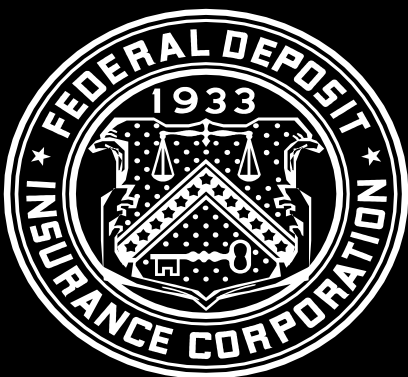


FDIC 

ACQUISITION POLICY MANUAL

Revision 3



FEDERAL DEPOSIT INSURANCE CORPORATION
DIVISION OF ADMINISTRATION
ACQUISITION SERVICES BRANCH



FEDERAL DEPOSIT INSURANCE CORPORATION

DIRECTIVE SYSTEM

TYPE AND NUMBER Circular 3700.16	
CONTACT Michael L. Benavides	TELEPHONE NUMBER 202-942-3557
DATE May 31, 2004	
DATE OF CANCELLATION (<i>Bulletins Only</i>)	

TO: All FDIC Divisions and Offices

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

SUBJECT FDIC Acquisition Policy Manual (APM) – Revision 3

1. Purpose To revise and establish new policies and procedures for the FDIC Acquisition Policy Manual (APM). The revised manual titled FDIC Acquisition Policy Manual – Revision 3 is hereinafter referred to as APM, Revision 3.

2. Revision FDIC Circular 3700.16, FDIC Acquisition Policy Manual, Revision 2, dated July 17, 2003, is hereby revised and superseded.

3. Scope APM, Revision 3 establishes an updated set of policies and procedures for:

- a. Procuring goods and services on behalf of the Corporation in its corporate, receivership, and conservatorship capacities; and
- b. Identifying roles and responsibilities for all FDIC employees involved in the pre-solicitation, solicitation, proposal evaluation, award, and contract administration phases of the procurement process.

4. Applicability APM, Revision 3 applies to all corporate procurement processes and personnel, including:

- a. Contracting Officers and other Acquisition Services Branch (ASB) personnel involved with procuring goods and services on behalf of the Corporation;

**Applicability
(cont'd)**

- b. Oversight Managers and Technical Monitors involved with monitoring contractor performance; and
- c. Divisions and Offices that participate in the procurement process.

5. Summary of Revisions

Revisions have been made in every chapter. See overview of APM, Revision 3 change attached.

6. FDICnet and Internet Access

APM, Revision 3 may be accessed as follows:

- a. **FDICnet.** This directive is available on the FDICnet on the "DOA Home Page," either under "Forms, Directives, & Records" or "Buying Goods and Services," under "Documents and Policy," and click on "FDIC Acquisition Policy Manual (APM) – Revision 3."
- b. **Internet.** On the FDIC external home page (www.fdic.gov), click on "Buying From, Selling to FDIC," then click on "Goods and Services" under "Selling to FDIC," and then click on "FDIC Acquisition Policy Manual – Revision 3."

7. Contacts

Questions regarding the information contained in this manual may be directed to the Assistant Director, Policy and Operations Section, Acquisition Services Branch, Division of Administration at (202) 942-3680.

8. Effective Date

The provisions outlined in this directive are effective May 31, 2004.

Attachment

FDIC ACQUISITION POLICY MANUAL

OVERVIEW OF APM, REVISION 3 CHANGES

The purpose of Revision 3 to the APM is to incorporate new and updated policies, and to streamline and present the information in a sequential process flow. General policy is located in Chapter 1; Chapter 2 is Requirements Package; Chapter 3, Simplified Procurement; Chapter 4, Formal Contracting; Chapter 5, Contract Administration; and Chapter 6, Procurement Credit Card Program. Chapters 2 through 5 each have a lead section summarizing the policies that apply to the subject of the chapter. The remaining sections of the chapter present a sequential step through the process. Individual, office, and division roles and responsibilities are incorporated into the process. Policies and procedures are presented in the active voice. Definitions were removed from the process flow and may be found in the glossary. Internal and external web and electronic document references are hyperlinked.

APM, Revision 3 establishes new or updated policies and procedures for:

- Integrated Best Value Assessment
- Price/Past Performance Tradeoff
- Security Requirements
- Contractor Performance System (CPS)
- CeFile
- Central Contractor Registration (CCR)

APM, Revision 3 changes the following approvals and thresholds:

Subject:	Approver was:	Approver is:
Second BAFO (4.D.8.)	Assistant Director, Headquarters Operations Head, Regional Contracting	Assistant Directors, DIRM & Corporate Contracting Head, Regional Contracting
Program Office task order requirements approval (5.E.1)	Division or Office Director for all task orders	No requirements approval for task orders
Subject:	Threshold level was:	Threshold level is:
Oral solicitation (3.C.2)	Less than \$25,000	Less than \$100,000 unless oral quote is not practical
Written RFQ (3.C.4.)	\$25,000 & greater	\$100,000 & greater
Contractor Registration (3.E.1.c.)	Awards \$25,000 & greater, registered in NCS	Awards \$5,000 & greater, registered in CCR
POS Reporting (3.E.7., 4.F.7)	5 business days	7 calendar days
Number of Sources for Solicitation (4.B.5.a.)	at least 5 or more	at least 3 or more
Risk level designation (4.C.2.c)	New	Services \$100,000 & greater
Separate pricing for IT security costs (4.C.2.d.)	New	\$3,000,000 & greater
SMS reviews contracts with network or data access (4.C.3)	New	Services \$100,000 & greater
Invoice review, line item sampling (5.H.6)	Between 25% and 50%	C.O. discretion, document file to support decision

FDIC Acquisition Policy Manual

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1.A. AUTHORITY

1.A.1. Authority

1.A.1.a. Acquisition Policy Manual (APM)

The [Federal Deposit Insurance Act](#) (12 U.S.C. § 1819) empowers the Federal Deposit Insurance Corporation (FDIC) to enter into contracts using private sector firms to provide goods or services. This Act also provides that the FDIC may establish policies and procedures to administer the powers granted to it, including the power to enter into contracts. The authority to establish policies and procedures for the contracting program has been re-delegated by the Board of Directors to the Director, Division of Administration (DOA). The Acquisition Services Branch (ASB), DOA issues the Acquisition Policy Manual (APM).

1.A.1.b. Contracting Authority

The [Expenditure Delegations](#) establish the Director, DOA, as the Corporation's Chief Contracting Officer, with authority to develop contracting policy, to solicit proposals, and to enter into, modify, and terminate contracts on behalf of the Corporation or any receivership or conservatorship. The Director's contracting authority may be re-delegated to Contracting Officers in ASB. FDIC employees without delegated contracting authority who enter into, modify, and terminate contracts are acting outside the scope of their authority and may be subject to disciplinary action.

1.A.2. APM Objective

The objective of the APM is to establish and maintain policies and procedures, and uniform standards for contracting policy.

ASB is responsible for developing all contracting policies and procedures, and communicating and implementing those policies and procedures throughout the FDIC.

The FDIC may contract in its [corporate](#), [receivership](#), [conservatorship](#), or [corporate liquidator](#) capacity; however, the specific capacity must be stated in each contract. The FDIC, in all capacities, will follow the policies and procedures contained in this manual when engaging private sector firms to provide goods or services unless listed in [1.A.4, Exclusions](#). The overall purpose of the contract will generally dictate the capacity in which the contract is executed.

1.A.2.a. Corporate Capacity

In its [corporate capacity](#), the FDIC contracts for the purpose of fulfilling corporate responsibilities and goals such as employee training, marketing policies, information systems, etc.

1.A.2.b. Receivership Capacity

When contracting in the [receivership capacity](#), the FDIC winds up the affairs of a failed insured depository institution by managing and liquidating its assets, collecting monies due, and paying its creditors. As a receiver, the FDIC succeeds to all the rights, titles, powers, and privileges of the institution and its stockholders.

1.A.2.c. Conservatorship Capacity

The FDIC contracts in the [conservatorship capacity](#) to preserve the assets of an open depository institution for the benefit of depositors and other creditors. As a conservator, the Corporation takes possession of the books, records, and assets of the institution, and takes whatever action is necessary to preserve the institution as a going concern. Contracts will likely be for asset management and disposition.

1.A.2.d. Corporate Liquidator Capacity

In the [corporate liquidator capacity](#), the FDIC contracting function supports the asset liquidation activities of the receivership or conservatorship. Although this capacity is a [corporate capacity](#), it is similar to the [receivership capacity](#) in terms of asset liquidation.

1.A.3. Guiding Principles

Participants in the acquisition process work together as a team, are empowered to make decisions within their area of responsibility, and exercise personal initiative and sound business judgment in providing goods or services at the "best value" to meet a Program Office's needs.

The acquisition process is based upon the following guiding principles:

- a. Attaining best value in award decisions;
- b. Enhancing acquisition planning and oversight management;
- c. Promoting fair and consistent treatment of offerors; and
- d. Providing outreach for socio-economic programs.

1.A.4. Exclusions

The policies and procedures in the APM are applicable to all offices except:

1.A.4.a. Office of the Inspector General (OIG)

The policies and procedures in the APM are only applicable to the FDIC [Office of the Inspector General \(OIG\)](#) to the extent that they are not inconsistent with provisions contained in the Inspector General Act of 1978, as amended. In this regard, and in accordance with the Inspector General Act, the OIG is provided certain independent contracting authorities. The OIG will follow the procedures in the APM to the

extent possible within its authorities and responsibilities. In addition, the OIG has separate authority for [final decisions](#) on appeals relating to contractor claims and protests on OIG contracts, including those resulting from audits. Notwithstanding, ASB will execute all contract actions required to implement OIG appeal decisions.

1.A.4.b. Legal Division

The [Legal Division](#) has independent contracting authority to acquire legal services to support FDIC's mission. However, the Legal Division is required to follow the APM for the procurement of all other goods or services.

1.A.4.c. Leases

Leases for office and warehouse space are excluded from the provisions of this manual. For leasing policies and procedures, please refer to Circular 3540.1, FDIC Leasing Policy Manual (LPM). However, services to assist in leasing activity should be obtained through ASB.

1.A.4.d. Accounts at Insured Depository Institutions

The Chief Financial Officer (CFO) or designee may establish and maintain accounts at insured depository institutions on behalf of the FDIC in its corporate, receivership, conservatorship, or corporate liquidator capacity, without following the policies and procedures stated in the APM. This includes:

1. The authority to establish certain terms of the accounts such as the designation of signatories and the authorization of monthly statements, as well as;
2. The authority to acquire ancillary services for these accounts relating to the processing of receipts and disbursements; and
3. The purchase and sale of allowable investments.

Notwithstanding the forgoing, the Division of Finance (DOF) may, in its sole discretion, elect to follow the APM and submit these requirements to ASB for processing.

1.A.5. APM Deviations

Adherence to the APM promotes procedural consistency and protects the integrity of FDIC's contracting process. When departures from APM requirements are necessary or desirable, the Associate Director, ASB, may authorize waivers for the deviations.

If a recurring need for a [deviation](#) is foreseen, a revision to the APM should be proposed for consideration.

1.A.5.a. Submission and Content for Proposed Deviations

Proposed deviations to the APM will be sent in writing to the Assistant

Director, Policy and Operations Section, and include the following information:

1. Identification of the APM requirement from which deviation is sought;
2. Full description of the deviation and the period of time and circumstances under which it will be used;
3. Explanation of why the deviation is necessary or desirable; and
4. Copies of any documents involved, such as forms, clauses, memoranda, or correspondence.

1.A.5.b. Approval

The Associate Director will approve all APM deviations. The requester will be notified in writing of the decision.

**1.A.6.
APM Revisions**

1.A.6.a. Submission and Content of Proposed Revisions

Proposed revisions to the APM will be sent in writing to the Assistant Director, Policy and Operations Section, and must include the following information:

1. Description of the proposed revision;
2. Explanation of why the proposed revision is necessary or desirable;
3. Effect of the proposed revision in terms of price and personnel resources;
4. Reference to the procedures or experience of other agencies or organizations, if applicable; and
5. Suggested draft of the proposed revision.

1.A.6.b. Approval

The Associate Director, ASB, will approve all APM revisions.

1.A.6.c. Consideration

The Associate Director, ASB, may obtain comments and advice on proposed revisions from other FDIC functional areas, including field organizations, when appropriate.

1.B. GENERAL POLICIES

1.B.1. Use of Private Sector Firms

The FDIC uses private sector firms for the acquisition of a wide range of goods or services when practicable and efficient, and where such firms meet FDIC's Contractor [Conflicts of Interest](#) Regulation. The FDIC monitors the performance of contractors to ensure compliance with the terms and conditions of the contracts and applicable policies of the FDIC.

1.B.2. Use of Commercial Goods

The majority of FDIC procurements for goods involve commercial products that have established catalog or market prices and are sold in substantial quantities to the general public. Whenever possible, FDIC acquires [commercial goods](#) because the descriptions and availability have already been established and the existence of competitive market forces ensures reasonable prices.

1.B.3. Public Release and Exchange of Information

1.B.3.a. Availability of Information

The FDIC will make records, data, and information available to the public to the fullest extent possible, consistent with its interests, privacy rights of individuals, ownership of rights in the data requested, and the need to protect the FDIC and other confidential business information from disclosure.

1.B.3.b. Confidential Information

[Contractors](#) must not disclose [confidential information](#) until authorized by the FDIC or required by court order. Maintaining confidential information includes:

1. Not disclosing the confidential information, except as authorized by the FDIC;
2. Taking reasonable measures to avoid disclosure of confidential information to any unauthorized person by a contractor's employees, agent, or attorneys;
3. A contractor revealing to a third party only the confidential information that is reasonably necessary in connection with the performance of contractor's obligations, and only after first obtaining a written agreement that the third party will abide by the terms hereof; and
4. Not disclosing procurement, price, or financial information during the proposal evaluation phase or otherwise.

1.B.3.c. Ensuring Confidentiality of Information with Contractors

Contractors must take appropriate measures to ensure the confidentiality of all information relating to any insured institution or any other business of the Corporation, that is obtained by any of its employees or [subcontractors](#), and prevent its inappropriate use and disclosure.

1.B.3.d. Referrals to the Contracting Officer

FDIC employees must forward all requests for information regarding a contract to the Contracting Officer.

1.B.3.e. Role of the Contracting Officer

If a request to the Contracting Officer is submitted pursuant to the [Freedom of Information Act](#) (FOIA), the Contracting Officer must forward the request directly to the FOIA/Privacy Act Group, [Legal Division](#).

**1.B.4.
Privacy Act
Requirements**

A contractor who designs, develops, or operates a system of records regarding personal information, in order to accomplish an FDIC function, must comply with the [Privacy Act](#). The Contracting Officer will ensure that the Privacy Act is included in all contracts, as appropriate.

**1.B.5.
Contractor
Conflict of
Interest**

The FDIC has established minimum standards for [contractors](#) and [subcontractors](#) in the areas of [conflicts of interest](#), ethical responsibilities, and the use of [confidential information](#) and has delegated authority for interpreting these standards to the Executive Secretary for all non-legal contracting and to the General Counsel for all contracts with law firms. It is the policy of the FDIC not to award contracts to firms that do not meet these minimum standards.

1.B.5.a. Applicable Regulation

Requirements for minimum standards, and procedures for ensuring that contractors meet minimum standards of competence, experience, integrity, and fitness are defined in the Contractor Conflict of Interest Regulation (12 CFR Part 366). When services are being procured, the [Contracting Officer](#) must ensure that the *FDIC Integrity and Fitness Representations and Certifications Form* is included in the [Request for Proposals](#) (RFP) or [Requests for Quotation](#) (RFQ) for services estimated to cost greater than \$25,000, or is available on the Internet at <http://www.fdic.gov/regulations/laws/forms/index.html>. All firms submitting proposals for services must complete this form. Contractors who submit [proposals](#) for goods, or who enter into [contracts](#) for goods with the FDIC, are not subject to the regulation. These contracts may

still be subject to background investigation reviews and fingerprinting in accordance with [4.A.18., Background Investigations](#).

When a contract is primarily for goods, but requires incidental services (e.g., technical support for computers, installation for systems furniture, or set-up for fax machines), the contractor will not be subject to the Regulation. If there are any doubts regarding the application of a Regulation to a procurement, the Contracting Officer will refer the matter to the Policy and Operations Section, ASB, for coordination with the Contracting Law Unit (CLU) of the Legal Division.

1.B.5.b. Responsibilities of Program and Contracting Personnel

The [Program Office](#) and ASB personnel, in consultation with CLU, ensure that these conflict of interest regulations are enforced.

1.B.5.c. Referral of Potential Contractor Conflicts of Interest

When an issue arises during the contracting process that involves contractor and/or contractor employee conflicts of interest issues, including issues relating to persons previously employed by FDIC, FDIC Form 3700/26, Contractor Eligibility Review Request, should be completed and submitted to the Assistant Director, Policy and Operations Section, ASB. The form should be filled out as completely as possible (even if the referral does not pertain to a specific contracting action) with particular attention paid to SECTION V – COMMENTS, SPECIAL INSTRUCTIONS, NATURE OF CONFLICT. The information should include a summary of events, the identification of all pertinent facts, and any applicable supporting documentation.

1.B.5.d. Citation

12 CFR, Part 366.

**1.B.6.
Employee
Standards of
Conduct**

1.B.6.a. Applicable Regulation

The FDIC employees are held to the highest standards of conduct in performing their duties as specified in its Employee Standards of Conduct Regulation. It is the employee's responsibility to become familiar with, and to comply with these standards. Employees who have questions regarding their standards of conduct may consult with CLU.

1.B.6.b. Prohibited Actions

In particular, employees will not take part in any action, whether or not specifically prohibited, that may result in the following:

1. Appearance of using their public offices for their private gain;
2. Private gain of another person;

3. Preferential treatment to any person, such as friends and relatives;
4. Loss of complete independence or impartiality;
5. FDIC decisions outside of official channels; or
6. Adversely affecting the public's confidence in the integrity of the FDIC.

1.B.6.c. Recusal for Conflicts of Interest

Employees must **recuse** themselves from any matter in which they, their spouse, or dependent child have a financial interest, or that may otherwise create a **conflict of interest**, or an appearance thereof.

Employees, who believe that their assignment may result in, or give the appearance of a conflict of interest, must report all relevant factors to their appropriate supervisor and the Ethics Section immediately.

1.B.6.d. Referral Action on Employee Conflicts of Interest (MAR 2000) (JUL 2003)

When an issue arises during the contracting process that involves FDIC employee conflicts of interest issues, a memorandum shall be prepared which should include a summary of events, the identification of all pertinent facts, and any applicable supporting documentation. This memorandum should be submitted to the Assistant Director, Policy and Operations Section, ASB.

Following the review of the submission to the Policy and Operations Section and the identification of the conflicts of interest and/or the eligibility issue(s), any additional information and documentation will be collected. The matter will then be referred to the Executive Secretary Section of the Legal Division for a determination and resolution. Upon receipt of their determination by the Policy and Operations Section, the interested parties will be advised of the recommended course of action.

1.B.6.e. Citation

5 CFR, Part 2635.

1.B.7. Gifts

1.B.7.a. Applicable Regulations

Employees are prohibited from accepting gifts, entertainment, favors, loans, or anything of monetary value from certain prohibited sources. This includes a person who has or seeks contracts, other business, or financial relationships with the FDIC, or who has an interest that may be substantially affected by the performance or nonperformance of any employee's official duties.

Competing **contractors**, or their related entities, employees, and agents, are prohibited from offering, giving, or promising to offer or give, directly or indirectly, anything of value to an FDIC employee.

These regulations supplement criminal conflict of interest statutes in Title 18 of the U.S. Code.

1.B.7.b. Referral of Suspect Practices

Information or allegations concerning gratuities must be promptly referred to the Ethics Section and the OIG.

1.B.7.c. Citation

5 CFR, Part 2635, Subpart B.

**1.B.8.
Minority,
Women-Owned
Business
(MWOB) and
Small
Disadvantaged
Business (SDB)
Programs**

The Office of Diversity and Economic Opportunity (ODEO) has corporate wide responsibility for oversight and monitoring of the FDIC Minority, Women-Owned, and SDB Outreach Program. In addition, ODEO participates in the contracting process for all contracting actions over \$100,000. Minority Women-Owned Business (MWOB) and Small Disadvantaged Business (SDB) firms in Joint Ventures, or as subcontractors, are encouraged. The goal of the Outreach Program is to increase the number of MWOB and SDB firms available for FDIC contracting requirements.

The current program identifies and registers MWOB firms that are interested in providing goods and services used by the FDIC.

**1.B.9.
8(a) Program**

The FDIC participates in the Small Business Administration's (SBA) 8(a) Program. This program provides contracting opportunities with the FDIC for small disadvantaged businesses where only 8(a) firms will be solicited for a particular requirement.

SBA has delegated to the head of the FDIC, or designee, for re-delegation to FDIC Contracting Officers, its authority to enter into 8(a) contracts pursuant to the Partnership Agreement between SBA and FDIC.

**1.B.10.
Service Contract
Act (SCA)**

1.B.10.a. Applicable Statute

The McNamara-O'Hara Service Contract Act (SCA) of 1965 requires that contractors pay not less than prevailing wages and fringe benefits, and provide safe work conditions, under Federal contracts in excess of

\$2,500 for the performance of non-professional services in the United States. Examples of non-professional services subject to the Act include:

1. Custodial, janitorial, or housekeeping services;
2. Snow, trash and garbage removal;
3. Guard services;
4. Temporary or secretarial support services;
5. Certain specialized services requiring special skills, such as graphic arts or stenographic reporting;
6. Packing, crating, or storage;
7. Maintenance and repair of equipment;
8. Data processing, collection, and analysis; and
9. Accounting clerks and bookkeepers.

1.B.10.b. Applicability

The FDIC will comply with the SCA for all contracts entered into in its [corporate capacity](#), and where the principal purpose of the contract is to furnish [services](#) in the United States, through the use of non-professional service employees. Obligations under the SCA apply to any contract for services in excess of \$2,500, unless they have been specifically exempted.

1.B.10.c. Exemptions

Many types of services are covered by SCA, which attempts to include all service contract workers who do not fall under the [Davis-Bacon Act](#) for construction, or the [Walsh-Healey Public Contracts Act](#) for supplies. However, several classifications of services have been made exempt by either statute or regulation. In addition, there are some special FDIC exemptions.

1.B.10.c (1) Statutory Exemptions

Contract exemptions mandated by various statutes are as follows:

- a. Contracts for construction, alteration, or repair of public buildings or public works subject to the Davis-Bacon Act;
- b. Contracts for supplies subject to the Walsh-Healey Public Contracts Act;
- c. Transportation contracts governed by published tariff rates;
- d. Contracts for telecommunications services subject to the Communications Act;
- e. Contracts for public utility and postal operations services; and
- f. Employment contracts for direct services to a Federal agency by an individual or individuals.

1.B.10.c (2) Regulatory Exemptions

The Secretary of Labor has also issued regulatory exemptions for certain classifications of employees. By regulation, the SCA does not cover bona fide executive, administrative, and professional positions, and certain computer-related professional positions. Professional positions are narrowly defined as those who fit the traditional professions, i.e., doctors, accountants, lawyers, and teachers. Exempt computer professionals generally include engineers, program designers, and other persons who perform original non-repetitive tasks.

In addition, the Secretary of Labor has determined that the SCA does not apply to contracts for maintenance, calibration, or repair of:

- a. Automated data processing equipment and office information/word processing equipment;
- b. Certain scientific and medical equipment; and
- c. Office/business machines not otherwise exempted, where the manufacturer or supplier of the equipment performs such services.

Subcontracts for commercially available services, regardless of amount, are likewise exempt.

1.B.10.c (3) Special Exemptions

As applied to FDIC operations, provisions of the SCA do not apply to contracts written by the FDIC acting in its [receivership capacity](#). Should contracts need to be written to cover the FDIC acting in both its [corporate capacity](#) and its receivership capacity, the Contracting Officer must assure that services related to each are segregated and that offerors understand that the SCA wage determination applies only to services performed for the FDIC operating in its corporate capacity.

[Federal Supply Schedule](#) (FSS) contracts, when originally executed by GSA, make provision for related SCA wage levels as applicable to a given contract. Therefore, an agency placing an order against the FSS is not required to reissue an SCA wage determination for specific orders.

1.B.10.d. Penalties

For any violation of the SCA, the “party responsible” is liable for the amount of any deductions, rebates, refunds, and underpayment (including nonpayment) of compensation due any employee. In addition, employees are entitled to interest on any money due at the applicable prime rate.

1.B.10.e. Citations

41 USC 351-357.

**1.B.11.
Davis-Bacon Act****1.B.11.a. Applicable Statute**

The Davis-Bacon Act of 1931 requires payment of not less than prevailing wage rates to workers on Federal or federally funded construction projects in excess of \$2,000. Prevailing wage rates, set by the Department of Labor, are the wages paid to the majority of the laborers or mechanics falling within the same specific classifications on similar projects, in the area during the period in question

1.B.11.b. Applicability

Contractors must comply with the Davis-Bacon Act for all construction contracts involving construction, alteration, or refurbishment, including painting and decorating, for \$2,000 or more.

1.B.11.c. Procedures

Wage determinations are published in the Federal Register and in the Government Printing Office Document entitled General Wage Determinations Issued Under the Davis-Bacon and Related Acts or are available on line at: <http://davisbacon.ntis.gov>.

1.B.11.d. Citation

40 USC 276a.

**1.B.12.
Walsh-Healey
Public Contracts
Act****1.B.12.a. Applicable Statute**

The Walsh-Healey Public Contracts Act requires that contractors who supply materials, supplies, articles, or equipment be manufacturers or regular dealers. They must conform to Federal requirements for minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions.

1.B.12.b. Applicability

The FDIC will include the Walsh-Healey Public Contracts Act in all contracts for goods valued over \$10,000.

1.B.12.c. Citation

41 USC 35-45.

**1.B.13.
Prohibition on
Practices to
Restrict
Competition**

An anticompetitive practice is one that eliminates or restricts competition or restrains trade. Such practices include [collusion](#), follow-the-leader pricing, rotated low price proposals, sharing of business, identical prices, and any other device intended to deprive the FDIC of the benefits of competition. These practices may violate Federal anti-trust laws and may be subject to prosecution by the Attorney General of the United States. Proposals suspected of reflecting anticompetitive practices will be rejected and reported to the Contracting Officer, CLU, and the OIG.

**1.B.14.
Referrals to the
OIG**

The Inspector General Act of 1978, as amended, establishes the OIG as the corporate entity responsible for developing and administering a nationwide program of audits and investigations. The program is designed to detect and prevent fraud, waste, abuse, and gross mismanagement. It encompasses audits and investigations of all FDIC activities and entities doing business with the FDIC. The OIG initiates audits and investigations, at any time, in areas of the FDIC's and its contractors' operations when it suspects fraud, waste, abuse, or gross mismanagement.

1.C. FDIC CONTRACT FILE MANAGEMENT

1.C.1. Official Contract File

Each ASB must maintain an official contract file system that will include all contract information from the point that a completed [Requirements Package](#) is received by ASB through the closeout of the contract.

- a. The Head of each ASB will appoint authorized contracting personnel who will be responsible for establishing and maintaining the contract file room or ensuring that the contract files are properly secured.
- b. All contract files must be placed in numerical order by contract.
- c. Access to the file room must be restricted to only authorized contracting personnel. All personnel will be required to sign file cards to obtain files from the official contract file room.
- d. All documentation related to contract actions, including invoices processed by ASB, must be maintained in the official contract file.
- e. All information pertaining to a contract must remain in the official contract file through closeout and while in records storage. The exception is for unsuccessful proposals. These may be archived sixty to ninety days after contract award.
- f. Contract information will be retained in compliance with FDIC's Record Retention Policy stated in [5.O., Contract Files Record Retention](#).

1.C.2. Contract Numbering System

1.C.2.a. Contract Numbering

All contract files will be numbered using the official FDIC contract numbering system. This system is illustrated below.

96 00189 F BB 002

The definitions are:

96 - The last two digits of the year in which the purchase order or contract is being created;

189 - A sequential number created by ASB for the contract;

F - The class of order of the contract (class of order is explained in the Purchase Order System (POS) User Guide);

BB - A buyer code that identifies the Contracting Officer who is creating the contract; and

002 - A sequential number for all modifications to a contract.

1.C.2.b. Task Order Numbering

Task order designations are as follows:

96 00189 F BB 001 96/002

The contract numbering system remains the same with the addition of the two task order designations. The definitions of the task order designation are as follows:

96. The last 2 digits of the year in which a task order for a contract is issued.

002. The number of a task order issued against a contract. Task orders are numbered sequentially beginning with 001.

1.C.3. Filing Requirements

1.C.3.a. Basis of Filing

The FDIC must establish a file folder for each contract, labeled with the relevant number.

1.C.3.b. Initiation of File

The file must be created and placed in the file room or in a secured area as soon as the Contracting Officer begins work on the contract. This file must include a copy of the Requirements Package and describe the contracting method to be used.

1.C.3.c. Types of File Folder

Until the time of award, the Contracting Officer will maintain the file. File folders will be created for each of the following:

1. [Purchase orders](#);
2. Contracts and [multiple-order requirements contracts](#);
3. [Basic ordering agreements](#) (BOAs);
4. [Task orders](#); and
5. Other contract instruments (e.g., [Interagency Agreements](#)).

1.C.3.d. Multiple Awards

Where a solicitation results in multiple awards (e.g., for a basic ordering agreement), a separate file must be created for each contract issued. A master file should contain the solicitation information.

1.C.3.e. Partitions of File

Each official contract file will use one or more six-partition file folders. Purchase order files will use a two-partition file folder. *Exhibit XXII, Contracting File Checklists*, shows the required contents of each file partition.

**1.C.4.
Review and Audit**

Authorized contracting personnel will review the information in POS periodically to ensure that all contract actions that are in process have documentation in the official contract file.

The FDIC's official contract files are subject to review by [OIG](#) and the [GAO](#).

**1.C.5.
Requirements for
the File Room****1.C.5.a. Responsibility**

Authorized contracting personnel must ensure that the file room is secure; and that adequate staff are available to create, remove, and replace file folders at the request of the Contracting Officer.

1.C.5.a (1) File Cards

A "file card" must be prepared for every file folder. This card will include the identity of the file (contract, task order agreement, task order, or purchase order) and a record of each date that the file is taken out of the file room. The card will be signed by the person who removes the file, and should denote a responsible person (e.g., the Contracting Officer) if removed by a procurement clerk. When files are returned, the return will be annotated on the card.

1.C.5.a (2) Restricted Access

Only ASB authorized personnel will have unrestricted access to the file room. All personnel must sign file cards to check files in and out of the file room following established procedures.

1.C.5.a (3) Service

Authorized contracting personnel will ensure that file room access is available during normal business hours and that the file room is secured at the end of each day.

1.C.5.a (4) Initiating the Contract File

Each Contracting Officer is responsible for establishing a contract file for each new contract. A separate contract file must not be established for modifications and other actions taken on the same contract.

1.C.5.b. Handling Requests for Information**1.C.5.b (1) Timely Response**

The Contracting Officer will request the removal of files from the file room in person, or by a designee. The authorized contracting personnel will retrieve the file in a timely manner.

1.C.5.b (2) Signature on File Card

The authorized contracting personnel will enter the date and responsible

person's name on the file card and obtain the signature of the person retrieving the file. The authorized contracting personnel will return the file card to the official contract file.

1.C.5.c. Accountability for Contracting Files

If a [Contracting Officer](#) requests a file that has already been checked out, the authorized contracting personnel will give the name of the Contracting Officer who has the file to the requestor. Contract files should reside in the file room, except when needed by Contracting Officers to process contract actions. It is the responsibility of the Contracting Officer to ensure that a contract file is returned to the file room as contract actions are completed.

1.C.5.d. Transfer

If it is necessary to transfer a file from one Contracting Officer to another, the file room must be notified of the transfer. The transfer should be noted on the file card.

1.C.5.e. Inventory Control Checks

Authorized contracting personnel will perform a quarterly inventory control check on all contract files. At this point, Contracting Officers will be required to return all contract files for inventory reconciliation. Advance notice of at least three business days will be given for all inventory control checks.

1.C.5.f. Returned Files

Each time a Contracting Officer returns a contract file to the file room, authorized contracting personnel must retrieve the file card, and sign it to show that the file has been returned. The file and the file card must be immediately returned to the official contract file.

1.C.6. Handling Proposals

Proposals may be filed separately from the remainder of the official contract file. However, the location of the proposals must be noted in the official contract file. All proposals, except that of the selected firm, may be archived within sixty to ninety days after contract award, [5.O., Contract Files Record Retention](#).

1.C.7. Inactive Files

The Contracting Officer may designate a contract file as inactive, when the last invoice is paid and no outstanding issues remain. To maximize the efficiency of the file room, inactive files may be filed in a separate location within the file room until contract closeout is completed. After contract closeout, files will be archived in accordance with records management procedures, [5.O., Contract Files Record Retention](#).

**1.C.8.
Maintaining the
Official Contract
File**

The Contracting Officer must ensure that all documents are filed in the official contract before contract award.

The Contracting Officer will periodically review the official contract files to ensure that all required documents are present. If they are not, the Contracting Officer must justify why they are missing.

The Contracting Officer must take immediate steps to obtain missing information (e.g., by obtaining copies from the [Program Office](#) or the contractor).

During contract closeout, the Contracting Officer will conduct a final review of the official contract file.

1.D. SUBSIDIARY CONTRACTING

1.D.1. Background

The board of directors and officers of a **subsidiary**, not the FDIC or the receivership, are responsible for managing the business and affairs of the subsidiary. Policies and procedures otherwise applicable to the receivership do not apply to the subsidiary. The directors of the subsidiary may determine, in the exercise of both their fiduciary duties to the subsidiary and their business judgment, if the subsidiary will be subject to specific contracting policies and procedures. It is imperative that the independent legal status of the subsidiary is maintained.

1.D.2. Applicability of the APM

If a subsidiary chooses to follow the APM for contracting, a Resolution of the board of directors of the subsidiary (Resolution) and a Service and Agency Agreement (SAA) are required. The Division of Resolutions and Receiverships (DRR) defines the contracting requirements and performs oversight management.

1.D.3. Board Resolution

The Resolution provides authority to the FDIC to take a specified action(s) on behalf of the subsidiary. The Resolution must authorize the FDIC to contract for goods and services on behalf of the subsidiary.

1.D.4. Service and Agency Agreement

If the FDIC is given the authority to contract on behalf of the subsidiary, the SAA must identify the assets and the asset management responsibilities, and transfer them from the subsidiary to the FDIC. The appropriate officials of DRR will execute the SAA on behalf of the FDIC, and those with proper-delegated authority will execute it on behalf of the subsidiary. Contracting support related to the assets will be performed by Contracting Officers in ASB in accordance with the APM, regardless of the subsidiary's operating status. SAAs are discussed in Chapter XIII, Management and Disposition of Subsidiaries, of the DRR Asset Disposition Manual.

1.D.5. Contracting Capacity

When a third party contract is to be executed for a subsidiary's asset(s), the contract will be in the receivership capacity and signed by "FDIC as Receiver for (name of institution), as Agent for (name of subsidiary)."

**1.D.6.
Processing
Invoices**

The subsidiary is responsible for payment of invoices for subsidiary contracts in POS, although they are processed in the same manner as other invoices (see [5.H., Contract Payments](#)).

**1.D.7.
Documentation**

The Contracting Officer will obtain both the Resolution and SAA, and any other documentation, from the Program Office that supports FDIC contracting on behalf of the subsidiary, and place it in the official contact file.

1.E. FINDER'S FEE

1.E.1. Background

This section relates to the location of dormant assets by private entities. There may be significant assets of cash or cash-equivalents belonging to failed institutions, conservatorships, and receiverships existing in various locations. In some instances they are not known, have not been identified; therefore, are not being recovered.

1.E.2. Use of Private Sector Firms

In instances where private entities offer to locate and identify assets of cash or cash-equivalents that are considered unclaimed, abandoned, or lost, in return for a [finder's fee](#) or referral fee, payment will be made from the recovery and subsequent collection of the lost property. The engagement of finders is not covered under the APM, but is controlled by DRR and its Asset Disposition Manual.

A [payment authorization voucher](#) (PAV) will be used to pay the fees.

1.F. USE OF PAYMENT AUTHORIZATION VOUCHERS

1.F.1. Use of Payment Authorization Vouchers

There are circumstances where goods or services obtained by the Corporation in the normal course of business, are not procured by a Contracting Officer. Expenses for these types of goods and services are listed below and represent the only circumstances where payment may be made by a PAV (For definition of Non-Procurement Related Expenses, see *Exhibit I, Expenditure Delegations for Contracts, Leases, Legal Services, and Non-Procurement Related Expenses*).

1.F.1.a. Non-Procurement Administrative-Related Expenses

1.F.1.a (1) Travel-Related Services

Facilities and services arrangements made by the FDIC's travel agency services contractor including but not limited to seminars, meetings, conferences, training sessions and bank closings.

1.F.1.a (2) Utilities

Utilities and local telephone services may be interpreted as including the actual cost of services associated with cellular/mobile phones, pagers, etc. However, any actual equipment costs should not be paid for by PAV, but by purchase order.

1.F.1.a (3) Catering Services

Payment to contractors operating food services operations catering functions in FDIC buildings.

1.F.1.a (4) Postage

Postage obtained from the U.S. Post Office.

1.F.1.a (5) Travel Expenses

Payments to reimburse FDIC employees for expenses incurred while on travel status, such as rental of rooms or workspace, and related equipment and services, as listed in the Government Travel Regulations (GTR), Section 10710.

1.F.1.a (6) Invitational Travel

Payments to reimburse speakers and others invited to attend official FDIC meetings and functions.

1.F.1.a (7) Membership Fees

Payments of membership fees or dues associated with corporate sponsored memberships for FDIC employees in professional associations, in accordance with FDIC Circular 2660.1, Corporation Guidelines for Membership In Professional Organizations.

1.F.1.a (8) Relocation Expenses

Payments to reimburse FDIC employees for relocation and related expenses, in accordance with the GTR. Only the Travel and Relocation Unit in Washington, DC may authorize these payments.

1.F.1.a (9) Training Expenses

Payments to reimburse FDIC employees for training expenses (must be supported by a canceled check indicating that the employee has made payment to the contractor) under an approved SF182.

1.F.1.a (10) Licensing Fees

Payments to reimburse FDIC employees for licensing fees relative to maintaining professional accounting for financial certification, including a Certified Public Accountant Certificate.

1.F.1.a (11) Miscellaneous Items

Payments for other miscellaneous items such as: commuter payments, replenishment of petty cash or imprest funds, rental of post office boxes, clothing allowances for FDIC drivers in accordance with FDIC policies and procedures, and refunds resulting from duplicate or overpayment to the FDIC.

1.F.1.a (12) Rent Payment

Payments of rent, including operating expense and tax pass-throughs, as set forth in the FDIC leases.

1.F.1.a (13) Payments to Lessors for Lease Related Expenses

Payments to lessors for expense other than rent, either stipulated in, or provided for, under the lease. Such goods and services will be provided by or through the lessor and will be associated with the day-to-day operation of FDIC leased space. The following is a non-exclusive listing of examples of goods and services covered by this item:

- a. After hours and miscellaneous HVAC;
- b. Added janitorial and trash removal;
- c. Mechanical, plumbing, and electrical services (including replacement of light bulbs and tubes);
- d. Repairs to appliances affixed to the leased premises;
- e. Additional pest control services; and
- f. Miscellaneous carpentry, painting, and repairs.

1.F.1.a (14) Subscriptions

Payment to reimburse Division of Supervision and Consumer Protection (DSC) field office personnel for periodical subscriptions and/or book purchases up to \$115.00 in accordance with the Field Subscription Program.

1.F.1.a (15) Expenses Associated with Senior Executive-Level Meetings

Payment to reimburse Senior Executives (i.e., E-3 Level and higher) for expenses associated with business meetings, including but not limited to meals and meeting rooms.

1.F.1.a (16) FDIC Bills of Lading Expenses

Payments to reimburse General Services Administration (GSA) contractors for FDIC-approved expenses under official FDIC bills of lading.

1.F.1.a (17) Expressions of Sympathy and Acknowledgement of Personal Events

Donations to charities and expenses for U.S. Savings Bonds to acknowledge births and adoptions pursuant to Directive 2800.1 dated February 15, 1997.

1.F.1.a (18) Financial Obligations Under RTC Contracts

Payments relating to contractor claims, settlements and/or aged/unpaid invoices resulting from closeout activities under RTC contracts that were not officially transitioned to the FDIC or recorded in POS.

1.F.1.a (19) Job Fairs

Registration fees for job fairs associated with recruiting new FDIC employees only when payment cannot be made with the FDIC Procurement Credit Card.

1.F.1.a (20) Visiting Scholar Program

Payments required under an Intergovernmental Personnel Act Assignment Agreement to Universities, or other non-profit organizations for reimbursement of salaries, fringe benefits, and travel subsistence expenses.

1.F.1.a (21) Newspaper Advertisements

Payment for newspaper advertisements.

1.F.1.b. Non-Procurement Business/Legal-Related Expenses

1.F.1.b (1) Payments to Financial Institutions

Payments to financial institutions for loss sharing or assistance agreement transactions, settlement transactions and bank failure closing activities, such as payment of initial funds to the assuming or agent bank and payment to the Federal Reserve Bank to enable the release of loans that were pledged by the bank prior to closing. This will also include expenses incurred by the FDIC as a non-lead participant in a loan payable to the lead participant.

1.F.1.b (2) Real Property Taxes

Payments of real property taxes on real estate owned or managed by the FDIC in either its corporate or its receivership capacity. This does not include payments related to contracts for tax appeal services or taxes paid directly by property managers.

1.F.1.b (3) Occupancy Taxes

Payments of occupancy taxes to the State of Virginia and Arlington County for state bank examiners who stayed at the Seidman Student Center.

1.F.1.b (4) State and Local Charges

Payments to Federal, state and municipal government entities for items that, by their nature, are not competitively bid, such as building permits and inspection fees.

1.F.1.b (5) Proceedings

Payments associated with legal proceedings or matters such as judgments, court costs, filing fees, bond fees in judicial and non-judicial foreclosures, court and county clerk fees, Uniform Commercial Code fees, subpoena fees, witness fees, sheriff or process server fees, referee fees, receiver fees, advance checks for foreclosed assets to be purchased by DRR, court reporters, and experts to assist in the preparation and evaluation of a legal matter.

1.F.1.b (6) Escrow Funds

Payment of funds held in escrow, such as trustee for owner funds and work-in-process accounts.

1.F.1.b (7) Discretionary Claims

Payments of discretionary claims (general creditor and uninsured depositor claims).

1.F.1.b (8) Legal Division Expenses

Payments of Legal Division expenses that cannot be processed through the Legal Services invoice system, such as indemnification of bank officers or FDIC employees.

1.F.1.b (9) Asset Pool Servicers

Payments to Asset Pool Servicers involving previously authorized assistance agreements for contractor operating expenses, incentive fees, and permitted advances pursuant to the Servicing Agreement.

1.F.1.b (10) Subsidy Expenses

Payment to reimburse a receivership for subsidy expenses such as discounts or other closing assistance paid by the FDIC as part of the Affordable Housing Program.

1.F.1.b (11) Banking Services

Payments to depository institutions for cleared checks, bank service fees, and the purchase of returned checks, and for services to manage the banking relationships of the corporation and receiverships by the Division of Finance (DOF).

1.F.1.b (12) Borrowing Charges

Payments of funds to the receiverships as result of a borrowing from the corporation.

1.F.1.b (13) Receivership Expenses

Payments to the Corporation for receivership billings, borrowings, cash sweeps, etc.

1.F.1.b (14) Tax Filing Servicers

Payments to tax filing servicers for amounts withheld from employee relocation benefits, due and payable to tax authorities.

1.F.1.b (15) Mortgages

Payments of principal balance on obligations owed on notes or mortgages payable.

1.F.1.b (16) Refunds

Payments of member bank FDIC insurance assessment refunds.

1.F.1.b (17) Transfer of Funds

Transfer of funds from/to split receivership bank and home locations.

1.F.1.b (18) Legal Notices

Payments for legal notices of claims required by statute.

1.F.1.b (19) Finder's Fees

Payment (called Finder's Fees) to private sector firms or individuals in return for the recovery of the FDIC lost property in accordance with the policies and procedures in [1.E., Finder's Fee](#).

1.F.1.b (20) Affordable Housing Program Expenses

Payments to Technical Assistance Advisors when services have been secured by the FDIC Memoranda of Understanding for activities related to the promotion of sales of qualifying residential properties, from training to pre-marketing activities through closing. Also included are payments to monitoring agencies (state housing finance agencies, local entities, and national and local nonprofit organizations) for administrative and monitoring fees pursuant to Memoranda of Understanding and/or Land Use Restriction Agreements.

1.F.1.b (21) Affordable Housing Program Advisory Board Expenses

Administrative support and payment of those expenses covered under the Charter of the Affordable Housing Advisory Board. These expenses

include, but are not limited to, travel, meeting space, hotel services, car/van rental for property tours, legal transcription services, per diem, and invitational travel expenses for witnesses.

1.F.1.b (22) Transcripts Expenses

Payments for transcripts and/or other deposition documentation required by the FDIC but produced by opposing counsel or court-appointed reporters (i.e., produced outside the control of the FDIC).

1.F.1.b (23) Monthly Cooperative Maintenance Fees

Expenses for monthly cooperative maintenance fees for assets owned by the FDIC in either its receivership or corporate capacity.

1.F.1.b (24) Payments to Other Agencies

Payments to other State, Local and Federal agencies for goods and services.

1.F.1.b (25) Call Report Processing

Payments to reimburse the Federal Financial Institution Examination Counsel (FFIEC) for costs incurred as part of Call Report Processing. The Call Report is a quarterly financial statement that is jointly developed by and filed by the Federal Reserve Board, the FDIC, and the Office of the Comptroller of the Currency.

1.F.1.b (26) Property Management

Permitted advances pursuant to the Property Management Agreement.

1.F.1.b (27) Ground Lease

Payments for ground lease expense when paid directly by the FDIC.

1.F.1.c. RTC Mortgage Backed Securities (MBS) Expenses:

1.F.1.c (1) Administration Expenses

Payments for fair market valuations and legal opinions incurred in the course of terminating existing RTC issued MBS. Also, payments for expenses related to the administration and termination of existing RTC issued MBS that are associated with and required under the transaction Pooling and Servicing Agreement.

1.F.1.c (2) Rating Agency Expenses

Payments to Rating Agency Firms for providing reviews of reserve fund reductions, which are necessary in order to ensure the certificates maintain their current ratings, and

1.F.1.c (3) Trailing expenses subsequent to the termination of an RTC is Assignment and Recordation Expenses

Payments associated with the recording and assignment of mortgage loans into trusts, as required and set forth in the Pooling and Servicing Agreement of each RTC issued MBS.

**1.F.2.
Payments
Authorized by
PAV**

FDIC organizational units must submit a completed [PAV](#) to the Accounts Payable Processing Unit, DOF. The PAV must provide all required accounting data and must be signed by an individual with delegated expenditure authority for the expense. In addition, all PAVs must cite the basis for authorizing the payment as stated in [1.F.1, Use of Payment Authorization Vouchers](#). If the APM reference is not listed on the PAV, it will be returned to the approving official for correction.

**1.F.3.
Reporting
Improper Use of
PAVs**

PAVs that are used to circumvent the official contracting process will be reported to the Director, DOA on a quarterly basis. DOF will provide ASB with a copy of all improper PAVs quarterly, and ASB will consolidate the information into a report. The report will include the name of the official who authorized the payment, date of authorization, date of payment, amount, and description of the goods or services procured.

**1.F.4.
Sanctions**

When appropriate, the authorization of one or more payments for improperly acquired goods or services may result in the revocation of the authorizing official's expenditure authority and any other disciplinary action deemed appropriate for acting outside the scope of his or her authority.

1.G. CLOSING SUPPORT FOR FINANCIAL INSTITUTION CONTRACTS

1.G.1. Pre-Closing Activities

Before closing a financial institution, the **Contracting Officer**, with DRR and the Legal Division, will complete an initial inventory of the institution's contracts, during the on-site review, to determine the dollar value/ceiling price, period of performance, description of services, and general terms and conditions. The Contracting Officer will use best efforts to obtain copies of all institution contracts. The initial contracts inventory will be used to reconcile against the status of the institution's contracts ninety days following the closing.

1.G.2. Post Closing Activities

1.G.2.a. Post Closing Review of Institutions Contracts

Ninety calendar days following the closing, the Contracting Officer and DRR will conduct a post closing review of all the institution's contracts. The purpose of this review is to reconcile this list with the initial inventory completed during the pre-closing on-site review.

1.G.2.b. Identification

The post closing review will identify:

1. Contracts that have been assumed by the assuming institution;
2. Contracts that have been repudiated by the FDIC;
3. Contracts that have been or will be retained by the FDIC; and
4. Contracts that require additional time for the repudiation decision.

Even though disposition decisions on most institution contracts should generally be made at the ninety-day-post-closing date, DRR will have up to one-hundred-eighty calendar days from the closing to make a repudiation decision on a contract.

1.G.2.c. Additional Information

In addition to the information obtained during the pre-closing review, the Contracting Officer will obtain the following information for each contract that has been or will be retained by the FDIC:

1. Payment schedules;
2. Analysis of terms and conditions (e.g., egregious provisions);
3. Potential conflicts of interest, and integrity and fitness of the contractor;
4. Cost effectiveness of the contract and the availability of ongoing FDIC contracts that could provide more attractive

terms;

5. Adequacy of the performance to date; and
6. Legal Division review, if appropriate.

1.G.2.d. Preparation of Expenditure Authority Case

Following the ninety-day post closing review, DRR will prepare a case for **expenditure authority** in the total aggregate dollar value, for each contract, to continue performance through expiration. The case will break out the total dollar amounts of each contract. The expenditure authority will be based upon the information known at the time, and current service levels. Additional expenditure authority will not be required for minor increases in a contract's ceiling price unless the increase is based on adding additional (new) requirements. The case will be prepared and submitted for approval as soon as possible following the ninety-day review.

1.G.2.e. Contract Administration Activities

Between the closing and the FDIC's decision to retain or repudiate a contract(s), DRR has the authority to approve invoices for acceptable work under institution contracts. However, all required contract modifications, claims, or issues requiring contract interpretations will be handled by the **Contracting Officer**, with input from DRR and the Legal Division, as necessary. During this period, if a contract requires modification, this will constitute a decision to retain the contract and it will be subject to contract administration in accordance with the APM.

1.G.2.f. Retained Contracts

The appointed DRR Oversight Manager and the Contracting Officer will administer all retained contracts jointly in accordance with the APM, including invoice processing, to the fullest extent possible. The Contracting Officer, in consultation with the Oversight Manager and the Legal Division, should attempt to enter into a bilateral modification of these contracts to convert them to the FDIC's standard contract documents, including the FDIC General Provisions. While the extent to which a contract can be modified will differ from one contract to another, the Contracting Officer will, at a minimum, negotiate invoicing and payment procedures.

1.H. CONTRACTOR CONFLICTS OF INTEREST, ELIGIBILITY, AND WAIVER PROCEDURES

1.H.1. Applicability

The FDIC will not award contracts for [services](#) to [contractors](#) that have disqualifying conditions, or [conflicts of interest](#) associated with a particular contract, or permit contractors to continue performance with such conflicts or conditions, unless such conflicts or conditions are waived by the FDIC, or are eliminated by the contractor.

This policy is based upon *Exhibit XXIII, 12 CFR Part 366 Contractor Conflicts of Interest Regulations*.

1.H.1.a. Limitations and Requirements

These limitations and requirements procedures apply to all former RTC contracts to which the FDIC succeeded at sunset. Furthermore, they apply to any FDIC contract entered into on or after April 10, 1996, and to any existing FDIC contracts that were modified or extended on or after April 10, 1996, or at the time the FDIC exercises an option.

1.H.1.b. Exclusions

These limitations and requirements do not apply when the FDIC is acting as a [conservator](#) of a failed financial institution, or when operating a bridge bank.

These limitations and requirements do not apply to contracts for the acquisition of goods. The fact that a contract for the acquisition of goods may also include incidental services would not subject the contractor to these limitations and requirements. Incidental services may include technical support, installation, and set-up services that are generally available to purchasers of similar goods.

1.H.1.c. Disqualifying Conditions under 12 CFR Part 366

No person will perform services under an FDIC contract, and no contractor will enter into any contract with the FDIC if that person:

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

Contractors with disqualifying conditions that arise prior to or after award are required to notify the FDIC in writing within ten calendar days, and will be handled in accordance with 12 CFR part 366. There are no waivers for disqualifying conditions.

1.H.1.d. Waivers

Waivers of conflicts of interest will only be granted when, in light of all relevant circumstances, the interests of the FDIC in the contractor's participation outweigh the concern that a reasonable person may question the integrity of the FDIC's operations.

1.H.1.e. Subsequent Submissions

During the term of the contract, the contractor will:

1. Verify the required information for any employee, agent, or subcontractor who will perform services under the contract for whom such information has not been previously verified, prior to such employee, agent, or subcontractor performing services under the contract; and
2. Immediately notify the FDIC if any of the information submitted was incorrect at the time of submission or has subsequently become incorrect.

1.H.1.f. Failure to Provide Information

A contractor that fails to provide any required information, or misstates a material fact, may be determined by the FDIC to be ineligible for the award of the contract for which such information is required, or be in default with respect to any existing contract for which such information is required.

1.H.1.g. Retention of Information

A contractor must retain the information upon which it relied in preparing its certification(s) during the term of the contract, and for a period of three years following the termination or expiration of the contract, and will make such information available for review by the FDIC upon request.

1.H.1.h. Delayed Compliance in Emergencies

In emergencies, when unforeseeable circumstances make it necessary to contract immediately, in order to protect FDIC personnel or property, the FDIC may authorize delayed compliance with this requirement.

1.H.1.i. Additional Contract Requirements

In addition to the provisions of this part, the FDIC may include in its contract, provisions, conditions, and limitations, including additional standards for contractor eligibility.

**1.H.2.
Minimum
Standards**

In connection with the performance of any contract, and during the term of the contract, a contractor and any person performing services under the contract must adhere to the standards set forth in 12 CFR Part 366.7 and 366.8(c).

**1.H.3.
Procedures****1.H.3.a. Contractor Integrity and Fitness Representations and Certifications**

These procedures apply to [solicitation](#) and [award](#) activities when a contractor completes the Contractor Integrity and Fitness Representations and Certifications Form and is unable to certify to any item on the form. These procedures also apply when contractors bring potential conflicts of interest to the attention of the FDIC. When the Eligibility Form or the matter indicates a potential or actual conflict of interest, the Contracting Officer will refer the matter to the Policy and Operations Section of ASB, for review, coordination with, and resolution by CLU. Field eligibility and conflict of interest issues should be forwarded to the Regional Office's contracting staff. Likewise, the Regional Office's contracting staff should forward those issues to the Policy and Operations Section in Washington, DC for coordination with and resolution by CLU.

1.H.3.b. Acquisition Services Branch (ASB)

ASB is responsible for reviewing contractor submissions and identifying eligibility issues under 12 CFR Part 366. Generally, eligibility issues arise:

1. During the review of applications submitted by contractors who have expressed an interest in providing services to the FDIC;
2. During the review of eligibility representations and certifications submitted by potential and current contractors in connection with a solicitation or modification of a contract;
3. In a request for a waiver of a conflict of interest submitted by a contractor (either upon their own identification of such issues or identification of such issues by the FDIC);
4. In a request for eligibility representations and certification limitations;
5. From outside sources of information such as other contractors, media, etc.; or
6. Upon referral of contractor information from the FDIC Regional Offices.

A potential contractor who submits an offer in response to a solicitation on a contracting action of \$25,000 or greater, or [substantive](#) modification of an existing contract must submit more detailed contractor eligibility requirements certifications and answer additional questions regarding eligibility, contractor eligibility requirements, and conflicts of interest. ASB reviews the contractor's eligibility certification(s) for completeness and for identification of a potential eligibility issue. Such eligibility issues include:

1. Applications and certifications which indicate grounds for prohibition under Part 366;
2. Applications and certifications with qualifications;
3. Applications and certifications which appear to be false; and
4. Conflicts of interest.

If the certification(s) is/are complete and no eligibility issue is identified, ASB will approve the contractor's eligibility certification(s) for possible contract modification or award. If the certification(s) is/are incomplete, ASB will obtain the missing information from the contractor. ASB will refer any eligibility issue regarding the recommended awardee to CLU as early as possible in the contracting process.

When ASB identifies a potential eligibility or [conflict of interest](#) issue, it will notify the affected contractor and send a copy of that notification to CLU. When referring an eligibility or conflict of interest issue to CLU, ASB will provide the appropriate solicitation or contract documents. Additionally, ASB will contact the potential contractor and obtain any documents that may be requested by CLU for its review and resolution of the issue.

1.H.3.c. The Contracting Law Unit (CLU)

1.H.3.c (1) Counsel

The [Contracting Law Unit](#) (CLU) of the Legal Division provides legal counsel to ASB in resolving independent contractor issues. CLU will address eligibility cases involving litigation, cases of first impression, and other appropriate cases before those actions are finalized. Once CLU has completed its review, it will send its analysis identifying the legally supportable action(s) to ASB along with any supplementary evidence it has gathered.

1.H.3.c (1) a Administration

CLU is responsible for the administration of the Contractor Conflicts of Interest Regulations (12 CFR Part 366) with respect to all contracts for services, with the exception of legal services. CLU determines whether an independent contractor meets the standards enumerated in 12 CFR Part 366 and is eligible to provide services to the FDIC. CLU will coordinate with ASB on eligibility determinations.

1.H.3.c (1) b Review

Upon referral by ASB, CLU will review conflicts of interests in the certification(s) for the recommended awardee. CLU will act on requests for a waiver of an eligibility requirement or a conflict of interest under 12 CFR Part 366 only for the recommended awardee in a contract action. CLU will issue a written decision of its determination and furnish a copy to ASB and the FDIC Reading Room. CLU will also prepare eligibility determination cases, conflict of interest waiver cases, final determination appeal cases, or other documents for review by the [Corporation Ethics Committee](#) (CEC) where CLU determines that a particular case is one that merits consideration. All cases for consideration by CEC will be reviewed by ASB prior to their submission.

1.H.3.d. The General Counsel

The General Counsel of FDIC, or his or her designee, is responsible for administering procedures with respect to contracts for the provision of services by law firms or sole practitioner lawyers.

1.H.3.e. Security Management Section (SMS)

The SMS conducts background checks on [contractors](#), [subcontractors](#), and key employees at the request of ASB. If SMS identifies an eligibility issue or a conflict of interest, it will refer that matter to ASB and CLU.

1.H.3.f. Office of the Inspector General (OIG)

The OIG is responsible for investigating contractor misconduct and allegations of criminal conduct under 12 CFR Part 366. The OIG, CLU, or ASB may receive allegations of contractor misconduct. ASB and CLU will refer allegations they receive to the OIG for investigation.

1.H.3.g. Corporation Ethics Committee (CEC)

The CEC serves as an appellate body for reconsideration of decisions regarding contractor conflicts of interest made by CLU. CEC has the authority to reverse, stay, or uphold a final decision. Requests for reconsideration of denials of waivers of conflicts of interest, waivers granted with conditions, or other adverse determinations by CLU may be submitted by the affected contractor or by the division or office for whose benefit the waiver decision was sought. Such submissions must be in writing and support the request for reconsideration. Any decision by CEC with respect to a contractor conflict of interest will constitute the final Corporation action on the matter. Eligibility, conflict of interest, or waiver cases going to CEC are prepared by CLU and reviewed by ASB prior to submission.

1.H.3.h. Office of Diversity and Economic Opportunity (ODEO)

The [Contracting Officer](#) will notify ODEO of any adverse action(s), including intent to rescind the contract of, or to suspend and/or exclude an MWOB or SDB firm, joint venture with MWOB or SDB participation, and/or prime contractor with MWOB or SDB subcontractors.

1.I. SUSPENSION AND EXCLUSION OF CONTRACTORS

1.I.1. Minimum Standards

Minimum standards for contractors and subcontractors in the areas of [conflicts of interest](#), ethical responsibilities, and use of [confidential information](#) have been established. Furthermore, the Executive Secretary has delegated authority for interpreting these standards for all non-legal contracting. The General Counsel has delegated authority for all contracts with law firms. It is FDIC policy not to award contracts to firms that do not meet these minimum standards. The FDIC may suspend or exclude contractors that violate the Contractor Conflicts of Interest Regulation, 12 CFR Part 366 (see [1.H.](#)) as well as for other causes. The policies and procedures stated in this section are based on the *Suspension and Exclusion of Contractors and Termination of Contracts Regulation, 12 CFR Part 36, Exhibit XXIV, 12 CFR Part 367.*

1.I.1.a. Integrity and Fitness Representations and Certifications

As stated in the Regulation, Part 366.1(c), Scope, these integrity and fitness requirements apply to contractors who submit proposals for [services](#) or who enter into contracts for services with FDIC. When services are being procured, the Contracting Officer will ensure that the FDIC Integrity and Fitness Representations and Certifications Form is included in the RFP or RFQ for services, or is available on the Internet at <http://www.fdic.gov/regulations/laws/forms/index.html>, and completed by all firms submitting proposals for services. Contractors who enter into contracts for [goods](#) with the FDIC are not subject to the Regulation; unless, the contract includes personnel working on-site at an FDIC office.

When a contract is primarily for goods, but requires incidental services (e.g., technical support for computers, installation for systems furniture, or set-up for fax machines), the contractor will not be subject to the Regulation. If there is any doubt as to whether the Regulation applies to the procurement, the [Contracting Officer](#) will refer the matter to the Policy and Operations Section, ASB, for coordination with the Ethics Section.

1.I.1.b. Responsibilities of Program and Contracting Personnel

Program Office and ASB personnel, in consultation with CLU, ensure that these conflict of interest regulations are enforced. The Contracting Officer will review the Debarred Vendors List on the ASB web page and the Federal Government Excluded Parties Listing System: <http://epls.arnet.gov> to ensure that the [recommended awardee](#) is not excluded or ineligible to contract with government or FDIC.

1.I.1.c. Referral of Potential Contractor Conflicts of Interest

Potential conflicts of interest issues will be forwarded to CLU.

1.I.1.d. Citation

12 CFR Part 366.

**1.1.2.
Contractor Rights**

The Regulation informs contractors and subcontractors (including their affiliated business entities, key employees, and management officials) regarding their rights to notice and an opportunity to be heard on FDIC actions involving suspension and exclusion from contracting and rescission of existing contracts. It applies to contractors submitting offers to provide services or entering into contracts to provide services and to subcontractors entering into contracts to perform services under a proposed or existing contract with the FDIC.

**1.1.3.
Suspension and
Exclusions**

The FDIC may suspend and/or exclude a contractor from participating in FDIC contracts. Suspensions are immediate but temporary, exclusions are generally for a defined period of time. Contractors suspended or excluded from contracting programs are prohibited from entering into any new contracts for the duration of the suspension. FDIC will not solicit offers from, award contracts to, extend or modify existing contracts, award task orders under existing contracts, or consent to subcontracts with such contractors. Suspended or excluded contractors are also prohibited from conducting business with the FDIC as agents or representatives of other contractors. A suspension will become effective immediately upon issuance of the notice.

**1.1.4.
Roles and
Responsibilities****1.I.4.a. Contracting Law Unit (CLU)**

CLU is responsible for the overall administration of the [Suspension and Exclusion Regulations](#) (12 CFR Part 367) with respect to all contractors for services, with the exception of law firms. CLU determines whether an independent contractor meets the standards defined in 12 CFR Part 367. The Assistant General Counsel is the deciding official whenever a decision is issued to exclude or suspend a contractor or to settle an exclusion or suspension case.

All reports of contractor misconduct that may support suspension or exclusion action under 12 CFR Part 367, including but not limited to violations of Part 366, false certifications as to the contractor's integrity

and fitness, conflicts of interest, or other types of contractor misconduct, should be referred to CLU with a copy to the Policy and Operations Section, ASB.

Where information provided to CLU establishes a reasonable belief that conduct warranting a [suspension](#) or [exclusion](#) may have occurred, CLU will determine if further action is warranted, as discussed below. If CLU determines that the information provided does not support a reasonable belief of actionable misconduct, it will prepare a memorandum closing the case. Notification of such memoranda will be provided to the OIG and the Policy and Operations Section. If actionable misconduct is determined, CLU will prepare a notice to the contractor.

1. CLU is responsible for reviewing the material submitted, including the administrative record, and determining whether that record and the evidence is legally sufficient to support a suspension and/or exclusion under the applicable evidentiary standard. In cases where the evidence is insufficient, CLU will identify any additional information that may be required for enforcement action and seek to obtain such information.
2. In situations where exclusion is the appropriate action, CLU will prepare a notice of possible cause to exclude and send it to the contractor. Where suspension is appropriate, either alone or in conjunction with exclusion, CLU will prepare an appropriate notice of suspension together with a case supporting that action. Where CLU determines there is no legal basis to take action, it will inform the Policy and Operations Section of that determination via memorandum.
3. Once the appropriate notice has commenced a suspension and/or exclusion action, CLU will undertake all necessary contact with the contractor. CLU will prepare appropriate settlement documents, and advise ASB on the execution of settlements.

In suspension and exclusion cases that do not settle, CLU will review the record and draft a case and proposed decision. If a contractor appeals the decision to the Corporation Ethics Committee (CEC), CLU will prepare the case and decision for the CEC's consideration.

1.I.4.b. Acquisition Services Branch (ASB)

Once a contractor has been suspended or excluded under 12 CFR Part 367, ASB will ensure that the contractor does not obtain any new contract, extension, or modification of an existing contract, except as provided for in 12 CFR Part 367.19.

ASB will notify its Contracting Officers of any contractor that has been suspended or excluded from providing services to the FDIC upon receipt of FDIC's Suspension and Exclusion List from CLU.

1.I.4.c. Security Management Section (SMS)

SMS conducts background checks on contracting issues related to vendors or contractors, their subcontractors, and key personnel at the request of ASB. If a false certification or other matter that might warrant suspension or exclusion is identified, SMS will refer the matter to CLU with a copy to ASB.

1.I.4.d. Office of the Inspector General (OIG)

The **OIG** is responsible for investigating **contractor** misconduct. The OIG, CLU, or ASB may receive allegations of contractor misconduct. ASB and CLU may refer allegations they receive to the OIG for investigation.

The OIG may provide CLU with audit or investigation reports involving contractor misconduct that might warrant suspension or exclusion action. The OIG may also provide follow-up investigatory services that may be necessary to support a suspension and/or exclusion.

1.I.4.e. Ethics Committee, Executive Secretary Section

A contractor may appeal the Executive Secretary's suspension or exclusion decision to the FDIC's CEC.

This committee has authority to reverse, stay, or uphold a final decision. Such an appeal will be based on the contractor's suspension and/or exclusion case file.

**1.1.5.
Resoliciting
Proposals Under
Terminated
Contracts**

When a contract is **terminated for default** because of a conflict of interest, and the services are still required, the Contracting Officer may consider the feasibility of awarding a new contract to the next firm offering best value to the FDIC, based upon the ranking of offerors in the original proposal evaluation process. In deciding to award from the original proposal evaluation, the Contracting Officer must ensure that the proposal, as evaluated, is still valid and all pre-award requirements specified in the APM can be satisfactorily completed. If the proposal is no longer valid, the Contracting Officer will resolicit for the services.

1.J. CONTRACTING WITH FIRMS HAVING UNRESOLVED AUDIT ISSUES

1.J.1. Policy

1.J.1.a. Scope

The FDIC, at its discretion, may refrain from soliciting firms that have unresolved audit issues. In addition, the FDIC may prohibit these same firms from participating as [subcontractors](#) under [solicitations](#) or [contracts](#). The policy may be invoked when an audit entity or agency identifies questioned costs that may be potentially recoverable and audit issues remain outstanding or unresolved as a result of the contractor's failure to:

1. Cooperate with resolution efforts undertaken by the FDIC;
2. Adequately support questioned costs; or
3. Remit the disallowed portion of the questioned cost.

1.J.1.b. Business Need

In support of this policy, the FDIC has determined that it is prudent business to selectively refrain from soliciting future services from contractors who are uncooperative or noncompliant in resolving audit issues. Firms with unresolved audit issues are identified on the ASB web page.

1.J.2. Procedures

1.J.2.a. Management Decision

After the issuance of a final management decision, audit reports that identify questioned costs under FDIC contracts are assigned to a [Contracting Officer](#) for resolution. The Contracting Officer will provide a copy of the audit report to the contractor. The copy will be sent by USPS certified mail, return receipt requested, with an accompanying cover letter requesting that the contractor respond to the findings contained in the report, within ten business days of receipt of the letter, or such other time as specified by the Contracting Officer. Such responses should include the appropriate supporting documentation.

1.J.2.b. Contractor Failure to Adequately Respond

If the contractor fails to respond to the request, fails to remit the disallowed portion of the [questioned costs](#) contained in the audit report, or otherwise fails to adequately respond to the issues raised in the report, the Contracting Officer will provide the contractor with a letter via express mail delivery that formally advises the contractor of its failure to cooperate. The letter will also state that:

1. The contractor will now remit the requested repayment or make other arrangements satisfactory to the Associate Director, ASB,

or designee, within ten calendar days of receipt of this letter. If this does not occur, the Director, DOA, may make a determination that the FDIC may refrain from soliciting or awarding contracts for any future goods or services to this contractor, effective that date;

2. The contractor is prohibited from participating as a subcontractor under new FDIC solicitations and/or contracts; and
 3. This determination will remain in effect until all issues identified in the audit report are resolved to the FDIC's satisfaction and the contractor is provided a letter from the Contracting Officer confirming resolution of all issues.
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Chapter 2

Requirements Package

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2.A. POLICY

2.A.1. Overview

Acquisition planning is necessary to ensure that the FDIC's needs are met in the most efficient, effective, economical, and timely manner. The formality and detail of the planning process will vary with the complexity and projected price of the requirement.

2.A.2. Requirements Packages

The Program Office identifies a procurement requirement, and then prepares a [Requirements Package](#). A completed Requirements Package will consist of:

- a. Routine requirements: A Procurement Requisition for noncomplex requirements for services generally less than \$100,000, or commercial goods less than \$5,000,000, see [Chapter 3, Simplified Procurement](#).
- b. Complex requirements: A Procurement Requisition, plus further documentation, for \$100,000 or greater, or commercial goods \$5,000,000 or greater, see [Chapter 4, Formal Contracting](#).

The Program Office has final responsibility for providing definition and documentation for its procurement.

There may be instances when procurements under \$100,000 are sufficiently complex for the Contracting Officer to request a detailed Requirements Package from the Program Office.

2.A.3. Expenditure Authority

The Expenditure Delegations establish a set of thresholds and expenditure approval levels under competitive and noncompetitive contracts awarded in the [corporate](#), [receivership](#), [conservatorship](#), and [corporate liquidator](#) capacities. All expenditures under contracts must be approved in accordance with the Expenditure Delegations.

The [Program Office](#) is responsible for obtaining expenditure authority. The [Procurement Requisition](#) in the Requirements Package must include evidence of proper expenditure authority approval from the person (persons, or Board) with the appropriate delegated authority for the requirement.

2.A.4. On-Line Services

All Requirements Packages for on-line services must be reviewed and authorized by the Library and Public Information Center Unit. If not, the Contracting Officer will return the Requirements Package to the Program Office to obtain the authorization.

**2.A.5.
Prohibition on
Splitting
Requirements**

Program Office personnel must not split a known requirement into two or more separate requirements in order to bypass or circumvent the delegations of expenditure authority.

**2.A.6.
Description of
Services**

The Program Office must ensure that the Requirements Package contains an accurate description of any services to be performed under a contract. The services required must be defined in plain language, and be identified as professional, technical in nature versus non-professional, or non-technical. Additionally, the Program Office must identify the geographic area (city/county/state) within which the services will be performed.

**2.A.7.
ODEO Review**

ODEO Specialists are responsible for reviewing Requirements Packages, including statements of work, for contracting actions greater than \$100,000.

**2.A.8.
Market Research**

The Program Office must first contact the Contracting Officer for guidance before conducting [market research](#) and information gathering to plan for a specific or future procurement.

Before preparing a Justification for Noncompetitive Procurement (JNCP), the Program Office, with the Contracting Officer, will conduct market research to identify possible sources for the goods or services required. The Program Office will document and submit the results of the market research with the JNCP (see, [2.C., Market Research](#)).

**2.A.9.
Actions Not
Requiring
Noncompetitive
Approval**

The following actions do not require a JNCP:

- a. Procurements of \$5,000 or less;
 - b. Nonprocurement related expenses as defined in [1.F., Use of Payment Authorization Vouchers](#);
 - c. Procurements of goods or services under Interagency Agreements with other government agencies; and
 - d. Procurement of newspaper advertisements. However, the Contracting Officer and the Program Office can use competitive procedures if it is in the best interest of the FDIC. The requisite expenditure authority must authorize the procurement of advertisements.
-

**2.A.10.
Advance
Payment to
Contractors**

Advance payments represent an unusual contracting practice and require special consideration, approval, and administration. Therefore, advance payments are not to be authorized, unless the need is adequately justified and in the best interests of the FDIC; the contract is to be competitively awarded; and the advance does not exceed 25% of the base year contract price (exclusive of option year prices).

Advance payments will not be authorized for paying contractor commissions or anticipated profits.

If a Program Office considers advance payments necessary for contractor performance, the request must be included in the Requirements Package and approved by the proper-delegated authority.

2.B. ACQUISITION PLANNING

2.B.1. Overview

The Program Office identifies potential contract requirements and initiates discussions with ASB. ASB can better carry out its mission when the Program Office provides sufficient advance notification of its requirements. Early communication by the Program Office enables ASB to view the requirement in a broad context, and thereby:

- a. Work with the Program Office to identify upcoming requirements and plan how to meet them;
- b. Schedule its workload so that contracting resources are available to support requests as they are received;
- c. Establish realistic lead-times and timely award schedules;
- d. Prevent contracting delays, by identifying and resolving potential conflicts of interest and other problems, before the solicitation process begins;
- e. Work with the Program Office to finalize statements of work and Requirements Packages and correct deficiencies; and
- f. Combine duplicative requirements for similar or affiliated services.

2.B.2. Reserved

Reserved.

2.C. MARKET RESEARCH

2.C.1. Overview Market research is a systematic, objective collection and analysis of general data to obtain information and knowledge about availability and types of goods or services in the commercial marketplace. Market research is performed by the Program Office. For a planned, upcoming procurement, the Program Office must first contact the Contracting Officer.

2.C.2. Application of Market Research FDIC conducts market research:

- a. To stay current and up-to-date with industry, even though there is no planned procurement;
- b. To identify prospective offerors (including noncompetitive procurements) for planned procurement; and
- c. To ensure that existing pricing for the contract option is competitive, [Chapter 5, Contract Administration](#).

2.C.3. Market Surveillance Market surveillance is a method of market research used by the Program Office and is an ongoing process of reviewing information about market trends, new developments, products, services and technical features. It is conducted as part of routine business when there is no planned or future procurement action. Under these circumstances, the [Program Office](#) may perform market surveillance without notification or assistance of the [Contracting Officer](#).

2.C.4. Planned Procurement

2.C.4.a. Contact the Contracting Officer

For a planned procurement, the Program Office must first contact the Contracting Officer who will provide appropriate guidance to perform market research. Without a Contracting Officer, or other representative from ASB, involved, or present at meetings with vendors, Program Offices cannot begin market research. The process must be fair and available to all participating vendors.

2.C.4.b. Vendor Meetings and Product Demonstrations

Market research may involve conducting face-to-face meetings with vendors to discuss specific products and services currently available in the commercial marketplace. This may include having vendors provide product demonstrations.

In instances where the vendor provides the FDIC with equipment, hardware, or software for testing or evaluation, the vendor and FDIC will sign a *Memorandum of Understanding (MOU)*, and a *Confidentiality Agreement, Exhibit XXXIII*, before testing or evaluation. The Contracting Officer will sign both documents on behalf of the FDIC. The MOU and *Confidentiality Agreement* are on ASB's website under sample documents or at the following address: --

(<http://fdic01/division/doa/buying/sampledocuments/sampdocs.html>)

2.C.5. Techniques for Market Research

Possible techniques for conducting market research include:

- a. Contacting specific potential suppliers and market experts;
- b. Formal Requests for Information (RFIs) published in various publications (including technical, scientific, business, and industry journals or publications, as well as, posted on [FedBizOpps](#));
- c. Internet searches; searching available databases (including government and private sources);
- d. On-line communication;
- e. Defining source lists from other contracting activities or government agencies;
- f. Reviewing catalogs;
- g. Contacting trade associations (including publications and trade shows);
- h. Reviewing contractor literature or product research sources; and
- i. Conducting information meetings and product evaluations or demonstrations.

2.C.6. Cautions

There are a number of situations that can be prejudicial to the FDIC or the firm being researched. Therefore, Program Offices and Contracting Officers must use extreme caution when conducting market research. Examples of situations to avoid are:

- a. Disclosing current or future procurement plans or other sensitive information. Such disclosure may cause one firm to gain an unfair competitive advantage over another;
 - b. Giving the impression that an employee has the authority to obligate the FDIC;
 - c. Showing favoritism by allowing vendors to influence the definition of FDIC requirements;
 - d. Discussing one firm's technology or proprietary information with another firm;
 - e. Inadvertently obligating the FDIC, without the authority to do so; and
 - f. Improperly disclosing proprietary or source selection information.
-

**2.C.7.
Prohibited Acts**

Market research will not include any of the following:

- a. Making purchase commitments;
 - b. Conducting price negotiations; and
 - c. Sharing procurement-sensitive or other information that favors one vendor over others.
-

2.D. CONTRACTING METHODS, PRICING ARRANGEMENTS, AND CONTRACT DOCUMENTS

2.D.1. Overview

While the [Contracting Officer](#) is responsible for selecting the type of contract and contract documents that represent the most suitable business arrangement for procuring goods or services on behalf of the FDIC, the [Program Office](#) must be aware of the options available when developing the [Requirements Package](#). Ideally, the Contracting Officer's decision will be the result of a joint agreement between the Program Office and the Contracting Officer on the best pricing arrangement and the most appropriate contract vehicle to satisfy the requirement and create the best value solution for the Corporation.

2.D.2. Contract Instruments

The [contract](#) includes any contract instrument that can be used, including contracts, purchase orders, task orders awarded under basic ordering agreements, orders awarded under multiple-order requirements contracts, software licensing agreements, and all other contract instruments issued by ASB, to acquire goods or services on behalf of the Corporation.

2.D.3. Pricing Arrangements

Contract types represent pricing arrangements that balance risk and uncertainty of performance with motivation of contractors to perform. The Contracting Officer will select the type of contract that imposes sufficient risk on the contractor to motivate good performance, yet relieves the contractor of risks over which it has no control and which are unpredictable.

There are two basic types of pricing arrangements used in FDIC contracts: fixed price and level of effort.

Fixed price contracts generally provide for the least risk to the FDIC, and are the easiest types of contracts to administer. Oversight concerns are normally schedule, performance, and quality rather than price. If the fixed price is exceeded, then the contractor will not be reimbursed for any additional amounts required to complete the performance of the contract. Further, if the work is not satisfactorily completed on time, the contractor will be liable to the FDIC for a breach of the contract.

Level of effort contracts should be used with caution since they provide no positive profit incentive to the contractor for price control or labor efficiency. A level of effort contract should only be used when the Contracting Officer determines that a fixed price contract is not suitable for the procurement.

2.D.3.a. Fixed Price Contract

A fixed price contract can be expressed as either a firm fixed price or fixed unit price contract.

2.D.3.a (1) Firm Fixed Price

Under a firm fixed price contract, the contractor is paid a predetermined price for successfully performing the work. This arrangement represents the least risk for FDIC in that the total price is predetermined at the time of contract award, and is not subject to adjustment during contract performance. Accordingly, this places the maximum risk upon the contractor to manage costs. Payment is normally made upon delivery and acceptance of the goods or services. Successful use of this arrangement requires a clear definition of requirements in the statement of work, and realistic estimates of work to be performed.

2.D.3.a (2) Fixed Unit Price

Under a fixed unit price contract, a type of unit price is established in the contract, and is subsequently used to determine the ultimate price to be paid to the contractor for successful performance (i.e., unit price multiplied by the quantities delivered).

During contract performance, any adjustments to price are limited to those defined through contract terms as allowable at predetermined times, such as adjustments in accordance with inflation indices. A not-to-exceed contract-ceiling price is established, and represents the maximum billable amount for the contract. This type of contract is advantageous when the total amount of the requirement can be reasonably estimated, but the exact quantity for each individual item is not known in advance. Variances may occur in the amount of each unit actually delivered, as long as the cost of total delivery does not exceed the established ceiling price.

2.D.3.b. Level of Effort Contracts

Level of effort contracts involve both time and materials and labor hour contracts and use fixed labor rates.

2.D.3.b (1) Time and Materials

Time and materials contracts provide primarily for the procurement of labor services on the basis of direct labor hours at specified fixed hourly labor rates and necessary materials. These contracts are used when it is difficult to provide a detailed statement of work or to estimate the price or duration of time required for performance.

2.D.3.b (2) Labor Hour

A labor hour contract is similar to a time and materials contract, except that the contractor will not be required to provide materials during performance.

2.D.3.b (3) Ceiling Price

Level of effort contracts must always contain a not-to-exceed ceiling dollar amount that represents the maximum billable amount for a contract.

2.D.3.b (4) Oversight

The FDIC will ensure appropriate oversight of contractor performance to assure that efficient methods are being used.

2.D.3.b (5) Classes of Labor

All level of effort contracts will include the classes or types of labor required to perform, and a fully loaded labor rate (e.g., base rate, all overhead, and profit) for each category of labor. The labor categories will be described in sufficient detail (i.e., experience, education requirements, qualifications, etc.) to allow for competitive pricing. Variances may be allowed in the number of hours delivered for each labor category as long as the actual price does not exceed the contract ceiling. In addition, the Contracting Officer will investigate all situations where a contractor is incurring labor hours during performance that are materially different from the proposed labor mix.

2.D.3.b (6) Materials

For time and material contracts, contractors are allowed to purchase materials in accordance with the terms and conditions of the contract and their associated prices will be reimbursed on the basis of incurred prices. This includes subcontractor prices. Adequate documentation must be submitted to support reimbursement of material costs.

2.D.4. Purchase Order

The purchase order is generally used to acquire services that are noncomplex in nature and less than \$100,000, or for commercial goods less than \$5,000,000. Purchase orders generally contain the item description, unit price, quantity, extended price, due date, destination requirements, invoicing instructions, and other provisions. Under purchase orders, FDIC agrees to pay the price stated upon delivery of the goods or services by the contractor and acceptance by the Program Office, or based on the receiving report for goods delivered to an FDIC warehouse.

A purchase order, when used as the contracting vehicle, typically has no [Oversight Manager](#) designated. A point of contact, as represented on the purchase order form, is responsible for conducting any oversight responsibilities such as inspection, acceptance, and reviewing and approving the invoice for payment.

2.D.5. Multiple-Order Contracts and Agreements

When multiple requirements are generally similar in nature and repetitive, the Contracting Officer will initiate a contract arrangement that will allow orders to be placed when the repetitive requirement occurs. These orders will be placed under a [basic ordering agreement](#) (BOA), [multiple-order requirements contract](#), or [blanket purchase agreement](#) (BPA), and will be used for repetitive requirements for the same or similar tasks.

For all multiple-order contracts and agreements, the expenditure approval must include the total cumulative dollar amount of all orders to be awarded during the basic term, and if applicable, all option terms. Expenditure authority for individual orders to be awarded under BOAs or multiple-order requirements contracts is not required, as long as the cumulative amount of the orders does not exceed the [expenditure ceiling](#).

2.D.5.a. Basic Ordering Agreement (BOA)

The BOA:

1. Is used mainly for the procurement of services.
2. Contains terms and conditions that will apply to FDIC-issued task orders during its term, a description of the services to be provided, and the method(s) for the pricing and issuing of task orders under the agreement.
3. Is established with one or more firms that have the qualifications and capability to meet anticipated future FDIC needs.

A task order issued under a BOA in accordance with the terms and conditions of the BOA becomes a contract instrument against which funds are obligated as consideration in exchange for the goods or services specified in the task order.

The procedures for awarding task orders will be at the discretion of the Contracting Officer in consultation with the Program Office, and will be specified in all RFPs resulting in the award of BOAs. The procedures may include full or limited competition with all BOA contractors, or a form of rotation in a specified sequence among the BOA contractors. Whichever method is chosen must be fairly and consistently applied in all task order solicitations and awards.

2.D.5.b. Multiple-Order Requirements Contract and Delivery Orders

A multiple-order requirements contract is a contract that provides for filling purchase requirements during a specified contract period, with deliveries to be scheduled as delivery orders are placed. Ordering procedures will be defined in the RFP. For multiple-order requirements contracts:

1. A maximum dollar value will be stated in the contract;
2. Delivery orders are placed if and when individual requirements are

defined;

3. Funds are obligated by each delivery order and not by the contract itself;
4. Unless the applicable Assistant Director, Corporate or DIRM Contracting, approves an alternative procedure for a specific contract, the Contracting Officer will issue all delivery orders;
5. Ordering procedures should be flexible enough to allow timely delivery of goods and services, while maintaining sufficient internal controls;
6. Ordering procedures will provide in detail the manner in which delivery orders will be placed, including ordering agreements with multiple vendors (i.e., by competition or rotation); and
7. A delivery order form will be used that, at a minimum, includes:
 - a. A delivery order number with a related contract or purchase order number;
 - b. A synopsis of the specific requirement to be fulfilled through the delivery order;
 - c. Required schedule and location for delivery;
 - d. Signature of the authorized contractor representative; and
 - e. Contracting Officer approval (with date) of the delivery order prior to start of work or delivery of goods;
 - f. Language emphasizing that the contractor will not be paid for work or goods in excess of the approved cost of the delivery order, such as:

“FDIC will not pay more than the total cost of \$_____. Additional work will not be performed, or additional goods will not be delivered, without the prior written approval of the Contracting Officer.”

The cumulative amount of all delivery orders for each contract will not exceed the approved expenditure authority for that contract. The Contracting Officer and the Oversight Manager are jointly responsible for monitoring the total dollar amount of delivery orders against the approved expenditure authority and, where appropriate, against limits established within the contract for certain services or deliverables. The Contracting Officer will not issue any delivery order that is not in compliance with the contract or that may result in expenditures in excess of the approved expenditure for that contract.

2.D.5.c. Blanket Purchase Agreement (BPA) and Call Orders

A blanket purchase agreement (BPA) is a simplified method of procurement for filling anticipated, repetitive needs for goods or services. It:

1. Is not a contract, because it does not obligate funds nor does it state that the FDIC will place any call orders under it.
2. Is designed to reduce administrative costs in accomplishing the procurement of reasonably known needs by eliminating what could be the costly issuance of individual purchase orders or contracts. The use of BPAs can result in ordering economies, reduced procurement lead-time, and improved inventory levels.
3. Must be placed competitively and concurrently with more than one firm whenever practicable. All prospective firms must be afforded an opportunity to provide goods or services under BPAs.
4. May be limited to the furnishing of individual items, commodity groups, or classes of goods, or it may be unlimited for all items that a firm is capable of furnishing and include established unit prices.
5. Contains a statement that a contractor is obligated to furnish goods, described in general terms, if and when requested by authorized representatives during a specified period of time and within a stipulated aggregate amount. A BPA will specify whether call orders must be in writing or if telephone calls may be used. A BPA specifies that in addition to any available discounts, prices will be as low or lower than those charged to the contractor's most favored customer for comparable quantities under similar terms and conditions.
6. Is considered to be complete when call orders issued under it equal its total dollar limitation, or when it has reached its expiration date as specified in the agreement. Upon expiration, a BPA is automatically completed, whether or not its total dollar limitation has been reached.

Once the BPA is established, the Contracting Officer or an Oversight Manager with ordering authority delegated by the Contracting Officer can place orders. Ordering procedures will be specified in the solicitation.

2.D.6. Interagency Agreements

An interagency agreement is a procedure whereby a Federal agency obtains goods or services from another Federal agency. When placing an order, the Contracting Officer will place an order on any form or document that is acceptable to both agencies. The order should include a description of the goods or services required, delivery requirements, funds citation, and a payment provision.

**2.D.7.
System
Development Life
Cycle (SDLC)
Contracts with
Task Assignments**

A contract that requires the use of task assignments will allow the **Oversight Manager** to issue **task assignments** under the terms and conditions of that contract. Thus, the Oversight Manager can determine the timing and scope of deliverables to be provided under a task assignment, without having the Contracting Officer issue the task assignment.

These contract documents may be used in DIRM contracts that incorporate a System Development Life Cycle (SDLC) documenting the steps to be taken by the contractor assigned a specific task with respect to the SDLC. The task assignment statement of work will refer to the SDLC to enhance the specificity of the statement of work.

These SDLC contracts are generally delivery orders issued against General Services Administration (GSA) Federal Supply Schedules (FSS), and the task assignments are then issued under the FSS delivery orders.

2.D.7.a. Statement of Work (SOW)

In an SDLC contract where the use of task assignments is intended, the **SOW** of the task assignment should be as comprehensive as possible to enable the FDIC to determine the contractor's adherence to the terms of the SOW. The SOW should refer directly to the SDLC to make the SOW as specific as possible. The task assignments must be sufficiently specific to allow the FDIC to assess the contractor's performance.

2.D.7.b. Responsibility

It is the responsibility of the Oversight Manager to develop the task assignments for each SDLC contract. In addition, there must be documentation in the Oversight Manager file that the contractor has received a copy of the SDLC.

It is also the responsibility of the Oversight Manager to ensure that the total dollar value of the various task assignments issued pursuant to a contract does not exceed the contract ceiling. The Oversight Manager will ensure that the work detailed in the task assignments does not go beyond the scope of work set forth in the SOW of the contract.

2.D.7.c. Issuance

The Oversight Manager is authorized to issue task assignments, as they are needed on SDLC contracts. The task assignments:

1. Must be in a form that was defined in the solicitation and incorporated in the contract document;
2. Must be signed by the Oversight Manager; and
3. Must be sent to the Contracting Officer for inclusion in the official contract file.

2.E. PREPARING REQUIREMENTS PACKAGES

2.E.1. Assistance from ASB The Program Office should consult with ASB for assistance in determining what to include in a [Requirements Package](#).

2.E.2. Requirements Package under Simplified Procurement For contracting actions processed under [simplified procurement](#) procedures, the Requirements Package will consist of an approved Procurement Requisition Form FDIC 3700/01. The Contracting Officer may require additional supporting documentation (statement of work, cost estimate, technical evaluation criteria etc.), when necessary, to initiate the contracting process.

2.E.3. Requirements Package under Formal Contracting Formal contracting procedures are used to acquire high dollar (generally over \$100,000) or complex goods or services, or commercial goods \$5,000,000 or greater. Formal contracting has multiple deliverables, or may have periods of performance longer than one year, or both. Requirements Packages for formal procurement requirements will consist of the Procurement Requisition Form 3700/01 and applicable supporting documentation.

2.E.4. Requirements Package Required Elements The elements of a Requirements Package are:

- a. A complete Procurement Requisition Form (3700/01) with appropriate expenditure authority and budget approval, and numbered in accordance with [2.E.6., Procurement Requisition Numbering](#);
- b. A detailed cost estimate supporting the proposed procurement in accordance with *Exhibit V, Guidelines for Development of Cost Estimates for Contractual Goods or Services*;
- c. An expenditure approval for the total amount of the contract including options from the appropriate delegated official(s) or Board of Directors;
- d. A price schedule for the RFQ/RFP;
- e. A complete statement of work (SOW), ([2.F.](#));
- f. A determination of the Service Contract Act (SCA) applicability ([1.B.10.](#));
- g. A period of performance (with options);

- h. Technical proposal evaluation criteria (relating to SOW requirements, including IT security criteria, when applicable), relative weighting for the criteria evaluation methodology, and designation of Technical Evaluation Panel members (2.G.2);
- i. A determination of the need for oral presentations;
- j. A list of suggested sources (optional);
- k. The minimum qualifications a firm must have to be considered for award;
- l. Documentation of [market research](#), if conducted;
- m. A determination of whether the requirement is subject to Article 17 as defined in *Exhibit IV, Contracting Out Procedures*;
- n. A Section 508 Determination and Finding;
- o. An identification of [confidential information](#) that is provided to either the offerors during the [solicitation](#) phase, or the [contractor](#) on a post-award basis. Such offerors or contractors will sign the *Contractor Confidentiality Agreement, Exhibit II*, before receiving the information;
- p. A notation of recurring requirements, so that ASB can determine whether a [multiple-order requirements contract](#), [BOA](#), or [BPA](#) is in the best interest of the FDIC;
- q. A determination of a need for an offerors conference;
- r. A determination whether [subcontracting](#) will be allowed, and any limitations;
- s. Identification of technical information to be addressed by offerors, if necessary;
- t. Determination if requirements are suitable for offering to the [8\(a\) program](#); and
- u. The identification of additional information for incorporation into the solicitation package, including payment terms, license prerequisites, indemnity requirements, insurance requirements, and other special contract provisions.

**2.E.5.
Contract Specific
Elements**

The following items should be included in the Requirements Package when applicable to the procurement:

2.E.5.a. Noncompetitive Contracts

For [noncompetitive](#) contracts, provide a [Justification for Noncompetitive Procurement](#) (JNCP) memorandum, if the estimated price of the required [goods](#) or [services](#) is greater than \$5,000 and the [Program Office](#) requests that the procurement be made noncompetitively (2.J.).

2.E.5.b. Contractor Security

If the estimated cost of the contract will be greater than \$100,000, or contractor employees will have access to the FDIC facilities or networks/system, or for any other contract at the discretion of the FDIC, the provisions of Circular 1610.2 must be followed. For these contracts, the Program Office must:

1. Establish risk levels by labor category or by contract using the Risk Level Matrix (Attachment A to Circular 1610.2);
2. Document the results of the pre-solicitation risk level determination by using the Contractor Risk Level Record (Attachment B to 1610.2); and
3. Provide the results of the risk level determination to the Divisional Information Security Manager (ISM) for concurrence.

After the ISM concurs on risk levels, the Program Office includes them in the Requirements Package.

2.E.5.c. Information Technology (IT) Contracts

If the contract is for IT or IT-related goods or services, the Program Office must make a determination of the need for and level of IT security as required by Circular 1360.17. It is recommended that the Program Office coordinate and clarify IT security requirements in the procurement cycle with the Information Security Section (ISS) in DIRM and Security Management Section (SMS) in DOA. For these contracts, the Program Office must include the following in the Requirements Package:

1. Appropriate security requirements (management, administrative, and technical), including methods for providing security assurance throughout the life cycle of the contract (mission and business planning, acquisition planning, acquisition, contract performance, disposal and contract closeout) for preparing solicitations. Specifically, Automated Information Systems (AIS) or applications procured by the FDIC must meet FDIC and government information security requirements refer to [OMB Circular A-130](#) and [NIST 800-4](#);
2. Preliminary sensitivity assessments and risk analyses to determine IT security requirements (include these products in the SOW);
3. Estimate of the cost of contractor information security, for contracts valued at \$3 million or greater;
4. On the pricing schedule, include a line item for IT security so that offerors may identify their pricing for implementing IT security during contract performance through contract closeout, for contracts valued at \$3 million or greater;

5. Contract responsibilities for monitoring contractor security (contractor and Oversight Manager);
6. A list of all internal IT security policies, procedures, laws, and regulations to be incorporated by reference in the contract;
7. Specific IT security specifications, features, and controls for the procurement requirement, which must be addressed in a contractor-developed IT Security Plan;
8. Identification of a member of the TEP from DIRM's ISS, with expertise in IT security, to review the security portions of offerors' proposals and evaluate the IT Security Plan. This person will be a non-voting member of the TEP;
9. Technical evaluation criteria to evaluate contractor IT security;
10. A point of contact within the FDIC for oversight of IT security to be included in the resultant contract;
11. A list of all FDIC-furnished equipment, information, and systems that will be provided to the contractor upon award;
12. Test or other assurance requirements to ensure that the contractor has implemented and maintained IT security required by the contract according to the IT Security Plan; and
13. Requirements for any unique warranties or other provisions for ensuring IT security.

2.E.5.d. Advance Payments

If [advance payments](#) are considered necessary for performance, the Program Office must provide a written request and justification to the Division Director or Regional Manager for approval. The request will include the following:

1. Identification of the requesting Program Office and prospective [Oversight Manager](#);
2. Description of the requirements and the anticipated dollar value;
3. Justification for the use of advance payments;
4. Amount of the requested advance payment;
5. Copy of the [SOW](#) and draft contract, including the terms and conditions applicable to advance payments and proposed security requirements;
6. Certification that the approval of advances is in accordance with policy; and
7. Certification that the advance payment is a commercially accepted practice, is essential to obtaining a qualified contractor, is necessary for overall contractor performance, and is in the best interest of the FDIC.

**2.E.6.
Procurement
Requisition
Numbering**

Each Program Office is responsible for ensuring that the Procurement Requisition numbers are correct and conform to the sixteen character numbering system as follows:

- a. The first four digits are the Program Office's Financial Information System (FIS) Accounting Code Key (ACK) organization code;
- b. The next three digits are the Program Office's FIS ACK location code;
- c. The next five digits are the Program Office's unique numbering system for the Procurement Requisition form; and
- d. Two digits designating the current calendar year.

**2.E.7.
Requirements
Package
Summary
Checklist**

The Program Office will send the [Requirements Package](#) to ASB under the transmittal memorandum, the *Requirements Package Summary Checklist, Exhibit XVIII* so that ASB can initiate the contracting process. The Program Office will complete all applicable information on the checklist.

**2.E.8.
Changes**

Changes to an existing Requirements Package can be made in writing, unless the change requires additional funding. Additional funding must be approved on an amended [Procurement Requisition](#), based on the aggregate amount, including the change.

2.F. STATEMENTS OF WORK (SOW)

2.F.1. Overview

All contract actions require a [statement of work](#) (SOW). The SOW provides a brief description of the work required, the intended use of the goods or services, and the originator's actual or minimum needs. While there is no required format, a comprehensive SOW will define the work products that are required and address all the elements necessary for successful performance by the contractor.

The SOW is used by prospective offerors to develop a [proposal](#) and appropriate pricing. FDIC then uses it as a benchmark for [proposal evaluation](#) and selection of the appropriate contractor. The SOW is the part of the contract that the FDIC oversight team and the contractor use to plan and define the work. It provides guidance for resolving issues that arise during performance of the contract.

2.F.2. Guidelines for Development

A thorough understanding of the required goods or services and expected results is critical for a well-developed SOW. Items to be considered and conveyed through the SOW include:

- a. Nature of the services;
 - b. Qualifications necessary to perform the work;
 - c. Deliverables and the scheduled [milestones](#) for their delivery; and
 - d. Standards by which the contractor's performance will be measured.
-

2.F.3. Simplified Procurement

Under simplified procurements, a short, concise description of what is required may be sufficient. Thus, a computer can be defined by minimal system requirements (e.g., hard drive capacity, processor speed). The Program Office will typically describe the work requirements on the Procurement Requisition Form 3700/01.

2.F.4. Formal Contracting

When the requirements are complex, (e.g., a contracting requirement for the development of a new computer system) a detailed and complete SOW conveying all aspects of the requirement is necessary. In this example, the SOW would include system development parameters, benchmark testing, acceptance criteria, documentation requirements, etc. For formal contracts, the [Program Office](#) will typically attach the SOW to the [Procurement Requisition](#).

**2.F.5.
IT Requirements**

IT security and monitoring requirements for contracts subject to Circular 1360.17 should be included in the SOW.

**2.F.6.
Task Assignments**

In instances where the work cannot be adequately defined before contract award, the [Contracting Officer](#) will allow the use of [task assignments](#), which will provide contract specifics. The Program Office should discuss the appropriateness of the task assignments with the Contracting Officer.

When task assignments are needed, the Contracting Officer will ensure that the SOW is specific, standard task assignment language is included, and, when applicable, that the task assignment form refers specifically to the [System Development Life Cycle \(SDLC\)](#).

2.G. EVALUATION METHODOLOGY

2.G.1. Evaluation Process

The proposal evaluation process is used by the FDIC to determine which firm's proposal is the best value in providing the goods or services. Factors or criteria, and the methodology used to evaluate proposals for the requirement, must be defined at the same time as the requirement is defined so that they may be included in the solicitation package.

2.G.2. Identification of Technical Evaluation Panel (TEP) Members

For complex requirements that will require convening a Technical Evaluation Panel (TEP) to evaluate proposals, the Program Office needs to identify the TEP members in the Requirements Package.

The size and membership of the TEP will depend upon the size and complexity of the requirement. The TEP will consist of at least three voting members, one of whom will be designated as Chairperson. The number of panel members must be odd. Voting members of the TEP, including the Chairperson, may not be immediate supervisors of any other voting member.

The panel may also include, as non-voting members, representatives from:

- a. CLU;
- b. ODEO; and
- c. DIRM's ISS, with expertise in IT security, (for IT contracts).

TEP members must be available for the duration of the evaluation process.

When specific technical expertise is required, the FDIC will name individuals inside or outside the Corporation as TEP advisors.

2.G.3. Source Selection Official

When a contract involves complex, business sensitive, or unusual requirements; or a significant expenditure of funds, the Program Office may appoint its Division or Office Director, or designee, as the [Source Selection Official](#) (SSO). The SSO will act as a senior advisor to the team that develops the solicitation package, and will review the proposal evaluation, and concur with the award decision.

2.H. REQUEST FOR INFORMATION (RFI)

2.H.1. RFI Preparation and Distribution

2.H.1.a. Soliciting Research

The RFI is a market research method in which the Contracting Officer issues a notice to the marketplace to provide information about a future procurement and to seek interested sources. The RFI must have sufficient information so that prospective offerors understand the requirement, and can provide information to document their qualifications and interest. The RFI should list the screening criteria to be used to identify the most qualified respondents. For general RFI notices, the responses should be reviewed using the screening criteria on a pass-fail basis.

2.H.1.b. Content for Non-scored RFIs

RFI notices must generally provide sufficient information about the requirement to generate interest among prospective offerors. The notice also sets forth the information that must be provided to the FDIC. The FDIC's review will be based on non-scored judgments applied by the Program Office to determine which contractors will be included on a [solicitation list](#). Pricing information is generally not requested for this type of RFI.

2.H.1.c. Preparation and Distribution

The Program Office and the Contracting Officer jointly prepare the RFI notice and make a decision about whether the notice will be broadly advertised on [FedBizOpps](http://www.fedbizopps.gov/) (<http://www.fedbizopps.gov/>) or sent to a select group of firms identified through market research. Posting to [FedBizOpps](#) ensures the widest distribution. However, this may inundate the FDIC with responses that will require significant time to review and evaluate. A select group of firms is more manageable administratively, but there is no guarantee that an adequate number of responses will be provided. The decision must be based on the nature of the project, the availability of the products or services and the relative standing in the commercial marketplace. Either way, the acquisition strategy must substantiate the selected approach.

2.H.2. RFI for Capital Investment Procurements

For capital investment projects, the scope of the RFI needs to be broad enough to obtain detailed technical and pricing information from the marketplace.

For these requirements, it is recommended that the Contracting Officer:

1. Use an "RFI pre-qualification notice" to fully describe the requirement;
2. Obtain corresponding technical and pricing information;
3. Identify qualified and interested sources or firms; and
4. Evaluate the responses to determine which firms are the most qualified.

The FDIC will then send the solicitation to the firms determined to be the most qualified based on the RFI pre-qualification process.

2.H.2.a. Technical Information

The technical portion of the RFI should include, at a minimum:

1. A background statement describing the project;
2. Its purpose and scope;
3. A listing of the project's requirements and functionality; and
4. If appropriate, the operating environment.

The technical portion of the RFI should also include technical questions or project requirements to be addressed by interested firms. Even though the FDIC is not seeking formal proposals, the technical responses to the RFI must address the FDIC's requirements in sufficient detail to allow them to be reviewed for responsiveness, evaluated for technical merit, and scored. The purpose of this evaluation and scoring is to review the responses at a higher level of scrutiny, document the results, and eliminate unqualified firms from further consideration. It is the FDIC's sole discretion to determine which firms are deemed qualified.

2.H.2.b. Pricing Information

The RFI pre-qualification notice should also include a request for pricing information. For fulfilling the requirement, firms will review the technical requirements and provide an estimated price for their proposed methodology. Obtaining realistic, marketplace prices from all responding firms is critical. The pricing will not be as exact as under an RFP because there is no statement of work or detailed specification. For example, for software, the pricing may be on a single package offered by different resellers and implementers or on different packages altogether. The pricing may be based on commercial market price lists, catalog pricing, commercial or FSS labor rates, or rough order of magnitude estimates. Respondents should be instructed that they will not be bound by the pricing provided, but should provide the basis of their projected price.

2.H.2.c. Additional Information

The RFI pre-qualification notice should also provide guidance for submitting responses including page count maximums, format, due dates, where and when and to whom to submit, and any other information considered necessary. The notice should state that the RFI is not an RFP, may be canceled at any time, and may not result in the issuance of an RFP or award of a contract.

2.I. PREPARATION OF EXPENDITURE AUTHORITY REQUESTS FOR THE DEPUTIES TO THE CHAIRMAN, CHAIRMAN, AND BOARD OF DIRECTORS

2.1.1. Overview

Expenditures requiring approval by the Deputies to the Chairman, Chairman, and Board of Directors (cases) must be submitted before issuing the solicitation.

Requests for expenditure approval are to be processed for approval early in the planning stage, at the time that a requirement is identified, and before issuance of a solicitation by ASB, unless approved in advance by the Associate Director, ASB.

2.1.2. Concurrences

Each case must be routed for appropriate approvals and concurrences in accordance with the *Expenditure Delegations for Contracts, Leases, Legal Services, and Non-Procurement Related Expenses, Exhibit I*, as follows:

- a. Associate Director, ASB;
 - b. Division Director;
 - c. If applicable, Appropriate Deputy or Deputies to the Chairman; and
 - d. If applicable, Board of Directors.
-

2.1.3. Approved Cases

The Contracting Officer will ensure that a copy of the case is retained in the [official contract file](#).

2.J. JUSTIFICATION FOR NONCOMPETITIVE PROCUREMENT (JNCP)

2.J.1. Exceptions to Competitive Contracting

Though it is the FDIC policy to procure goods or services through competition, instances arise when a noncompetitive procurement is justified. In these instances, and when the value of the procurement is greater than \$5,000, the **Program Office** must provide a **JNCP** with the Requirements Package.

The Program Office must cite rationale for the approval of a JNCP, including one or more of the following circumstances:

- a. When the need for the **goods** or **services** is of such an unusual and compelling urgency that delay would adversely affect the Corporation;
- b. When, after adequate investigation, only one firm is identified that can meet the specific needs, (e.g., highly specialized services demanding the expertise of an individual or firm with unusual capabilities);
- c. When there is only one firm that provides the required goods or services that meet specific FDIC requirements; and
- d. When an existing contractor offers the benefits of historical expertise or systems compatibility, which other contractors could not provide as cost-effectively or as timely.

2.J.2. Market Research

Before preparing the JNCP, the Program Office, with the Contracting Officer, should conduct **market research** in order to identify possible sources for the goods or services required.

2.J.3. Preparation

All JNCPs must include:

- a. A description of the goods or services required to meet the FDIC's needs (including estimated value);
- b. Rationale for the use of noncompetitive procurement;
- c. Demonstration that the proposed contractor meets the FDIC's needs;
- d. Any patent rights, copyrights, or other proprietary information, which may preclude a competitive procurement;
- e. Results of market research; and

- f. Documentation that the anticipated price to the FDIC will be fair and reasonable.
-

**2.J.4.
Contracting
Officer Assistance**

Upon request, the Contracting Officer will assist the Program Office in reviewing the rationale and appropriateness of the JNCP.

**2.J.5.
Approvals**

All requests for noncompetitive contracts must be approved prior to soliciting the selected offeror. Program Offices must obtain the necessary expenditure approval and submit it to the Contracting Officer with the Requirements Package and the JNCP.

The Contracting Officer will send the request to the Competition Advocate Program for review.

A request for noncompetitive procurement can be rejected if the Contracting Officer believes a competitive procurement can be awarded within the required time frame.

Chapter 3

Simplified Procurement

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3.A. POLICY

3.A.1. Overview

Simplified procurements are accomplished by using abbreviated contracting procedures and documents. Requirement will normally be competitively solicited using a [Request for Quotation \(RFQ\)](#), and a purchase order or short form contract awarded to the successful offeror.

This procedure will generally be used when soliciting for:

- a. Goods or services with estimated (aggregate) expenditures less than \$100,000 or for the acquisition of commercial goods less than \$5,000,000; or
- b. Goods or services that are classified by the [Contracting Officer](#) as having a noncomplex or simplified nature.

3.A.2. Direct Award Authority

Solicitation actions for contracts valued at \$5,000 or less will not require noncompetitive approval if only one firm is solicited. However, the Contracting Officer may solicit one or more firms if it is considered to be in the best interest of the Corporation. The Contracting Officer will ensure that these awards are not concentrated with the same contractors and that the awards include reasonable participation by [Minority-](#) or [Women-Owned Business \(MWOB\)](#) and [Small Disadvantaged Business \(SDB\)](#) firms.

3.A.3. Participation of MWOB and SDB Firms

FDIC policy is to encourage the inclusion of MWOB, SDB, and 8(a) firms in the purchase of goods or services.

If requested, the ODEO Specialist will provide the Contracting Officer MWOB and SDB sources for inclusion on the solicitation list for all awards greater than \$100,000. The sources will be provided after ODEO's review of the draft solicitation package.

3.A.4. Determining Whether to Use Simplified Procedures

In addition to the guidelines in [3.A.1.](#), the Contracting Officer will use the following factors to determine whether to use simplified procurement procedures:

- a. The award will require minimal administration (e.g., inspecting a single deliverable and approving payment, like appraisals);
- b. The period of performance is generally short, less than one year;

- c. The award decision will be made on a price only, or limited technical evaluation basis;
- d. Payment is based upon a single delivery; or
- e. Other factors, as determined by the requirement.

3.A.4.a. Award Document

Purchase orders, blanket purchase agreements (BPAs), or short form contracts can be used when making awards under simplified procurement procedures. For purchase orders, the successful offeror is not required to counter-sign the document because acceptance of its terms will be evidenced by commencement of performance or delivery.

3.A.4.b. Cancellation, Amendment, or Withdrawal of Purchase Order

When it is in the best interest of the Corporation, the Contracting Officer may cancel, withdraw, or amend a purchase order at any time before commencement of performance or notice of acceptance by the contractor.

3.A.5. Published Price Quotation

Published price quotations (e.g., a catalog price) may be used in lieu of obtaining a quotation for procurement. In such cases, the Contracting Officer will ensure that the price information is current and that the FDIC obtains the benefit of any available discounts before the award is made.

3.A.6. Shipping Charges

Contracting Officers will evaluate quotations inclusive of transportation charges from the shipping point of the offeror to the delivery destination.

3.A.7. Background Investigations

The Contracting Officer will include the applicable background investigation forms in all RFQs when required by [4.A.18., Background Investigations](#).

3.A.8. Contractor Confidentiality Agreement

Some contracts require that offerors or contractor(s) have access to [confidential information](#), or require the [contractor](#) to work on-site at an FDIC office or have access to FDIC systems. When this occurs, the Contracting Officer must require the offerors or contractor(s) to sign and return a *Contractor Confidentiality Agreement*, prior to receiving the information or access, or prior to commencing work on-site.

**3.A.9.
Documentation of
Contract Award**

Contracting Officers must provide the appropriate documentation that clearly describes the process used to prepare, solicit, evaluate, and award the purchase order or contract. Upon receipt of the [Requirements Package](#), the Contracting Officer will establish the contract file, and file all original documents for each contract action. The contract file will contain the documentation specified in *Exhibit XXII, Contracting File Checklists*.

All documentation will be prepared and included in the [official contract file](#) prior to award.

CEFile documentation requirements are contained in the CEFile Desk Companion.

3.B. PRESOLICITATION PHASE

3.B.1. Overview

3.B.1.a. Requirements Package

ASB will record the date the [Requirements Package](#) is first received, and assign it a solicitation or purchase order number.

3.B.1.b. Procurement Action Log (PAL)

The Requirements Package is recorded in PAL. PAL generates the contract number.

3.B.1.c. CEFile

ASB also creates a contract file in CEFile, scans the requirements package documents, and enters them into the contract file in CEFile. The resulting electronic file will be routed to a manager for review and assignment.

3.B.2. Developing the Solicitation List

ASB may use a variety of methods to select sources, keeping in mind the principles of fair and adequate competition:

- a. A sufficient number of interested and capable firms;
- b. Clear and accurate specifications; and
- c. Sufficient time for evaluation, selection, and award.

3.B.2.a. Sources

The Contracting Officer may obtain sources from the [Central Contractor Registration \(CCR\)](#), (<http://www.ccr.gov/>) the Program Office, ODEO Outreach, publications, GSA schedules, and elsewhere, at their discretion.

ASB will ensure that selection of sources for a particular requirement is unbiased; therefore, every opportunity must be given for the participation of a reasonable number of qualified firms. Generally, the same firms should not repeatedly compete against one another.

3.B.2.b. Preparing the Solicitation List

ASB will prepare a solicitation list, identifying firms to be solicited including MWOB or SDB status and document how the list was generated. The list will be filed in the [official contract file](#).

**3.B.3.
Eligibility,
Background
Investigations, and
Confidentiality
Agreements**

After a solicitation list is developed, the Contracting Officer will:

- a. Review the Debarred Vendors List on the ASB web page and the [Federal Government Excluded Parties Listing System](http://epls.arnet.gov) at <http://epls.arnet.gov> to identify excluded or ineligible firms and remove them from the list. This review is applicable for all awards regardless of whether the solicitation is made orally or in writing;
- b. Include applicable *Background Investigation Forms, Exhibit XIV*; and
- c. Obtain *Contractor Confidentiality Agreements, Exhibit II*, as required.

**3.B.4.
Service Contract
Act (SCA)**

When the requirement is estimated to cost more than \$2,500, and includes services, determine whether the requested services are covered by the [SCA \(1.B.10.\)](#).

**3.B.5.
Davis Bacon Act**

When the requirement is for construction, and is estimated to cost more than \$2,000, include [Davis Bacon Act](#) provisions ([1.B.11.](#)).

3.C. SOLICITATION PHASE

3.C.1. Competition, Number of Sources, and RFQ

The Contracting Officer should solicit at least three sources to promote [competition](#). The Contracting Officer has discretion to establish the maximum number of quotations required in connection with a particular procurement. In making this decision, the Contracting Officer will consider the following factors:

- a. Availability of [goods](#) or [services](#);
- b. Information obtained in making recent purchases of the same or similar item(s);
- c. Dollar value and urgency of the proposed procurement; and
- d. Past experience concerning prices.

An [RFQ](#) is the preferred document to be used for solicitation under [simplified procurement](#). Contracting Officers will solicit firms by [oral solicitations](#) or written RFQs.

3.C.2. Oral Solicitation

At the Contracting Officer's discretion, oral solicitations may be used when:

- a. The award is anticipated to be less than \$100,000;
- b. The award will be made to the capable firm with the lowest price offer; and
- c. [Background investigations](#) or access to FDIC sites or systems are not required.

To obtain oral quotations, the Contracting Officer will call the firms on the solicitation list, present the requirements, and request the firm's quotation.

The Contracting Officer will use the *RFQ Log, Exhibit VIII*, to establish and maintain written records of oral price quotations, showing the names of the offerors contacted, MWOB classification, SDB status, the date solicited, and the prices and other terms and conditions quoted by each. The *RFQ Log* must be included in the [official contract file](#).

At the discretion of the Contracting Officer, when appropriate, a written confirmation of the quotation may be obtained before award.

**3.C.3.
Receiving and
Safeguarding
Quotations**

Written RFQs will be used when:

- a. The award is \$100,000 or greater;
- b. The award is less than \$100,000 and obtaining an oral quotation is not practical;
- c. In addition to price, technical criteria are specified and evaluated; and
- d. Background investigations or access to FDIC sites or systems are required.

Written quotations will normally be evaluated on the basis of price only, where the qualified firm that offers the lowest price is selected for award.

For some requirements, other factors, such as [past performance](#), capacity, quality, and technical capability may be considered, if specified in the RFQ. Evaluation of these factors will normally be done by pass (firm meets the minimum requirement and will therefore be considered for award) or fail (firm does not meet the minimum requirement and will not be considered for award). Award is made to the firm with the lowest price among those that meet the minimum requirement (passed).

In rare instances, the Contracting Officer may determine it is in the FDIC's best interest to conduct a limited technical evaluation for a simplified procurement. The evaluation criteria, their relative importance and the basis for award must be included in the RFQ.

**3.C.4.
Written RFQ
Contents**

The Contracting Officer will prepare a written RFQ and will include the following items:

- a. RFQ form or letter detailing the overall quotation submission requirements, the due date and time;
- b. Specifications or SOW performance schedule, and associated material;
- c. Quotation submission requirements, as determined by the Contracting Officer, which may include the following:
 1. Statement of firm's relevant experience (with up to three references), including past FDIC experience;
 2. Statement of firm's ability to meet the schedule requirements;
 3. Proposed staffing with supplemental information: resumes, professional qualifications, and certificates, if required; and

4. Price quotation information, including compliance with insurance requirements, if any, appropriate business financial reference requirements, and any appropriate licensing prerequisites.
 - d. Notice of the basis upon which the award will be made;
 - e. All required certification and release forms (contracts for services \$25,000 and greater need to include integrity and fitness certifications);
 - f. Risk levels by labor category or contract, if applicable; and
 - g. Proposed purchase order, at the discretion of the Contracting Officer.

3.C.4.a. Limiting Quotation Size

When evaluating on other than price only, a limit may be placed on the size of the quotation (such as five pages, exclusive of resumes and certifications) to permit timely review and evaluation.

3.C.4.b. Use of Technical Literature

Request technical literature, rather than specific quotations, when acquiring [commercial goods](#), if practical.

3.C.5. Written RFQ Process

3.C.5.a. Reviews

ODEO will review each RFQ package for requirements estimated to cost greater than \$100,000.

Security Management Section (SMS) and Information Security Section (ISS), DIRM, will review each RFQ package for contracts that require network or data access.

In addition, contracts with contractor personnel requiring access to FDIC facilities will require SMS review.

3.C.5.b. Distribution

The Contracting Officer will distribute the RFQ to each firm on the [solicitation list](#). The solicitation package should be sent by U.S. mail, electronic transmission, courier, or overnight delivery.

3.C.5.c. Quotation Preparation Time and Receipt of Quotations

Firms will be given sufficient time to prepare a response.

Quotations or modification to a quotation received after the due date and time are [nonresponsive](#), unless acceptance is in the best interest of the FDIC and is authorized by the Contracting Officer.

**3.C.6.
Receipt and
Safeguarding
RFQs**

Quotations will be received strictly in accordance with the terms of the RFQ (due date, time, and format). ASB will ensure that each quotation is stamped with the date and time received will retain the original of each quotation received.

ASB staff, technical evaluators, and other involved FDIC personnel will safeguard all quotations to prevent unauthorized disclosure. The Contracting Officer is responsible for all quotations in the possession of ASB. Quotations will be kept in a secured location.

**3.C.7.
Record of
Quotation
Received**

After quotations are received, the Contracting Officer will maintain a written record of RFQs in abstract form to show vendor information, prices, delivery requirements, and other pertinent data. *Exhibit VIII, RFQ Log* may be used.

**3.C.8.
One Quotation
Received**

The receipt of only one quotation in response to a written RFQ that was sent to more than one source may be accepted by the Contracting Officer as satisfying competitive requirements, if it is determined that the price is **fair and reasonable** (e.g., through comparison to historical pricing).

**3.C.9.
Quotations from
Solicited Firms
Only**

A quotation from an offeror that was not on the **solicitation list**, or that was not approved by the Contracting Officer prior to the quotation due date, will be rejected and returned to the offeror by the Contracting Officer. However, an offeror may be provided a copy of an RFQ, and, upon request, added to the solicitation list. An extension to the quotation due date is at the Contracting Officer's discretion, and if granted, will apply to all offerors.

3.D. EVALUATION PHASE

3.D.1. Price Competition

The determination that a proposed price is reasonable should be based on competitive quotations. If only one response is received, or the price variance between multiple responses reflects a lack of adequate [competition](#), the [Contracting Officer](#) will include a statement in the [official contract file](#) giving the basis for the determination that the price is fair and reasonable.

3.D.1.a. Price Reasonableness

A price reasonableness determination is important to ensure that the FDIC does not pay prices that are exorbitant or not in line with the general marketplace. For simplified procurement, price reasonableness is generally handled by the Contracting Officer and involves comparing the successful price to market or catalog prices, or prior awards. In rare instances, and when there is a technical evaluation of the quotations, the Program Office will conduct a price realism analysis by evaluating the price for the offeror's technical proposal and comparing it to the cost estimate.

3.D.1.b. Other Than Price

When other than price-related factors are considered in selecting the contractor (resumes, schedules, etc.), the Contracting Officer will document the official contract file to support the contract award decision.

3.D.2. Oral Solicitation Evaluation

When an oral solicitation is used, the award will be made to the firm with the lowest evaluated price, whose overall offer is determined as the best value, without conducting a formal technical evaluation.

The Contracting Officer will document and maintain written records of oral price quotations that clearly reflect the propriety of awarding the purchase order at the price paid to the offeror.

3.D.3. Contractor Past Performance Information

The Contracting Officer and the Program Office will use a contractor's past performance information in the evaluation process for all procurements of \$100,000 or greater, and at the discretion of the Contracting Officer, for any other procurement. This information may be available in the Contractor Performance System (CPS), provided by the offeror with its quotation, or obtained from references included in

the quotation using the *Contractor Past Performance RFP Reference Check Questionnaire, Exhibit XXVIII*.

**3.D.4.
Written RFQ
Evaluation**

Simplified procurements are typically awarded to the firm that is technically capable of performing and offers the lowest price. Sometimes there are factors in addition to price that are evaluated on a pass or fail basis. Occasionally there may be a limited technical evaluation in which a Technical Evaluation Official (TEO) from the Program Office conducts the technical evaluation of the quotations. The TEO is subject to the approval of the Contracting Officer. The TEO will conduct the evaluation tasks performed by a Technical Evaluation Panel (TEP) and TEP Chairperson for formal contracting ([4.D., Evaluation Phase](#)).

The Contracting Officer has the discretion to convene a TEP when limited technical evaluations are required.

3.E. PRE-AWARD AND AWARD

3.E.1. Pre-Award Reviews

3.E.1.a. Excluded Parties

The Contracting Officer will review the Debarred Vendors List on the ASB web page and the [Federal Government Excluded Parties Listing System: \(http://epls.arnet.gov\)](http://epls.arnet.gov) before contract award, regardless of dollar value, to ensure that the recommended awardee is not ineligible from doing business with the FDIC under 12 CFR Part 366. If the recommended awardee has disqualifying conditions, the Contracting Officer will not award a contract to that contractor.

3.E.1.b. Additional Reviews

The Contracting Officer must conduct the applicable pre-award reviews described in [4.E., Pre-Award Phase](#).

3.E.1.c. CCR Review

A recommended awardee must be registered in CCR for all awards estimated to cost greater than \$5,000. The Contracting Officer will review [CCR \(http://www.ccr.gov/\)](http://www.ccr.gov/) before contract award to ensure the recommended awardee is registered. The Contracting Officer will include the recommended awardee's registration in the [official contract file](#).

3.E.2. Award

The Contracting Officer makes the award decision. If there is a limited technical evaluation, the Contracting Officer will make the award decision after consultation with the TEO.

3.E.3. Preparing and Executing the Contract

The Contracting Officer will prepare the contract, using the appropriate standard contract definitions of the minimum qualifications needed for performing tasks, in the specific labor categories of contracts for services.

For purchase orders, the Contracting Officer will execute the document and send the original to the contractor, after retaining a copy for the Program Office and another for the official contract file.

For awards using the short form contract, the contractor will sign first, and the Contracting Officer will provide the final signature.

Copies of the award will be provided to the Program Office and filed in the contract file.

**3.E.4.
Notice to Proceed**

Normally, the fully executed contract must be in place before a contractor commences work. However, with the prior approval of the Associate Director, ASB, or Head of the Regional contracting function, notice to proceed maybe granted before the execution date. In such cases, the Contracting Officer can verbally authorize a contractor to begin before a fully executed contract is in place. The Contracting Officer will issue a letter authorizing the contractor to commence work. *Exhibit XIII, Sample Letter Authorizing Contractors to Commence Work.* Before a verbal authorization is given, the contractor and the FDIC must agree to the terms and conditions, price, and deliverables. The Contracting Officer must also ensure that expenditure authority in the total amount of the contract has been approved.

**3.E.5.
Notification to
Unsuccessful
Offerors and
Debriefings**

Notification to unsuccessful offerors is not required when an award is made on a price only evaluation basis. However, when an award is based upon a technical and price evaluation, The FDIC is required to notify all unsuccessful offerors in accordance with the procedures stated in [4.F.6., Notification of Unsuccessful Offerors.](#)

**3.E.6.
Debriefings**

Debriefings will not be offered to unsuccessful offerors when the award is made on a price only evaluation basis. However, when an award is based on a technical and price evaluation, unsuccessful offerors will be offered debriefings in accordance with [4.G., Debriefings.](#)

**3.E.7.
POS Reporting**

Within seven calendar days after award, the Contracting Officer must enter all required data directly into the Purchase Order System (POS). Major POS data fields include:

- a. Vendor Identification Number;
- b. Purchase Order Number;
- c. Dollar amount;
- d. Description of services;
- e. Accounting information; and
- f. Payment terms.

Other data will be entered as required by POS.

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Chapter 4

Formal Contracting

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4.A. POLICY

4.A.1. Overview

Formal contracting addresses the phases of the competitive contracting process used for the acquisition of:

- a. Goods or services with a total estimated dollar amount of \$100,000 or greater, where technical evaluation procedures are required; or
- b. Commercial goods \$5,000,000 or greater.

The procedures in this chapter also apply to task orders meeting the thresholds or criteria stated herein.

4.A.2. Release of Source Selection Confidential Information

Offeror proposals and source selection **confidential information** will not be released, except to:

- a. Individuals involved in the **proposal** evaluation process, after they sign a *Confidentiality Agreement, Exhibit XII*;
 - b. ASB staff, but only to the extent those staff members require the information to fulfill professional or clerical functions; and
 - c. Other FDIC employees officially charged with review and approval of proposal, evaluation, and award documents, but only to the extent that they have a need to know the information to fulfill their official review or approval functions, and after they sign a *Confidentiality Agreement, Exhibit XII*.
-

4.A.3. Solicitation Lists

At the discretion of the **Contracting Officer**, a firm may be added to the **solicitation list** at any time prior to the proposal due date. The proposal due date need not be extended to accommodate a request received late in the proposal preparation process.

Solicitations are not transferable, unless approved in advance by the Contracting Officer. A proposal from an offeror that was not on the solicitation list, or that was not approved by the Contracting Officer prior to the proposal due date, will be rejected and returned to the offeror.

Solicitation lists can be released upon request.

**4.A.4.
Source Selection
Plan**

A [Source Selection Plan](#) (SSP) is required for any contract award that uses formal contracting procedures, see [4.A.1](#).

**4.A.5.
Pre-requisite for
Solicitation and
Award**

A [solicitation](#) will not be issued until the Contracting Officer receives evidence of [expenditure authority](#), unless the Associate Director, ASB, has granted prior approval.

No contract will be awarded without prior written [expenditure authority](#).

**4.A.6.
Contractor
Confidentiality
Agreement**

Some solicitations require that offerors have access to confidential information. When this occurs, the Contracting Officer must require the offerors to sign and return a *Contractor Confidentiality Agreement, Exhibit II* before receiving the information.

When the contract requires [contractors](#) to have access to confidential information, work on-site at an FDIC office, or have access to FDIC systems, the Contracting officer will require the contractor and its employees to sign and return a *Contractor Confidentiality Agreement*.

**4.A.7.
Oral Presentations**

The Contracting Officer, after consultation with the [Program Office](#), has discretionary powers to incorporate oral presentations in the solicitation. All offerors will be notified in the [Request For Proposal](#) (RFP) that a major portion of the response will consist of an oral presentation. Oral presentations will be used, along with price and other written information, to evaluate and select the successful offeror. Every [Technical Evaluation Panel](#) (TEP) member must attend all presentations, unless approved in writing by the Associate Director, ASB or Head of the Regional contracting function. The file will be appropriately documented.

**4.A.8.
SDB Evaluation
Adjustments for
Goods and
Services**

[Small Disadvantaged Business](#) (SDB) participation may be achieved through participation of SDB firms either as a prime contractor, joint venture partner, or subcontractor. Only SDB firms, as [prime contractors](#), will be eligible for the price evaluation adjustment. No price evaluation adjustment will be given to non-SDB offerors.

4.A.8.a. Price Evaluation Adjustment

For procurements greater than \$100,000 in an industry eligible for SDB preference as determined by the appropriate [North American Industrial Classification System](#) (NAICS) codes, the price evaluation adjustment of 10% will be given to qualified SDB offerors. SDB firms must perform at least 50% of the work for goods and services to be entitled to the adjustment. The adjustment will be used to reduce the SDB's price for evaluation purposes. If more than 50% of the work/dollars is subcontracted, the offeror will not be entitled to a price evaluation adjustment.

4.A.8.b. Technical Evaluation Adjustment

For procurements for goods or services greater than \$500,000 (\$1 million for construction) in an industry eligible for SDB preference as indicated by the applicable NAICS codes, offerors may elect to waive the price evaluation adjustment and take a technical evaluation adjustment. An offeror cannot reconsider the election to retain or waive the price evaluation adjustment after submission of its proposal. Technical evaluation adjustments will be available as stated below. The total technical evaluation points will be determined by the Contracting Officer and the actual point score will be based on a range of not less than 50% and not more than 100% of the highest scored technical criterion.

Non-SDB offerors who commit to subcontracting, teaming or joint venturing with SDB firms will receive an amount of technical points proportional to the amount of SDB participation. The effective range of participation will be 10-50% in the aggregate. No points will be given for less than 10% aggregate participation and no additional points will be given for participation above the 50% threshold.

4.A.8.c. Non-SDB Prime Contracting

Total points available for non-SDB offerors with SDB subcontracting or joint venture teaming participation shall be determined as follows:

$$\frac{\text{Proposed \% of SDB Participation}}{\text{Maximum SDB Participation (50\%)}} \times \text{SDB Points Available}$$

The price and technical evaluation adjustments will be applied following the initial ranking and determination of qualified offerors (technical, price and other factors considered) or following the competitive range decision during the best and final offer phase.

**4.A.9.
SDB Evaluation
Adjustment for
Construction**

SDB offerors who perform at least 15% for construction and 25% for special trades construction will be eligible for either the price evaluation adjustment or the total available technical evaluation adjustment (points) with the same election as in 4.A.8.b. above. If more than the applicable percentage of the work/dollars is subcontracted, the offeror will not be entitled to an adjustment.

**4.A.10.
Subcontracting
Approval**

Prime contractors cannot subcontract more than 50% of the work under a contract, except for construction contracts, without prior approval from the Associate Director, ASB. For purposes of this pre-award approval, the Contracting Officer will use the subcontracting percentage stated in the contractor's [subcontracting plan](#).

A Contracting Officer's execution of a contract will constitute written approval of the proposed level of subcontracting.

**4.A.11.
Basis for
Contract Award**

Proposal evaluation is the process of assessing each offeror's capability to successfully perform FDIC's stated requirements. Technical proposals are evaluated by the TEP and price proposals are evaluated by the Contracting Officer and TEP. Proposals will be evaluated in accordance with the evaluation criteria stated in the RFP. When more than one (1) firm is solicited, but only one proposal is received, the proposal may be evaluated and considered for award under competitive contracting procedures at the discretion of the Contracting Officer.

There are several methods of determining the [best value](#) to the FDIC in soliciting and awarding contracts. It is the responsibility of the Contracting Officer to select the best approach from those defined in 4.A.12., Best Value Scoring Method, 4.A.13., [Price/Past Performance Tradeoff \(PPT\)](#), and 4.A.14., [Integrated Best Value Assessment Approach](#) with input from the [Program Office](#), and the [Source Selection Official \(SSO\)](#), if applicable.

**4.A.12.
Best Value
Scoring Method**

In determining which firm offers the best value, FDIC must balance the quality of work (as measured by the technical evaluation) against the relative price (as measured by the price evaluation). Weights are given to the evaluation of technical and price proposals individually, to reflect the Program Office's need for quality work at a fair and reasonable price. The standard technical vs. price weighting ratio is 60/40 unless a higher weight on technical is approved as stated therein.

Price points will be established in accordance with the technical/price weighting ratio and reflect the relative importance of price versus technical criteria. Price points will be weighted less than technical points when price is not the overriding consideration. *Exhibit XI, Technical Evaluation Panel Documents for Best Value Scoring Method*, provides instructions for calculating points for price proposals.

4.A.12.a. Technical Evaluation Criteria

The use of too many criteria is undesirable and should be avoided because it can lead to an unintentional leveling of evaluation scores. The criteria that relate to the most critical aspects of the statement of work should be predominant in the evaluation.

Evaluation criteria should be developed for the specific requirements of each contract. The objective of the technical evaluation is to determine which of the offerors is most qualified to perform under the contract. The criteria are the means to accomplishing that objective. Therefore, criteria should be chosen that will require the offeror to provide evidence of ability to perform. For example, an offeror's experience tells more about its ability to do the work than does a description of a "new and innovative" approach that it will develop in response to the solicitation. Generally, criteria should address the following topics:

1. Understanding of the requirement and approach towards accomplishing work;
2. Management ability;
3. Commitment to quality;
4. Qualification requirements;
5. Resources and facilities;
6. Similar or prior experience; and
7. Past performance.

4.A.12.b. Price Evaluation

Price proposal information will be segregated from the technical proposal information. Price evaluation is performed by the Contracting Officer and price scores are allocated based upon the ranking of lowest proposed prices to the highest proposed prices (see *Exhibit XI, Technical Evaluation Panel Documents for Best Value Scoring Method*).

4.A.12.c. Past Performance

Past performance will always be one of the evaluation criteria used for evaluating technical proposals. The amount of points assigned to this criterion will be at least equal to the highest rated evaluation criterion. This criterion will be scored similarly to all other criteria on the quality of their previous performance.

It is FDIC policy to take into consideration a firm's past performance

and to reward high quality past performance in the evaluation process. Rewarding outstanding performance provides an incentive for contractors to perform at higher levels when repeat business is a possibility.

To provide fairness to firms with no prior FDIC experience, the solicitation will require descriptions of prior work with other customers to be provided and evaluated on the same basis as prior work with FDIC. Firms with no past experience (e.g., new start-up firms) will be given scores for past performance for evaluation purposes by adding together all of the scores of all evaluated proposals given scores on the criteria related to past performance and dividing by the number of evaluated proposals given scores on that criteria.

4.A.12.d. The Scoring System

4.A.12.d (1) Relative Importance of Technical Criteria.

The relative importance of the individual technical evaluation criteria must be analyzed and each criterion shall be distinguished from other criteria by assigning differing point scores based upon importance.

4.A.12.d (2) Assigning Scores.

During the evaluation process, each technical criterion should be assessed and assigned a score based on the following:

Outstanding. Very comprehensive, in-depth, and clear. Uniformly outstanding in quality. Consistently high quality performance is probable. Numerical rating = 9 – 10.

Very Good. Clear and understandable. Consistently high quality performance is possible. Numerical rating = 7 – 8.

Satisfactory. Does not meet all minimum requirements. Is of marginal quality. Problem areas may not be correctable during discussions. Numerical rating = 5 – 6.

Poor. Shows deficiencies that cannot reasonably be corrected during discussions. Vague indications of the required capability and experience. Satisfactory performance cannot be expected. Numerical rating = 3 – 4.

Unsatisfactory. Weak and lacking in clarity. Very little indication of the required capability and experience. Cannot be expected to meet minimum requirements. Numerical rating = 1 – 2.

Non-responsive. Fails to comply with basic solicitation instructions regarding submission of proposals. Numerical rating = 0.

In most cases, when using the Best Value Scoring Method as the basis for contract award, best value is defined as the highest combined score of price and technical merit. However, there may be situations when awarding a contract to a firm whose proposal receives less than the highest overall combined technical and price score including SDB price or technical evaluation adjustments is the best value. These situations

are described below:

4.A.12.e. Award to a Firm with a Technically Acceptable, Lower Price Proposal

The Contracting Officer may award the contract to a technically acceptable, lower priced offeror. The Contracting Officer making this decision must include complete supporting rationale in the Final Selection Recommendation Report. The Assistant Director, of the respective contracting function, i.e. Corporate contracting, DIRM contracting, or the Head of the Regional contracting function, must approve the decision. The approval must consider:

1. Relative rankings of all technically acceptable offerors;
2. Differences in technical scores for each proposal; and
3. Potential for significant price savings under the resultant contract.

4.A.12.f. Award to a Firm with a Higher Technical and Higher Price Proposal

Under some circumstances, the Contracting Officer may award a contract to a technically superior offeror at a higher price. The Contracting Officer making this decision must include complete supporting rationale in the final Selection Recommendation Report. The Assistant Director, of the respective contracting function, i.e. Corporate contracting, DIRM contracting, must approve the decision. The approval will consider:

1. Relative rankings of all technically acceptable offerors;
2. Differences in technical scores and proposed prices for the technically acceptable offeror; and
3. Complexity of the requirement and the need for increased technical capability.

**4.A.13.
Price/Past
Performance
Tradeoff (PPT)**

Another alternative available to Contracting Officers in determining best value is Price/Past Performance Tradeoff (PPT). Price and past performance are equally important. Under PPT procedures, a technically acceptable offer other than the one with the lowest-evaluated price may be awarded the contract. The FDIC may elect to award to an offeror who has a higher price but demonstrates superior past performance. The use of PPT is at the discretion of the Contracting Officer when evaluating procurements over \$100,000.

To be considered for award:

1. Each proposal will be evaluated against the criteria established for Mission Capability and must receive a favorable rating on each subfactor in Mission Capability.

2. Next, each offeror's past performance will be evaluated. The Contracting Officer will consider demonstrated accomplishment of the services outlined in the SOW by reviewing the contractor's relevant present and past performance. This evaluation includes the contractor's record, the key personnel proposed and their accomplishments, as well as subcontractors proposed. Experience will be considered highly relevant, relevant, or not relevant, depending on how similar the prior work was to the current SOW. Data from previous source selections may be used. Data will also be obtained from questionnaires, the Contractor Performance System (CPS), Dunn and Bradstreet, and any other source deemed appropriate.
3. The last step in the evaluation process is to consider price. After determining that the proposal contains all the information required, the FDIC will evaluate the price proposal based on the completeness and reasonableness of the proposed work as outlined in the SOW, including all options. The proposed prices will be compared with the FDIC cost estimate.

The FDIC will make an integrated price/past performance tradeoff assessment and award to the technically acceptable offeror whose performance assessment and price provides the best value. The Contracting Officer will document the rationale and the basis substantiating the best value analysis and place the document in the official contract file. See *Exhibit VI Policy #2003-5, dated December 10, 2003, Implementing Price/Past Performance Tradeoff Best Value Approach*.

4.A.14. Integrated Best Value Assessment Approach

The use of Integrated Best Value Assessment is available as a prototype for use at the discretion of the Contracting Officer when evaluating procurements for services over \$100,000 in order to determine overall best value to the FDIC.

The Contracting Officer will evaluate all offerors' proposals integrating past performance, key evaluation factors and sub-factors, and price to determine which proposal represents the best value to the FIDC. Proposals will be evaluated using a color-coded rating for each subfactor and element. Only the evaluation factors and subfactors in the solicitation may be used to evaluate proposals. They are the baseline against which each offeror's proposal is compared to determine the confidence the FDIC has that the offeror will be able to actually perform the work that the offeror proposes. The evaluation factors establish the level an offeror's proposal must meet in order to be judged acceptable.

Proposals with an unacceptable rating are not awardable. The factors and subfactors are limited to those that are real discriminators. The mandatory evaluation factors are:

- a. Mission Capability (Technical);
- b. Past Performance; and
- c. Cost/Price.

Additional factors may be used if approved by the Associate Director, ASB.

To be considered for award:

- a. Each proposal will be evaluated against the factors, sub-factors and elements set forth in the solicitation and rated using the following color-coded ratings:

Blue – exceptional – exceeds specified minimum performance or capability requirements in a way that is beneficial to the FDIC.

Green – acceptable – meets specified minimum performance or capability requirements necessary for acceptable contract performance.

Yellow – marginal – does not clearly meet some specified minimum performance or capability requirements necessary for acceptable performance, but any proposal inadequacies are correctable.

Red – unacceptable – fails to meet specified minimum performance capability requirements.

- b. Next, each offeror's past performance will be evaluated by the Past Performance Group of technical and contracting personnel. The Group will consider demonstrated accomplishment of the services outlined in the SOW by reviewing the contractor's relevant present and past performance. This evaluation includes the contractor's record, the key personnel proposed and their accomplishments, as well as subcontractors proposed. Experience will be considered highly relevant, relevant, or not relevant, depending on how similar the prior work was to the current SOW. Data from previous source selections may be used. Data will also be obtained from questionnaires, the Contractor Performance System (CPS), Dunn and Bradstreet, and any other source deemed appropriate.
- c. The last step in the evaluation process is to consider price. After determining that the proposal contains all the information required, the FDIC will evaluate the price proposal based on the completeness and reasonableness of the proposed work as outlined in the SOW, including all options. The proposed prices will be compared with the FDIC cost estimate.

The FDIC will make an Integrated Best Value Assessment and award to the technically acceptable offeror whose overall technical evaluation rating, past performance rating and price provides the best value to the Corporation. The Contracting Officer will document the analysis performed in determining the offeror's proposal that best represents the overall best value decision utilizing the Integrated Best Value Assessment approach. The Contracting Officer will document the rationale and the basis substantiating the best value analysis and place the document in the official contract file. See *Exhibit VII Interim Acquisition Policy #2004-2, dated March 4, 2004, Implementing Integrated Best Value Assessment Approach*.

**4.A.15.
Selection Decision**

The Contracting Officer will make the final selection decision with concurrence from the TEP Chairperson and the SSO, if applicable. The Contracting Officer's decision will reflect the best value based on the stated technical evaluation criteria, the offeror's price, and other factors. The Contracting Officer will consider any rankings, ratings, or other information by the TEP in making such selections.

**4.A.16.
Contract Selection
Decision
Approvals**

The following additional approvals are required on [Selection Recommendation Reports](#) for procurements to be awarded in the FDIC's corporate capacity:

- a. For procurement actions greater than \$100,000 but less than \$500,000, the SRR will be approved and signed prior to award by the individuals listed:
 1. The applicable Division or Office Director from the organization having the business need for the procurement action.
 2. For Legal Division, the Deputy General Counsel.
 3. For the Office of Public Affairs and Office of Legislative Affairs, the applicable Office Director and the Chief of Staff (or designee).
- b. For procurement actions exceeding \$500,000 the SRR will be approved and signed before award by:
 1. The applicable Division or Office Director.
 2. For Legal Division, for non-legal services, approval and signature will be by the Deputy General Counsel and the General Counsel.

3. Office of Public Affairs and Office of Legislative Affairs approval will be by the applicable Office Director and the Chief of Staff (or designee).

The signed SRR document will be included in the [official contract file](#).

4.A.17. Financial Capability Evaluation

The Contracting Officer will perform a financial capability evaluation for the recommended awardee for contracts for services having an expenditure of \$500,000 or greater. At the discretion of the Contracting Officer, a financial capability evaluation may be conducted on any contract for [goods](#) or [services](#) when it is deemed necessary or advisable.

4.A.18. Background Investigations

The [Contracting Officer](#) is responsible for requesting a background investigation on the contractor, [subcontractors](#), and [key personnel](#) for:

- a. Contracts for services \$100,000 or greater;
- b. Contracts where the contractor's employees will be required to work on-site at an FDIC office; or
- c. Any other contract at the discretion of the Contracting Officer.

Contracts for goods do not require background investigations.

Fingerprinting will be performed as part of the background investigation of all contractor personnel who will be working on-site in any FDIC office, or working off-site with access to the FDIC network. Fingerprinting will typically be performed at the site where the contract was awarded.

The fingerprinting will typically be performed by, or under the direction of, the Security Management Section (SMS) and sent to the FBI in Washington, DC, for analysis. Unless the Program Office and Contracting Officer believe the security considerations related to on-site work are critical, the award and performance of the contract must not be delayed while the fingerprint analysis is in process.

Fingerprinting will not be required for contractors that conduct business, or make deliveries, or repairs on an intermittent, or 'as required' basis at FDIC offices. No fingerprinting will be required for receiverships except when access to FDIC systems is obtained.

All contractor and subcontractor employees being granted access to FDIC's network/systems must review the FDIC Security Awareness Web site and provide electronic certification of their review within five business days of receiving a network ID. The Security Awareness review and certification must be done annually to retain access.

No contractor or subcontractor employee may begin work on a contract

until favorable results from the fingerprint and credit checks are received. SMS will provide the Contracting Officer with the results of the fingerprint and credit checks, and the Contracting Officer will then inform the contractor and Oversight Manager that actual performance may begin.

**4.A.19.
Contract Ceiling**

All contract awards must include a [contract ceiling](#) amount.

**4.A.20.
Documentation of
Contract Award**

Contracting Officers must provide comprehensive documentation that clearly describes the process used to prepare, solicit, evaluate, and award the purchase order or contract. The contract file will contain the documentation specified in *Exhibit XXII, Contracting File Checklists*.

All documentation will be prepared and included in the [official contract file](#) prior to award.

CEFile documentation requirements are contained in the CEFile Desk Companion.

4.B. PRESOLICITATION PHASE

4.B.1. Overview

4.B.1.a. Receipt of Requirements Package

ASB will record the date the [Requirements Package](#) is first received, and assign it a solicitation or purchase order number.

4.B.1.b. Procurement Action Log (PAL)

The Requirements Package is recorded in PAL. PAL generates the contract number.

4.B.1.c. CEFile

ASB also creates a contract file in CEFile, scans the requirements package documents, and enters them into the contract file in CEFile. The resulting electronic file will be routed to a manager for review and assignment.

4.B.2. Contracting Officer Review

The [Contracting Officer](#) must review the Requirements Package for completeness and clarity, and will determine and advise the Program Office of the contracting method to be used:

1. [Simplified procurement](#);
2. [Formal contracting](#); or
3. An existing contract.

The Contracting Officer will review requirements for [services](#) to ensure that [prohibited personal services contracts](#) will not be created. The Contracting Officer will also review the evaluation methodology.

If a [noncompetitive](#) award is contemplated, ASB must ensure compliance with the requirements for awarding a noncompetitive contract, see [2.J., Justification for Noncompetitive Procurement \(JNCP\)](#).

In a [System Development Life Cycle \(SDLC\)](#) contract, where the use of task assignments is intended, the Contracting Officer will ensure that the [SOW](#) is sufficiently specific, that it includes standard task assignment language, and the intended form of the [task assignment](#), or that the task assignment form refers specifically to the SDLC, when applicable.

4.B.2.a. IT Security

The Contracting Officer must ensure that the IT security requirements are communicated in the RFP.

4.B.2.b. Contract Type and Document

Based on information in the Requirements Package, the Contracting Officer will consult with the Program Office, if necessary, and select the type of contract and contract documents that represent the most suitable business arrangement for procuring goods or services.

**4.B.3.
ODEO Review**

For contracting actions estimated to cost greater than \$100,000, the Contracting Officer will forward the complete [Requirements Package](#) to ODEO for review. ODEO will review it to identify MWOB and SDB sources for [solicitation](#), as well as, for appropriate [Section 8\(a\) Program](#) requirements.

**4.B.4.
Technical
Evaluation Panel
(TEP)****4.B.4.a. Roles and Responsibilities**

When a technical evaluation is required, the Program Office will select the members to serve on the Technical Evaluation Panel (TEP), as described in [2.G.2. Identification of Technical Evaluation Panel \(TEP\) Members](#).

4.B.4.b. Prerequisites

Each voting and non-voting member of the TEP must read and sign a *Confidentiality Agreement* and a *Conflict of Interest Certification, Exhibit XII* and submit them to the Contracting Officer. If, for any reason, a member cannot evaluate a proposal objectively, that member must alert the Contracting Officer.

**4.B.5.
Preparing the
Solicitation List**

The Contracting Officer will prepare a [solicitation list](#) identifying the firms to be solicited, their MWOB classification and SDB certification. The list will include firms provided by the Program Office, ODEO, eligible firms from [Central Contractor Registration \(CCR\)](#), or any other sources, at the discretion of the Contracting Officer. The Contracting Officer will ensure that a reasonable number of MWOB and SDB firms are included on the solicitation list. The Contracting Officer will document the basis for a firm's inclusion on the list in the [official contract file](#).

4.B.5.a. Number of Sources for Solicitation

The Contracting Officer will select an appropriate number of sources to ensure [adequate competition](#), at least three or more. If three sources do not exist, the Contracting Officer must document the results of the attempt to find them in the official contract file.

4.B.5.b. Eligibility Reviews**4.B.5.b (1) Suspended and Excluded Contractors**

Before including any firm on a solicitation list, the Contracting Officer will consult the Debarred Vendors List on the ASB web page and the Federal Government Excluded Parties Listing System: <http://epls.arnet.gov> to ensure that none of the firms being solicited

are suspended or excluded from Federal or FDIC contracting.

4.B.5.b (2) Firms Having Unresolved Audit Issues

The Contracting Officer will check the ASB web page to see if any firms have unresolved audit issues and may refrain from soliciting firms that have unresolved audit issues, see [1.J. Contracting With Firms Having Unresolved Audit Issues](#)

4.B.5.c. SDB Verification

To verify a firm's SDB certification, the Contracting Officer will:

1. Check the SDB database PRO-Net on the SBA web site (<http://pro-net.sba.gov/>) to determine whether the applicable NAICS code is authorized to participate in the SDB program (ODEO will be provided the opportunity to review this verification); and
2. Document this procedure and the results in the official contract file.

4.B.6. Service Contract Act (SCA)

[Service Contract Act](#) (SCA) provisions are included when the contract is estimated to cost more than \$2,500, and it is determined that the services are covered by the SCA, see [1.B.10](#).

4.B.7. Davis Bacon Act

[Davis Bacon Act](#) provisions are included; when the requirement is estimated to cost more than \$2,000, see [1.B.11](#).

4.B.8. Source Selection Plan (SSP)

4.B.8.a. Participants

The Contracting Officer and the Program Office will jointly develop the [SSP](#).

4.B.8.b. Plan Contents

The SSP provides guidelines and a control mechanism for the proposal evaluation and selection process. The SSP will include a section on IT security requirements. Contents of the SSP are specified in *Exhibit IX, Source Selection Plan Organization*.

4.B.8.c. Confidentiality

Each page of the SSP will include the following protective marking: "Confidential Contracting Information - Not for Public Disclosure."

**4.B.9.
Contract
Milestone
Schedule**

To monitor the progress of the contracting process, ASB and the Program Office will jointly prepare a written schedule of events, and the projected completion date, *Exhibit X, Contract Milestone Schedule*. The Contracting Officer will monitor adherence to the schedule to ensure timely award.

4.C. SOLICITATION PHASE

4.C.1. Preparing the Solicitation Package

The Contracting Officer must prepare the Solicitation Package using elements and information received from the Program Office in the [Requirements Package](#) and the appropriate [standard documents](#). At a minimum, the Solicitation Package will include:

- a. The [RFP](#);
- b. Draft contract with [SOW](#) and General Provisions;
- c. Proposal cover and signature pages;
- d. Pricing schedule requiring pricing for the base term and each option period;
- e. Contractor Representations and Certifications;
- f. Eligibility Representations and Certifications;
- g. Background Investigation Forms;
- h. Notice and Authorization Pertaining to Consumer Reports Pursuant to the Fair Credit Reporting Act of 1970, FDIC Form 1600/10; and
- i. Wage Determination, if applicable.

4.C.2. Proposal Preparation and Evaluation Structure

4.C.2.a. Standard Solicitation Documents

The standard solicitation documents include language to cover all contracting situations. The Contracting Officer must tailor the RFP to the requirement.

4.C.2.b. Evaluation Criteria

The [evaluation criteria](#) must be defined in enough detail in the solicitation to provide offerors a reasonable opportunity to understand the evaluation structure.

4.C.2.c. Security Policy

In accordance with Circular 1610.2, Security Policy and Procedures for FDIC Contractor and Subcontractors, the Contracting Officer will ensure that [risk level designations](#) are included in the solicitation package for:

1. All contracts for services greater than \$100,000,
2. Contracts at any amount when contractor employees will have access to FDIC facilities or network/systems, or
3. Any other contract at the discretion of the FDIC.

4.C.2.d. IT Security Guidance

In accordance with Directive 1360.17, Information Technology Security Guidance for FDIC Procurements/Third Party Products, the Contracting Officer will include security language and requirements in the RFP, including:

1. Security laws, regulations, and policies with which all deliverables must comply;
2. Statement of basic security requirements;
3. Protection of FDIC data related to the contract;
4. Provision for security technical evaluation criteria as part of the overall technical evaluation criteria;
5. Sensitivity assessment and risk analysis to determine security requirements and vulnerabilities;
6. Suitability of contractor and **subcontractor** staff based on personnel security criteria;
7. Provision for obtaining a separate pricing line item from contractors for implementing security requirements for any contracts \$3 million or greater; and
8. A clause that states, upon **termination** of the contract or completion of tasks involving FDIC data, all hard copy data will be returned or destroyed as directed by the FDIC, and all electronic data will be erased or destroyed (disk wiping or media sanitizing) in accordance with FDIC policies and procedures.

4.C.3. Solicitation Package Reviews

Before releasing the Solicitation Package to prospective offerors on the solicitation list, the Contracting Officer will obtain the following reviews:

- a. CLU;
 - b. ODEO;
 - c. ASB Supervisor;
 - d. SSO, if applicable;
 - e. SMS, for contracts for services greater than \$100,000, or for contracts that require network or data access; and
 - f. Information Security Section (ISS), DIRM, for contracts that require network or data access.
-

**4.C.4.
Release of
Solicitation
Package**

After all required reviews have been completed, and on the date specified for solicitation issue, the Contracting Officer will release the solicitation to the prospective offerors on the solicitation list. All questions and correspondence related to the solicitation will be referred to the Contracting Officer.

**4.C.5.
Response Time**

Firms will be given sufficient time to respond to the RFP. The [Contracting Officer](#) will take the following factors into consideration in determining the solicitation due date:

- a. Unique characteristics that might dictate a longer or shorter time;
 - b. Complexity and/or dollar value of the contract;
 - c. Open market or General Services Administration (GSA)/Federal Supply Schedule (FSS) contract; and
 - d. Type of solicitation.
-

**4.C.6.
Offeror Questions**

Interested firms must submit all questions in writing. The Contracting Officer will respond in a timely manner, using information obtained from the Program Office, ODEO, CLU, or other offices, as appropriate. Questions and the FDIC responses will be sent to all firms on the solicitation list.

**4.C.7.
Offeror
Conference**

The Contracting Officer and the Program Office will jointly determine whether an [offerors conference](#), including 'walk-throughs', is needed. They must ensure:

- a. The timing is as early as possible in the process;
 - b. The presence of appropriate FDIC officials to give potential offerors the clearest possible understanding of the requirement, including, an explanation of the proposal submission instructions, representations and certifications, and contractor integrity and fitness requirements; and
 - c. Questions raised during the conference, and the responses, are reduced to writing, and distributed to all firms on the [solicitation list](#).
-

**4.C.8.
Proposal Receipt
and Disposition****4.C.8.a. General Practice**

ASB must receive proposals strictly in accordance with the terms of the [solicitation](#). As soon as it is received, each proposal is stamped with the date and time and then immediately secured. The Contracting Officer will prepare and maintain a list of the proposals received, including the date and time received, for the [official contract file](#).

4.C.8.b. Late Proposals and Modifications

The Contracting Officer must notify an offeror, at the time of the decision that its proposal is late and will not be considered.

In unusual circumstances, proposals, or modifications to proposals, received after the proposal due date and time may be accepted at the Contracting Officer's discretion. Circumstances when it would be in the best interest of the FDIC to accept a late proposal or modification to a proposal include when:

1. It would improve competition;
2. It would offer significant price or technical advantages; or
3. The FDIC mishandled the receipt of the proposal.

All exceptions will be documented in the official contract file.

4.C.8.c. Distribution and Safeguarding of Proposals

The Contracting Officer must retain the original proposals for the official contract file.

ASB staff, technical evaluators, and other involved personnel must safeguard all proposals to prevent unauthorized disclosure. The Contracting Officer is responsible for all proposals in the possession of ASB.

**4.C.9.
Amendment**

The Contracting Officer will issue an amendment to the [solicitation](#) when necessary to make changes in the solicitation. The Contracting Officer will send amendments to all firms on the [solicitation list](#) and allow sufficient time to permit offerors to consider all solicitation amendments in submitting or modifying their proposals. When it is necessary to issue an amendment by telephone or electronic transmission, written confirmation will be promptly furnished to offerors. Amendments will also be provided to all members of the [TEP](#).

**4.C.10.
Cancellation**

When it is necessary to cancel a solicitation, the Contracting Officer must send a written notice to every firm on the solicitation list. The Contracting Officer will document the file with the reason for cancellation.

4.D. EVALUATION PHASE

4.D.1. Contracting Officer Review of Proposals

The **Contracting Officer** will review each **proposal** to ensure that it meets the requirements of the **RFP**. Any proposal that is **non-responsive** will be eliminated from further consideration. At the discretion of the Contracting Officer, proposals missing some information can be evaluated with **clarifications**. The Contracting Officer must document the file reflecting any such decision.

4.D.2. Proposal Acceptance Period

During evaluation, the Contracting Officer needs to monitor the proposal acceptance period defined in the RFP and request extensions as necessary.

4.D.3. Initial Briefing

After proposals are received, the Contracting Officer will convene a briefing on the proposal evaluation process for all **TEP** evaluators. At this time, the Contracting Officer will distribute copies of the proposals to the TEP members. Each member will sign a *Confidentiality Agreement and Conflict of Interest Certification Exhibit XII*. During the evaluation process, TEP members are responsible for safeguarding the proposals in their possession. Proposals must be kept in a secure location to prevent unauthorized disclosure.

During the briefing, the Contracting Officer will provide detailed written and verbal instructions on the mechanics of evaluating each proposal, and a copy of the **SSP**. The agenda will include:

- a. Evaluators' responsibility for protecting contracting information;
 - b. The number of proposals received;
 - c. The schedule for completing the evaluation;
 - d. Key solicitation terms and conditions and significant statement of work contents, including IT Security Plan, if applicable;
 - e. Resumes of **key personnel** and how they will be reviewed;
 - f. Any proposal format requirements;
 - g. Instructions for requesting **clarifications**;
 - h. **Evaluation criteria** and their corresponding standards;
 - i. Questionnaires to document past performance; and
 - j. Documentation requirements, including the standard protective marking statement "Confidential Contracting Information - Not for Public Disclosure," included on all proposal evaluation documentation and recommendation reports.
-

4.D.4. Technical Proposal Evaluation

Each technical proposal must be reviewed by the **TEP** to determine if it meets the requirements of the solicitation. The Contracting Officer is responsible for ensuring that the TEP is convened and that it completes its work on a timely basis. The TEP members are responsible for evaluating proposals in accordance with the procedures established in the **SSP**, the evaluation criteria specified in the **solicitation**, the best value methodology selected, and the procedures established herein.

4.D.4.a. Past Performance Information

The TEP will obtain available performance information on all offerors, using the *Contractor Past Performance Reference RFP Check Questionnaire, Exhibit XXVIII*, provided by the Contracting Officer during the initial briefing. TEP members are required to call an offeror's references and use the questionnaire to document **past performance**. TEP members will use the past performance information obtained, along with any other past performance information from the Contractor Performance System (CPS) in evaluating the contractor.

4.D.4.b. Guidelines for Individual Evaluations

Individual proposals must be evaluated against the evaluation criteria, and not compared against each other. Generally, evaluators should take the following steps:

1. Scan each proposal for organization, contents, and style;
2. Analyze each proposal segment, using the evaluation criteria, corresponding standards, and any proposal instructions provided in the solicitation as a checklist;
3. Document the review of each proposal segment with written narratives, emphasizing both strengths and weaknesses;
4. Summarize the proposal's strengths and weaknesses; and
5. Rate the proposal using the instructions provided in the SSP.

4.D.4.c. Evaluating subcontracting

If **subcontracting** is allowed, and a firm proposes **subcontractors**, it should propose a detailed and complete **Subcontracting Plan**. The plan must clearly indicate oversight and control throughout the contract. The Contracting Officer and Program Office should consider the following guidelines to evaluate a subcontracting proposal:

1. The proposed level of subcontracting must be appropriate for the requirements of the contract (i.e., logically balanced on a technical basis);
2. The subcontractor's qualifications, resources, and capabilities must be appropriate for the complexity of the work;
3. The proposed level of subcontracting must be commensurate with industry practices for similar requirements;

4. The complexity and critical nature of the subcontracting must be balanced with the appropriate level of on-going supervision by the contractor;
5. The contractor must demonstrate experience in supervising and performing control and quality assurance of the subcontractor's work; and
6. The contractor must clearly have full responsibility for the inspection and acceptance of all subcontractors' work.

4.D.4.d. Clarification of Proposals

During the evaluation process, if TEP members need **clarification**, the TEP Chairperson may request it from the Contracting Officer. Only the Contracting Officer has the authority to request clarification from an offeror, and the request will be made in writing. Contracting Officers will instruct the offeror to provide supplemental information of a strictly explanatory nature. An offeror must provide the clarification in writing but may not change any part of the proposal as a result of the clarification request. If the offeror provides information that changes the contents of its proposal, the Contracting Officer can disregard the changes, eliminate the proposal from further consideration, or waive the matter as a minor informality.

4.D.4.e. TEP Consensus Meeting

After the individual TEP members have completed and documented their evaluations of each proposal, or all of the proposals, the TEP will discuss the strengths and weaknesses of each proposal. The TEP must achieve consensus using a rational, agreed upon method (e.g., thorough discussion).

The goal of the consensus meeting is to reach a TEP consensus on the strengths and weaknesses of each proposal, relative to the evaluation criteria.

If the TEP cannot reach a consensus, the TEP Chairperson will decide the final ranking of a proposal.

4.D.4.f. TEP Memorandum

Prior to receiving the price proposals from the Contracting Officer, the TEP Chairperson must provide the Contracting Officer a memorandum documenting the panel's position on each proposal.

The TEP memorandum must include:

1. An analysis, keyed to the specific evaluation criteria, of the technically acceptable and unacceptable proposals, including an assessment of each offeror's ability to accomplish the technical requirements;
2. A consensus narrative statement reflecting the strengths and weaknesses of each proposal and the basis for the consensus;

3. Evaluation sheets and narratives;
4. Protective marking statement, “Confidential Information: Not for Public Disclosure” on each page;
5. Signature of all TEP members on each page; and
6. Concurrence of the [SSO](#), if applicable.

The past performance questionnaires should be returned to the Contracting Officer along with the TEP Memorandum and score sheets to support the evaluation and for inclusion in the file.

4.D.4.g. Review of TEP Memorandum and Evaluation Sheets

The Contracting Officer must review the TEP memorandum and evaluation sheets to ensure that all proposals were evaluated impartially, and in accordance with the evaluation criteria listed in the solicitation. If a proposal is excluded from further consideration, the TEP memorandum must document the basis for the exclusion. The Contracting Officer will advise the TEP Chairperson of any deficiencies or necessary changes to the memorandum. The TEP memorandum will provide written documentation of the technical evaluations, including the strengths and weaknesses of each proposal. After the Contracting Officer's review is complete, the price proposals will be provided to the TEP for review.

4.D.5. Price Proposal Evaluation

Price evaluation is always required to assure the validity and reasonableness of an offeror's price proposal. It must include an evaluation of the offeror's price for IT security, if applicable. Price proposal information must be segregated from the technical proposal information. The Contracting Officer performs the price evaluation.

An SDB price adjustment is applied after firms are determined to be technically qualified. Incorporating the price evaluation into the overall proposal evaluation will be done by the Contracting Officer according to the best value methodology selected.

4.D.5.a. Price Reasonableness - Contracting Officer's Duties

Adequate [price competition](#) is obtained when competitive proposals are solicited and the solicitation has identified price as an evaluation criterion. Price competition normally ensures reasonable prices, but there are instances when competitive pressures are not sufficient to do this. To determine [price reasonableness](#) (including for IT security), the Contracting Officer may:

1. Compare each price with the same or similar items or services in comparable quantities acquired under previous or existing contracts.
2. Compare proposed prices with the FDIC cost estimate and the Contracting Officer's personal knowledge of the item being

- procured, or any other reasonable basis.
3. Verify that law or regulation sets prices when that claim is made.
 4. Compare proposed prices with competitive published catalogs or lists, published market prices or commodities, similar indices, and discount or rebate arrangements.

The Contracting Officer will select and use the **price analysis** technique that is most appropriate for a particular **solicitation**. All price analysis techniques rely on data obtained from sources other than the offeror.

4.D.5.b. Price Realism - TEP Duties

When all technical discussions are concluded, and the technical evaluations have been provided to the Contracting Officer, the TEP Chairperson will obtain price proposals from the Contracting Officer and provide them to the TEP evaluators. The evaluators examine evidence of whether the proposed price for the work and IT security, if applicable:

1. Is realistic for the work to be performed;
2. Reflects a clear understanding of the requirements; and
3. Is consistent with the offeror's technical proposal.

If the TEP cannot perform the **price realism** duties, the TEP Chairperson will perform this function.

The elements of a price proposal can provide insight into an offeror's understanding of the requirement. If an offeror's total proposed price greatly exceeds or falls far short of the Program Office estimate for the requirement, the offeror's understanding of what is required must be questioned. The TEP review and determination will include:

1. The number and qualifications of personnel to be assigned to the various aspects of the proposed work;
2. Proposed labor rates or proposed material fees;
3. Necessity and price of proposed resources for the requirement; and
4. The price, amount, and necessity of travel.

4.D.5.c. Elimination of Proposals Based on an Unrealistic Price Proposal Determination

If an offeror is eliminated from consideration on the basis of an unrealistic price proposal, the basis for the elimination must explain why the offeror would not be able to perform the contract for the proposed price, or why the price is considered unreasonably high or low. The decision to eliminate a proposal will be made by the Contracting Officer and concurred with by the TEP Chairperson.

**4.D.6.
Award Based on
Initial Offer**

If it is in the best interest of FDIC, the Contracting Officer may award a contract based on the initial submission of proposals following the results of technical and price evaluations. There are no substantive discussions with the recommended awardee, unless there is a need for clarifications. The recommended awardee's proposal or resultant contract cannot be materially or substantively changed.

**4.D.7.
Award Based on
Best and Final
Offer (BAFO)**

Following the initial evaluation, if there is no one successful offeror and if there is a need to hold technical or price discussions with offerors, the Contracting Officer may establish a competitive range and hold a Best and Final Offer (BAFO).

4.D.7.a. Competitive Range Determination

The Contracting Officer determines the competitive range on the basis of technical, price, and other factors stated in the solicitation. Generally, the competitive range will include all proposals that have a reasonable chance of being selected for award. However, at the discretion of the Contracting Officer, the competitive range may be limited to the top three firms with the highest Integrated Best Value Assessment. A BAFO may be held for one or more firms, if there is a competitive range, a BAFO must be held for all offerors in the competitive range.

If the Contracting Officer determines that a proposal no longer has a reasonable chance of being selected for contract award, it may no longer be considered for selection.

4.D.7.b. Planning for Discussions

The purpose of the discussions is to provide all parties with an equal opportunity to improve their proposals. Before holding discussions, the Contracting Officer will normally meet with members of the TEP to review findings. During discussions, the Contracting Officer will determine what information will be provided to, and requested from, offerors in the competitive range concerning their proposals. This process is an important step because it provides a plan for the discussions.

4.D.7.c. Discussions

Discussions must be conducted with all firms in the competitive range. With the assistance and participation of the TEP, the Contracting Officer will conduct the discussions, face-to-face, telephonically, or in writing, and may include technical, price, or other issues.

The Contracting Officer will control the discussions to ensure they are conducted fairly. Discussions are not intended to be a general question-and-answer period for each offeror. Rather the Contracting Officer should ask specific questions to clarify uncertainties in the proposal.

During discussions, the Contracting Officer will:

1. Advise the offeror of deficiencies in its proposal based upon the TEP's evaluations;
2. Attempt to resolve any uncertainties concerning the offeror's proposal; and
3. Identify and resolve suspected mistakes by calling them to the offeror's attention without disclosing information on other offerors' proposals or the evaluation process.

During discussions the Contracting Officer must ensure that FDIC personnel do not:

1. Help an offeror bring up a proposal to the level of other proposals through successive discussion opportunities;
2. Indicate to an offeror that a price must be met to obtain further consideration; or
3. Furnish information about other offerors' proposed prices.

After discussions are completed, offerors will be given the opportunity to improve their proposal through a best and final offer (BAFO).

4.D.7.d. Request for BAFOs

After discussions have concluded, the Contracting Officer will solicit BAFOs from all offerors in the competitive range. The request will include:

1. Notice that discussions are concluded;
2. Notice of the opportunity to submit BAFOs by revising price proposals, technical proposals, or other terms and conditions of the original proposals; and
3. A due date and time that allows a reasonable opportunity for submission of written BAFOs.

4.D.7.e. BAFO Evaluation

After the receipt of BAFOs, the TEP will reconvene to evaluate them. The same process used to evaluate the original offers is repeated, including the [price realism](#) determination after the technical evaluation. However, the TEP will only consider the changes resulting from the BAFOs. For any changes that affect the technical evaluation, the TEP members will complete a re-evaluation sheet that addresses any changes to the offers made by the BAFOs. The TEP Chairperson will adjust the evaluation accordingly.

**4.D.8.
Second BAFO**

After receipt of BAFOs, the Contracting Officer will not re-open discussions unless available information is not adequate for contractor selection and award, or when it is in the FDIC's best interest to do so. Request for a second BAFO requires the prior approval of the appropriate Assistant Director, Corporate or DIRM contracting, or, the Head of the Regional contracting function.

**4.D.9.
Addendum to
the TEP
Memorandum**

The TEP Chairperson will issue an addendum to the TEP memorandum addressing the review of the price proposals and the results of the BAFO evaluation.

Based on the original and BAFO evaluations the Contracting Officer will prepare the Selection Recommendation Report (SRR).

**4.D.10.
Selection
Recommendation
Report (SRR)**

Based on the final signed TEP memorandum, price analysis, and all other relevant decision-making factors, the Contracting Officer will prepare an SRR to explain the basis for the award decision. Each page will include the protective marking statement: "Confidential Procurement Information - Not for Public Disclosure." The Contracting Officer and the TEP Chairperson will sign the report. The SRR will include:

- a. A chronology of events in the evaluation and award process;
- b. Number of firms solicited, proposals received, proposals received late, proposals withdrawn, and non-responsive proposals;
- c. A competitive ranking of the proposals and a brief description of the significant strengths and weaknesses of each proposal among those in the competitive range;
- d. The final assessment for each offeror or joint venture including SDB evaluation adjustments;
- e. The offeror's proposed price;
- f. SDB status;
- g. Statement that a background investigation request was made to or provided by SMS;
- h. The results of the financial capability evaluation;
- i. CCR Documentation;
- j. Statement of results of the *Contractor Integrity and Fitness Representations and Certifications, Exhibits XXX and XXXI* for the recommended awardee;

- k. IT security evaluation and pre-award site visit, if applicable;
 - l. Percentage of subcontracting, if in excess of 50% for services and 85% for construction (75% for special trades construction); and
 - m. All other pertinent information that may influence the selection.
-

**4.D.11.
SSO Review of
the Selection**

The **SSO** must review all the documentation relating to the source selection to ensure that the source selection decision is:

- a. Based on an analysis of the proposals;
- b. Consistent with the evaluation factors stated in the solicitation; and
- c. The best value available.

The SSO will concur with the SRR and document any issues in a memorandum to the Contracting Officer.

**4.D.12.
SRR Signature
and Approvals**

The TEP Chairperson or Program Office is responsible for obtaining the signatures and reviews of the SRR required by [4.A.16.](#), [Contract Selection Decision Approvals](#).

4.E. PRE-AWARD PHASE

4.E.1. Insurance Coverage

The **Contracting Officer** must verify that the selected firm is in full compliance with all necessary insurance requirements of the solicitation.

4.E.2. Contractor and Integrity and Fitness Verification

The Contracting Officer will review the *Contractor and FDIC Integrity and Fitness Representation and Certifications, Exhibits XXX and XXXI*, for the **recommended awardee**. If the certifications indicate potential ethics problems, the Contracting Officer will refer the matter to the Policy and Operations Section for review, and provide all supporting documentation necessary to complete the review. Contract **award** will not be made until the certification issue is resolved.

4.E.3. Eligibility

4.E.3.a. Excluded Parties Review

The Contracting Officer will review the Debarred Vendors List on the ASB web page and the Federal Government excluded Parties Listing System: <http://epls.arnet.gov> to ensure that the recommended awardee is not excluded or ineligible to contract with the government or the FDIC.

4.E.3.b. CCR Review

A recommended awardee must be registered in CCR. The Contracting Officer will review **CCR** (<http://www.ccr.gov/>) and include the recommended awardee's registration in the **official contract file**.

4.E.4. Financial Capability

If necessary, the Contracting Officer will conduct a **business reference check** of the recommended awardee before award. The check provides information concerning the financial capability of the offeror. If the **recommended awardee** is not selected for award based on the check, the official contract file will be documented.

The Contracting Officer will perform a financial capability evaluation for the recommended awardee for contracts for services having an expenditure of \$500,000 or greater. The evaluation will consist of an analysis of financial data submitted by the recommended awardee and other relevant information supporting the financial condition of the recommended awardee to fully meet all contract obligations. The recommended awardee will be required to identify any pending proposals submitted, any previous or existing contracts, and other pending commitments and contract obligations.

**4.E.5.
Pre-Award Survey****4.E.5.a. General**

FDIC may perform a pre-award survey at the recommended awardee's location to verify the accuracy of representations made by the firm in its proposal. Contracting Officers may ask TEP members and other appropriate offices to participate in the survey. The participation request will depend on the nature of the information to be verified. The TEP Chairperson is responsible for providing a brief, written report of findings and recommendations from the survey to the Contracting Officer.

4.E.5.b. Subcontracting

For contracts that will include [subcontracting](#), ASB may review the firm's history in selecting, awarding, and monitoring subcontracts, the firm's history of MWOB and SDB subcontracting, as well as the degree of competition obtained in previous subcontracting activities.

4.E.5.c. Information Technology (IT)

When the contractor has network access, the Contracting Officer and DIRM's Information Security Section (ISS) will perform a pre-award survey to verify the security at the recommended awardee's facility.

**4.E.6.
Background
Investigations**

The Contracting Officer will provide the completed background investigation forms for the recommended awardee to the Policy and Operations Section before award.

**4.E.7.
Variance from
Approved
Expenditure
Authority**

If the amount of the winning proposal exceeds the [expenditure authority](#) of the original [Procurement Requisition](#), the [Program Office](#) must provide additional expenditure authority for the new amount before contract award. A memorandum from the Division or Office Director responsible for the program should be prepared immediately if the winning proposal amount will result in an increase from the original approved expenditure authority greater than:

- a. \$250,000 for Up to \$5 million; or
- b. 5% of Total for over \$5 million;

Or, a funding decrease more than:

- a. \$1,000,000 for up to \$10 million; or,
- b. 10% of Total for over \$10 million.

This memorandum will be forwarded to the appropriate Deputy to the Chairman, and subsequently to the Board, if the expenditure authority originally required Board approval.

4.F. AWARD PHASE

- 4.F.1. Award** The Contracting Officer will notify the recommended awardee in writing that an **award** decision has been made.
-
- 4.F.2. Preparing the Document** The Contracting Officer will prepare the contract using the appropriate standard contract documents and the General Provisions. The Contracting Officer will make all revisions necessary to finalize the contract before award and ensure that the contract contains a **ceiling price**. The names of all **key personnel**, identified during the proposal review process, must be included in the final contract. Where labor categories are used, the contract will also contain descriptions of the qualifications needed for performing tasks in specific labor categories. CLU will provide advice and counsel as requested.
-
- 4.F.3. Executing the Contract** The Contracting Officer will send two originals of the contract to the **contractor**, who must sign both of them, without modification, and return the signed copies. After executing both copies of the contract, the Contracting Officer will return one of the originals to the contractor, and retain the second copy. A copy of the contract will be provided to the **Oversight Manager**.
-
- 4.F.4. Award Prior to Completion of Reviews and Verifications** The award may be made even though a background investigation has not been completed, if a waiver is obtained from SMS. However, the contractor cannot begin work until a favorable background investigation is received.
-
- 4.F.5. Notice to Proceed** Normally, the fully executed contract must be in place before a contractor commences work. However, with the prior approval of the Associate Director, ASB, or the Head of the Regional contracting function, notice to proceed maybe granted before the execution date. In such cases, the Contracting Officer can verbally authorize a contractor to begin before a fully executed contract is in place. The Contracting Officer will issue a letter authorizing the contractor to commence work, *Exhibit XIII, Sample Letter Authorizing Contractors to Commence*

Work. Before a verbal authorization is given, the contractor and the FDIC must agree to the terms and conditions, price, and deliverables. The Contracting Officer must also ensure that expenditure authority in the total amount of the contract has been approved.

**4.F.6.
Notification to
Unsuccessful
Offerors**

Within fifteen calendar days after award, the Contracting Officer will send a written notice of the award to all unsuccessful offerors. The notice will contain the identity of the successful offeror and procedures for requesting a debriefing, *Exhibit XV, Notification to Unsuccessful Offeror Letter*.

**4.F.7.
POS Reporting**

Within seven calendar days after award, the Contracting Officer must enter all required data directly into the Purchase Order System (POS). Major POS data fields include:

- a. Vendor Identification Number;
- b. Purchase Order Number;
- c. Dollar amount;
- d. Description of services;
- e. Accounting information; and
- f. Payment terms.

Other data will be entered as required by POS.

4.G. DEBRIEFINGS

4.G.1. Debriefings

Debriefings will be offered to unsuccessful offerors when technical proposals are evaluated as part of the proposal evaluation and award process (includes contracts, basic ordering agreements, task orders, and purchase orders). Unsuccessful offerors must request a debriefing in writing within fifteen calendar days after the offeror is notified of the contract award. Debriefings may also be provided to successful offerors upon request.

Debriefings may be held either by telephone or in person, within a reasonable time, generally within thirty calendar days.

4.G.1.a. Responsibilities

The **Contracting Officer** is responsible for assembling information and coordinating the debriefing with the offeror and the **TEP** Chairperson or other TEP members. However, the Contracting Officer does have the discretion to allow other participants, such as an offeror's subcontractor and counsel to attend. When requested by the Contracting Officer, CLU will participate in the debriefing. ODEO will be given an opportunity to participate when debriefings are given to MWOB, **SDB**, and 8(a) firms. TEP personnel should be available for debriefing consultations, before the debriefing.

The Contracting Officer will retain a record of debriefing conferences in the **official contract file**.

4.G.1.b. Discussion Items

The Contracting Officer will introduce all FDIC participants, explain their respective roles in the selection and award process, and manage the flow of the meeting.

4.G.1.b (1) Required Discussion Items

4.G.1.b (1) a Evaluation Structure

An overview of the evaluation structure/process including the procedural aspects of the technical and price assessment, the technical evaluation criteria, and price proposal.

4.G.1.b (1) b General Ranking

The offerors ranking in general terms such as within "the top third" or "bottom half" of the offerors. It is important to concentrate on the relative nature of the rating system. Debriefers will emphasize that a low rating does not necessarily mean that an offeror is not qualified to perform the required services but, rather, that the contractor was not perceived to be overall as strong as the successful offeror. It is not appropriate to discuss either the specific ratings or the price proposals of other offerors. However, the Contracting Officer may disclose the

awardee's price.

4.G.1.b (1) c Future Improvement

It is essential that debriefers provide useful information that will help the offeror produce a more competitive proposal in response to future solicitations. For example, if an offeror's proposed prices were so much higher than most other offerors' prices that they precluded any real chance of selection, debriefers could stress a general need to trim proposal prices—without stating any particular price that might be considered "competitive" or "reasonable." On the other hand, if the offeror's proposal lacked technical merit, debriefers can identify the general areas of weakness, but should refrain from making a point-by-point comparison of all elements considered.

4.G.1.b (2) Optional Discussion Items

When the Contracting Officer considers it appropriate, other items, such as the following, may be discussed:

- a. Administrative process for selecting sources;
- b. Number of sources solicited;
- c. Number of proposals received;
- d. Perceived strengths as well as weaknesses in the firm's proposal, based on the criteria set forth in the solicitation;
- e. If requested, procedures for requesting information under the [Freedom of Information Act \(FOIA\)](#); and
- f. If requested, procedures for filing an official [protest](#).

4.G.1.b (3) Unauthorized Discussion Items

These items must not be discussed or disclosed to the firm being debriefed:

- a. The number of offerors included in the [competitive range](#) or requested to submit [BAFOs](#);
 - b. The actual assessment of the firm being debriefed, or the firm's ranking;
 - c. Any other offeror's assessment or ranking;
 - d. A copy of the technical proposal;
 - e. Copies of any technical or price evaluation sheets, reports, or any other written information produced by the TEP or the Contracting Officer during the evaluation process; and
 - f. Information relating to the selected contractor or other offerors that could be considered proprietary information.
-

4.H. SERVICE CONTRACT ACT (SCA) PROCEDURES

4.H.1. Overview

When the [Service Contract Act](#) (SCA) applies, the Contracting Officer must obtain the specific minimum wage rates to be paid by the contractor for [job classifications](#) to be used in performing services under the contract, and notify the U.S. Department of Labor (USDOL) of the determination. The solicitation for such contracts must include the minimum wage determinations and the clauses as set forth in the FDIC General Provisions.

4.H.2. Obtaining Wage Determination

The Contracting Officer will refer to the [SCA database](#) on [FedWorld](#) (<http://servicecontract.fedworld.gov/>) to select the job classification(s) most closely resembling the requested services. Once the appropriate job classifications and wage rates are selected, the Contracting Officer must provide them in the solicitation by including copies of completed *Forms SF 98 and SF 98a, Exhibit III*. The Contracting Officer should consult CLU and ASB's Policy and Operations Section in making these determinations.

The Contracting Officer will determine the appropriate SCA wage by accessing the [SCA database](#) no more than fifteen calendar days before issuance of the solicitation, the exercise of an [option](#), the execution of a contract extension, or a modification to a covered contract. Each of these circumstances triggers the requirement for the SCA wage determination.

If a job classification and prevailing wage do not exist, the Contracting Officer may request that the USDOL establish them, using *Forms Used to Request Wage Determination, Exhibit III*.

4.H.3. Completion of the SF 98 and SF 98a

Once the appropriate job classifications are identified, and the wage determination obtained, the Contracting Officer must complete an *SF 98 and SF 98a, Notice of Intention to Make a Service Contract and Response to Notice, Exhibit III*.

In addition to completing the usual sections of the *SF 98*, the Contracting Officer will complete the RESPONSE TO NOTICE section of the form by listing the number, including the revision number, of all wage determinations included in the solicitation. The Contracting Officer will sign the RESPONSE section of the form. The *SF 98* should be clearly annotated with the letters MOU on or near the NOTICE NO. Section, which appears on the upper right section of the

SF 98. All sections of the *SF 98* must be completed fully and accurately. *Exhibit III* contains sample copies of the *SF 98* and *SF 98a* and instructions for completion. Before issuance of the solicitation, the completed *SF 98* and *SF 98a* may be submitted electronically, or to the following address:

Administrator
 Wage and Hour Division
 Employment Standards Administration
 U.S. Department of Labor
 Washington, DC 20210

After submitting the forms to USDOL, the Contracting Officer is free to begin the solicitation and award process using the standard documents referenced above. No response in the form of a formal wage determination will be issued by USDOL.

4.H.4. SCA Forms

FDIC has developed standard SCA forms for inclusion in the solicitation and contract, as appropriate. Examples of these forms are available in *Exhibit III*. The first of these forms is the *FDIC Wage Determination*, and is for the applicable wage classification(s) and wage rate(s) as found on the SCA database. This document is to be attached to the wage determination taken from the SCA database and forwarded as part of the solicitation.

The second of these documents is called the *Contract Addendum – SCA*. It provides the awardee with a restatement of the applicable wage classification and wage rate. However, for information purposes, it also provides the contractor with the FDIC equivalent wage, were the FDIC to have directly hired such employees. This disclosure is attached to the contract.

4.H.5. Multiple Performance Locations

In the event a solicitation is intended to result in a contract for services performed in multiple locations, whether those locations are known or unknown, special procedures will apply.

When issuing such a solicitation, the Contracting Officer will use the originating office location when obtaining the wage determination(s) from the SCA database. This allows for application of the SCA to specific geographic locations at the time of task order issuance.

The solicitation must clearly indicate that wage determinations are being applied to the solicitation process for competitive purposes only. Wage determination(s) will be issued in the task order for the performance location.

**4.H.6.
Exceptions to the
Use of the SCA
Database**

For contracts involving the following situations, the SCA database may not be used, and Contracting Officers must submit *SF 98's* and *SF 98a's*, and obtain a USDOL-issued wage determination,

4.H.6.a. SCA Database Lacks Appropriate Work Classification

Any solicitation for which the [FedWorld](#) system does not contain an appropriate job classification will require USDOL-issued wage determination.

Every effort should be made to use a job classification contained in the SCA database.

4.H.6.b. Collective Bargaining Agreements

If the existing contract is being performed by service employees under an established Collective Bargaining Agreement, and if the successor's contract will be for substantially the same services as were furnished at the same location by the incumbent contractor, the wages and fringe benefits of the successor's service employees are determined by the predecessor's collective bargaining agreement. In this event, the predecessor's Collective Bargaining Agreement must be filed with the USDOL along with the *SF 98*, *SF 98a* and any related documents since SCA requires that the same wages and fringe benefits will apply to the successor contract.

**4.H.7.
Timing
Requirements for
Filing SF98 and
SF98a for
Exceptions**

In the event that unforeseen circumstances result in a service employee job classification being added to a contract after a wage determination applicable to a contract has been obtained and work has started on the contract, the contractor must take steps at that time to establish a classification and rate. The contractor submitting an *SF 1444, Request for Authorization of Additional Classification and Rate* to the Contracting Officer, initiates this "conformance" process. The employer must complete the contractor portion of the form, have affected employees sign, and indicate their agreement or disagreement on the *SF 1444* at the time of submittal, *Exhibit III* for sample *SF 1444*. The Contracting Officer forwards the *SF 1444* to USDOL, including recommendations based on the Contracting Officer's review and any additional pertinent information. USDOL has sole approval authority of this request. The contractor may compensate employees at the proposed rate until USDOL's response is received requiring a higher rate of pay. A conformance action is effective on the first day an employee in the conformed classification performs contract work; therefore a retroactive pay adjustment may be required. When the Contracting Officer requests a wage determination, it is done by submitting the *SF 98* and *SF 98a* notice to USDOL and waiting for USDOL to respond.

In order to allow USDOL sufficient time to respond, the *SF 98* and *SF 98a* notice is required to be submitted sixty calendar days prior to issuance of the solicitation, exercise of option, contract extension, or contract modification as may be the case.

In the event that a response from USDOL is not received in time for incorporation into the solicitation, the Contracting Officer may proceed with issuance of the solicitation but must include a statement in the solicitation that upon USDOL issuance of the wage determination, contract wages will be adjusted to reflect it.

**4.H.8.
Requirements for
Revised Wage
Determinations**

If a wage rate is published in the SCA database ten or more days prior to the award of the related contract, a revised wage rate will be used and a new wage determination must be submitted to USDOL. If a revised wage rate is published in the SCA database after award of the contract but before work under the contract commences, a revised wage determination must be completed and an *SF 98* and *SF 98a* must likewise be sent to the USDOL. Where appropriate, consult CLU regarding the specific timing requirements for revised wage determinations.

4.I. USING FEDERAL SUPPLY SCHEDULES AND OTHER CONTRACTS

4.I.1. Federal Supply Schedule Program

The General Services Administration (GSA) directs and manages the [Federal Supply Schedule](#) (FSS) program where the GSA schedule contracting office issues FSS contracts for use by all Federal entities. This program provides a simplified process for obtaining commonly used [commercial goods](#) and services at prices associated with volume buying. Indefinite delivery contracts (including requirements contracts) are established with commercial firms to provide goods and services at stated prices for given periods of time. Orders can be placed on the Internet to further simplify the ordering process.

Although this information is available online, FDIC personnel can obtain information on currently available goods or services by ordering copies of the Federal Supply Schedule Program Guide from:

General Services Administration
Centralized Mailing List Service (7CAFL)
P.O. Box 6477
Fort Worth, TX 76115
Phone: (817) 334-5215/5240
Fax: (817) 334-5227

4.I.2. Ordering Considerations Before Using Schedules

The Contracting Officer will only order goods and services that meet the needs of FDIC users. Before award, Contracting Officers must consider the following:

4.I.2.a. Delivery Time

If the required delivery in the [Requirements Package](#) is short-term, ASB will verify that the need for a quick turn-around time is legitimate. The schedule provides a delivery timeframe, but some FSS contractors may be in a position to offer quicker delivery. Often contractors base contract delivery on a "worst-case" situation. The Contracting Officer may be able to negotiate a better delivery time.

4.I.2.b. Specific or Unusual Circumstances

Included in this category are situations in which performance characteristics do not meet the FDIC's needs. For example, a copier does not produce the required number of copies per minute or the size of an item will not fit within the available physical space of the user.

4.I.2.c. Compatibility with Existing Systems

If the goods or services are compatible with existing FDIC systems, for example, a printer cartridge is useless unless the cartridge fits the FDIC user's printer.

4.I.2.d. Need for Special Features

A need for special features, for example, an FDIC user may need a calculator designed especially for real estate asset management. Such a calculator should be able to calculate, using only a few keystrokes, remaining balances for a loan amortization during various times in the life of the loan and other specialized information. A standard calculator would not meet this FDIC need.

4.1.3. Price Consideration Before Using Schedules

GSA has already determined the prices of items under schedule contracts to be **fair and reasonable**. However, before placing an order against a schedule using the procedures in this section, the Contracting Officer must determine that the order represents the best value and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc.) to meet the FDIC's needs. Some schedules have a built-in pricing indicator using color code identifiers to indicate lower- (green), medium- (yellow), and higher-priced (red) goods and services. Equipment trade-in considerations and transportation factors may have an effect on the quoted price for specific locations and users. The quoted price, therefore, may not be the best market price. Because market conditions change, FDIC's most advantageous price might be obtained off-schedule in the current market. In such cases, **market research** is worthwhile. If lower prices are found elsewhere, the Contracting Officer may try to negotiate a lower price with a schedule contractor or purchase from a source other than an FSS.

4.1.4. Ordering Thresholds Using Schedules

4.I.4.a. FSS Orders less than \$100,000

The Contracting Officer should place orders with the schedule contractor that can provide the goods or services that represent the best value, and select the delivery and other options available under the schedule that meet the FDIC's needs. When selecting the goods or services representing the best value, the Contracting Officer may consider:

1. Special features of the goods or services required for effective performance;
2. Trade-in considerations;
3. Probable life of the item selected as compared with that of a comparable item;
4. Warranty considerations;

5. Maintenance availability;
6. Past performance; and
7. Environmental and energy efficiency considerations.

4.I.4.b. FSS Awards Greater than \$100,000 but Less than the Maximum Order Threshold

For delivery orders greater than \$100,000 awarded under an FSS contract, but less than the maximum order threshold, price comparisons must be conducted with at least three FSS contractors offering the required goods or services. The Contracting Officer should ensure a reasonable number of MWOB or SDB firms are included. At the Contracting Officer's discretion, the price comparisons may be through review of published price lists or through oral or written [Requests for Quotations](#) (RFQs). All quotes must be based on the same estimated volume of goods or services to be purchased. SDBs and MWOBs selected from the FSS will not receive any evaluation adjustment.

It is optional for the Contracting Officer to allow a limited [technical evaluation](#) where the award will be based upon a best value determination including price and technical requirements. The Contracting Officer must ensure that the verbal or written quotes are documented in the [official contract file](#) and clearly justify the award decision.

4.I.4.c. Orders exceeding the maximum order threshold

Each schedule contract has an established maximum order threshold. This threshold represents the point where it is advantageous to seek a price reduction. Before placing an order, the Contracting Officer may:

1. Review additional schedule contractors' catalogs or pricelists, or use the GSA Advantage on-line shopping service;
2. Seek price reductions from the schedule contractor(s) appearing to provide the best value (considering price and other factors); and
3. Place the order with the schedule contractor that provides the best value and results in the lowest overall cost alternative after seeking price reductions. If further price reductions are not offered, an order may still be placed, if the Contracting Officer determines that it is appropriate.

4.I.5. Ordering Procedures Using Schedules

Orders from a schedule contractor must be made directly with the firm, using the FDIC FSS delivery order. The GSA contract number must be clearly referenced on the form. The delivery order must be signed by the Contracting Officer and sent to the contractor for fulfillment. Acknowledgement is necessary at the discretion of the Contracting Officer. The following information may also be needed in an order:

- a. Complete shipping and billing addresses;
- b. Date;
- c. Agency order number;
- d. F.O.B. delivery point; i.e., origin or destination;
- e. Discount terms;
- f. Delivery time;
- g. Special item number or national stock number;
- h. Brief, complete description of each item (when ordering by model number, features and options such as color, finish, and electrical characteristics, if available, must be specified);
- i. Quantity and any variation in quantity;
- j. Number of units;
- k. Unit price;
- l. Total price of order;
- m. Points of inspection and acceptance;
- n. Other pertinent data; e.g., delivery instructions or receiving hours and size-of-truck limitation;
- o. Marking requirements; and
- p. Level of preservation, packaging, and packing.

**4.1.6.
Use of Brand
Name
Specifications**

If price comparisons are conducted among FSS contractors selling a specific brand-name item, the Program Office must provide a written justification to the Contracting Officer demonstrating why a specific brand is essential to the requirement. Contracting Officer approval is required before requesting verbal or written quotes.

**4.1.7.
Procuring Non-
Schedule Goods or
Services in an FSS
Order**

Generally, FSS contracts offer a vast array of goods or services covering most customer needs within a given schedule. However, there may be times when an FSS contractor does not offer goods or services related (i.e., incidental) to the overall requirement on its schedule. If the cost of “non-schedule” incidental goods or services is less than 25% of the total price of procurement, an FSS contractor is permitted to add these to the FSS delivery order.

4.J. SECTION 8(A) PROGRAM

4.J.1. SBA is Prime Contractor

Section 8(a) contracts will state that, even though the SBA may not be identified in the FDIC contract, it is still the **prime contractor**.

The Contracting Officer will ensure that all contracts awarded pursuant to the 8(a) Partnership Agreement with SBA contain provisions that:

- a. Require SBA's approval of novation or assignment of contract agreements submitted by the 8(a) Participant regarding conformance to the SBA's requirements for section 8(a) firms, and require the FDIC's approval of such novation or assignment of contract agreements regarding the FDIC's contractor ethics eligibility requirements, background investigations, and security checks as set forth in Section V of the Partnership Agreement; and
- b. Require advance notice to the SBA (as the prime contractor) before issuance of a final notice terminating the contract in whole or in part.

4.J.2. 8(a) Contracting Process

4.J.2.a. Requirements Offered

The **Program Office** will determine which requirements are suitable for offering to the 8(a) program and identify, in conjunction with the appropriate SBA servicing offices and ODEO, 8(a) Participants capable of performing these requirements.

4.J.2.b. Limited Competition

Limited competition means soliciting at least three firms in writing. Oral solicitations will not be used.

4.J.2.c. Offering Letter

The offering letter will include the following:

1. A description of the work to be performed;
2. The estimated period of performance;
3. The **NAICS** code that applies to the principal nature of the acquisition;
4. The anticipated dollar value of the requirement, including options;
5. Any special restrictions or geographical limitations on the requirement;
6. The location of the work to be performed for construction procurements;
7. Any special capabilities or disciplines needed for contract

- performance;
8. The type contract to be awarded;
 9. The acquisition history, if any, of the requirement;
 10. The names and addresses of small business contractors which have performed on this requirement during the previous twenty-four months;
 11. Bonding requirements, if applicable;
 12. Identification of all participants which have expressed an interest in being considered for the acquisition;
 13. Identification of the participants that will be solicited for the acquisition;
 14. Identification of all SBA field offices which have requested that the requirement be awarded through the 8(a) program; and
 15. Any other information that the Contracting Officer or Program Office deems relevant or which SBA requests.

4.J.2.d. Submission for Competitive Procurement

The Contracting Officer will submit the offering letter for competitive 8(a) procurements to the SBA district office that services the geographical area where the FDIC's contracting activity is located. However, offering letters for construction work will be sent to the SBA district office located in the geographical area where the work will be performed.

4.J.2.e. Review of Offering Letters

4.J.2.e (1) Competitive Acquisitions over \$5,000

The SBA will issue a confirming acceptance letter or notification of rejection of the 8(a) participants within five working days of receipt of an offering letter from FDIC. Absence of such a notification of rejection may be assumed as acceptance on the sixth working day. If the award will be made on the initial submission of proposals, the SBA will issue an eligibility determination within two working days after a request from the Contracting Officer. If discussions, negotiations, or a BAFO will be held, the SBA will issue an eligibility determination for all firms in the competitive range within two working days after a request from the Contracting Officer.

4.J.2.e (2) Acquisitions \$5,000 or Less

The SBA will review the eligibility of the 8(a) Participant within two working days after receipt of a copy of the signed purchase order document. The purchase order document may be delivered by any means acceptable to the SBA district office. The SBA will provide a copy of any negative eligibility determination to the contracting activity and the 8(a) participant. It will be authorized to begin performance if the receipt of a negative eligibility determination from the SBA is still

absent within two working days. No offering or acceptance letter is required for requirements processed under the simplified procurement procedures.

**4.J.3.
Joint Ventures**

The Contracting Officer will ensure that SBA approves all proposed joint ventures involving 8(a) participants before contracts are awarded.

**4.J.4.
Ethics and
Security**

Before award, the Contracting Officer will ensure that all of the background investigations of personnel have been completed. The Contracting Officer will also ensure that any fingerprinting of contractor and [subcontractor](#) personnel has been completed and favorable results obtained.

**4.J.5.
Award**

4.J.5.a. Direct Award

The Contracting Officer may directly award a contract to the 8(a) participant, not to the SBA, only after the requirement has been offered to and accepted by the SBA.

4.J.5.b. Contracts \$5,000 or Less

The Contracting Officer may award a contract without an offer and acceptance by the SBA if the contract is \$5,000 or less and simplified procurement procedures for direct award are used.

4.J.5.c. Contract Form

The standard form contract will include:

1. The identity of the awarding FDIC office;
 2. The SBA district office for the 8(a) participant; and
 3. The 8(a) participant's name and address.
-

**4.J.6.
SBA Report**

SBA will issue a letter to ODEO, with a copy to the Associate Director, ASB, on a quarterly basis identifying award documents that have not been received by the SBA district office.

Chapter 5

Contract Administration

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5.A. POLICY

5.A.1. Contract Administration

The **Contracting Officer** is responsible for contract administration. Contract administration begins after the **contract** has been awarded, and ends when the **goods** or **services** have been accepted and the **contractor** has received final payment. The contractor's progress must be closely monitored to identify potential problems that threaten performance. Contract administration includes oversight management.

5.A.2. Oversight Management

Oversight management is overseeing the technical performance requirements of the contract and is primarily the responsibility of the **Oversight Manager**. It ensures that the contractor delivers the required goods or performs the work according to the delivery schedule in the contract. It also includes monitoring the expenditure of funds in relation to the **contract ceiling**. The **Program Office** is responsible for ensuring that adequate resources are available for monitoring contractor performance.

5.A.3. Team Concept

The Oversight Manager and Contracting Officer jointly perform contract administration. Other organizations including the Contracting Law Unit (CLU) of the Legal Division, the Office of Diversity and Economic Opportunity (ODEO), the Security Management Section (SMS), and the Accounts Payable Processing Unit also play a role. Members of the contract administration team may not delegate their responsibility. When authorized by the Contracting Officer, they can assign certain specific duties to other assigned personnel within their respective departments.

5.A.4. Contracting Officer

Only a Contracting Officer may enter into a contract, a contract modification, or change a contractual commitment. The Contracting Officer is responsible for ensuring compliance with the contract, and may delegate certain authorities to other personnel.

In consultation with CLU, the Contracting Officer will promptly issue decisions on contractual problems and questions. In addition, the Contracting Officer will ensure no unreasonable intrusion by FDIC personnel into the contract.

**5.A.5.
Absence of
Oversight
Manager**

In the event the Oversight Manager will be absent from the office for an extended period or will no longer be serving in the oversight management capacity, the Program Office will appoint a replacement Oversight Manager and advise the Contracting Officer of this appointment in writing. The Contracting Officer will issue a new confirmation letter and notify the contractor of the replacement. In the event of a short-term absence (e.g., two week vacation), the Program Office will assign the Oversight Manager's administrative duties (e.g., invoice approval) to another qualified member of the Program Office for the duration of the Oversight Manager's absence. The Program Office will inform the Contracting Officer of this assignment in writing; however, a new Letter of Confirmation is not necessary.

**5.A.6.
Letter for
Oversight
Manager
Confirmation**

The Contracting Officer will provide the Program Office appointed Oversight Manager, and the contractor, with a *Letter of Oversight Manager Confirmation, Exhibit XVI*, describing the Oversight Manager's authority and responsibilities.

**5.A.7.
Change in
Oversight
Manager**

If there is a change in Oversight Manager, the Contracting Officer will terminate the existing *Letter for Oversight Manager Confirmation* in writing, with a copy to the old Oversight Manager, the contractor, and the [official contract file](#). The Contracting Officer will issue a new *Letter for Oversight Manager Confirmation* in accordance with [5.A.6](#).

**5.A.8.
Oversight
Manager
Prohibitions**

An Oversight Manager may not:

- a. Solicit proposals or approve changes to the contract;
 - b. Modify contract terms and conditions;
 - c. Approve changes in cost, schedule, delivery, quality, or other terms and conditions;
 - d. Render a decision on any contractual dispute or express an opinion to the contractor; or
 - e. Discuss future contract plans or other advance information, which may provide preferential treatment of one contractor over another.
-

**5.A.9.
Technical
Monitors**

In complex areas of performance, the Oversight Manager may find it appropriate to appoint one or more **Technical Monitors** to assist with oversight management. The duties of the Technical Monitor are a subset of the duties of the Oversight Manager, but the responsibility for oversight management remains with the Oversight Manager.

The Contracting Officer appoints a Technical Monitor with a *Letter of Technical Monitor Confirmation, Exhibit XVII*. Copies of the Letter are sent to the contractor and the Oversight Manager.

**5.A.10.
Overtime for
Contractors**

If overtime is permitted under the contract, the only person who can approve the overtime is the Contracting Officer unless specifically delegated in writing by the Contracting Officer to another person. As an example, the delegation may be to the Oversight Manager and must be included in the *Letter of Oversight Manager Confirmation* or other written document. If overtime is not permitted by the contract, no overtime may be approved without a written modification to the contract.

**5.A.11.
Training for
Oversight
Managers and
Technical
Monitors**

Training for Oversight Managers and Technical Monitors includes successful completion of the instructor-led Oversight Management Training or the web-based Oversight Management Instruction. This is a one-time requirement, but must be taken before the Contracting Officer issues the *Letter of Oversight Manager (or Technical Monitor) Confirmation*.

In order to be certified, an Oversight Manager or Technical Monitor must also take any additional training identified by the Policy and Operations Section, ASB.

A point of contact for a contract for goods is only required to take the goods-specific training upon the initial assignment.

**5.A.12.
Contract Files****5.A.12.a. Official Contract File**

The Contracting Officer will be responsible for the completion of the appropriate *Contracting File Checklist, Exhibit XXII*, and retention of all pertinent documents in the electronic contract file system (CEFile) or in a hard copy file.

5.A.12.b. Oversight Manager File

Throughout the contract, the Oversight Manager (and Technical Monitor, if there is one) must maintain a complete record of the status

and results of the oversight of the contract and retain all pertinent and original documents.

Oversight Managers may organize and maintain their files in the electronic contract file system (CEFile) or in a hard copy files and in accordance with the *Oversight Manager File Checklist, Exhibit XXVII*.

**5.A.13.
Contract
Administration
Plan**

A Contract Administration Plan (CAP) is required for all contracts and task order for services having a total estimated value of \$100,000 and greater. The objective of the CAP is to ensure that the Oversight Manager and Contracting Officer have a common understanding of both the contractor's and FDIC's obligations under the contract. The Contracting Officer prepares the CAP, with the assistance of the Oversight Manager, immediately following contract award. It should be completed before the post-award conference, if one is to be held. A copy is then provided to the Oversight Manager. The CAP is included as *Exhibit XXVI*.

**5.A.14.
Integrity and
Fitness Issues and
Contractor
Conflicts of
Interest**

5.A.14.a. Recision

The Conflict of Interest Regulation permits the FDIC to rescind contracts if a contractor fails to disclose a material fact to the FDIC, no longer meets the FDIC's ethical standards, is subject to a final enforcement action by a Federal banking agency, or fails to take corrective action which the FDIC has mandated in order to resolve a conflict.

5.A.14.b. Referral to Policy Unit

Refer all suspected changes to a contractor's integrity and fitness certifications, or potential conflicts of interest, to the Policy Unit, ASB. The Policy Unit will coordinate with CLU for appropriate action and resolution.

**5.A.15.
Maintaining
Independent
Status of
Contractors**

Contracts for [services](#) that establish an employer-employee relationship between the Corporation and the contractor's employees are prohibited. These are commonly referred to as [prohibited personal services contracts](#).

In order to preclude the appearance of a prohibited employer-employee relationship, and to preserve the independent status of contractor employees, the following precautions must be observed:

- a. Employees will not directly or indirectly supervise contractor employees;
- b. Work stations of contractor personnel will be separated from FDIC personnel to the maximum extent practicable;
- c. Contractor personnel will be required to wear badges on site, display appropriate office signs, or take some other measure to clearly identify them as contractor employees;
- d. Contractor employees will not be invited to attend regular staff meetings; and
- e. Contractor employees, in general, may not participate in services, or employee recreational activities (including office picnics and holiday parties), provided for the benefit of FDIC employees.
- f. If an FDIC employee believes an inappropriate relationship exists between the FDIC and the contractor, that individual should refer it to the Contracting Officer. The Contracting Officer will seek CLU review.

5.A.16. Claims

Contractor [claims](#) must be resolved, by mutual agreement, at the Contracting Officer level.

5.A.16.a. Timing

5.A.16.a (1) Contractor Claim Filings

Claims must be filed within the time period required by the terms and conditions of the contract. If no term is referenced in the contract, corporate claims must generally be filed according to the Statute of Limitations of the state in which the contract was executed. Receivership claims must be filed in compliance with the [Federal Deposit Insurance Act](#), which requires that all claims be filed within ninety days following notification of the FDIC's intent to terminate a receivership.

5.A.16.a (2) Claim Decisions

For corporate claims, the Contracting Officer will provide the contractor with a decision in a timely manner (sixty days from receipt of the claim). For receivership claims, the Contracting Officer's decision must be provided to the contractor within one hundred eighty days after receipt of the claim, as required by the Federal Deposit Insurance Act.

5.A.16.b. Settlement or Final Decision

The Contracting Officer will request that CLU draft a settlement agreement for execution by the Contracting Officer. If the claim is not resolved, the Contracting Officer must issue a final decision within the

time frames identified above.

5.A.16.c. Allegations of Fraud

The Contracting Officer must not settle, compromise, or pay any claim involving allegations of fraud. Such matters must be referred to the OIG at the earliest possible time after discovery.

**5.A.17.
Bid Protests**

Only [interested parties](#) who meet eligibility certification requirements may submit a bid [protest](#) regarding a [solicitation](#), or a proposed or actual contract [award](#).

The Contracting Officer must promptly respond to the bid protest within ten business days of receipt of the protest. When a bid protest is filed, the Contracting Officer must notify the Associate Director, ASB and the Assistant Director, Policy and Operations Section.

All bid protests, Contracting Officer's decisions, requests for review, and decisions by the Associate Director, ASB will be mailed by certified mail, return receipt requested.

5.B. PREPARING FOR OVERSIGHT MANAGEMENT

5.B.1. Designation of Oversight Managers

All procurement actions require some level of performance monitoring and management by the [Program Office](#). The extent varies based upon many factors including the contract type, complexity of requirement, and dollar amount of the contract action. The Program Office designates [Oversight Managers](#), or points-of-contact for simplified contracting, who are responsible for monitoring contractor performance on contracts awarded by ASB.

5.B.2. Reviewing a Contract

To prepare for oversight management, the Oversight Manager must review the entire [contract](#), including the contractor's proposal, and understand the terms and conditions of the contract. The Oversight Manager will then be able to determine the contract requirements, including identification of deliverables, and the specific obligations of all parties.

5.B.3. Determining the Level of Oversight

The Oversight Manager must determine what level of oversight is necessary to ensure that the [contractor](#) makes satisfactory progress toward the successful completion of the contract. To assist in performing oversight activities for complex contracts for [services](#), the Oversight Manager should complete and use the *Oversight Management Monitoring Plan, Exhibit XXXIV*. A copy of the plan should be provided to the Contracting Officer, and any other member on the oversight team who might benefit. The plan should be updated during performance to reflect any changes to the contract and redistributed. Oversight Managers may supplement the elements of the monitoring plan, as needed.

5.B.4. Post-Award Conference

A [post-award conference](#) may be necessary to ensure mutual understanding of all contract terms and conditions, and for clarification of any potential issues or misunderstandings. Not every contract requires a full-scale formal post-award conference. However, after award, every contract will receive some form of discussion, to ensure that the FDIC and the [contractor](#) agree on the performance requirements, and the administrative procedures applicable under the terms of the contract.

5.B.4.a. Conference Set Up

The Contracting Officer is responsible for convening and chairing the post-award conference; however, the Oversight Manager generally leads the technical discussions. The Contracting Officer and the [Oversight Manager](#) will:

1. Establish the time and place of the conference (must be held not later than one week after award);
2. Prepare the agenda;
3. Invite appropriate personnel (Technical Monitors, CLU, and other relevant personnel);
4. Invite the contractor; and
5. Schedule and conduct a preliminary conference with the FDIC personnel to properly plan for the conference.

5.B.4.b. Agenda

The post-award conference will cover the following areas, as applicable:

1. FDIC personnel roles in contract administration;
2. Scope of the contract;
3. Rights and obligations of both parties;
4. Contract terms and conditions;
5. Applicable contract administration procedures;
6. Technical requirements of the contract;
7. Potential contract problem areas and their potential resolution;
8. Changes in personnel;
9. Invoicing requirements and the FDIC invoice review, approval, and payment process;
10. Contractor Performance System (CPS);
11. Contractor compliance with approved subcontracting plans or Joint Venture agreements;
12. Verification of insurance coverage, if required;
13. Contractor Eligibility and Conflicts of Interest certifications;
14. Contractor Confidentiality Agreements and confidential information;
15. Contractor security and the process for obtaining contractor badges and access to FDIC sites and systems, as applicable; and
16. Information Technology (IT) Security:
 - a. The Security Plan;
 - b. Screening requirements; and
 - c. Contractor and subcontractor IT training.

5.B.4.c. Documentation

After the post-award conference, the Contracting Officer will prepare a report covering all items discussed, including issues requiring resolution, controversial matters, participants, and, in particular, responsibilities for further action, the individuals assigned, and the due dates for those actions. Copies of the report become part of the [official contract](#) and [oversight files](#). The Contracting Officer will distribute copies of the report to all participants.

5.C. MONITORING CONTRACT PERFORMANCE

5.C.1. Oversight Management

The **Oversight Manager** is responsible for overseeing the performance requirements of the contract, and acts as a technical liaison between the FDIC and the contractor. The Oversight Manager must ensure technical compliance with the contract by all parties. The **Contracting Officer** will assist, as requested, in oversight of the technical business requirements of the contract. The Oversight Manager ensures that resources are provided, as required by the contract, for the successful completion of the contract. The Oversight Manager must notify the Contracting Officer in writing of any noncompliance, deviation in performance, or failure to make progress. The Oversight Manager must also notify the Contracting Officer of any need for modification of the contract, and refer all questions regarding contract provisions to the Contracting Officer.

5.C.2. Contractor and Subcontractor Security

5.C.2.a. Fingerprinting and Credit Checks

All contracts for **services** greater than \$100,000, or at any dollar amount when facilities or network access is required, will include risk level designations at the contract-level or for each labor category. The **contractor** will be required to provide a list of all personnel, including **subcontractor** personnel, to the Contracting Officer within five calendar days of the award. The Contracting Officer will forward the list to SMS. SMS will then contact the contractor and arrange for all personnel proposed on the contract to be fingerprinted, and have credit checks conducted. If a contractor or subcontractor employee has had a government background investigation conducted within the last five years of the planned award at the assigned risk level, no additional review may be required.

No contractor or subcontractor employee may begin work on a contract until favorable results from the fingerprint and credit checks are received. SMS will provide the Contracting Officer with the results of the fingerprint and credit checks, and the Contracting Officer will then inform the contractor and Oversight Manager for actual performance to begin.

5.C.2.b. Confidentiality Agreement

In addition, all contractor and subcontractor personnel must sign and return the *Contractor Confidentiality Agreements, Exhibit II*, to the Contracting Officer.

5.C.2.c. Identification Badges

Identification badges for contractors have a yellow background and are issued for six-month periods. Oversight Managers:

1. Initiate the process to obtain on-site badges for contractor personnel;
2. Prepare and maintain a list of all personnel issued a badge;
3. Renew applicable badges every six months; and
4. Ensure all badges are returned.

5.C.2.d. Access to FDIC Systems

If contractor personnel require access to the FDIC systems, the Oversight Manager authorizes access by completing *FDIC 1370/02, Computer Access Authorization* on line.

The Oversight Manager must suspend access when the contract is over; when the contractor personnel leave; or, when access is no longer necessary.

5.C.2.e. Applicable Directives

1. Circular 1610.2, Security Policy and Procedures for FDIC Contractors and Subcontractors; and
2. Circular 1360.17, Information Technology Security Guidance for Procurements/Third Party Products.

**5.C.3.
Communication**

The Oversight Manager will provide direction to the contractor, as necessary, in performance matters that:

- a. Are within the scope of the contract as written; and
- b. Will not affect fees paid to the contractor, period of performance, schedule, or other terms and conditions, which might materially change the contract.

The Oversight Manager may communicate directly with the contractor regarding technical aspects of the contractor's performance including:

- a. Holding conferences and meetings with the contractor;
- b. Certifying that goods or services have been received, and are satisfactory for their intended purpose, before invoice payment;
- c. Providing the contractor with information, FDIC Directives, relevant FDIC policies, and other items necessary to successfully carry out its duties as required by the contract; and
- d. Coordinating with the contractor on all technical matters of performance relating to the contract, including giving technical clarification as to the meaning of the statement of work, inspection, testing, and acceptance procedures.

5.C.4. Inspection and Acceptance

5.C.4.a. General

Inspection and **acceptance** is a process of determining whether the contractor has fulfilled all contract obligations, and may be paid for the **goods** or **services** provided. All contracts will contain provision for inspecting and accepting goods or services. The Oversight Manager will receive, inspect, and accept deliverables, including:

1. Inspecting work to ensure that it is in full compliance with contract requirements;
2. Rejecting work that is not in compliance with contract requirements, by promptly notifying the Contracting Officer in writing; and
3. Notifying the Contracting Officer when the contractor fails to correct deficiencies, make progress, or replace rejected work promptly.

The Contracting Officer will formally notify the contractor regarding performance deficiencies, and if requested, assist in resolving contractor performance issues.

5.C.4.b. Inspection

The Oversight Manager, or **Technical Monitor** will perform inspection at the place and time of performance or delivery of goods.

5.C.4.c. Acceptance

The Contracting Officer, in cooperation with the Oversight Manager, must ensure that the work performed under the contract is in accordance with the contract requirements. The Oversight Manager must ensure that all review actions and decisions on accepting deliverables are documented in the Oversight Manager's files. This documentation will be used to support approval or disapproval of invoices.

In case of identified deficiencies, the Oversight Manager will advise the Contracting Officer in writing, so that remedial action can be taken. This must be done before any further payments are made, or before contract closeout takes place.

5.C.4.d. Nonconforming Goods or Services

The Oversight Manager will reject in a timely manner, goods or services not conforming to contract requirements. Contractors will be directed to correct **nonconforming goods or services** within a reasonable time, at the contractor's expense. Direction for correction will be in the form of a nonconforming performance letter drafted or reviewed by CLU, and issued by the Contracting Officer.

Ordinarily, the Oversight Manager will reject goods or services, if correction cannot be accomplished within the term and costs of the contract. The Oversight Manager will notify the Contracting Officer of

any such proposed rejection. Payment for the rejected goods or services will be made only upon satisfactory correction of the problem.

However, the Oversight Manager has the authority to accept nonconforming goods or services, when it is in the best interest of the FDIC, and after appropriate modification of the contract by the Contracting Officer.

The Program Office and ASB, in conjunction with CLU, as needed, will jointly determine what remedies are required, as well as an acceptable time frame for problem resolution.

5.C.5. Site Visits for Performance Verification

5.C.5.a. General

[Site visits](#) may be conducted for large complex contracts on a regular basis, but may not be necessary for small or noncomplex contracts.

5.C.5.b. Purpose

The purpose of the site visit is to:

1. Verify the contractor's performance against scheduled and reported performance;
2. Verify that the proper employees working on the contract are assigned to appropriate tasks; and
3. Determine the adequacy of contractor facilities and working conditions.

A site visit is an opportunity for the FDIC to provide technical assistance and enhance communication with the contractor. It offers an opportunity for the Oversight Manager, and the Contracting Officer to:

1. Observe firsthand how the contractor operates;
2. Re-emphasize the FDIC goals and objectives;
3. Ensure compliance with the FDIC policies, procedures, and directives; and
4. Follow up on previously noted problems.

If a site visit reveals a delay or performance problems, the FDIC must take necessary action to restore contract schedule or address problems.

5.C.5.c. Coordination

No site visit will be performed without coordination with the Contracting Officer and the Oversight Manager. Exceptions include personnel from, or contracted by, the [OIG](#) or the [General Accounting Office](#) (GAO); if they consider such advance notification inappropriate.

5.C.5.d. Review of Documentation

Personnel planning to conduct site visits will first review documentation relating to previous site visits, reviews, and audits. This will reduce or avoid duplication and uncoordinated visits.

5.C.5.e. Caution

The Contracting Officer, Oversight Manager, and other FDIC representatives must not make changes to the contract during the site visit.

**5.C.6.
Performance
Evaluation****5.C.6.a. Contractor Performance Reporting Requirements**

Information on a contractor's performance may be critical to subsequent procurements. FDIC subscribes to the National Institutes of Health (NIH) Contractor Performance System (<http://cps.od.nih.gov/>) (CPS) to track contractor performance information. The Oversight Manager must evaluate a contractor's performance for contracts, purchase orders, task orders under basic ordering agreements, and delivery orders \$100,000 or greater. The Contracting Officer will initiate the report in CPS and notify the Oversight Manager that it is available. After completing the performance report, the Oversight Manager will notify the Contracting Officer that it is complete. The report must be completed at the end of the initial contract period, and when a renewal option is exercised. A performance report may also be appropriate for contracts with dollar values less than \$100,000. If so, the Oversight Manager should ask the Contracting Officer to initiate the report in CPS. Factors to consider when making this decision are the complexity of the contract, the potential to use a contractor in the future, and the need to document poor performance.

If unacceptable or nonconforming performance results in a rating of "unsatisfactory" in any area, the Oversight Manager must include a supporting narrative of the problem(s) and attempted resolution.

The Contracting Officer will concur with the report and forward it to the contractor. The contractor has thirty days to review and sign, or appeal the report. If the Contracting Officer and the contractor are unable to agree on a rating, the matter is to be referred to an official one level above the Contracting Officer. Upon receipt of the review official's decision, the Contracting Officer will adjust the initial rating, if appropriate. The fully executed report must be included in the [official contract file](#).

Additional performance reports (interim) may be prepared at the discretion of the Oversight Manager to reflect significant changes in a contractor's performance. The Oversight Manager will request the Contracting Officer to initiate the report.

5.C.6.b. Unacceptable Performance

Evaluation of the contractor's performance must be based on the contract requirements for quality of work. The contractor will be

notified, in writing, of an unacceptable performance rating and any remedial action required for resolution of the problem.

**5.C.7.
Notice of
Expenditure**

A level of effort contract will require the contractor to notify the Contracting Officer, in writing, when the amounts invoiced under the contract reach 75% of the [contract ceiling](#).

**5.C.8.
Options**

The Contracting Officer will notify the Oversight Manager when an option is coming due, with enough lead time to accommodate the requirement for [market research](#). The Oversight Manager must then provide timely notification to the Contracting Officer regarding the Program Office's desire to either exercise or not exercise an option.

Before exercising an option, the FDIC must conduct market research to confirm that existing pricing for the option represents current competitive pricing. It is important to determine if the FDIC is receiving the most favored price from the contractor and to validate that the option price is competitive. The market research must be completed sixty days before the Contracting Officer's required notification to the contractor on the FDIC's intent to exercise the option. The market research is to be conducted by the Contracting Officer and Oversight Manager. The Contracting Officer will make all contacts with prospective firms necessary to determine the acceptability of exercising an option and will document the file accordingly. If the option price is not considered competitive, based on current market research data, the Contracting Officer will not exercise the option. The Contracting Officer may enter into negotiations with the contractor to reduce the option price or establish a contract modification to extend the schedule of the existing contract to provide an opportunity to issue a new competitive solicitation.

When exercising an option, the Program Office must obtain annual budget approval.

**5.C.9.
Insurance**

The Contracting Officer will ensure that the contractor is in full compliance with all insurance requirements as stated in the contract.

**5.C.10.
FDIC-Furnished
Property**

If the contract calls for the FDIC to provide the contractor with any FDIC property or equipment, the Oversight Manager must:

- a. Prepare an itemized list of the property including serial numbers, if any;
- b. Ensure delivery of the property in accordance with the contract;
- c. Obtain written acknowledgement for receipt of the property from the contractor;
- d. Provide the Contracting Officer with the property list and a written contractor acknowledgement for receipt of the property; and
- e. Get the property back or account for it at the end of the contract or whenever the FDIC property is no longer required ([5.M., Pre-Exit Clearance Procedures for Contractors](#), and [5.N., Closeout](#)).

**5.C.11.
Contractor
Personnel**

The Oversight Manager must monitor the contractor's assignment of personnel in relation to qualifications, as required by the contract and the contractor's proposal. Changes in [key personnel](#) require a modification to the contract.

The Oversight Manager ensures:

- a. New contractor personnel possess the requisite experience for open market contracts by evaluation of resumes, and for [FSS](#) contracts by evaluation to schedule requirements;
- b. New contractor personnel are established and working under the appropriate contract labor categories by consistent monitoring and spot audits;
- c. Key contractor personnel undergo background investigations and are fingerprinted as required before commencing work or obtaining an identification badge;
- d. Contractor personnel working on-site or obtaining access to FDIC systems complete the proper background investigation forms and are fingerprinted before commencing work, obtaining an identification badge, or obtaining a password for access to FDIC systems;
- e. Personnel who leave before the expiration of the contract complete pre-exit clearance procedures and the Oversight Manager completes the Oversight Manager Memorandum and submits it with the *Pre-Exit Clearance Record for Contractors FDIC Form 3700/25, Exhibit XXIX* to the Contracting Officer; and

- f. Pre-exit clearance procedures are conducted for contractor personnel who no longer require system access or access to the FDIC facilities, even if they continue to work on the contract.
-

**5.C.12.
Contracts
Containing Task
Assignments**

In a contract containing [task assignments](#), the Oversight Manager must ensure that:

- a. A signed copy of the task assignment is sent to the Contracting Officer;
 - b. The total dollar value of all task assignments issued does not exceed the [contract ceiling](#); and
 - c. The work assigned by the task assignment does not go beyond the [scope](#) of the [SOW](#) of the contract.
-

5.D. MODIFICATIONS TO CONTRACTS

5.D.1. Authority

5.D.1.a. Modification Authority

During the performance of a contract, some terms and conditions may require modification. This may result from planned actions, such as an extension option, or from unforeseen changes. As a result, the Contracting Officer may issue a change order pursuant to the changes provision in the contract.

While the Oversight Manager may be in the best position to identify when a [contract modification](#) is necessary, only Contracting Officers have delegated authority to modify a contract. It is important for an Oversight Manager to coordinate closely with the Contracting Officer on all proposed modifications.

A change to an FDIC contract is either administrative or substantive.

5.D.1.b. Expenditure Authority

Expenditure authority for contract modifications will be based on the cumulative dollar amount of the contract, plus modifications. However, when a contract is awarded on a competitive basis, and the modification is noncompetitive, then expenditure authority is required only for the dollar value of the noncompetitive modification. Expenditure authority for multiple noncompetitive modifications, under the same contract, must be obtained on the contract and the cumulative value of all noncompetitive modifications.

5.D.2. Administrative Changes

[Administrative changes](#) are within the scope of the contract and do not affect, or alter the rights of the parties to the contract. Administrative changes are executed on a unilateral basis. Examples of administrative changes include:

- a. Appointment of a new Oversight Manager;
- b. Changes permitted by specific contract clauses or provisions;
- c. Corrections of typographical errors not affecting the substance of the contract;
- d. Change in either the Contracting Officer or the contract specialist; or
- e. Changes in billing instructions or address.

5.D.2.a. Oversight Manager Responsibility

The Oversight Manager will:

1. Identify the necessary administrative change; and
2. Submit a written request to the Contracting Officer.

5.D.2.b. Contracting Officer Responsibility

The Contracting Officer will:

1. Verify that the change does not affect the rights of the parties;
2. Ensure that the change is documented in a contract modification and provide copies to the contractor and the Oversight Manager, or if it is not administrative, handle it in accordance with [5.D.3., Substantive Changes](#);
3. Enter the modification into Procurement Action Log (PAL); and,
4. If applicable, notify other affected FDIC organizational units, such as the Division of Finance (Accounts Payable).

**5.D.3.
Substantive
Changes**

[Substantive changes](#) alter the rights and obligations of the parties to the contract and require a written bilateral modification to the contract. Examples of substantive changes include:

- a. The addition of assets to an existing asset management agreement (if an existing clause does not provide for such);
- b. A change in the amount of fees to be paid to the contractor;
- c. A change in the delivery schedule;
- d. A change in the quantity and nature of deliverables;
- e. An extension of the contract not contemplated by the contract;
- f. Other performance requirements that are not within contract scope; or
- g. Changes to key personnel (a background investigation and fingerprinting, if required, will be conducted on any “new” key personnel or affiliated entity and pre-exit clearance will be conducted on departing personnel).

5.D.3.a. Oversight Manager Responsibility

To begin the modification process, the Oversight Manager will forward a written request to the Contracting Officer (along with a completed Procurement Requisition 3700/01, if required) a detailed written explanation of the reason for and description of the change, and rationale supporting the change. In addition, the Oversight Manager will:

1. Determine whether the cost to the FDIC caused by the modification will exceed the [expenditure ceiling](#), and if so, ensure that additional expenditure authority has been obtained;
2. Ensure that the proposed prices are realistic for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the offeror's change proposal;

3. Provide a complete and approved JNCP if the Contracting Officer determines that the request for modification is not within the scope of work; and
4. Jointly with the Contracting Officer, participate in any negotiation pursuant to the need for the modification.

5.D.3.b. Contractor Officer Responsibility

The Contracting Officer will:

1. Determine whether the requested modification is within the scope of the contract and consult with CLU, as necessary. In making such determination, the Contracting Officer will consider:
 - a. What was reasonably anticipated by the parties to be within the scope of the contract when it was first entered into;
 - b. The extent to which the proposed modification increases the overall cost of the contract;
 - c. Change in the delivery schedule;
 - d. If the change requires a contract extension; and
 - e. The effect that the change will have on competition.
2. Use price analysis techniques to help determine the reasonableness of the price proposed by using the techniques set forth in [4.D.5., Price Proposal Evaluation](#), or any other reasonable basis, and document the pricing analysis in the official contract file;
3. With the support of the Oversight Manager, negotiate the changes required by the modification;
4. Execute the modification with the contractor;
5. Provide executed originals of the modification to the contractor and the official contract file;
6. Enter the modification into PAL; and
7. Provide a copy of the modification to the Oversight Manager.

5.D.4. Constructive Changes

Monitoring a contractor's technical performance requires skill and judgment to ensure that the contractor performs the exact tasks required by the contract. A contractor will sometimes perform work beyond that which is required by the contract. If the contractor perceived that the work was ordered by the Corporation or caused by Corporation fault, the contractor may claim that the contract was "constructively" changed. As a result, the contractor may be entitled to additional compensation for the changes. The Oversight Manager must take care to avoid inadvertently causing constructive changes.

Claims for constructive changes are the primary means used by contractors to obtain additional compensation under fixed price contracts. Constructive changes can arise from written or oral communication, or as a result of action, inaction, or omission by Corporation officials. The contractor then typically misconstrues these types of communications and actions as having the same effect as a written change order. Constructive changes may occur when an Oversight Manager or other Corporation officials:

- a. Provide "suggestions" to a contractor;
- b. Provide definitions to general contract terms;
- c. Accelerate the delivery schedule;
- d. Direct work to be performed differently;
- e. Change the sequencing of work;
- f. Delay rejecting or accepting deliverables;
- g. Delay reviewing invoices and approving payment;
- h. Fail to warn the contractor of an event/change; or
- i. Interfere with, or hinder performance.

The Oversight Manager must immediately notify the Contracting Officer, if it is believed that the contractor is performing work that is not required under the contract, and which may result in a claim against the Corporation.

**5.D.5.
Contract
Assignment
(Change in
Contractor)**

Contract assignment is the proposed substitution of a new contractor for the original contractor. Examples of when such changes occur are a change in the contractor's form of doing business (proprietorship to corporation, etc.); a proposed transfer of the contract from the original contractor to another contractor; or the addition of another contractor to a joint venture.

Contractors cannot assign contracts without prior acceptance and approval of the FDIC.

5.D.5.a. Oversight Manager Responsibility

The Oversight Manager will:

1. Upon receipt of a request for assignment from the Contracting Officer, determine whether the technical expertise of the proposed contractor meets, at a minimum, the technical expertise required of the original contractor, when the original contract was signed;
2. Provide a written recommendation to the Contracting Officer whether the assignment should occur; and

3. Provide a recommendation to the Contracting Officer whether the original contractor should be released from liability under the contract.

5.D.5.b. Contracting Officer Responsibility

The Contracting Officer will:

1. Determine whether the financial capability of the proposed contractor meets the financial capability required to successfully complete the remaining contract requirements;
2. Jointly with the Oversight Manager and CLU, determine whether the assignment should be approved, and whether the original contractor should be released from liability;
3. Obtain *Contractor and Integrity and Fitness Representations and Certifications* and background checks in the same manner as for new contracts;
4. Request that CLU draft the *Consent to Assignment, Exhibit XIX*, and other necessary documents if the assignment is approved;
5. Execute the documents with the contractor(s); and
6. Provide copies of the documents to the contractor(s), the Oversight Manager, and the official contract file.

5.D.6. Service Contract Act (SCA)

5.D.6.a. Renewals, Options, Extensions, and Modifications

For SCA purposes, all contract renewals or options exercised, all contract extensions, and all modifications to contracts related to labor requirements under the contract are considered new contracts and require the inclusion of a new, or revised, wage determination in the contract. In addition, a new wage determination must be provided on each anniversary date of a two-year contract and each two-year anniversary of a multi-year contract, with notice of the determination to USDOL.

5.D.6.b. Changing Rates on Existing Labor Categories

Any issuance of a new wage determination will require that the Contracting Officer issue a modification to formally incorporate the new or revised rates into the contract. When the new or revised wage determination is incorporated into the contract, the contractor is entitled to submit a request for an equitable price adjustment for the affected class rates. If the contractor does not formally request an equitable adjustment, the Contracting Officer is not required to increase the applicable contract labor rate(s) as a result of a revised wage determination. However, if an equitable adjustment request is received, the Contracting Officer must review it for reasonableness.

As a general benchmark, the contractor's labor rates will only be increased in the amount of (not to exceed) the net increase in the rate from the old, to the revised, wage determination. For example, if the old wage determination rate increased from \$7.00 to a revised rate of \$7.08, then the corresponding contract labor rate will only be increased by \$.08.

5.D.6.c. Adding New Categories

If it is discovered that the most current, applicable wage determination covering the appropriate locality, occupations, types of services and fringe benefit levels for the service(s) to be performed, was not included in the contract, the FDIC must ensure that the applicable wage determination is added to the contract by modification.

5.E. PROCEDURES FOR AWARDING TASK ORDERS

5.E.1. Request for Task Order Proposals

The [Program Office](#) will provide the [Contracting Officer](#) with written requests for all [task orders](#) under a [basic ordering agreement](#) (BOA). A Procurement Requisition and a written [statement of work](#), specific to the task order, must accompany the request. If required, a detailed cost estimate, technical [evaluation criteria](#), evaluation methodology, and any other elements of the [Requirements Package](#) listed in [2.E.4, Requirements Package Required Elements](#) must also be provided.

5.E.1.a. Restrictions

Contracting Officers will not issue task orders that:

1. Modify terms or conditions of the BOA;
2. Require services that are beyond the [scope](#) of the statement of work in the BOA; or
3. Exceed the overall [expenditure ceiling](#) for the BOA.

5.E.1.b. ODEO Review

The Contracting Officer will provide ODEO with a copy of all Program Office requests for new task orders of greater than \$100,000 and will consider any comments provided.

5.E.2. Solicitation and Evaluation of Task Order Proposals

5.E.2.a. Competition Requirements

Task orders must be solicited in accordance with the procedures stated in the RFP, the BOA, and this manual.

If more than one contractor has a BOA, the Contracting Officer will equitably compete task orders among contractors that have the BOA and can perform the work, or follow the ordering procedures prescribed in the BOAs (e.g., rotation or other fair and consistent approaches). If a competitive method of issuing task orders is defined, and it is decided to solicit only one BOA contractor for a task order, a [Justification for Noncompetitive Procurement](#) (JNCP) with appropriate [expenditure authority](#) is required. BOAs will not be used to circumvent the FDIC's requirement for adequate competition. All BOA contractors will normally be solicited for each task order unless otherwise prescribed by the terms of the BOA or the terms of the task order solicitation.

5.E.2.b. Request for Task Order Proposal

The Request for a Task Order Proposal will describe the task order requirement, include the statement of work, and describe the type of proposal required from the contractor and the time frame for its submission. The form of the proposal requested will depend on the

complexity of the task order requirements. Elements of a task order proposal will normally include:

1. Management plan, outlining the contractor's technical approach, if appropriate;
2. Schedule of performance for completing the task;
3. List of **key personnel** who will be assigned to the task, with resumes if required; and
4. A price proposal that will either be fixed price (firm fixed price or fixed unit price) or a **level of effort** (**time and materials** or **labor hours**) with a **ceiling amount**.

5.E.2.c. Background Investigations

The **solicitation** for a task order proposal will include the *Background Investigation Questionnaire for Contractor Personnel and Subcontractors, FDIC Form 1600/04*; and the *Notice and Authorizations Pertaining to Consumer Reports Pursuant to the Fair Credit Reporting Act of 1970, FDIC Form 1600/10, Exhibit XIV*.

5.E.2.d. Task Order Proposals

Contractors will normally be required to provide a written task order proposal within five business days from receipt of the request. The submission of a task order proposal to the FDIC constitutes the contractor's representation and warranty that it is able to provide the goods or services specified in the Request for Task Order Proposals on a competent and timely basis.

5.E.2.e. Technical Evaluation

When technical evaluation is required, the Program Office will evaluate solicited task order technical proposals in accordance with the evaluation procedures in **4.D., Evaluation Phase**.

5.E.2.f. SDB Evaluation Adjustment

The SDB evaluation adjustment will be determined and applied as set forth in **4. A.8., SDB Evaluation Adjustments for Goods and Services**.

5.E.2.g. BAFOs

Requests for submission of best and final offers (BAFOs) before award of task orders, although not encouraged, are permitted, if in the best interest of the FDIC, **4.D.7., Award Based on BAFO**.

5.E.3. Award of Task Orders

All task orders, at a minimum, will:

- a. Incorporate terms and conditions of the BOA;
- b. Contain or incorporate a statement of work for the specific task to be performed;

- c. Specify milestones with a schedule of deliverables;
- d. State a period of performance; and
- e. Contain pricing information including ceiling prices for labor and travel.

The Contracting Officer must complete all actions for contract award as defined in [4.F., Award Phase](#).

5.F. INFORMATION TECHNOLOGY (IT) REQUIREMENTS

5.F.1. Information Technology (IT) Security

All FDIC employees responsible for procuring and implementing automated systems at the FDIC, including procurement initiators, [Contracting Officers](#), [Oversight Managers](#), information technology (IT) security officials, private-sector [contractors](#), and others who participate in IT contracting with the FDIC must adhere to the requirements of Circular 1360.17, Information Technology Security Guidance for FDIC Procurements/Third Party Products.

5.F.1.a. Contractors

Contractors and others who participate in IT contracts with the FDIC and individuals who service, handle, manage, or interface with FDIC data or systems and non-FDIC products are required to:

1. Use standard FDIC hardware or software (as defined by DIRM Technical Infrastructure) to perform FDIC work;
2. Prepare a waiver with justification and obtain FDIC approval before using hardware or software that is not FDIC standard;
3. Document requested hardware or software changes clearly and thoroughly, explaining the impact of these changes on security throughout the life of the contract and obtain Oversight Manager approval for changes;
4. Ensure that facilities used for FDIC work comply with the FDIC's physical security requirements, and cooperate with FDIC personnel who perform on-site reviews (documenting compliance as reviews are done) before connections are approved and periodically thereafter;
5. Provide an IT Security Plan within ten days after contract award, if required;
6. Implement and maintain the Security Plan for the duration of the contract;
7. Develop and maintain access control lists based on need and according to standards set forth by the FDIC;
8. Perform impact analyses that include clear and thorough assessments of possible new security vulnerabilities before installation of IT services or equipment, and throughout the duration of the contract;
9. Provide employees with the appropriate security training (i.e., according to standards set forth by the FDIC) to perform duties including training for the specific automated information systems (AIS) or data associated with the services being performed;

10. Encrypt the FDIC's sensitive information in conformance with FDIC encryption policy and procedures when transmitting such information over unsecured lines, in conformance with FDIC Circular 1310.5, Encryption and Digital Signature for Electronic Mail;
11. Agree that hardware or software, personnel and facilities contracted to support the FDIC are subject to regular and spot audits (including audits following the performance of a contract) by the GAO and FDIC personnel including DIRM ISS. These audits may be conducted at any time during contract performance;
12. Require that all contractor staff supporting FDIC IT functions review and agree to the information on the FDIC DIRM Information Security Awareness Website on an annual basis, or as otherwise required; and
13. For all contracts valued at \$3 million or greater, identify on the invoice as separate line item, any direct cost for information security.

5.F.1.b. DIRM Information Security Staff

The DIRM Information Security Staff will:

1. Coordinate (and monitor completion) with the Oversight Manager to conduct semi-annual reviews of compliance with FDIC security policies and standards during and following the period of contract performance or product service to the FDIC;
2. Develop guidelines for Oversight Managers to monitor contractor security practices and obtain training on accepted security practices. These guidelines will outline clearly defined Oversight Manager roles and responsibilities for contractor security; and
3. Process waivers or justifications seeking approval of use of non-standard hardware or software.

5.F.1.c. Oversight Manager

The Oversight Manager will:

1. With DIRM coordination and/or Divisional ISM assistance, conduct periodic reviews of compliance with FDIC security policies and standards during contract performance or product service, and observe and document contractor security practices during site visits and performance evaluations;
2. Ensure that contractors perform initial sensitivity assessments according to FDIC IT security guidance to determine additional IT security requirements such as the need for security plans and risk analyses;

3. Ensure that contractor employees are aware of their responsibility to be familiar with federal security requirements of OMB Circular A-130 and other federal and FDIC IT security requirements;
4. Ensure that contractors keep FDIC network equipment in a locked room with controlled access;
5. Ensure that contractors maintain documentation indicating that employee AIS related security activities are monitored during the contract;
6. Report any suspected IT security related violations of the contract by contractor or subcontractor employees to the Contracting Officer and the Divisional ISM. In cases determined to be severe, notify the OIG and/or other appropriate authorities;
7. Report any suspected violations of FDIC security policy by contractor personnel to DIRM, ISS or the Divisional ISM; and
8. Maintain accurate records of contractor-furnished equipment and FDIC-furnished equipment provided to off-site contractors.

**5.F.2.
Warranty or
Maintenance
Clause**

The Oversight Manager must immediately notify the Contracting Officer and contractor of any deficiencies in material or workmanship, and whether the contract contains a warranty or maintenance clause. In addition, the Oversight Manager must monitor response and repair times as stipulated in the contract.

5.G. SUBCONTRACTING

5.G.1. Privity of Contract Subcontracting permits FDIC [contractors](#) to engage other firms ([subcontractors](#)) to assist in meeting their contract obligations. The FDIC encourages its contractors to subcontract with [Minority](#) or [Women-Owned Business](#) (MWOB) and [Small Disadvantaged Business](#) (SDB) firms. The contracts require that the contractor be responsible and accountable for the activity of every subcontractor under the contract.

The [Oversight Manager](#) and the [Contracting Officer](#) will not interfere with the [privity of contract](#) between the contractor and its subcontractors. The Contracting Officer will refer questions or issues on privity to CLU.

5.G.2. Approval Unless otherwise provided in the contract, the FDIC has the right to approve proposed subcontractors before a contractor can award a subcontract. The decision to approve new subcontracting, during contract performance, will be made in writing by the Contracting Officer. A subcontractor will not be allowed to begin work until the Contracting Officer provides written approval.

5.G.3. Eligibility FDIC requires all first-tier subcontractors to meet the provisions of its contractor eligibility representations and certifications. It is the contractor's responsibility to ensure that its subcontractors furnish the required *FDIC Contractor and Integrity and Fitness Eligibility Certifications, Exhibit XXX and Exhibit XXXI*. The Contracting Officer will refer any conflicts revealed by the certifications or that arise during the course of performing work to the Policy and Operations Section for resolution.

5.G.4. Subcontractor Markups Prime contractors are prohibited from establishing and seeking reimbursement for a markup of any kind on subcontractor invoices. However, on a case-by-case basis, the Associate Director, ASB, has the authority to allow subcontractor markups. This markup prohibition does not apply for acquisitions under the GSA schedules.

**5.G.5.
Monitoring
Compliance with
the Subcontracting
Plan**

Contractors must comply with the [subcontracting plans](#) and joint venture (JV) agreements on which the award was based, and any revisions subsequently approved by the Contracting Officer. This includes subcontracts to SDB firms, and SDB JV partners. The Contracting Officer and the Oversight Manager are jointly responsible for monitoring compliance during contract administration, by reviewing invoices and the monthly subcontracting/JV activity reports required by the contract. This monitoring is only applicable for awards where formal contracting procedures were used. Contractors who do not perform in accordance with the terms of their contract, regarding the distribution of work and dollar amounts paid to subcontractors, or JV partners, are not in compliance with their approved subcontracting plan or JV agreement. As such, they may be considered in material breach of their contract.

The Oversight Manager will immediately notify the Contracting Officer of any issues associated with the contractor's compliance with the approved SDB subcontracting plan or any SDB joint venture agreement. In turn, the Contracting Officer will solicit participation from ODEO.

**5.G.6.
Service Contract
Act (SCA)**

The [Service Contract Act](#) (SCA) also applies to subcontracts under covered contracts. Prime contractors must include and flow down the SCA provisions to subcontractors for covered service contracts.

5.H. CONTRACT PAYMENTS

5.H.1. Overview

The FDIC pays contractor costs that are allowable by the terms of the contract and are reasonable in nature and amount. In this regard, the contractor will be compensated for actual productive work hours, exclusive of travel time, vacation, holiday, sick leave, or other absences. In addition, the contractor will be compensated for other contract costs, including materials and travel that are delivered in accordance with the terms and conditions of the contract, and have been determined to be fair, reasonable, and necessary.

5.H.2. Timely Payment of Invoices and Prompt Payment Act

5.H.2.a. Timely Payment

Generally, [invoices](#) will be paid within thirty calendar days of receipt, unless the invoice is determined to be unacceptable. However, the thirty-day clock does not start if the goods or services being billed have not yet been received and accepted by the FDIC, there is a disagreement with the contractor over compliance with a contract requirement, or billing errors are identified on the invoice.

5.H.2.b. Prompt Payment Act

The [Prompt Payment Act](#) (PPA) requires the FDIC, in its corporate capacity, to pay complete and correct invoices, either on the date specified in the contract, or if there is no such date, within thirty calendar days after receipt of an acceptable invoice. In the event that the invoices are not paid in the allotted time, interest will begin to accrue at a rate set by the Department of Treasury. The FDIC is obligated to pay such interest, automatically, until the invoice is paid, without request from the contractor.

5.H.2.c. Exemption from PPA

Invoices (costs) related to contracts written in the receivership capacity or contracts with costs billed back to receiverships are exempt from the PPA.

5.H.2.d. Citation

31 CFR, Part 3901.

5.H.3. Invoice Review

The Contracting Officer, Oversight Manager, and any other designated approvers on Electronic Procurement Routing Invoice Solution (EPRIS), review invoices for all contracts and purchase orders. The Contracting Officer is responsible for ensuring that all charges

contained on each invoice are within the contract terms and conditions. The Contracting Officer is also responsible for ensuring that contractors are paid in a timely manner, and that total payments to the contractor do not exceed the [contract ceiling](#). The Oversight Manager is responsible for ensuring that the [goods](#) or [services](#) were delivered in an acceptable manner and comply with the [statement of work](#) and other technical requirements of the contract. The Oversight Manager is also responsible for monitoring total payments to the contractor to ensure that they do not exceed the contract ceiling.

5.H.4. Taxes

The FDIC is exempt from the payment of Federal, state, and local taxes, except for real property. However, contractors are not normally exempt from these taxes, except when acting as agents for the FDIC, or when particular jurisdictions have an exemption available, based on the nature of the transaction. Contractors should ask suppliers for exemption of state and local taxes based on the FDIC's tax exemption. See *Exhibit XXXV Tax Exemption*. If an [invoice](#) includes tax, the Contracting Officer will determine whether or not to reimburse the tax, and document the file.

5.H.5. Processing Invoices

5.H.5.a. Invoice Requirements

Invoice requirements are specified in the contract. An invoice will only be accepted for processing if it meets the terms and conditions of the contract.

5.H.5.b. Invoice Review and Approval

The Contracting Officer and Oversight Manager must review the entire invoice before it is approved or rejected and processed for payment. Guidance for processing invoices, including partial and total rejection of invoices is contained in the EPRIS Desk Guide. Local procedures established by a specific office may contain additional requirements.

5.H.6. Sampling

5.H.6.a. Approval to Use Sampling

The Contracting Officer and the Oversight Manager are expected to do a 100% review of invoices. However, in appropriate circumstances, and when approved by the Contracting Officer, a sample of line items may be examined for invoice review and approval.

5.H.6.b. Sampling Methodology

Because the types and formats of contractor invoices vary, judgment

must be used to determine the size and scope of the sample to be taken for any particular contract. The Contracting Officer will document the sampling size and rationale in the [official contract file](#).

5.H.7. Withholding Payments

The Contracting Officer has a responsibility to protect the interests of the FDIC, and at the same time, not to act in an arbitrary or improper manner in violation of the contractor's rights. Under appropriate circumstances, it may be necessary to withhold payment to contractors.

5.H.7.a. Withholding Requiring CLU Concurrence

CLU concurrence is required before withholding payments to the contractor, in part or in full, under the following circumstances:

1. A material breach of the contract by the contractor;
2. To collect an amount owed by the contractor under the same or any other contract;
3. The Contracting Officer or Oversight Manager has been notified in writing by the OIG, or has reason to suspect the contractor, or subcontractor, of fraud under the contract; or
4. The contractor's performance is nonconforming or not acceptable.

5.H.7.b. Withholding Not Requiring CLU Concurrence

Contractually authorized payment withholding provisions, such as retention fees, do not require CLU concurrence.

5.H.8. Contractor Travel

The Oversight Manager and the Contracting Officer will ensure that travel is legitimate, authorized under the contract, and submitted for reimbursement in accordance with the contract and *Contractor Travel Reimbursement Guidelines, Exhibit XXI*. Contracting Officers will ensure that all contractors have a current copy of the *Guidelines*.

FDIC contractors, performing a contract under which the FDIC reimburses travel costs, will request government contract rates, or discounts, from providers. Contractors may only request government discounts if they are performing under an FDIC contract in which the travel costs are directly reimbursed.

The potential for abuse of government discounts by unauthorized personnel exists, therefore, both contractor and FDIC employees will be alert for any indications of fraud or abuse of the program and will report any such instances to the OIG.

**5.H.9.
Advance Payments****5.H.9.a. Invoice and Recording Procedures**

Advance payments will be netted against invoiced or incurred expenses. Expenses will not be funded until amounts previously advanced have been fully recovered. Advances will be issued under the Purchase Order System (POS). Advances will be thereafter posted as miscellaneous receivables from the contractor under the General Ledger (GL) Accounts-Miscellaneous Receivables, Account #035601. As the contractor's progress payment draws are revised and approved, credit memos will be processed to expense GL Account #035601 and to adjust POS.

5.H.9.b. Advance Payments for Property Management Requirements

Under property management contracts and task orders, situations may occur that put the FDIC properties at risk or create emergencies that require immediate attention. For purposes of this provision, emergencies are defined as any situation, circumstance, or special occurrence that threatens the safety or soundness of an FDIC property or its occupants, has the potential for significantly undermining the FDIC's equity in the property (i.e., anticipated code violations, utility liens, condemnation orders), or creates a potential liability.

When emergencies arise, the Regional Director or designee(s) may approve an advance payment(s) for the direct purpose of addressing or correcting the situation. Emergency advance payment(s) must be approved in accordance with the Expenditure Delegations. The amount of the emergency payment(s) will not be applied against the 25% limitation on advance payment policy, see, [2.A.10., Advance Payment to Contractors](#).

5.H.9.c. Security for Advance Payments

The contractor must provide security for the advance payment(s) in the form of an irrevocable letter of credit equal to the advance. However, when DOF deposits an advance payment into an operating account at a financial institution and the FDIC is named as a party to that account, the contractor is not required to provide security for the advance. The jointly established bank account gives the FDIC access to the advance funds in case the contractor goes out of business or their contract is terminated. Notwithstanding, the Contracting Officer will ensure that all contracts that provide advance payments include fidelity bond insurance coverage to protect the FDIC from losses arising from theft, embezzlement, fraud, or misplacement of funds.

5.H.9.d. Administration of Payment of Advance Payments

The Contracting Officer will transmit all approved requests for advance payment to DOF.

The Contracting Officer will ensure the amount of advance payments does not exceed the contractor's financial requirements and closely supervise the contractor's withdrawal of funds from the special bank account in which the advance payments are deposited.

The Contracting Officer will be responsible for determining that the security for advance payment continues to be adequate during performance.

5.H.9.e. Contractor Reports

The contractor will submit a monthly status/reconciliation report to the Contracting Officer indicating the use of all funds advanced, the remaining funds available, copies of relevant invoices, and such other documentation the Contracting Officer may request.

5.H.9.f. Reconciliation of Advances

Oversight Managers and Contracting Officers must promptly reconcile all advances to contractors. Contractors who receive advance payments will be required to provide supporting documentation for all incurred costs for which advance payments have been made, on a monthly basis.

5.H.9.g. Audit and Review

The Contracting Officer will ensure that all contractors that receive advances are subject to an annual review by the DRR Office of Internal Revenue or by an independent accounting firm retained by the FDIC. In addition, audits may be performed by the OIG as necessary.

5.I. RATIFICATION OF UNAUTHORIZED CONTRACTUAL COMMITMENTS

5.I.1. Applicability

Ratification is the act of approving an **unauthorized contractual commitment** and occurs:

When work is authorized by an FDIC employee, without, or beyond his or her authorized **expenditure authority**;

- a. When a **Contracting Officer** authorizes work over his or her warrant limit; or
- b. When an FDIC employee, without a warrant, authorizes work.

Ratification procedures will not be used to ratify an unauthorized commitment when a contractor performs without implicit or explicit direction from FDIC.

5.I.2. Procedures

5.I.2.a. Contractor Activities and Documentation

For a ratification, the contractor must submit an **invoice** to the Contracting Officer for the unauthorized work and include documentation that describes:

1. What work was performed;
2. Why the work was performed;
3. Where the work was performed;
4. When the contractor was instructed to do the work; and
5. Who instructed the contractor to do the work, and in what form were the instructions given (verbal or written), including a copy of any written authorization.

If the contractor cannot name the FDIC individual(s) or representative(s) who authorized the work, the ratification request will be rejected. The contractor may file a **claim** for resolution.

If an FDIC employee directed the work, the Contracting Officer will evaluate the contractor's submission to determine if it provides a legitimate basis for payment.

5.I.2.b. Office Activities and Documentation

The office that directed the work will submit a written and signed statement before the execution of the ratification document to the Contracting Officer that includes:

1. Identification of the employee who directed the contractor to perform the work;
2. Statement of the facts including why the contracting process was not followed;
3. A statement that goods or services have been provided to and

accepted by the FDIC, or that the FDIC has obtained or will obtain a benefit resulting from performance of the unauthorized commitment; and

4. Expenditure authorization in accordance with Expenditure Delegations.

5.1.3. Ratification Approval

5.I.3.a. Contracting Officer Recommendation Report

Based on the unauthorized commitment, the Contracting Officer will prepare a written Recommendation Report documenting the findings and providing a recommendation for either approving or denying the ratification action. When the Contracting Officer recommends approval, the Recommendation Report must affirm the goods and services are acceptable and the price is fair and reasonable.

5.I.3.b. Approval of the Recommendation Report

The Contracting Officer's Recommendation Report must be approved by the applicable Assistant Director, Corporate or DIRM contracting, or the Regional Manager, DOA, as appropriate, for actions \$10,000 or less. Only the Associate Director, ASB, may approve actions greater than \$10,000.

5.I.3.c. Contracting Officer Action

If the ratification is denied, the Contracting Officer will provide the contractor with a letter disclosing the decision with a brief rationale. If the ratification is approved, the Contracting Officer will prepare a contract modification. This is applicable if the ratification occurs on a contract with a current period of performance. If the ratification occurs without a corresponding contract, a new contract will be issued.

5.I.3.d. Warrant Authority and Expenditure Approval

Ratification is permitted only within the Contracting Officer's warrant authority, and after new Program Office expenditure authority has been obtained. The specific dollar amount being ratified will be used for determining the required warrant level and proper [expenditure authority](#). Previously approved expenditure authority for the contract may not be used for ratification.

5.I.3.e. Documentation

The Contracting Officer will file all documentation supporting the approval or denial of a ratification action, including expenditure authority and contract modification or contract, in the official contract file. The Contracting Officer must provide a copy of an approved or denied Recommendation Report to the Assistant Director, Policy and Operations Section, ASB.

5.J. CLAIMS PROCESS

5.J.1. Policy

It is FDIC's policy that contractor **claims** will be resolved, by mutual agreement, at the Contracting Officer level to the maximum extent possible. If they are not resolved the Contracting Officer must issue a final decision.

5.J.1.a. Elements of a Claim and Claim Certification

All claims will include the following information:

1. The name, address, telephone and facsimile number of the claimant;
2. Contract, order, purchase order number;
3. The specific relief requested by the contractor;
4. A summary of the pertinent facts and discussion of the specific contract provision under which relief is sought, and supporting documentation (correspondence, reports, invoices, deliverables, etc.);
5. A list of names, addresses, titles, and telephone number(s) of any person(s) who has any knowledge of any facts relevant to the claim (FDIC employees, contractor employees, or contractor's legal counsel); and
6. Certification by a senior official of the contractor that:
 - a. The claim is made in good faith;
 - b. Supporting data is accurate and complete to the best of the contractor's knowledge and belief; and
 - c. The amount of relief requested accurately reflects the contract adjustment for which the contractor believes the FDIC is liable.

5.J.1.b. Oversight Manager Responsibility

The Oversight Manager will:

1. Promptly notify the Contracting Officer of any indication that a contractor intends to file a claim;
2. Provide the Contracting Officer and the representative from CLU with information and detailed documentation relevant to the claim;
3. Assist the Contracting Officer in resolving the claim;
4. Ensure that proper **expenditure authority** is obtained if settlement requires the expenditure of funds not already authorized; and
5. Refrain from discussing any aspect of the submitted claim with the contractor, without the advice and consent of the Contracting Officer and CLU.

5.J.1.c. Contracting Officer Responsibility

The Contracting Officer will coordinate all claims and disputes by working closely with the Oversight Manager and CLU, and ODEO for claims and disputes involving qualifying MWOB firms, MWOB Joint Venture's and non-MWOB firms with MWOB subcontracting. After receipt of a claim, the Contracting Officer will:

1. Document receipt of the claim;
2. Review the claim, and seek clarification, if necessary, including meeting with the contractor to discuss the claim;
3. Return the claim if it is incomplete;
4. Initially evaluate the claim and confer with CLU on any proposed interpretation or definition of contract provisions and request a legal analysis;
5. If claim involves allegations of fraud, suspend evaluation and refer the matter to [OIG](#);
6. Prepare findings to assist in the claim [settlement](#);
7. Discuss settlement with the contractor where appropriate;
8. Ensure that proper expenditure authorization has been obtained before settlement;
9. Document the basis for the negotiated settlement decision in the [official contract file](#);
10. Execute and implement a settlement agreement if settlement is achieved; and
11. If settlement cannot be reached, issue a final decision denying the claim in full or in part stating the reason for the decision in sufficient detail for the contractor to understand the basis for the conclusion.

5.J.1.d. CLU Responsibility

CLU will:

1. Provide advice and counsel regarding the claim;
2. Prepare a legal analysis when requested;
3. Assist the Contracting Officer in preparing findings to assist in settling the claim, as required;
4. Attend negotiations, if contractor's counsel is present, with the contractor, or as requested by the Contracting Officer;
5. Evaluate potential settlement against the prospects for successful litigation;
6. Recommend alternatives to litigation as appropriate; and
7. Prepare settlement and releases or other legal documents that may be required.

5.J.1.e. Documentation

The [official contract file](#) documentation will include:

1. A description of the claim being made by the contractor;
2. The specific provisions of the contract that address or are related to the claim;
3. The [Oversight Manager's](#) evaluation of the claim and recommendations as to what action must be taken;
4. CLU's review of the claim;
5. Statement of factual areas of agreement and disagreement;
6. The resolution and supporting rationale;
7. Any other information or documents related to the claim; and
8. A copy of any settlement agreement or final decision.

5.J.2. 8(a) Contract Claims

The [Contracting Officer](#) will make interim and final determinations on all claims resulting from 8(a) contracts, provided that the FDIC will give written notifications to SBA within ten calendar days of any such determination. SBA has five calendar days to provide comments and suggestions, which the FDIC will take into account in making the final determination.

5.J.3. Final Decisions

A final decision is a ruling by the Contracting Officer on a claim when [settlement](#) between the FDIC and the contractor cannot be achieved. The final decision will describe the claim, the pertinent contract terms, state the basis for the decision, and inform the contractor of its right to request a review of the decision.

The Contracting Officer will send written notification of the decision to the contractor by USPS certified mail, return receipt requested. Furthermore, if requested, the Contracting Officer will discuss the decision with the contractor, and answer any related questions.

The Contracting Officer's decision is final, unless within sixty days from the date of receipt of the decision, the contractor submits a written request for review to the Associate Director, ASB, or designee, or for OIG contracts, the Assistant Inspector General for Management and Congressional Relations, to review the Contracting Officer's decision.

If a claim is partially allowed, and a review or [appeal](#) is requested, the claim is subject to review in total. However, there is no guarantee that any portion of the previously allowed claim will continue to be allowed.

5.K. CLAIM DECISION REVIEW AND APPEAL PROCESS

5.K.1. Review Process

A **contractor** may file for review of the Contracting Officer's decision by the Associate Director, ASB, or designee, or for OIG contracts, the Assistant Inspector General for Management and Congressional Relations. The contractor must request the review, in writing, of the Contracting Officer's decision within sixty calendar days after receipt of a final decision.

The contractor's request for review must be based on the same facts and claim that were initially raised to the Contracting Officer. Where applicable, the contractor must explain newly listed items that were not previously provided.

Documentation a contractor provides with the request for review, not previously available to the Contracting Officer, will not be considered, unless the Associate Director, ASB, or designee, or for OIG contracts, the Assistant Inspector General for Management and Congressional Relations, determines that the failure to provide such documentation was justified and unavoidable.

5.K.2. Processing the Review

Upon receipt of the request for review, the Associate Director, ASB, or designee, or for OIG contracts, the Assistant Inspector General for Management and Congressional Relations, will request the Contracting Officer to provide the necessary information.

5.K.2.a. Meeting with Contractor

The Associate Director, ASB, or designee, or for OIG contracts, the Assistant Inspector General for Management and Policy, may provide an opportunity for the contractor to discuss the Contracting Officer's decision. If a meeting is considered necessary the contractor will be notified of the time and place in writing by certified mail, return receipt requested.

5.K.2.b. Additional Time

The Associate Director, ASB, or designee, or for OIG contracts, the Assistant Inspector General for Management and Congressional Relations, will notify the contractor in writing by USPS certified mail, return receipt requested, if additional time is needed to review the contractor's request for review of the Contracting Officer's decision.

5.K.2.c. Notification of Decision

Notification of all decisions will be made by USPS certified mail, return receipt requested. For claims less than \$100,000, decisions of the Associate Director, ASB, or designee, or for OIG contracts, the

Assistant Inspector General for Management and Congressional Relations are final FDIC action, and are not subject to further FDIC review or consideration.

5.K.2.d. Implementation

If it is decided that the contractor's [claim](#) is valid, in whole or in part, the Contracting Officer will implement the decision promptly.

5.K.2.e. Settlement

If a full or partial payment of a claim is authorized, the Program Office will ensure that proper expenditure authority is promptly obtained. The Contracting Officer will request that CLU, or for OIG contracts, the Counsel to the Inspector General, draft a settlement agreement for execution by the Contracting Officer.

**5.K.3.
Appeal of
Contracting
Officer's Final
Decision**

For claims of \$100,000 or greater (original claim amount), a contractor may file for an appeal of the Contracting Officer's decision after review by the Associate Director, ASB or designee, or for OIG contracts, the Assistant Inspector General for Management and Congressional Relations, with the Director, Division of Administration (DOA), or for OIG contracts, the Inspector General or designee. As set forth below, the Director, DOA, or the Inspector General or designee, will accept an appeal of a claim decision and issue a final FDIC decision for appeals properly filed in writing. For claims, the Director, DOA, will be considered the duly authorized representative of the Chairman of the FDIC.

5.K.3.a. Contents of Request for Appeal

The request for appeal will be based on the same facts and claim that were initially submitted to the Contracting Officer. If items are listed that were not previously provided, the contractor must provide reasons why each item was not previously provided. This new information will not be considered, unless the failure to provide such documentation was justified and unavoidable.

5.K.3.b. Final FDIC Decisions

Decisions by the Director, DOA, or for OIG contracts, the Inspector General or designee are final decisions on a matter and are not subject to further review or consideration. When in the [receivership capacity](#), and if the contractor is in disagreement, the contractor may file in Federal Court within sixty days of receipt of the decision under dispute. When in the [corporate capacity](#), and if the contractor is in disagreement, the contractor may file in an appropriate court of jurisdiction.

5.K.3.c. Implementation

If the Director, DOA, or for OIG contracts, the Inspector General or designee, makes a decision that the contractor's claim is valid, in whole or in part, the decision will be implemented promptly by the Contracting Officer.

5.K.3.d. Settlement

If the Director, DOA, or for OIG contracts, the Inspector General, or designee, authorizes full or partial payment of a claim, the Program Office will ensure that proper expenditure authority is promptly obtained. The Contracting Officer will request that CLU, or for OIG contracts, the Counsel to the Inspector General, draw up a settlement agreement for execution by the Contracting Officer.

5.L. TERMINATION PROCEDURES

5.L.1. Overview

The FDIC may [terminate](#) contracts under two different procedures. The decision to terminate a contract for [default](#) or [convenience](#) will be made by the Contracting Officer based upon a review by CLU. The Contracting Officer must notify the Associate Director, ASB, or the Regional Manager of any decision to terminate.

5.L.2. Termination for Default

The General Provisions contain a clause that allows the FDIC to terminate any contract for default when a contractor:

- a. Fails to deliver the goods or perform the services within the time specified in the contract or any extension;
- b. Fails to make progress, so as to endanger performance of the contract;
- c. Fails to perform any of the other provisions of the contract; or
- d. Has a conflict of interest or other ethics violations.

5.L.2.a. Coordination

Any termination by the Contracting Officer, based on a contractor's performance, will require the written concurrence of the Oversight Manager and CLU. If the termination involves an MWOB or SDB firm, the Contracting Officer will notify ODEO as soon as possible.

5.L.2.b. Procedure

1. The [Oversight Manager](#) must notify the [Contracting Officer](#) in writing when a basis for termination arises and assist the Contracting Officer and CLU, in considering the necessity of the default termination. During termination, the Oversight Manager will maintain complete records to support the basis for termination.
2. The Contracting Officer will determine if the contract requires a [cure notice](#) and if so, will prepare the appropriate letter and provide the contractor with a reasonable amount of time to correct the situation.
3. If termination is necessary, the Contracting Officer must obtain written recommendations and concurrence from the Oversight Manager and obtain CLU advice on the propriety of the termination and the likely risks of such action.
4. The Contracting Officer must also determine whether any unpaid contractor invoices must be paid, ensure that the contract file contains all documents relating to the termination, and determine

whether the termination will affect other contracts.

5. The Contracting Officer will request that CLU draft documents necessary to effect the termination, including a notice of termination to the contractor.
6. The Contracting Officer will execute the termination documents.
7. The Contracting Officer must notify the Policy and Operations Section, ASB, of any contractor terminated for default. The Policy and Operations Section will forward this information to CLU for possible exclusion consideration.

5.L.3. Termination for Convenience

The General Provisions include a termination for convenience clause that allows the FDIC to terminate any contract, or order, in whole or in part, at any time in its sole discretion, if the Contracting Officer determines that such termination is in the best interests of FDIC. The Contracting Officer will obtain the written concurrence from the Oversight Manager and CLU before proceeding with a termination for convenience.

5.L.3.a. Procedure

Termination takes place by delivering to the contractor a notice of termination specifying the extent of termination and the effective date.

1. The notice of termination will be delivered to the contractor at least thirty days before the effective date of the termination.
2. After receipt of the notice, the contractor will complete performance of work not terminated, and take whatever action is necessary for an orderly and timely discontinuation of the work terminated.
3. The contractor will deliver completed or partially completed, any plans, drawings, information, data, materials or equipment that, if the contract had been completed, would have been furnished.
4. The contractor will generally be paid for allowable costs incurred up to the termination.
5. The Contracting Officer must notify the Policy and Operations Section, the Oversight Manager and CLU of the termination for convenience.

5.L.3.b. Partial Termination

If the termination is partial, the contractor may file a proposal with the Contracting Officer for an adjustment of the price(s) of the continued portion of the contract or order. The Contracting Officer will make any adjustment agreed upon. Within ninety days from the effective date of

termination, unless extended in writing by the Contracting Officer, the contractor can request an adjustment to any proposal by the Contracting Officer.

5.L.3.c. Charges Incurred After Termination

The FDIC is not liable for payment to the contractor or to any subcontractors or vendors, of any fees, charges, penalties, or damages related to the terminated work, which are incurred after the effective date of the termination.

**5.L.4.
Termination of
8(a) Contracts**

The Contracting Officer must give written notice to the SBA, ten calendar days before termination of an 8(a) contract.

5.M. PRE-EXIT CLEARANCE PROCEDURES FOR CONTRACTORS

5.M.1. Procedures

If the **contractor** has been provided equipment or access to FDIC systems, the **Oversight Manager** needs to conduct pre-exit clearance procedures. This is done upon completion of contracts to ensure the property and equipment is accounted for and returned in good condition. The Oversight Manager must also ensure that access to systems and telephone services has been revoked during the contract closeout process. In addition, pre-exit clearance must be conducted for contractor employees who are no longer providing services under an on-going contract.

Oversight Managers will:

- a. Ensure that form FDIC 3700/25, *Pre-Exit Clearance Record for Contractors, Exhibit XXIX* is initiated for departing contractors one week before the last day the contract is in effect, and completed at the time of departure of the contractor;
- b. Ensure the return and proper accounting for all FDIC-owned property, equipment, records, and documents by signature of the designated security official or their designee as defined in *Exhibit XXIX*;
- c. Refer contractors failing to properly account for or return the FDIC property to the Contracting Officer and SMS; and
- d. Coordinate with ASB if FDIC-issued property has been damaged or lost and reimbursement is deemed appropriate.

5.M.2. Property Clearance

5.M.2.a. General Property

The Oversight Manager will obtain all general FDIC property from departing contractor personnel and ensure that access to the FDIC's systems and telephone services has been revoked either at the time contractor employees depart from working during contractor performance or at contract completion. General FDIC property includes but is not limited to such items as calculators, typewriters, dictating equipment, diskettes, manuals, publications, and records.

5.M.2.b. Information Resources Equipment

The Oversight Manager will confirm with DIRM that the following have occurred at the completion of the contract or at the time any contractor employees depart from working on an FDIC contract during contract performance:

1. All software, hardware, equipment, and manuals, including personal computers, lap top computers, software, diskettes, pagers, cellular phones, portable fax machines, and telephone calling cards, have been returned;
2. User IDs (system access/administration privileges) for all systems including but not limited to software, mainframe, email, and remote access, have been revoked; and
3. Telephone service connections have been terminated.

5.M.2.c. Security Property and Devices

The Oversight Manager will confirm with SMS that all the parking permits, Kastle keys, identification badges, building passes, office keys, property passes, and special access cards have been returned to the appropriate officials.

5.M.2.d. Sign Off

Upon confirmation that all of the foregoing property has been returned and accounted for, all user IDs have been revoked, and all telephone connections have been terminated, the Oversight Manager will sign off on the *Pre-Exit Clearance Record for Contractors, Form 3700/25, Exhibit XXIX*, which will be placed in the [Oversight Manager's file](#). A signed copy will be sent to the Contracting Officer for the [official contract file](#).

5.N. CLOSEOUT

5.N.1. Introduction

The purpose of contract [closeout](#) is to verify that both parties to the contract have fulfilled their contract obligations, and there are no open issues or responsibilities remaining. It requires close coordination and teamwork between the Oversight Manager and the Contracting Officer.

A contract is completed when all goods or services have been received and accepted; all reports have been delivered and accepted; all administrative actions have been accomplished; all FDIC-furnished equipment and materials have been returned and accounted for by the Program Office; and final payment has been made to the contractor. After completion, or termination, the contract must be closed out.

The FDIC does not require a contractor release for contract closeout. Additionally, the Contracting Officer will not sign a release for the contractor.

5.N.2. The Closeout Process

The Contracting Officer is primarily responsible for contract closeout. Other members of the contract administration team also have responsibilities during closeout.

The Contracting Officer will:

- a. Determine that the contractor has satisfactorily performed all required contractual obligations;
- b. Complete and send the closeout memorandum provided in *Exhibit XXXII* to the Oversight Manager to request closeout status;
- c. Ensure that approval from the Oversight Manager has been received;
- d. Determine whether all payments to the contractor have been made;
- e. Complete reconciliation of all advances within sixty days of the final delivery of goods or performance of service, if the contractor received [advance payments](#);
- f. Determine that all administrative actions have been completed, including [claims](#), settlement of [disputes](#), and litigation, if known;
- g. Send a letter to the contractor, if required, to resolve FDIC property issues and identify any contractor issues that would preclude closeout, see *Exhibit XXXII*;
- h. Collect all funds or fees due from the contractor including set-offs or demands for payments initiated by the FDIC;

- i. Ensure that the **official contract file** contains all necessary documentation;
- j. Ensure all issues are resolved; and
- k. Complete the closeout checklist provided in *Exhibit XXXII*.

The Oversight Manager will:

- a. Determine whether all deliverables including reports have been delivered and accepted;
- b. Determine whether all funds have been collected;
- c. Determine whether all property has been returned;
- d. Determine whether all files have been returned;
- e. Ensure that a contractor performance report is completed, if required;
- f. Provide the Contracting Officer with appropriate documentation from the Oversight Manager's file for inclusion in the official contract file;
- g. Provide the Contracting Officer with written approval to close out the file; and
- h. Complete and return the Contracting Officer's request for status.

5.N.3. File Disposition

Upon contract completion or termination, the **Technical Monitor** will transfer his or her working files to the Oversight Manager for incorporation into the Oversight Manager's file. After incorporating all pertinent Technical Monitor information, the Oversight Manager will transfer the oversight management file to ASB for incorporation into the official contract file.

Once contracts are formally closed, the files will be prepared for transfer to off-site storage, in accordance with established FDIC records management procedures.

5.O. CONTRACT FILES RECORD RETENTION

5.O.1. Records Management

The [Oversight Manager](#) and [Contracting Officer](#) will jointly ensure that all records are securely maintained, and all contract administration actions are documented. These records must provide a complete history of any contract action.

5.O.2. Records Retention Guidelines for Contract Files

5.O.2.a. Solicitation and Contract Files

The solicitation and contract files will contain all applicable records and documents required under *Exhibit XXII, Contracting File Checklists*. Files will be handled as follows:

1. Contracts \$100,000 or less and construction contracts under \$2,000 may be destroyed three years after final payment; and
2. Contracts greater than \$100,000 and construction contracts greater than \$2,000 may be destroyed six years and three months after final payment.

5.O.2.b. Purchase Order Files

[Purchase order](#) files must contain all applicable records and documents as required in the appropriate contracting file checklist, *Exhibit XXII*. Purchase order files will be dispositioned as follows:

1. Purchase orders less than \$100,000 may be destroyed three years after date of final payment; and
2. Purchase orders \$100,000 or greater, may be destroyed six years and three months after date of final payment.

5.O.2.c. Unsuccessful Proposal Files

Unsuccessful offerors' proposal packages submitted in response to a solicitation will be destroyed as follows:

1. Awards \$25,000 or less may be destroyed when the contract is completed; or
 2. Awards greater than \$25,000 may be destroyed one year after the date of award, or final payment, whichever is later.
-

5.P. BID PROTEST PROCEDURES

5.P.1. Overview

A bid **protest** may be filed at any time before contract award, or after contract award, if the **interested party** first acquired actual or constructive knowledge of the basis for the bid protest after the award date; and notifies the **Contracting Officer** of the bid protest within ten business days after the basis of the bid protest is known, or should have been known.

5.P.2. Bid Protest Contents

A bid protest must be submitted in writing and include the following information:

- a. The interested party's name, address, telephone number, facsimile number, and taxpayer identification number;
 - b. Identification of the solicitation or contract at issue;
 - c. Identification of the ASB office responsible for the award of the contract;
 - d. Statement of the basis for the request, including supporting documentation;
 - e. Chronology of efforts made to resolve the complaint, naming the individuals in the ASB office who issued the solicitation or made the award; and
 - f. Statement of the relief requested.
-

5.P.3. Bid Protest Processing Procedures

The Contracting Officer will prepare a written draft decision in seven business days for review, approval, and release to the Associate Director, ASB; Assistant Director, Policy and Operations Section, ASB or Head of Regional contracting function; and CLU.

The Contracting Officer will issue the approved decision to the interested party, in writing, and within ten business days of receipt of the protest. A copy of the response must be sent to the Associate Director, ASB.

**5.P.4.
Filing a Request
for Review of
Decision**

If the interested party desires a review of the decision rendered by the Contracting Officer on a protest, other than under an **OIG** contract, the interested party must file such request in writing with the Associate Director, ASB within ten business days from receipt of the decision of the Contracting Officer. In the case of an **OIG** contract, the request for review must be filed with the Counsel to the Inspector General or designee.

The request for review of decision must include the same information as the bid protest and be based on the same issue or issues that were initially submitted to the Contracting Officer. The interested party must also include copies of all correspondence related to the complaint with the FDIC and the written denial of the bid protest.

**5.P.5.
Review Processing
Procedures****5.P.5.a. Contracting Officer Report**

Within ten business days after receiving notice from the Associate Director, ASB, or the Assistant Inspector General for Management and Congressional Relations, as appropriate, that a request for review of decision has been filed, the Contracting Officer, with concurrence of CLU or Counsel to the Inspector General, as appropriate, will submit a complete written report on the protest to the Associate Director, ASB, or the Assistant Inspector General for Management and Congressional Relations, as appropriate.

5.P.5.b. Contents

The report will include:

1. The Contracting Officer's statement of the circumstances relevant to the protest as well as any findings, determinations, or conclusions; and
2. Documents and other pertinent information, including:
 - a. The complete solicitation package and all amendments;
 - b. The proposal submitted by the interested party and the proposal or proposals selected for award;
 - c. The status of the award and, if an award has been made, whether performance has begun or shipment or delivery has been made;
 - d. If award has not been made, a statement as to when award is anticipated and an explanation of any impact on FDIC operations likely to result from delaying award until review of the decision has been completed;
 - e. A statement that the contracting process under the particular solicitation complied in all respects with the procedures set

forth in this manual; or if that is not the case, the statement will explain any deviations from the manual and the authority for such deviations;

- f. A legal review of the situation or file; and
- g. Any other documents, statements, or materials necessary to support the findings of the ASB office responsible for the award.

5.P.5.c. Action by Associate Director, ASB, or the Assistant Inspector General for Management and Congressional Relations

The Associate Director, ASB, or for OIG contracts, the Assistant Inspector General for Management and Congressional Relations have ten business days after receipt of the report from the Contracting Officer to issue a decision on the protest. Decisions by the Associate Director or Assistant Inspector General are:

1. Final on Contracts of Less than \$100,000. Decisions by the Associate Director, ASB, or for OIG contracts the Assistant Inspector General for Management and Congressional Relations, are final and not subject to further review with respect to protests involving contracts valued less than \$100,000.
2. Advice of Rights, Contracts of \$100,000 or Greater. If the protest involves a contract valued at \$100,000 or greater, the decision by the Associate Director, ASB, or the Assistant Inspector General for Management and Congressional Relations, will advise the interested party of its right to have the decision reviewed by the Director, DOA or the Principal Deputy Inspector General, as appropriate.

**5.P.6.
Remedies**

If it is determined that the bid protest is valid, the FDIC may, at its sole discretion, grant any remedy it deems appropriate, including:

- a. If before award, issue a new solicitation or award the contract consistent with applicable statutes, regulations, policies, and procedures;
 - b. If after award, refrain from extending the term of the contract or awarding task orders under an existing agreement;
 - c. Any other action permitted by law to promote compliance; or
 - d. At its sole discretion, take no further action.
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Chapter 6

Procurement Credit Card Program

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6.A. PROGRAM OVERVIEW

6.A.1. Overview

The FDIC follows Government-wide [Procurement Credit Card](#) Program policies and procedures when goods or limited administrative services of \$5,000 or less are acquired in both its corporate and receivership capacities. The Credit Card Program provides a simplified method of procuring low-dollar-value [goods](#) or [services](#), and reduces the administrative time frames, generally associated with these types of procurements. In addition, the process streamlines related payment procedures and reduces administrative prices. The program achieves its goals by facilitating cash management practices through the consolidation of payments, reducing petty cash funds, and strengthening internal management controls.

6.A.2. FDIC Participation

Whereas most government agencies participating in GSA's Government-wide Credit Card Program are subject to the Federal Acquisition Regulation (FAR), the FDIC is not. Therefore, certain GSA policies and procedures included in the documents provided to participants by the FDIC's card issuer, do not apply to the FDIC. As a result, participants must refer to this manual for guidance regarding the FDIC's policy. The Agency Program Coordinator (APC) is also available to provide clarification or guidance on questions regarding the applicability of a policy or procedure.

6.B. ROLES AND RESPONSIBILITIES

6.B.1. Overview

Five roles are associated with the successful operation of the Procurement Credit Card Program. Two have program administration responsibilities. They are:

- a. Agency Program Coordinator
- b. Program Billing Office.

Three are program-designated functions. They are:

- a. Approving Officials
 - b. Cardholders
 - c. Accounting Contacts.
-

6.B.2. Administrative Roles and Responsibilities

6.B.2.a. Agency Program Coordinator (APC)

The Associate Director, ASB or designee functions as the APC. The APC serves as the primary liaison to the card issuer and GSA, and is responsible for the oversight and administration of the FDIC's Procurement Credit Card Program nationwide. This includes the day-to-day administrative responsibilities involved in operating the program. In addition, the APC also monitors and reports program activities to executive management. Furthermore, the APC is responsible for the development and maintenance of the Procurement Credit Card Program policy, and provides necessary clarification and guidance to program participants.

6.B.2.b. Program Billing Function

ASB is responsible for handling all aspects of the billing process associated with the Procurement Credit Card Program. ASB efforts are coordinated with the designated Procurement Credit Card Program participants (specifically, the Accounting Contacts whose functions are described below). This ensures the timely processing of invoices and payments to the card issuer, for all cardholder purchases nationwide, in accordance with meeting payment deadlines required by the Prompt Payment Act. ASB verifies the validity of all cardholder statement authorizations against signature cards maintained on file, which are signed by program participants with delegated authority to approve purchases. ASB also assists program participants with any billing-related problems that arise during the payment and reconciliation process.

**6.B.3.
Program
Designated
Functions****6.B.3.a. Approving Officials (AOs)**

Approving Officials (AOs) represent a division or office and have the expenditure authority over all purchases or charges incurred by their cardholders. They are responsible for:

1. Designating cardholders under their authority;
2. Ensuring cardholders under their authority understand the policies and procedures associated with their responsibility;
3. Reviewing and approving all charges incurred by their cardholders;
4. Reviewing purchase receipts for approval against monthly statements;
5. Verifying proper documentation and assisting with the resolution of disputed items; and
6. Ensuring compliance with the billing office's requirements for statement verification and approval.

Internal procedures must be developed and implemented to ensure that purchase receipts are reviewed periodically with the monthly statements. This ensures strict adherence to monthly procurement limits. In the event that a cardholder resigns, is reassigned, or terminated, the AO must immediately notify the APC. The AO may not be subordinate to any cardholder under his or her authority. All AOs will be subject to the specific limitations set forth in Circular 1151.1, Delegations of Authority (Form 1151/01: Security Issues).

6.B.3.b. Cardholders

Cardholders are designated to procure goods or services on behalf of their respective division or office using the Procurement Credit Card. Cardholders are designated by the AO, and approved by the APC. Designated cardholders must be subordinate to their AO. The primary responsibilities of the designated cardholder are as follows:

6.B.3.b (1) Adherence to Policy

- a. Cardholders will be responsible for complying with the policies and procedures of the Procurement Credit Card Program.
- b. Cardholders must successfully complete the web-based training, "FDIC Procurement Credit Card," prior to receiving their Procurement Credit Card.
- c. Only the individual cardholder, whose name is imprinted on the Procurement Credit Card, has the delegated authority to use it.
- d. Cardholders are responsible for the physical security of their Procurement Credit Card, and for safeguarding the account number.

Cardholders must ensure that their Procurement Credit Card is used solely for official business, and that the prices obtained for all purchases

are fair and reasonable, reflect appropriate discounts, and do not include sales tax.

6.B.3.b (2) Documentation

Cardholders must be able to support all procurements made using the Procurement Credit Card. Therefore, they must maintain sufficient documentation, and provide adequate descriptions, to justify the charge. Procurements for the purpose of conferences should contain, at a minimum, a description stating the purpose for the conference, the name of the individual authorizing the function, and a list of all attendees. Cardholders must maintain sufficient documentation (receipts, charge slips, etc.) for any over-the-counter procurement and maintain a detailed record of all telephone purchases made with the Procurement Credit Card. Cardholders are responsible for verifying the accuracy of the charges reflected on their monthly billing statements, and for providing applicable accounting codes for each charge. If a cardholder identifies any charge as invalid, the cardholder must initiate any action necessary to effect resolution, such as obtaining a credit from the vendor or formally disputing the charge through the FDIC's card issuer.

6.B.3.c. Accounting Contacts (ACs)

Accounting Contacts (ACs) are designated by the AOs to assist ASB with the coordination of the payment process. On a monthly basis, the AC collects statements from all cardholders under the AO's authority and reconciles the cardholder's charges, and prepares a spreadsheet. The spreadsheet contains all charge information that was procured within the monthly billing cycle, per AO account, and includes accounting information for the appropriation of funds. The AC transmits the spreadsheet, and faxes approved copies of cardholder statements to ASB. The AC is responsible for providing all pertinent documentation, as instructed by ASB, within time-sensitive deadlines, to avoid unnecessary interest penalties. Designated ACs are not required to be knowledgeable in accounting practices; however, they should be familiar with Microsoft Excel and the FDIC accounting and organizational code structures.

6.C. PROGRAM PARTICIPATION AUTHORITY

6.C.1. FDIC Procurement Credit Card Use

The Procurement Credit Card Program was established as a supplement to existing procurement methods, policies, and directives. The program will provide the Corporation with the ability to purchase certain low-dollar-value goods or services needed to accomplish its mission. Use of the Procurement Credit Card to circumvent existing procurement methods, policies, and directives, is prohibited. Cardholders must adhere to existing policies and procedures. Use of the Procurement Credit Card for other than official business will result in immediate cancellation of the Procurement Credit Card, and could lead to disciplinary action.

6.C.2. Authority to Make Purchases

Under the Procurement Credit Card Program, employees designated as cardholders may use the Procurement Credit Card to make authorized procurements. The cardholder will receive a Cardholder Authority Memorandum from the APC, specifying procurement limits and any other restrictions. Items procured by the cardholder must be approved in accordance with the AO's functional and delegated expenditure authority. Acquisitions made by cardholders, on behalf of the Program Offices, must show appropriate documentation to demonstrate sufficient expenditure authority for the purchase.

6.C.3. Procurement Thresholds

The APC is the official responsible for approving AO and cardholder designations, and for establishing the maximum procurement thresholds under the Procurement Credit Card Program. No other official will possess this authority, unless specifically re-delegated by the APC. Under the Procurement Credit Card Program, the standard procurement thresholds are:

6.C.3.a. Single Purchase Limit

The single purchase limit is the maximum amount a cardholder may charge for any single procurement. Neither cardholders nor merchants are permitted to split a single purchase into smaller amounts in order to avoid exceeding the single procurement threshold. The maximum single purchase limit for any cardholder will be \$5,000 unless otherwise approved by the APC in writing. All cardholders will be subject to the specific limitations set forth in the Cardholder Authority Memorandum.

6.C.3.b. Monthly Procurement Limit

The monthly procurement limit is the maximum cumulative amount a cardholder may charge in any single monthly billing cycle. The maximum monthly procurement limit for any cardholder will be \$50,000. All cardholders will be subject to the specific limitations set forth in the Cardholder Authority Memorandum.

6.C.3.c. Monthly Division/Office Limit

In any single monthly billing cycle, for all of its cardholders, the combined monthly division or office limit is the maximum cumulative amount any division or office may charge. The monthly division or office limit is usually the sum of the monthly procurement limits of all cardholders in that division or office account.

6.D. POLICIES AND PROGRAM GUIDELINES

6.D.1. Permissible, Prohibited, and Restricted Use

6.D.1.a. Permissible Use

All goods or services that are not specifically included in the lists below as prohibited or restricted may be procured with the Procurement Credit Card.

6.D.1.a (1) Official Business

The Procurement Credit Card may be used to procure goods or limited administrative services for official business only. Use of the Procurement Credit Card for other than official business will result in immediate cancellation of the Procurement Credit Card, and could lead to disciplinary action. To differentiate from a personal credit card, the Procurement Credit Card was specifically designed to show the Great Seal of the United States and the words "United States of America."

6.D.1.a (2) Permissible Procurement Sources

The Procurement Credit Card may be used at any establishment at which the VISA Card is accepted as a form of payment. Sources should be rotated to preclude repeated acquisitions from the same merchant. Use of Minority- or Women-Owned Business (MWOB) and Small Disadvantaged Business (SDB) firms is encouraged.

6.D.1.a (3) Types of Acceptable Purchases

In accordance with these procedures, and other Corporation policies and procedures, as applicable, the following goods and services are considered appropriate for purchase with the Procurement Credit Card:

- (a) Building repairs;
- (b) Locksmith services;
- (c) Equipment purchases and repairs;
- (d) Catering services;
- (e) Flowers and other expressions of sympathy;
- (f) Membership fees and association dues;
- (g) External training courses once approved on FDIC Form 2610/12 as defined in FDIC Circular 2600.1;
- (h) Advertisement;
- (i) Conference/meeting rooms off-site;
- (j) Corporate vehicle repair and other services;
- (k) Duplicate keys;
- (l) Reconfiguration of workstations;

- (m) Carpet repair;
- (n) Non-Monetary Awards*; and
- (o) Newspaper advertisements.

*Refer to directive 2420.1, *Rewards and Recognitions Program*. All non-monetary award purchases must be marked on the bill as such and have adequate supporting documentation.

This list includes examples and does not represent all the acceptable types of purchases.

6.D.1.b. Prohibited Goods and Services

In addition, certain types of procurements are strictly prohibited under any circumstances, they are:

1. Official travel expenses (transportation expenses, hotel accommodations, meals, or vehicle rentals) for which the current Bank of America Travel Credit Card is used;
2. Rental or lease of land or buildings;
3. Telecommunications (telephone) services;
4. Cash advances from bank tellers or automated teller machines, except for bank closings, see [6.D.3. Automatic Teller Machine \(ATM\) Access](#);
5. Goods or services related to the management and disposition of assets held by the FDIC in its receivership capacity, former receivership assets, which have been obtained via corporate purchase, or receivership related assets, which may have been "assigned" to the FDIC in its corporate capacity. These prohibited services include appraisals, surveys, environmental assessments, Phase I environmental, brokerage services, title policies or commitments, asset searches, or similar goods, or services related to asset liquidation activities performed by the Division of Resolutions and Receiverships (DRR); and
6. Outside counsel procured by the Legal Division.

6.D.1.c. Restricted Use

Only specifically designated cardholders are authorized to procure the goods or services described in this section, unless special clearance is provided, as indicated below.

6.D.1.c (1) Information Resources Management (IRM)

The policies and procedures for procuring IRM goods or services require the prior approval from the Division of Information Resources Management (DIRM). For purposes of the Procurement Credit Card Program, and in accordance with established policies and procedures, only the designated cardholders in DIRM are authorized to procure IRM

goods or services including maintenance agreements and extended warranties. Requestors from divisions outside of DIRM must contact a DIRM cardholder, who will proceed to procure the IRM-related goods or services on their behalf (Refer to DIRM Circular 1330.1, for a more detailed description of DIRM requirements).

6.D.1.c (2) Office Supplies and Office Equipment

Cardholders can procure only items that are not stocked or available through the supplies contractor. Prior to procuring the item at retail cost, cardholders must contact DOA supply staff to ensure the item is not obtainable at the FDIC discount. If the item is not available, the cardholder can procure the item using the Procurement Credit Card, and charge the centralized Corporate Services Branch (CSB), office supply budget, in accordance with the CSB Supplies Purchasing Policies. The Division of Supervision and Consumer Protection (DSC) field office sites are the only exception to this policy. These offices may use the Procurement Credit Card to purchase office supplies and office equipment without checking CSB's supplies catalog. When office equipment is purchased under the terms of this paragraph, the cardholder may also purchase maintenance agreements and extended warranties.

6.D.1.c (3) Office Furniture

Only designated cardholders, located in the DOA/CSB Facilities Section are authorized to procure office furniture-related goods or services, which includes artwork. Requestors from divisions outside of this section must contact a designated facilities cardholder, who will procure the office furniture-related goods or services on their behalf (refer to Circular. 1801.1 for a more detailed description of CSB office furniture purchasing requirements).

6.D.1.c (4) Periodicals, Books, and Subscription Services

Approval of DOA/CSB is needed to procure periodicals, books, and subscription-related goods or services. Only designated cardholders of the CSB Library and Public Information Center Unit are authorized to procure periodicals or subscription-related goods or services. Requestors outside of DOA/CSB must contact a designated Library cardholder, who will procure the periodical or subscription on their behalf (Refer to Circular. 3020.2 for more detailed description of periodicals or subscription services purchasing requirements).

6.D.1.c (5) Management/Disposition of Assets

The procurement of goods or services related to asset liquidation activities performed by DRR's Franchise & Asset Marketing Branch, is prohibited. However, notwithstanding this prohibition, a Contracting Officer does have the authority to use his or her Procurement Credit

Card to procure incidental goods or services related to an asset (e.g., locksmiths, building repairs, etc.) in a receivership. The decision to use the Procurement Credit Card for this purpose, in lieu of a purchase order, is at the discretion of the Contracting Officer.

6.D.1.c (6) Meals and Beverages (Including Alcoholic Beverages)

Before using the Procurement Credit Card for procuring meals and beverages (including alcoholic beverages), the cardholder must obtain written approval from an Executive Manager. All Executive Managers are required to exercise sound judgment and appropriate discretion when authorizing these and other purchases, such as legitimate awards ceremonies, training events, business meetings with external clients, annual employee appreciation functions, and extended working meetings. AOs are required to review cardholders' monthly statements and supporting documentation to ensure that they conform to the requirements as stated in Circular 2410.9.

**6.D.2.
Convenience
Check Use**

Convenience checks are provided as part of the Procurement Credit Card Program; therefore, all pertinent policies and procedures apply, unless specifically indicated otherwise. Whenever possible, cardholders must use the Procurement Credit Card to avoid additional fees associated with a convenience check. The use of convenience checks is appropriate only in instances where merchants do not accept the Procurement Credit Card. Verification of a merchant's inability to process credit cards must be documented on the convenience check log at the time that a convenience check is written.

The cardholder must keep convenience checks in a secure location at all times.

The use of convenience checks for third-party drafts is prohibited. Cardholders may not write checks for reimbursement to another employee for FDIC-related purchases. Employees may apply for reimbursement via petty cash or PAV.

6.D.2.a. Ordering Procedures

AOs have the sole authority to request convenience checks. Requests are to be in writing to the APC and include:

1. **Cardholder Name.** Individual must have a Procurement Credit Card account established in order to obtain convenience checks.
2. **Check Denomination.** Not-to-exceed amounts are imprinted on the checks and are available in \$500, \$1000, \$2,500 and \$5,000 amounts. The denomination may not exceed the cardholder's single purchase limit.
3. **Quantity.** Convenience checks are available in books of ten,

twenty, or fifty. Unless specifically directed, the APC will assign one book of twenty checks per individual request.

The APC will submit the initial request to the card issuer. Once a cardholder account is set up to obtain convenience checks, subsequent orders may be obtained directly by the cardholder as needed. Cardholders do not have the authority to alter set denominations and quantities.

6.D.2.b. Convenience Check Limits

Convenience check transactions are posted against the cardholder's Procurement Credit Card account and the cardholder's authorized spending limit. Cardholders must remain within the authorized spending limits and are responsible for monitoring and reconciling cleared convenience checks against their authorized monthly limit. Checks that exceed either single purchase or monthly purchase limits will be returned for "insufficient funds."

6.D.2.c. Reporting Lost or Stolen Convenience Checks

Cardholders must notify Bank of America immediately to report lost or stolen convenience checks by calling 1-800-472-1424; and report the lost or stolen checks to the APC in writing. If only one or two convenience checks are missing, a "stop payment" request may be the most appropriate resolution. If, however, more than two convenience checks are detected lost or stolen, the account will be closed and a new account established. Replacement time is approximately two weeks and there is no fee for reporting lost or stolen convenience checks or for requesting a replacement account. Cardholders should report any remaining unused and valid outstanding checks that have not yet cleared the bank to prevent them from being affected from the stop-payment process.

Any unused checks must be reported to the card issuer and promptly destroyed.

If a check is stolen without the cardholder's knowledge and is posted to the cardholder's statement, the cardholder must immediately report the unauthorized transaction to Bank of America.

Bank of America will investigate the fraudulent activity and reverse the charge.

6.D.3. Automatic Teller Machine (ATM) Access

As part of the Procurement Credit Card Program, automatic teller machine (ATM) cash advance is provided on a strictly limited basis; during bank closings only. Otherwise, unless authorized by the APC, an ATM cash advance is a prohibited purchase. However, when previously authorized, and in instances cited below where use of the Procurement Credit Card or convenience checks is not feasible,

designated cardholders have the authority to use the ATM cash advance. Whenever possible, cardholders must attempt to use the Procurement Credit Card or convenience checks.

6.D.3.a. ATM Access Restrictions

The following restrictions apply:

1. Cash advance access is limited solely to ASB cardholders who participate in bank closings.
2. Cash advances are permitted solely for the purpose of procuring goods or administrative services to support bank closing requirements.
3. Cash advances obtained through the Procurement Credit Card must not be used for travel-related per-diem cash expenses.

6.D.3.b. Ordering Procedures

Designated ASB Approving Officials have the sole authority to request ATM cash advance access. Requests are to be in writing to the APC.

The APC will process the request through the card issuer to allow the cardholder to obtain up to a \$500 cash advance from an ATM or bank teller, not to exceed four cash advances per month.

6.D.3.c. ATM Cash Advance Limits

1. ATM cash advance transactions are posted against the cardholder's Procurement Credit Card account and the cardholder's authorized spending limit.
 2. Cardholders may not exceed their delegated single purchase and/or monthly purchase limit.
 3. Cardholders are permitted one cash withdrawal per day (four withdrawals per month).
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6.E. PROCEDURES FOR CARD USAGE

6.E.1. Exemption from Sales Tax

Procurements made for official U.S. Government purposes with the Procurement Credit Card are not subject to state or local sales tax. The Procurement Credit Card is designed to enable merchants to readily identify the FDIC's tax-exempt status by including the phrase "U.S. GOVT TAX EXEMPT." Further, the Procurement Credit Card account number is the tax exemption number recognized by the state for procuring items telephonically.

6.E.1.a. Avoiding Tax Charges

Cardholders must avoid being charged sales tax by the vendor, and should inform the merchant of their exempt status, before the completion of the sale. As a general rule, if the merchant does not accept the cardholder's instructions to waive the sales tax, the cardholder will make every attempt to procure the goods or services from another merchant who does not charge the tax. However, if time is of the essence in making the purchase, and there are no other merchants readily available, the cardholder is authorized to proceed with the purchase and pay the sales tax. In such cases, the circumstances for paying sales tax must be documented by the cardholder and kept with the purchase receipts.

6.E.1.b. Sales Tax Disputes

In the event that a cardholder is erroneously charged sales tax, FDIC must pay the charge as billed, including the tax amount. Sales tax may not be treated as a "disputed item" under VISA Operating Regulations. Therefore, every effort must be made for the cardholder and AO to work directly with the merchant to obtain a credit for the full amount of the charge. The merchant will then re-charge the item, excluding the sales tax.

6.E.2. Purchasing Methods

6.E.2.a. Over-the-Counter Procurements

Over-the-counter procurements refer to those made in person by the cardholder. Before transacting business over-the-counter, the cardholder is responsible for notifying the merchant that procurements for official U.S. Government purposes are not subject to sales tax. An electronic method of verification ensures that the procurement is within the cardholder's single, monthly, and division or office procurement limits.

Upon authorization of the charge, the merchant will present the cardholder with a sales draft for signature. Before signing the draft, the

cardholder will verify that the amount is correct, and that sales tax has not been included. The cardholder will maintain a file containing all receipts issued for over-the-counter procurements (including cash register receipts). During the statement verification process, these receipts will be used to verify and support the charges reflected on the cardholder's statement.

6.E.2.b. Telephone, Mail-Orders, and Internet Orders

When placing a telephone order for goods or services that are to be paid for with the Procurement Credit Card, the cardholder must notify the vendor that the procurement is for official U.S. Government purposes and is, therefore, tax exempt. Every attempt will be made to obtain verification from the vendor that the Procurement Credit Card will not be charged until time of shipment or delivery of the merchandise or service. This is important for statement verification and payment. A cardholder may not authorize payment of a charge for which the goods or services have not been received and accepted. The cardholder should be sure to discuss any applicable shipping or handling charges with the merchant, and confirm the amount to be billed.

The Procurement Credit Card may be used to make purchases from the Internet. These purchases shall conform to all policies and procedures stated herein. The procedures for placing an Internet order are the same as for telephone and mail order.

The cardholder will maintain a written record or log of all orders placed via the telephone, mail orders, or the Internet. This record or log is required for the statement review and verification process. Cardholders should use the *FDIC Procurement Credit Card Order Log, Exhibit XXV*.

6.E.3. Returned, Damaged or Unacceptable Procurements

The cardholder must promptly return damaged or unacceptable goods or services, and work with the merchant to obtain proper credit for the items. Cardholders must obtain some proof (receipt, certified mail receipt, or credit voucher) that the item was returned. On any return, cardholders must reject inappropriate return and handling charges, or restocking charges. The condition of the item(s) must be documented. Upon receipt of the monthly billing statement, the cardholder will verify that the return was properly credited to the account, and attach the credit slip to the statement for retention in the files. If the merchant is unwilling to accept returned items, or prepare a credit voucher, the cardholder will follow the procedures outlined in [6.F.3., Disputed or Questioned Items](#).

6.F. BILLINGS AND PAYMENT PROCEDURES

6.F.1. Billing Procedures

6.F.1.a. Monthly Statement of Account

The card issuer will send a Monthly Statement of Account (monthly billing statement) to all cardholders who have procured goods or services during a billing period. The cardholder must notify the AC when he or she has incurred charges, but did not receive a statement within several business days from the end of the billing cycle.

6.F.1.b. Master Invoice

Concurrent with the issuance of statements to cardholders, the card issuer will issue a separate master invoice to ASB for every location (Washington, DC, Regional, and Field Offices). These master invoices will include all charges made by each location's cardholders during the billing period. The Washington, DC, ASB will pay the master invoices upon verification of the charges authorized by the AOs.

6.F.2. Statement Review

Upon receipt of the monthly billing statement, the cardholder must promptly review and verify all charges. A brief description of the procurement must be noted in the space provided on the statement.

6.F.3. Disputed or Questioned Items

A cardholder who is charged incorrectly for an item, has a dispute with the merchant over unacceptable goods or services, or has a discrepancy with the monthly billing statement, must complete a dispute form. This form can be found at <http://fdic01/division/DOA/buying/CreditCard/index.html> under "Billing and Payment Procedures." The cardholder must transmit this form as soon as possible to the card issuer at:

Fax Number: **602-597-5158**.

A copy of the dispute form with the cardholder's statement will also be faxed to ASB during the invoice payment process.

The fax number is **202-942-3687**.

To preserve the FDIC's legal right to dispute a transaction, the card issuer must receive the dispute form within sixty days of the date of the statement. VISA Operating Regulations sometimes require certain written documentation from a cardholder before a reversal of charges can be processed. Instructions on the dispute form will assist cardholders in identifying any specific additional documentation required. Any disputes shown on the cardholders' statements must be properly handled to ensure the preservation of the FDIC's rights.

**6.F.4.
Statement
Authorization**

When the charges are verified, the cardholder will sign in the space provided on the back of the statement and forward it to the AO for review. The AO must also sign the back of the statement, authorizing the cardholder's purchases. After both the cardholder and AO have signed the statement, the AO will forward it to the designated AC for transmission to ASB.

FDIC is subject to the Prompt Payment Act requiring payment within thirty days; therefore, expeditious review and processing of the monthly statements by all cardholders and AOs is essential to timely payment.

**6.F.5.
Alternate
Cardholders or
AO Authorization**

When the cardholder or AO is not available to sign the cardholder statement, the following will apply:

6.F.5.a. Alternate Cardholder

If the cardholder is not available, the cardholder's designated AO may sign on his or her behalf.

6.F.5.b. Alternate AO

When the cardholder's AO is not available, there are two options:

1. An alternate Approving Official may be designated in advance, see [6.G.7., Designation of Alternate Approving Official](#); or
 2. The cardholder may request another designated AO from within the same division or office to provide authorization of his or her purchases. The APC can identify established AOs within a division or office.
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**6.F.6.
Transmission of
Monthly
Statements to
DOA/ASB**

When the monthly billing statement is received from the AO, the AC must include all applicable accounting information and fax a copy of the statement to ASB, then return the original billing statement to the cardholder. Additionally, an Excel spreadsheet detailing accounting information and procurement descriptions must be completed and transmitted to ASB by email. ASB will provide instructions regarding these procedures and time frames for submission to designated ACs.

**6.F.7.
Record-Keeping**

It is the responsibility of the AO to ensure that cardholders maintain complete records for all Procurement Credit Card charges. All other records and correspondence relating to the Procurement Credit Card Program must be retained for five years in accordance with the Records Retention and Disposition Schedule (Procurement Files).

6.G. ADMINISTRATIVE PROCEDURES

6.G.1. Requests for Procurement Credit Card Accounts

The APC, or designee, having authority for the designation of AOs and cardholders, must approve requests for new Procurement Credit Cards. All requests must be made in writing by the AO, and be submitted to the APC or his or her designee. The request will contain the names of the proposed cardholder(s) and AO, as well as proposed procurement limits. Upon approval of the request by the APC, or designee, the AO will be contacted to obtain specific information necessary for the issuance of the Procurement Credit Card(s). The APC will forward the necessary information to the card issuer for processing.

6.G.2. Training Requirements

New cardholders must successfully complete the web-based Procurement Credit Card Training Module in order to receive a Procurement Credit Card.

6.G.3. Issuance of Procurement Credit Card

When a Procurement Credit Card is issued, the cardholder must follow the instructions for activating and acknowledging receipt of the Procurement Credit Card. A copy of the Procurement Credit Card Program policies and procedures will accompany the Cardholder Authority Memorandum, as well as, certain forms and additional materials associated with the program. The cardholder must acknowledge receipt by signing and returning a copy of the Cardholder Authority Memorandum to the APC. The APC will maintain a current list of authorized AOs, cardholders, and ACs.

6.G.4. Requests for Changes to Maximum Procurement Limits

Any AO wishing to change the existing maximum procurement limits for a cardholder, must submit a written request to the APC. The request must provide adequate justification, along with a copy of the applicable Form 1151/01, Corporate Redefinition of Expenditure Authority. A signature line for the APC's approval or disapproval should be provided at the bottom of the request. If the proposed changes are approved, a new Cardholder Authority Memorandum will be issued by the APC as appropriate.

**6.G.5.
Changes to
Account
Information**

Changes to a cardholder's or AO's name or address must be immediately reported to the APC. The APC will ensure that the changes are processed through the card issuer.

**6.G.6.
Resignation or
Reassignment of
Cardholder or
Approval Official**

An AO who leaves the FDIC or moves to another location within the FDIC, must notify the APC immediately, in writing or by email, of the effective date of departure or reassignment. In support of this change:

- a. Pre-exit clearance procedures will be followed and the Administrative Officer must retrieve the departing cardholder's Procurement Credit Card, any remaining convenience checks, and cardholder file, to include receipts for outstanding charges.
- b. The Administrative Officer will notify the APC in writing of the cardholder's effective date of departure.
- c. The APC will ensure the account is properly cancelled, and submit written confirmation of the cancellation to the Administrative Officer.
- d. The Administrative Officer, upon receipt of the cancellation confirmation, will destroy and dispose of the cardholder's Procurement Credit Card and convenience checks.
- e. The Administrative Officer will return the cardholder file with any outstanding receipts and the written confirmation of account cancellation to the AO.
- f. The AO should follow the procedures outlined in [6.G.1., Request for Procurement Credit Card Accounts](#), to issue a new Procurement Credit Card to an employee who moves within the FDIC.
- g. The AO must contact the APC for approval of a new AO, prior to departure.

**6.G.7.
Designation of
Alternate
Approval Official**

In instances where the designated AO is not available to authorize cardholder purchases, another AO from the same division or office can perform the function. However, the designated AO must first notify the APC in writing, before the alternate AO can assume responsibility. A copy of the signature card must also be signed by the alternate AO and submitted to the APC prior to authorizing any purchases.

**6.G.8.
Lost or Stolen
Procurement
Credit Cards**

Cardholders must promptly report lost or stolen Procurement Credit Cards to the card issuer Government Card Services Unit (GCSU) Customer Service hotline at 1-800-472-1424.

Additionally, the cardholder must notify the designated AO and APC. Cardholders must also contact these officials if they believe that their account number has been compromised or used in a fraudulent manner.

When reporting loss or theft to the card issuer, the cardholder may be asked to provide some personal identifying information. This information is to help the card issuer identify any fraudulent purchase attempts, and is the only time personal information will be requested under the program. Subsequently, within two business days after the loss or theft is reported to them, the card issuer will issue a new Procurement Credit Card to the cardholder.

Procurement Credit Cards reported lost or stolen are immediately blocked from accepting additional charges. The cardholder must dispute unauthorized charges, and will not be liable for those charges.

6.H. PROGRAM COMPLIANCE

6.H.1. Program Review of Charges

The APC reviews all charges made each month under the Procurement Credit Card Program. The charges are reviewed for their appropriateness, and compliance with the Procurement Credit Card Program policies and procedures. Additionally, these reviews determine possible conflicts with general administrative policy (e.g., computer equipment procurement by offices not authorized to procure such equipment). If a violation is identified, or suspected, the APC will notify the appropriate AO in writing. The matter will be further investigated as appropriate.

6.H.2. On-Site Reviews

Periodic on-site reviews may be performed to ensure conformance with applicable policies and procedures. Improper action on the part of any Procurement Credit Card Program participant will be reported to appropriate AO and Division Director and may result in disciplinary action.

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APPENDIX A – LIST of ACRONYMS

AC	Accounting Contact (Procurement Credit Card Program)
ACK	Accounting Control Key
AIS	Automated Information System
AO	Approving Official (Procurement Credit Card Program)
APC	Agency Program Coordinator (Procurement Credit Card Program)
APM	Acquisition Policy Manual
ATM	Automatic Teller Machine
ASB	Acquisition Services Branch, ASB
BAFO	Best and Final Offer
BOA	Basic Ordering Agreement
BPA	Blanket Purchasing Agreement
CAP	Contract Administration Plan
CCR	Central Contractor Registration
CEC	Corporation Ethics Committee, FDIC
CFO	Chief Financial Officer
CLU	Contracting Law Unit, FDIC
CPS	Contractor Performance System
CSB	Corporate Services Branch, FDIC
DOA	Division of Administration, FDIC
DIRM	Division of Information Resources Management, FDIC
DOF	Division of Finance, FDIC
DSC	Division of Supervision and Consumer Protection, FDIC
DRR	Division of Resolutions and Receiverships, FDIC
EPRIS	Electronic Procurement Routing Invoice Solution
FAR	Federal Acquisition Regulation
FDIC	Federal Deposit Insurance Corporation

FIS	Financial Information System
FOIA	Freedom of Information Act
FSLIC	Federal Savings and Loan Insurance Corporation
FSS	Federal Supply Schedule
GAO	General Accounting Office
GSA	General Services Administration
IBVA	Integrated Best Value Assessment
IRM	Information Resources Management
ISS	Information Security Section, FDIC
IT	Information Technology
JNCP	Justification for Noncompetitive Procurement
NAICS	North American Industrial Classification System
MWOB	Minority- or Women-Owned Business
NIH	National Institutes of Health
ODEO	Office of Diversity and Economic Opportunity, FDIC
OIG	Office of the Inspector General
OM	Oversight Manager
OMB	Office of Management and Budget
PAV	Payment Authorization Voucher
POS	Purchase Order System
PPA	Prompt Payment Act
PPT	Price/Past Performance Tradeoff
PR	Procurement Requisition
RFI	Request for Information
RFP	Request for Proposal
RFQ	Request for Quotation
SCA	Service Contract Act
SBA	Small Business Administration

SDB	Small Disadvantaged Business
SDLC	Systems Development Life Cycle
SBA	Small Business Administration
SOW	Statement of Work
SRR	Selection Recommendation Report
SSO	Source Selection Official
SSP	Source Selection Plan
TEO	Technical Evaluation Official
TEP	Technical Evaluation Panel
USDOL	United States Department of Labor
USPS	United States Postal Service

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APPENDIX B – GLOSSARY of TERMS**A B C D E F G H I J K L M N O P Q R S T U V W X Y Z****A**

Acceptance	The act of an authorized representative approving a contractor's delivered work product after all FDIC contract requirements have been verified.
Accounting Control Key (ACK)	The combination of the organization code, program code, location, account, and fund. The ACK is used to apportion payments to specific budgets, and determines which cost centers and accounts are used for all accounting transactions. In the case of procurement transactions, the ACK directly determines which organization budget will be charged.
Adequate Competition	The solicitation of three or more firms having the potential to provide the goods or services requested.
Administrative Changes	Modifications to contract documents that do not require the signature of both parties, and do not involve substantive changes to the rights and/or duties of either party
Advance Payment	Any payment of funds to an FDIC contractor before receiving goods or services under the contract or before the contractor begins performance and incurs costs under the contract.
Appeal	A request made by a contractor for a reconsideration by the Director, DOA, of the Contracting Officer's decision after review by the Associate Director, ASB, on claims of \$100,000 or greater.
Award	Execution of the contract by a Contracting Officer on behalf of the FDIC.

B

Background Investigations Review	A generic term that describes a check or checks that the Security Management Section (SMS) completes on contractors and its personnel to ensure they meet minimum security and integrity and fitness standards as set forth by FDIC.
Basic Ordering Agreement (BOA)	An agreement setting forth terms and conditions to be applied to future task orders agreed between FDIC and contractor(s) signatory to the Agreement.
Best and Final Offer (BAFO)	A final revision to the original proposal by the offerors after discussions reflecting the firm's best offer to FDIC.
Best-Value Determination	The process by which FDIC personnel determine which offer will produce the greatest overall benefit to the FDIC.
Bid Protest Procedures	An objection, submitted by an interested party in writing, protesting a solicitation for offers, the cancellation of a solicitation, or the award or proposed award of a contract.

Blanket Purchasing Agreement (BPA)	An agreement (not a contract) for meeting anticipated recurring requirements, primarily for goods and routine types of services, which establishes an account, or accounts, with a qualified source or sources against which call orders are issued by a person with ordering authority.
Board of Directors	The governing body of FDIC, or any corporation, empowered to elect and appoint officers and agents to act on matters on behalf of and affecting the corporation.
Budget Approval	Annual evidence that funds have been allocated in the Program Office budget for a specific contract requirement as evidenced on the Procurement Requisition
Business Reference Check	A check of the business and financial status of the recommended awardee before award.

C

Call Order	Orders placed under a Blanket Purchase Agreement.
Central Contractor Registration (CCR)	The vendor database for the U.S. Federal Government; used to collect, validate, store and disseminate data in support of agency acquisition missions. Current and potential government vendors are required to register in CCR in order to be awarded contracts by the government
Claim	A written demand or assertion for payment of money, a request for adjustment or interpretation of contract terms, or for other relief arising under or relating to the contract. Either FDIC or a contractor may make claims.
Claim – Corporate	Claims filed by a contractor against the FDIC in its corporate capacity including claims on OIG contracts.
Claim – Receivership	Claims filed by a contractor against the FDIC in its receivership capacity.
Claim Decision Review	A contractor requested review by the Associate Director, ASB of Contracting Officer's claim decision. This is the final FDIC action for claims less than \$100,000. Claim decision reviews for claims over \$100,000 may be appealed to the Director, DOA.
Clarification	An FDIC generated request for a limited exchange of information, on a competitively negotiated procurement, for the sole purpose of eliminating minor irregularities, informalities or apparent clerical mistakes in a proposal. Clarification does not give the offeror an opportunity to revise or modify its proposal in a substantive way. See also discussions .
Closeout	The final contract administration process undertaken to complete a contract and close out the official contract file.
Collusion	A fraudulent agreement between two or more parties to eliminate competition, restrain trade, or otherwise accomplish an illegal purpose.
Commercial Goods	Those goods determined to be in the commercial market place, as documented by market research (e.g., office equipment and supplies), sold in substantial quantities to the general public in the course of normal business operations at prices based upon established catalog or market prices.
Commercially Available Services	For purposes of the Service Contract Act (SCA), services of workers available to the general public and based on catalog or published price lists

Competition	When three or more offerors, acting independently, attempt to obtain a contract with FDIC and the successful offeror is selected on the basis of the criteria specific to the solicitation.
Competition Advocate Program	A Program administered by the Policy and Operations Section of ASB, to monitor noncompetitive awards on a Corporate-wide basis in relation to overall competitive awards. This function relies on data collection and trend analysis generated from the Purchase Order System (POS) and other sources.
Competitive Range	The range of proposals that have a reasonable chance of being selected for contract or task order award established after the initial evaluation of proposals has been completed.
Confidential Information	Confidential information is any information not made routinely available and generally known to the public.
Conflict of Interest	As defined by 12 CFR Part 366, Contractor Conflicts of Interest, a situation in which: <ul style="list-style-type: none"> ❑ A contractor; any management official or affiliated business entity of a contractor; or any employee, agent, or subcontractor of a contractor who will perform services under a proposed or existing contract with the FDIC, that has one or more personal, business, or financial interests or relationships which would cause a reasonable individual with knowledge of the relevant facts to question the integrity or impartiality of those who are or will be acting under a proposed or existing FDIC contract; or ❑ A contractor; any management official or affiliated business entity of a contractor; or any employee, agent, or subcontractor of a contractor who will perform services under a proposed or existing contract with the FDIC, that is an adverse party to the FDIC, RTC, FSLIC, or their successors in a lawsuit; or ❑ A contractor; any management official or affiliated business entity of a contractor; or any employee, agent, or subcontractor of a contractor who will perform services under a proposed or existing contract with the FDIC, that has ever been suspended, excluded, or debarred from contracting with a Federal entity or has ever had a contract with the FDIC, RTC, FSLIC, or their successors rescinded or terminated prior to the contract's completion in which the rescission or termination involved issues of conflicts of interest or ethical responsibilities; or ❑ Any other facts that exist which the FDIC, at its sole discretion, determines during the proposal phase or the performance of an existing FDIC contract that the contractor obtained an unfair competitive advantage favoring the interest of the contractor or any person with whom the contractor has or is likely to have a personal or business relationship.

Conservatorship	The legal procedure provided by statute for the interim management of financial institutions used by the FDIC. Under the pass-through receivership method, after the failure of a savings institution, a new institution is chartered and placed under agency conservatorship; the new institution assumes certain liabilities and purchases certain assets from the receiver of the failed institution. Under a straight conservatorship, the FDIC may be appointed conservator of an open, troubled institution. In each case, the conservator assumes responsibility for operating the institution on an interim basis in accordance with the applicable laws of the federal or state authority that chartered the new institution. Under a conservatorship, the institution's asset base is conserved pending the resolution of the conservatorship.
Constructive Change	An informal change not done in accordance with the contract change clause or modification procedure that causes the contractor to do additional work for which it neither contracted nor volunteered.
Contract	An agreement between two or more competent parties that creates an obligation to do or not to do a particular thing. The elements of a contract are, offer and acceptance, consideration, competency of parties, legality of purpose, and clarity of terms and conditions. As used in this manual, a contract includes FDIC contracts, purchase orders, task orders, and orders under multiple requirements contracts.
Contract Administration	The process of ensuring that all aspects of an FDIC contract are fulfilled, beginning after the award of the contract and continuing through the closeout of the contract.
Contract Ceiling	The dollar amount that may not be exceeded for a specific contract.
Contract Modification	A written alteration in the specifications, delivery point, rate of delivery, contract period, cost, quantity, or other provisions of an existing contract which create a substantive change, whether made unilaterally (under a provision in the contract) or bilaterally by mutual agreement of the parties to the contract.
Contracting Capacity-Conservatorship	FDIC contracts for the sole purpose of fulfilling its conservatorship responsibilities on behalf of an open institution that is operating under FDIC's management and control. Contracts will frequently include those for the performance of day-to-day operations or asset liquidation activities.
Contracting Capacity-Corporate	FDIC contracts for the purpose of fulfilling corporate responsibilities and goals, such as employee training, marketing policies, information systems, etc.
Contracting Capacity-Corporate Liquidator	FDIC contracts to liquidate property where title has passed from a conservatorship to receivership.
Contracting Capacity-Receivership	FDIC contracts for the purpose of fulfilling its receivership responsibilities, which include managing and disposing of receivership assets and completing the business of closed institutions.
Contracting Law Unit (Legal Division)	The Contracting Law Unit (CLU) of the Corporate Legal Issues Section of the Legal Division provides legal counsel to ASB in resolving contracting issues.

Contracting Officer	The FDIC representative with delegated contracting authority to enter into and contractually bind, administer and terminate contracts on behalf of the FDIC.
Contractor	An individual, corporation, partnership, joint venture, or other third party entity that enters into a contract with FDIC to provide goods, services, or other requirements pursuant to its terms and conditions
Contractor Confidentiality Agreement	An agreement signed by offerors or contractors before receiving confidential information. If the confidential information is provided during the solicitation phase, all offerors must sign the Agreement before receipt of the information in, or associated with, an RFP. The Agreement is provided in the APM as <i>Exhibit II</i> .
Contractor Eligibility Review	The Contracting Officer shall review the Debarred Vendors List on the ASB web page and the Excluded Parties Listing System before any award, regardless of dollar value, to ensure that the recommended awardee is not excluded or suspended from doing business with the Government. In addition, the Contracting Officer shall require the selected offerors to submit contractor eligibility certifications for purchase orders and contracts of \$25,000 or greater.
Contractor Oversight	The process of ensuring that the contractor delivers the goods or performs the services as required under the contract to fulfill the requirements and mission of the Program Office.
Contractor Past Performance Information	Information on the performance of contractors on previous FDIC or Government contracts acquired from the contractor or the Contractor Performance System (CPS).
Contractor Performance Report	The electronic form used by the Oversight Manager in the Program Office to evaluate the quality of the contractor's performance in the Contractor Performance System (CPS). The information provided by this report is made available to Program Offices and Contracting Officers through the CPS for subsequent procurements where it may provide important information.
Contractor Personnel	All employees of a contractor who perform under an FDIC contract. These employees include key and non-key personnel.
Convenience Checks	Product and service provided by Bank of America that allows checks to be written on a credit card account within authorized dollar limits.
Corporation Ethics Committee	Serves as an appellate body for reconsideration of decisions regarding contractor conflicts of interest made by the Executive Secretary.
Cost	The amount to be expended by a contractor for goods or services to be delivered to the FDIC, to which the contractor adds some additional amount (fee or profit) in order to establish the price to be charged to, and paid by, the FDIC.
Covered Employee/Services	For purposes of the Service Contract Act (SCA), all those employees or services that are covered by the SCA.
Cure Notice	A notice issued by the Contracting Officer to a contractor for unsatisfactory performance under the terms of the contract instructing the contractor to "cure" its performance within a specified period of time.

D

Davis-Bacon Act	The Davis-Bacon Act of 1931 requires payment of not less than prevailing wage rates to workers on Federal or federally funded construction projects exceeding \$2,000. Prevailing wage rates, set by the Department of Labor, are the wages paid to the majority of the laborers or mechanics falling within the same specific classifications on similar projects in the area during the period in question.
Debriefing	Post award discussion with an unsuccessful offeror to discuss the strengths and weaknesses of its proposal. The purpose of a debriefing is to inform the offeror why its proposal was not selected; emphasize the areas in which improvement may enhance its chances of receiving future contract awards; and provide an understanding of the general basis for the selection of the successful offeror.
Defalcation	The act of a defaulter; the act of embezzling; failure to meet an obligation; the misappropriation of trust funds or money held in any fiduciary capacity; or the failure to properly account for such funds.
Delivery Order	An order for supplies or services placed against an established contract or with Government sources for supplies.
Deviation	Authorization to deviate from the APM, provided by the Associate Director, ASB, on a one-time basis.
Disallowed Cost	A questioned cost that management, in a management decision, has sustained or agreed should not be charged to the government.
Discussions	Exchange between the FDIC and an offeror in the competitive proposals process undertaken with the intent of allowing the offeror to revise its proposal.
Dispute	A disagreement between a contractor and the FDIC regarding the rights of the parties. It originates when the party against which a claim was filed denies it. A contractor claim that remains unresolved after the Contracting Officer has made a final decision becomes a dispute.

E

Evaluation	The process of determining which of the offerors' proposals are responsive to the requirements of the solicitation package and which offeror is most qualified in terms of technical expertise or cost, or both.
Evaluation Criteria	Written technical criteria for the purpose of proposal evaluation that are communicated to offerors in the solicitation.
Exclusion	Denial of admittance to, or participation in, the solicitation or the contract award process.
Expenditure Authority	The authority for approving the Corporation's expenditures for awarding competitive and noncompetitive contracts as established by the Expenditure Delegations.
Expenditure Ceiling	The dollar limit on the expenditure for a particular contract that has been approved in accordance with the Expenditure Delegations.

F

Fair and Reasonable Price	A price that is fair to both parties, considering the agreed-upon conditions, promised quality, and timeliness of contract performance. Price analysis may be used to determine whether an offered price is reasonable.
Federal Deposit Insurance Act -	(12 U.S.C. § 1819) empowers the Federal Deposit Insurance Corporation (FDIC) to enter into contracts using private sector firms to provide goods or services. This Act also provides the authority for the FDIC to promulgate policies and procedures to administer the powers granted to it, including the power to enter into contracts.
Federal Supply Schedules (FSS)	Contracts awarded to suppliers of goods and services by the General Services Administration (GSA) that are used to facilitate the timely acquisition of goods or services by any Federal Agency or other qualifying organization. FSS terms and conditions, rather than those normally used by FDIC, apply to these contracts.
Fee	A fixed charge, usually for professional services or goods, which is added to the contractor's actual costs to produce the total contract price to FDIC.
Final Decision	A written document signed by a Contracting Officer ruling on a claim by or against the government. It describes the claim, references pertinent contract terms, states areas of factual agreement and disagreement, states the reasons for the decision reached and informs the contractor of its rights to challenge the decision through an appeal.
Finder's Fee	Payment to private entities for locating and identifying assets of cash or cash-equivalents belonging to failed institutions, conservatorships, or receiverships.
Firm Fixed Price Contract	A contract where the contractor is paid a fixed price upon performance of the services or delivery of the goods. The price is not influenced by the contractor's cost of performance. Firm fixed price contracts are appropriate where the statement of work and the FDIC requirements are well defined and well documented.
First Tier Subcontractor	Any person or entity that enters into a contract with a person or entity holding a contract with the FDIC for goods or services (referred to as the prime contractor), whereby the subcontractor supplies goods/materials/supplies or services to the prime contractor in accordance with the terms and conditions of its contract with the FDIC.
Fixed Price Contract	A contract under which a rate is established to determine the ultimate price to be paid to the contractor for successful performance. The fixed price may be expressed as a percent or unit rate that is then multiplied by actual performance of the contractor (e.g., gross sales proceeds, quantity of goods delivered, number of hours worked) to determine the overall price to be paid to the contractor.
Formal Contracting	The competitive contracting process to be generally used for the acquisition of complex goods or services, goods or services with a total estimated dollar amount of \$100,000 or greater where technical evaluation procedures are required, or for commercial goods of \$5,000,000 or greater.

Fraud An intentional perversion of truth for the purpose of inducing someone to rely upon it and part with something of value or surrender a legal right.

Freedom of Information Act (FOIA) The Freedom of Information Act is a pro-disclosure statute that requires all records or information in the possession of the Federal government to be disclosed unless the information is withholdable under one of the nine exemptions defined in the Act.

G

General Accounting Office (GAO) An investigative arm of the U.S. Congress charged with examining all matters relating to the receipt and disbursement of public funds. Established in 1921 to independently audit federal government agencies, the GAO functions under the direction of the Comptroller General of the United States, who is appointed by the President and confirmed by the Senate for a 15-year term.

Goods Supplies, materials, equipment, or other tangible personal property that are the deliverables or subject matter of a contract between the FDIC and a contractor.

I

Inspection The process where FDIC determines if the delivery of the goods or performance of services, as defined in the contract, are met by the contractor. Inspection may be performed at another location or at a time other than the time of performance, if so defined. The Oversight Manager, or his or her authorized representative performs inspection.

Interagency Agreements A procedure where a Federal agency obtains goods or services from another Federal agency.

Interested Party Anyone who is included on the solicitation list and has submitted a proposal in response to the solicitation.

Invoice A written itemized statement prepared by the contractor and presented to the FDIC, defining in detail the goods or services delivered and the compensation due for that delivery.

J

Justification for Noncompetitive Procurement (JNCP) The document that justifies an award to a sole or single source for goods or services without going through a competitive process for procurements over \$5,000.

K

Key Personnel Contractor personnel that are deemed essential and critical to the performance of the contract and who are contractually required to perform by the Key Personnel contract clause.

L

Labor Hour Contract A contract for services to the FDIC under which the contractor provides services to the FDIC and is paid a specified rate per hour.

Late Proposals Proposals and modifications that are received after the date and time established in the solicitation.

Legal Division	See Contracting Law Unit .
Letter of Oversight Manager Confirmation	A standard document executed by the Contracting Officer that contains a description of the Oversight Manager's authority and responsibility in performing designated functions for a specific contract, see <i>Exhibit XVI</i> .
Letter of Technical Monitor Confirmation	A standard document executed by the Contracting Officer that contains a description of the Technical Monitor's authority and responsibility in performing designated functions for a specific contract, see <i>Exhibit XVII</i> .
Level of Effort Contract	A type of contract stating the work in terms of an amount of effort (usually man-hours or man-years) to be performed by specified classes of employees over a given period of time.

M

Management Decision	The evaluation by FDIC management of the findings and recommendations included in an audit report and the issuance of a final decision by FDIC management concerning its response to such findings and recommendations, including actions concluded to be necessary.
Market Research	Obtaining <i>general</i> knowledge about the availability and types of goods or services for future acquisitions and identifying firms offering goods or services that are available in the marketplace. Market research is required to substantiate justifications for noncompetitive procurements.
Memorandum of Understanding (MOU)	An explicit recognition of a need to formalize the consultative policy framework and document exceptions to established policies within that framework when all stakeholders are in agreement over the terms of those exceptions.
Milestone	A significant event or date of delivery in the performance of a contract that should be monitored by the FDIC during contract administration, see <i>Exhibit X</i> .
Milestone Schedule	A schedule established for all contracting milestone dates for contracts of \$100,000 or greater.
Minority-Owned-Business	Firm(s) in which at least 51% of the ownership and control is directly and unconditionally held by one or more minorities. A firm, which is principally owned by another business entity or by a trust (including employee stock ownership trusts) that is in turn owned and controlled by one or minorities, does not meet this definition. In the case of a firm which is a corporation, at least 51% of each class of voting stock outstanding, and 51% of the aggregate of all stock outstanding, must be unconditionally owned by one or more minorities. Additionally, the firm(s) management and daily business operations must be conducted by one or more minorities. The minority individuals must have managerial experience of the extent and complexity needed to run the firm. A minority owner's unexercised right to cause a change in the control or management of the firm does not constitute minority control and management, regardless of how quickly or easily the right could be exercised.
Modification	Any written change in the terms of a contract.
Multiple-Order Requirements Contracts	A contract that provides for filling purchase requirements during a specified contract period pursuant to delivery orders.

N

Noncompetitive	Soliciting only one source, not requiring competition to make an award or modification.
Nonconforming Goods or Services	Goods or services that do not confirm to contract requirements.
Nonrecurring Requirements	Requirements for goods or services that meet a one-time specific need, e.g., a financial management system.
Non-Exempted Employees or Services	For purposes of the Service Contract Act (SCA), those not included in the exemptions under the SCA and included in the definition of service employee.
Nonresponsive Proposal	A proposal that does not allow for evaluation because it lacks information required to be provided by the solicitation. The extent of the deficiencies is so great that the Contracting Officer may decide to exclude it from evaluation subject to documenting the reasons for the decision.
North American Industry Classification System (NAICS)	A product classification system that consists of six digits and was developed jointly by the U.S., Canada, and Mexico to provide new comparability in statistics about business activity across North America.

O

Offerors Conference	A conference held during the proposal submission phase for prospective offerors to obtain clarification from the FDIC on matters of interest before submission of offers.
Office of the Inspector General (OIG)	An independent Federal organization established to audit the programs and operations of the FDIC and to investigate complaints of fraud, waste, and gross mismanagement in those programs.
Official Contract File	The file containing the official contract records maintained by ASB.
Official Oversight File	The complete record of the status of the contract after award, and results of the oversight of the contract, maintained by the Oversight Manager.
Option	A unilateral right of the FDIC to extend the period of performance of a contract or to purchase additional quantities of a specified product or service under predetermined conditions as defined in the contract.
Oral Solicitations	Verbal requests for quotations from the contractor at the Contracting Officer's discretion under the following circumstances: (1) when the award is less than \$100,000; (2) when the award will be made to the capable firm with the lowest priced offer; and (3) background investigations or access to FDIC sites or systems are not required.
Organizational Conflict of Interest	Conflicts of interest involving the organization, as opposed to the individual. (See also Conflict of Interest).
Oversight Manager	An FDIC employee appointed by a Program Office and confirmed by the Contracting Officer with responsibility to monitor and evaluate contractor performance under an FDIC contract.

P

Partial Termination	Termination of part of the performance requirements of a contract, permitting the contractor to perform certain remaining functions related to the contract.
Past Performance	The degree that the contractor has met the requirements of past contract engagements. Past performance is one of the evaluation criteria used for evaluating technical proposals.
Payment Authorization Vouchers	A method of paying for goods or services purchased by the FDIC through its normal course of business without using the Contracting Officer and the contracting process. The only circumstances where payment may be made by a PAV are listed in APM, 1.F.
Personal Conflict of Interest	A personal conflict of interest exists when an individual's private interests conflict or raise a reasonable question of conflict with the performance of their duties and job responsibilities as a contractor's employee or an employee of the FDIC. An individual's private interests may include a financial and/or employment interest related to themselves, their spouse, minor child, or dependent(s).
Personal Services Contract	A contract that either by its terms, or the way it is administered, makes contractor personnel appear to be FDIC employees. These contracts are not allowed unless specifically authorized by law. These prohibited contracts arise when the terms of the contract or actual contract performance create a situation when FDIC employees are providing day-to-day supervision of contractor employees, or when the contractor's employees perform, or engage, in an inherent function of the Corporation.
Post-Award Conference	A meeting held between the Contracting Officer, Oversight Manager and Technical Monitors, CLU, and other relevant FDIC personnel, and the newly selected contractor to ensure there is a clear understanding of all contract terms and conditions and to clarify any potential issues.
Presolicitation	
Prevailing Wages	With respect to the Service Contract and Davis-Bacon Acts, the minimum wages that Government contractors may pay their employees.
Price	Price is equivalent to total value of the contract, including elements of the contractor's costs and fee for profit.
Price Analysis	The process of ensuring that contract prices are fair and reasonable to the FDIC, using various techniques such as the comparison of proposed prices from various offerors, comparison of proposed prices with FDIC cost estimate, and comparison of proposed prices with other contractor prices. It does not involve the evaluation of the individual direct cost, overhead, general and administrative (G&A) and profit elements of an individual price proposal
Price Competition	The determination that a proposed price is based on competitive quotations.
Price Realism	The analysis performed on a price proposal to determine whether the price proposed is realistic for the work to be performed and consistent with the technical proposal.

Price Reasonableness Determination	Examination to determine if a proposed price is reasonable in light of the FDIC cost estimate, the market, and other proposed prices.
Prime Contractor	A person or organization entering into a contract with FDIC.
Privacy Act	5 U.S.C. § 552a, limits Federal agencies in the records they can collect, maintain and disseminate about an individual.
Privity of Contract	The legal relationship and responsibility between parties to the same contract. FDIC has privity of contract with the contractor; the contractor has privity of contract with the FDIC and with the first-tier subcontractor; the first-tier subcontractor has privity of contract with the contractor and with the second-tier subcontractor; and so on.
Procurement Action Log (PAL)	The Procurement Action Log (PAL) is a database that generates the contract number after the Contracting Officer records receipt of the Requirements Package.
Procurement Credit Card	The Procurement Credit Card is issued by FDIC to provide a simplified method of procuring low dollar value goods or services. The Procurement Credit Card Program is administered by the Agency Program Coordinator (APC).
Procurement Requisition	A form used by the Program Office to request goods or services and which is included in the Requirements Package.
Program Office	The Program Office is the FDIC organizational unit sponsoring and/or holding ownership of products leased or bought, or services performed.
Prohibited Personal Services Contract	A personal services contract that is not allowed by statute.
Prompt Payment Act (PPA)	The Prompt Payment Act (PPA) requires the FDIC to pay complete and correct invoices either on the date specified in the contract, or if there is no such date, within thirty calendar days after acceptance of the goods or services, the Contracting Officer's receipt of a proper invoice from the contractor, or receipt and acceptance of goods or services, whichever is later.
Proposal	An offer or promise that, if accepted, becomes a contract. A proposal is usually made in response to a solicitation.
Protest	A written objection by an interested party concerning the terms of a solicitation, the award or proposed award of a contract, or any other action relating to the solicitation or award of a contract.
Purchase Order	A written document authorizing the vendor to deliver specified goods or simplified services to the FDIC that states the amount that the FDIC will pay and the performance terms for conforming goods or services.

Q

Questioned Cost A cost that is questioned in an audit by FDIC because of: an alleged violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds; a finding that, at the time of the audit, such cost is not supported by adequate documentation; or a finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable.

R

Ratification The act of approving an unauthorized commitment made by a representative of the FDIC who lacked the authority to contractually commit the FDIC.

Recommended Awardee The offeror that is apparently the successful offeror based on the technical and price evaluations as applicable.

Recusal The process by which a person removes himself or herself from the decision making process, as in the instance of a personal conflict of interest.

Recurring Requirement Requirements for goods or services that occur on a regular basis in a routine business process, e.g., appraisals.

Request for Proposal (RFP) An RFP is normally used for formal contracting. It is a solicitation document used in negotiated procurements to communicate Government requirements to prospective contractors and to solicit proposals from them.

Request for Quotation (RFQ) An RFQ is normally used for simplified procurement and may be oral or written. It is a solicitation document used in negotiated procurements to communicate Government requirements to prospective contractors and to solicit proposals from them.

Requirements Package A written request submitted by the Program Office to ASB that initiates the contracting process and includes: what is needed; when the need must be met; and the appropriate expenditure authority.

Rescission The unmaking of a contract – not only terminating it, but also annulling or abrogating the contract from inception.

S

Scope All work that was fairly and reasonably within the contemplation of the parties at the time the contract was made.

Second- or Third-Tier Subcontractor Any person or entity that provides goods or services to the first-tier subcontractor on an FDIC contract for inclusion in the performance of that contract by the first-tier subcontractor and the prime contractor.

Selection Recommendation Report (SRR) Report prepared by the Contracting Officer and signed by the TEP Chairperson, and approved by the Source Selection Official, if appropriate, documenting an award decision and based on the final signed TEP memorandum, cost analysis, and all other relevant decision-making factors.

Service Contract Act (SCA) The McNamara-O'Hara Service Contract Act of 1965 requires that contractors pay not less than prevailing wages and fringe benefits, and provide safe work conditions under Federal contracts for the performance of non-professional services in the United States.

Service Employee	For purposes of the Service Contract Act (SCA), any person engaged in the performance of a contract entered into by the United States and not exempted under the SCA, the principal purpose of which is to furnish services to the Federal Government in the United States.
Services	Any actions conducted by personnel to perform an identifiable task instead of furnishing goods.
Settlement	Full or partial payment of a claim.
Simplified Procurement	Contracting procedures used for services up to \$100,000 or commercial goods up to \$5,000,000, or goods or services having a noncomplex, simple nature.
Site Visits	<ol style="list-style-type: none"> 1. A visit to the contractor site to: verify performance against scheduled and reported performance; determine the adequacy of contractor facilities and working conditions; and verify that the proper employees are working on the contract and are assigned to appropriate tasks. 2. An opportunity for potential offerors on a solicitation to walk through the FDIC location(s) where the services will be performed.
Small Disadvantaged Business	A small business concern that is at least 51% unconditionally owned by one or more individuals who are both socially and economically disadvantaged.
Small Disadvantaged Business (SDB) Program	The Small Business Administration (SBA) has implemented the Small Disadvantaged Business (SDB) Program to provide equity in contracting with small business concerns owned and controlled by individual(s) determined to be socially and economically disadvantaged. The program certifies small business concerns that meet specific social, economic, ownership, and control eligibility criteria as Small Disadvantaged Businesses.
Solicitation	An oral or written communication of the FDIC requirements to prospective offerors, requesting proposals or offers from them.
Solicitation List	A group of potential offerors selected by the FDIC to receive solicitation materials.
Source Selection Official (SSO)	An official selected by the Program Office to review the Selection Recommendation Report. If the SSO disagrees with the Selection Recommendation Report, it shall be brought to the attention of the Associate Director, DOA, for resolution.
Source Selection Plan (SSP)	A written plan that provides guidelines and a control mechanism for the proposal evaluation and selection process. (See <i>Exhibit IX, Source Selection Plan Organization</i> .)
Standard Documents	Documents developed by the Policy and Operations Section in ASB for use by all FDIC ASB's for procurements and related actions.
Statement of Work (SOW)	The statement of work (SOW) is the portion of a contract that describes the actual work to be done by the contractor.
Subcontract	A contract entered into by a contractor and a subcontractor for the purpose of obtaining goods or services in support of a contract.

Subcontracting Plan	A written plan provided by the prime contractor detailing what portions of the obligations set forth in the contract will be performed by other entities under contract(s) with the prime contractor.
Subcontractor	Any firm, individual, or entity with whom the contractor or another subcontractor has entered or intends to enter into a contract to perform services or provide goods to fulfill the contractor's obligation under its contract with FDIC.
Subsidiary	Any company that is owned or controlled directly or indirectly by another company.
Substantive Change	A change to a contract that alters the rights and obligation of the parties. It requires a bilateral agreement between the parties for a modification to the contract document. Some examples of substantive changes include changes in the amount of fees paid to a contractor, changes in delivery schedules, and changes in key personnel.
Supplemental Agreement	A contract modification that is signed by the parties to the contract.
Suspension	Temporary interruption of the performance of a contract by the contractor at the demand of the FDIC.
Suspension and Exclusion Regulation	12 CFR Part 367, Suspension and Exclusion of Contractors and Termination of Contracts Regulation provides two levels of action against contractors who are in violation of the Contractor Conflicts of Interest Regulation. Suspended and excluded contractors may not enter into any new contracts for the duration of the suspension or exclusion period.
System Development Life Cycle (SDLC)	The System Development Life Cycle (SDLC) describes a repeatable, uniform process to develop new FDIC automated information systems and enhance or maintain existing systems.
T	
Task Assignment	Task assignments may be used with contracts and delivery orders under Federal Supply Schedules or under other contracts as specified therein when greater specificity is required for services to be performed or goods delivered. The Oversight Manager may issue task assignments under the terms and conditions of the contract if task assignments are necessary.
Task Order	A contract awarded under an existing basic ordering agreement (BOA).
Technical Evaluation	The examination of proposals to determine which offeror is most qualified to perform under the contract.
Technical Evaluation Official (TEO)	An FDIC employee who evaluates the written proposals for compliance with the solicitation's technical requirements and the evaluation criteria established in the solicitation for simplified procurements.
Technical Evaluation Panel (TEP)	A panel of FDIC employees established to evaluate the written proposals for compliance with the solicitation's technical requirements and the evaluation criteria established in the solicitation for formal contracting. The TEP may include a representative from CLU, ODEO, and DIRM ISS as non-voting members.

Technical Monitor (TM)	An FDIC employee nominated by a Program Office and confirmed by the Contracting Officer with responsibility to assist the Oversight Manager in monitoring contractor performance in designated areas.
TEP Consensus Meeting	The meeting of the TEP as a group after individual evaluation of the proposals to reach a consensus on the strengths and weaknesses of each proposal relative to the evaluation criteria.
Termination	All parties to a contract are relieved from further unperformed contract obligations in accordance with the agreed terms and conditions of the contract.
Termination for Convenience	The cancellation by the FDIC of all or any portion of the unfinished remainder of the performance obligations set forth in a contract for the convenience of the FDIC.
Termination for Default	The termination of a contract where the contractor has failed to perform a material obligation under the contract such as failing to deliver within the prescribed time or failing to make satisfactory progress, or there exists a conflict of interest or other ethics violation.
Time and Materials Contract	A contract for the acquisition of services on the basis of direct labor hours at specified, fixed hourly rates and allowable materials.

U

Unauthorized Commitment	An assurance that results in a contract action, either an original contract or a modification, that is not binding because the FDIC representative who made it lacked the authority to undertake the action on behalf of the FDIC.
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W

Wage Determination	With respect to the Service Contract and Davis-Bacon Acts, a determination of the Department of Labor that a certain scale of wages is the prevailing wage in a locality.
Waivers of Conflicts of Interest	Waivers of conflicts of interest may be granted when, in light of all relevant circumstances, the interests of the FDIC in the contractor's participation outweighs the concern that a reasonable person may question the integrity of the FDIC's operations.
Walsh-Healey Public Contracts Act	Requires that contractors who supply materials, supplies, articles, or equipment are manufacturers or regular dealers and conform to Federal requirements for minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions.
Warrant	The Contracting Officer's certificate of authority to engage private sector firms in providing goods and services to the FDIC.

Women-Owned Business

Firm(s) in which at least 51% of the ownership and control is directly and unconditionally held by one or more women. A firm, which is principally owned by another business entity or by a trust (including employee stock ownership trusts) that is in turn owned and controlled by one or more women, does not meet this definition. In the case of a firm which is a corporation, at least 51% of each class of voting stock outstanding, and 51% of the aggregate of all stock outstanding, must be unconditionally owned by one or more women. Additionally, the firm(s)'s management and daily business operations must be conducted by one or more women. The women must have managerial experience of the extent and complexity needed to run the firm. A woman owner's unexercised right to cause a change in the control or management of the firm does not constitute minority control and management, regardless of how quickly or easily the right could be exercised.

Work Product

Any and all tangible or intangible products, reports, information recorded by whatever medium, documents, written materials, documentation, and any and all other Work Product, and portion of any of the foregoing, prepared, generated, delivered or created by the contractor's performance under an FDIC contract.

Written Solicitation

The solicitation of potential offerors by a written solicitation document when using an oral solicitation is not practical, technical criteria are specified and evaluated, background investigations or access to FDIC sites or systems are required, or the anticipated price is greater than \$100,000.

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List of Exhibits

Exhibit Number	Title
Exhibit I	Expenditure Delegations for Contracts, Leases, Legal Services, and Non-Procurement Related Expenses and Amendments
Exhibit II	Contractor Confidentiality Agreement (<i>FDIC 3700/46</i>)
Exhibit III	Forms Used to Request Wage Determinations <ul style="list-style-type: none"><li data-bbox="475 520 1421 554">v Notice of Intention to Make a Service Contract and Response to Notice (<i>SF 98</i>)<li data-bbox="475 564 1421 598">v Attachment A (<i>SF 98a</i>)<li data-bbox="475 609 1421 642">v Request for Authorization of Additional Classification and Rate (<i>SF 1444</i>)<li data-bbox="475 653 1421 686">v FDIC Wage Determination<li data-bbox="475 697 1421 730">v FDIC Contract Addendum - SCA
Exhibit IV	Implementation Procedures for Contracting-out Decisions for Contracts for Services (Article 17) [Reserved]
Exhibit V	Guidelines for Development of Cost Estimates for Contractual Goods or Services <ul style="list-style-type: none"><li data-bbox="475 875 1421 909">v Development of Cost Estimates for Contractual Requirements<li data-bbox="475 919 1421 953">v Sample Contract Cost Estimate
Exhibit VI	Implementing Price/Past Performance Tradeoff Best Value Approach
Exhibit VII	Implementing Integrated Best Value Assessment Approach
Exhibit VIII	RFQ Log
Exhibit IX	Source Selection Plan Organization
Exhibit X	Contract Milestone Schedule
Exhibit XI	Technical Evaluation Panel Documents for Best Value Scoring Method <ul style="list-style-type: none"><li data-bbox="475 1245 1421 1278">v Memorandum Establishing Technical Evaluation Guidelines<li data-bbox="475 1289 1421 1323">v Technical Evaluation Panel Rating Form<li data-bbox="475 1333 1421 1367">v Price Evaluation Scoring Summary<li data-bbox="475 1377 1421 1411">v Technical Evaluation Scoring Summary<li data-bbox="475 1421 1421 1455">v Combined Price/Technical Weighted Evaluation<li data-bbox="475 1465 1421 1499">v Combined Technical and Price Points Scoring Summary<li data-bbox="475 1509 1421 1543">v TEP Memorandum
Exhibit XII	Documentation for Technical Evaluation Panel: <ul style="list-style-type: none"><li data-bbox="475 1612 1421 1646">v Memorandum Establishing Technical Evaluation Panel<li data-bbox="475 1656 1421 1690">v Conflict of Interest Statement<li data-bbox="475 1701 1421 1734">v Confidentiality Agreement
Exhibit XIII	Contracting Officer Sample Letter Authorizing Contractors to Commence Work

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Exhibit Number	Title
Exhibit XIV	Background Investigation Forms <ul style="list-style-type: none">o Background Investigation Questionnaire for Contractors (FDIC 1600/07)o Background Investigation Questionnaire for Contractor Personnel and Subcontractors (FDIC 1600/04)o Fair Credit Reporting Act Notice and Authorization (FDIC 1600/10)
Exhibit XV	Sample Letters <ul style="list-style-type: none">o Contract Contingent Award/Award Lettero Notification to Unsuccessful Offeror Letter
Exhibit XVI	Letter of Oversight Manager Confirmation (FDIC 3700/22)
Exhibit XVII	Letter of Technical Monitor Confirmation (FDIC 3700/23)
Exhibit XVIII	Requirements Package Summary Checklist
Exhibit XIX	Consent to Assignment Forms <ul style="list-style-type: none">o Version A – FDIC will not hold Assignor liable for Assignee’s actionso Version B – FDIC will hold Assignor and Assignee joint and severally liable
Exhibit XX	Invoice Review Checklists <ul style="list-style-type: none">o Invoice Review Checklist for Contract Specialistso Invoice Review Checklist for Oversight Managers
Exhibit XXI	Contractor Travel <ul style="list-style-type: none">o Contractor Travel Reimbursement Guidelineso Sample Letter for Contractor to Obtain Tax Exempt Travel Rates
Exhibit XXII	Contracting File Checklists <ul style="list-style-type: none">o Purchase Order (\$5,000 or Less) File Checklisto Simplified Contracting File Checklisto Formal Contracting File Checklist
Exhibit XXIII	12 CFR, Part 366 (<i>Contractor Conflicts of Interest</i>)
Exhibit XXIV	12 CFR, Part 367 (<i>Suspension and Exclusion of Contractors and Termination of Contracts</i>)
Exhibit XXV	FDIC Procurement Credit Card Order Log
Exhibit XXVI	Contract Administration Plan (FDIC 3700/35)
Exhibit XXVII	Oversight Manager File Check List
Exhibit XXVIII	Contractor Past Performance RFP Reference Check Questionnaire (FDIC 3700/29)
Exhibit XXIX	Pre-Exit Clearance Record for Contractors (FDIC 3700/25)

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List of Exhibits

Exhibit Number	Title
Exhibit XXX	Contractor Representations and Certifications <ul style="list-style-type: none"><li data-bbox="477 401 1421 432">v FDIC Contractor Representations and Certifications (FDIC 3700/04a)<li data-bbox="477 443 1421 474">v Executive Order 11246 and Amendments (Equal Employment Opportunity)<li data-bbox="477 485 1421 516">v 41 CFR, Part 60-1 (Equal Employment Opportunity)<li data-bbox="477 527 1421 558">v Disclosure of Lobbying Activities (OMB - SF LLL)<li data-bbox="477 569 1421 600">v Disclosure of Lobbying Activities Continuation Sheet (<i>OMB - SF LLL - A</i>)
Exhibit XXXI	FDIC Integrity and Fitness Representations and Certifications (<i>FDIC 3700/12</i>)
Exhibit XXXII	Contract Closeout Documents <ul style="list-style-type: none"><li data-bbox="477 720 1421 751">v Contract Closeout Letter to Contractor<li data-bbox="477 762 1421 793">v Contract Closeout Memorandum to Oversight Manager<li data-bbox="477 804 1421 835">v Contract Closeout Checklists
Exhibit XXXIII	Product Evaluation or Demonstration <ul style="list-style-type: none"><li data-bbox="477 909 1421 940">v Memorandum of Understanding (MOU)<li data-bbox="477 951 1421 982">v Confidentiality Agreement
Exhibit XXXVI	Oversight Management Monitoring Plan
Exhibit XXXV	Tax Exemption

FEDERAL DEPOSIT INSURANCE CORPORATION

CERTIFIED COPY OF RESOLUTION OF THE BOARD OF DIRECTORS

I, Robert E. Feldman, Executive Secretary of the Federal Deposit Insurance Corporation, do hereby certify that the attached is a true and correct copy of a resolution duly adopted at a meeting of the Board of Directors of said Corporation, regularly called and held on the 26th day of May, 1998, and that the same has not been amended or rescinded and is now in full force and effect.

(SEAL)

665040

IN WITNESS WHEREOF, I have hereunto subscribed my name and caused the seal of the Corporation to be affixed hereto, in the City of Washington and District of Columbia, this 26th day of May, 1998.



Executive Secretary
Federal Deposit Insurance Corporation

Resolution No. I (Corporate Seal No 065040):

WHEREAS, the Board of Directors (“Board”) of the Federal Deposit Insurance Corporation (“FDIC” or “Corporation”) is responsible for administering the Federal Deposit Insurance Act and the provisions of numerous other laws regarding insurance, regulation, and supervision of depository institutions; and

WHEREAS, Article IV, section 5, of the Bylaws of the Corporation provides in part that “[w]ithin the limitations of the law, the Board of Directors may delegate any of its specific or incidental powers to any standing or special committee of the Corporation or to any officer or agent of the Corporation upon such terms and conditions as it shall prescribe, except the power to amend these Bylaws or to adopt new bylaws”; and

WHEREAS, on September 17, 1996, and by resolution bearing Seal No. 060985, the Board delegated to various FDIC officials the authority to approve expenditures of funds associated with contracts, purchase orders, orders under Basic Ordering Agreements and other multiple-order requirements contracts, and all other contractual instruments awarded in the Corporate, receivership, or conservatorship capacities, leases, legal services, and non-procurement related expenses of the Corporation, which resolution was entitled “Expenditure Delegations for Contracts, Leases, Legal Services, and Non-Procurement Related Expenses” (“Expenditure Delegations”); and

WHEREAS, paragraph a. of section IV of the Expenditure Delegations establishes provisions governing delegated authority actions with respect to noncompetitive procurements except for noncompetitive contracts and legal referrals of \$2,500 or less in aggregate value, which are subject to and governed by contracting policies and procedures issued by the Director of the Division of Administration and the General Counsel, respectively; and

WHEREAS, because purchases of goods and services readily available in the marketplace are simple in nature and the availability of market price information assures a fair price, the Board has determined that increasing the aggregate value threshold for noncompetitive contracts and legal referrals from \$2,500 to \$5,000 would increase administrative efficiency but would not subject the Corporation to risks of higher costs for goods and services; and

WHEREAS, the Expenditure Delegations require further amendment to correct omissions in connection with an August 4, 1997, amendment thereto.

NOW, THEREFORE, BE IT RESOLVED, that resolution bearing seal No. 060985, dated September 17, 1996, as amended by resolutions bearing Seal Nos. 061244, 062371, and 063808, dated respectively, October 29, 1996, May 6, 1997, and August 4, 1997, is further amended by --

- in section III thereof, removing the words “Deputies to the Chairperson” and inserting in their place the words “Deputy to the Chairperson and COO”; and
- in paragraph a. of section IV thereof, removing the figure “\$2,500” and inserting “\$5,000” in its place; and
- removing the words “a deputy to the Chairperson is effective only when confirmed in writing by such deputy to the Chairperson” wherever they appear and inserting in their place the words “the Deputy to the Chairperson and Chief Operating Officer or the Chief Financial Officer is effective only when confirmed in writing by such official, as appropriate.”

FEDERAL DEPOSIT INSURANCE CORPORATION

CERTIFIED COPY OF RESOLUTION OF THE BOARD OF DIRECTORS

I, Robert E. Feldman, Executive Secretary of the Federal Deposit Insurance Corporation, do hereby certify that the attached is a true and correct copy of a resolution duly adopted at a meeting of the Board of Directors of said Corporation, regularly called and held on the 26th day of May, 1998, and that the same has not been amended or rescinded and is now in full force and effect.

(SEAL)

065041

IN WITNESS WHEREOF, I have hereunto subscribed my name and caused the seal of the Corporation to be affixed hereto, in the City of Washington and District of Columbia, this 26th day of May, 1998.



Executive Secretary
Federal Deposit Insurance Corporation

Resolution No. II (Corporate Seal No. 065041):

WHEREAS, the Board of Directors (“Board”) of the Federal Deposit Insurance Corporation (“FDIC” or “Corporation”) is responsible for administering the Federal Deposit Insurance Act and the provisions of numerous other laws regarding insurance, regulation, and supervision of depository institutions; and

WHEREAS, Article IV, section 5, of the Bylaws of the Corporation provides in part that “[w]ithin the limitations of the law, the Board of Directors may delegate any of its specific or incidental powers to any standing or special committee of the Corporation or to any officer or agent of the Corporation upon such terms and conditions as it shall prescribe, except the power to amend these Bylaws or to adopt new bylaws”; and

WHEREAS, on December 11, 1996, and by resolution bearing seal No. 061427, the Board established the Corporation’s Standing Committee structure and delegated to those committees authority either to act on certain matters or to make recommendations to the Board on various matters presented to it; and

WHEREAS, section I of that resolution established the Case Review Committee and subparagraph (4) of paragraph B thereof states that the Case Review Committee shall, with respect to the Contract Dispute Resolution Process regarding contracts transferred to the Corporation in connection with the termination of the Resolution Trust Corporation (“RTC”), hear and decide appeals of certain RTC contract claims in dispute; and

WHEREAS, a total of 726 RTC contracts were transitioned to the FDIC for continued support, with only 24 such contracts remaining active and no appeal on an RTC contract claim has been received since November 1996; and

WHEREAS, FDIC contract claims are considered under procedures set forth in the Acquisition Policy Manual, with the final decision in such claims made by the Division of Administration; and

WHEREAS, both processes provide a fair and administratively sound approach to claims settlement, but the process for resolving RTC contract claims is more labor-intensive and costly than the process for resolving FDIC contract claims; and

WHEREAS, the Board has determined that the process for resolving FDIC contract claims provides a sufficient level of administrative control and diligence in reaching resolution for any residual RTC contract claims that may be received and that its utilization will streamline the administrative processes, result in cost savings to the Corporation, and increase responsiveness to clients.

NOW, THEREFORE, BE IT RESOLVED, that resolution bearing seal No. 061427, dated December 11, 1996, as amended by resolution bearing Seal No. 063808, dated August 4, 1997, is further amended by deleting subparagraph (4) of paragraph B of section I and by renumbering subparagraphs (5) and (6) and subparagraphs (4) and (5), respectively.

BE IT FURTHER RESOLVED, that the Board of Directors hereby delegates to the Director, Division of Administration, the authority to resolve all contract claims or disputes under the procedures established in the Acquisition Policy Manual, whether those claims or disputes arise out of FDIC contracts or RTC contracts transitioned to the FDIC.

FEDERAL DEPOSIT INSURANCE CORPORATION

CERTIFIED COPY OF RESOLUTION OF THE BOARD OF DIRECTORS

I, Robert E. Feldman, Deputy Executive Secretary of the Federal Deposit Insurance Corporation, do hereby certify that the attached is a true and correct copy of a resolution duly adopted by the Board of Directors of said Corporation, on the 17th day of September, 1996, by notational vote, and that the same has not been amended or rescinded and is now in full force and effect.

(SEAL)

IN WITNESS WHEREOF, I have hereunto subscribed my name and caused the seal of the Corporation to be affixed hereto, in the City of Washington and District of Columbia, this 17th day of September, 1996.

060985


Deputy Executive Secretary
Federal Deposit Insurance Corporation

RESOLUTION

WHEREAS, the Board of Directors ("Board") of the Federal Deposit Insurance Corporation ("FDIC" or "Corporation") is responsible for administering the Federal Deposit Insurance Act and the provisions of numerous other laws regarding the insurance, regulation, and supervision of depository institutions; and

WHEREAS, Article IV, section 5, of the Bylaws of the Corporation provides in part that "[w]ithin the limitations of the law, the Board of Directors may delegate any of its specific or incidental powers to any standing or special committee of the Corporation or to any officer or agent of the Corporation upon such terms and conditions as it shall prescribe, except the power to amend these Bylaws or to adopt new bylaws"; and

WHEREAS, on December 15, 1992, by resolution bearing Seal No. 054241, the Board of Directors of the Federal Deposit Insurance Corporation adopted certain delegations of authority entitled "Corporate Delegations of Authority"; and

WHEREAS, the Board subsequently amended resolution bearing Seal No. 054241 on September 28, 1993, and May 16, 1995, by resolutions bearing Seal Nos. 055910 and 058801, respectively; and

WHEREAS, the Board is of the view that the existing Corporate Delegations of Authority established by resolution bearing Seal No. 054241, as amended, are in need of substantial revision in order to fulfill the requirement of the Corporate Operating Plan that delegations of authority be changed in order to reduce processing time, empower employees, and promote accountability; and

WHEREAS, on March 24, 1992, by resolution bearing Seal No. 052581, the Board adopted certain delegations of authority to the General Counsel (or designee) to retain and approve payment of private attorneys or law firms for liquidation matters, professional liability matters, resolution matters, and general matters; and

WHEREAS, on November 10, 1992, by resolution bearing Seal No. 053929, the Board adopted in paragraphs (1) and (2) of section E thereof certain delegations of authority to the Corporation's General Counsel (or designee) to retain and approve payment of private attorneys or law firms for matters concerning the management of the FSLIC Resolution Fund; and

WHEREAS, the Board subsequently amended resolution bearing Seal No. 053929 on November 10, 1992, by resolution bearing Seal No. 053930; and

WHEREAS, the Board is of the view that the existing delegations of authority to the General Counsel established by resolution bearing Seal No. 052581 and paragraphs (1) and (2) of section E of resolution bearing Seal No. 053929, as amended, are also in need of substantial revision in order to fulfill the requirement of the Corporate Operating Plan that delegations of authority be changed in order to reduce processing time, empower employees, and promote accountability; and

WHEREAS, the Corporate Delegations Task Force has recommended that the "Corporate Delegations of Authority" (1) be revised to increase the dollar limits under which the officers of the Corporation can obligate the Corporation exercising delegated authority, to clarify that the delegations are applicable to contracting, leasing, legal services, and non-procurement related expenditures, and to reduce the number of exceptions to the basic delegated authority dollar limits, and (2) be retitled the "Expenditure Delegations for Contracts, Leases, Legal Services, and Non-Procurement Related Expenses"; and

WHEREAS, by resolution bearing Seal No. 59817, the Board, on December 12, 1995, among other things, delegated to Corporation managers and committees the authority the Chief Executive Officer of the Resolution Trust Corporation ("RTC") had, prior to the termination of the RTC on December 31, 1995, delegated to RTC managers pursuant to various sections of the RTC Master Delegations of Authority, as modified, as attached and incorporated into such resolution ("Modified Master Delegations of Authority"); and

WHEREAS, the Board had specifically contemplated in resolution bearing Seal No. 59817 that each section of the Modified Master Delegations of Authority would be effective until such section is specifically revoked by the Board either in amendments to the Corporation's delegations of authority or in any other resolution; and

WHEREAS, adoption of the delegations of authority set out hereinafter will effectively supersede the need for the existence of section VII(C) of the Modified Master Delegations of Authority, entitled "Delegations of Authority Regarding Approval of Outside Counsel, Legal Matter Budgets, and Payment of Legal Bills" and section X of the Modified Master Delegations of authority, entitled "Delegations of Authority -- Contracting."

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors, consistent with the authority in the Federal Deposit Insurance Act and the Bylaws of the Corporation, hereby delegates to various FDIC officials in the manner set out below the authority to approve expenditures of funds associated with contracts, purchase orders, orders under Basic Ordering Agreements and other multiple-order requirements contracts, and all other contractual instruments awarded in the Corporate, receivership, or conservatorship capacities, leases, legal services, and non-procurement related expenses of the Corporation.

BE IT FURTHER RESOLVED, that the Board of Directors hereby authorizes the Director of the Division of Administration (1) to serve as the Corporation's chief contracting officer with the authority to develop contracting policy and to carry out and conduct the contracting function on behalf of the Corporation and (2) to serve as the Corporation's senior leasing official with the authority to manage, supervise, and direct the Corporation's space management function.

BE IT FURTHER RESOLVED, that the Board of Directors hereby authorizes the General Counsel to serve as the Corporation's chief contracting official for legal services with the authority to develop contracting policy for legal services and to carry out and conduct the legal services contracting function on behalf of the Corporation.

BE IT FURTHER RESOLVED, that section VII(C) of the Modified Master Delegations of Authority, entitled "Delegations of Authority Regarding Approval of Outside Counsel, Legal Matter Budgets, and Payment of Legal Bills" and section X of the Modified Master Delegations of Authority, entitled "Delegations of Authority -- Contracting," which the Board had incorporated into resolution bearing Seal No. 59817, are hereby rescinded.

BE IT FURTHER RESOLVED, that resolution bearing Seal No. 052581 and paragraphs (1) and (2) of section E of resolution bearing Seal No. 053929, as amended by resolution bearing Seal No. 053930, are hereby rescinded.

BE IT FURTHER RESOLVED, that to ensure that existing legal referrals made in accordance with the foregoing rescinded resolutions delegating authority to the General Counsel shall be deemed to comply with this Resolution, the Board of Directors hereby determines that such legal referrals shall be deemed to have expenditure approval of the estimated cost to complete the legal referral as may have been set forth in the authority to sue memorandum, approved budget, legal services invoice, or other document authorizing the legal referral, as approved prior to adoption of this resolution.

BE IT FURTHER RESOLVED, that resolution bearing Seal No. 054241, as amended by resolutions bearing Seal Nos. 055910 and 058801, is hereby rescinded, and the following new "Expenditure

Delegations for Contracts, Leases, Legal Services, and Non-Procurement Related Expenses" are hereby adopted and approved:

- I. Definitions. In order to clarify the usage of certain words or terms contained herein for the purposes of these delegations of authority, the following definitions are provided:
 - a. CFO means the Chief Financial Officer.
 - b. Contract means a mutually binding legal relationship that obligates the seller to furnish goods or services of any nature, except legal services as defined herein. Contracts include without limitation purchase orders, orders issued under a Basic Ordering Agreement ("BOA") and other multiple-order requirements contracts, software licensing agreements, and all other contractual instruments used by the Division of Administration to acquire goods and services on behalf of the Corporation or any receivership or conservatorship. All contracts not otherwise mentioned in this definition shall be subject to these delegations unless specifically excepted by these delegations or otherwise by the Board of Directors.
 - c. Contract Modification means any written change in the terms of a contract involving the specifications, delivery point, rate of delivery, contract period, price quantity, or any other provision. Contract modifications involve either administrative or substantive changes. Administrative modifications are awarded on a unilateral basis and generally do not change or alter the rights of the parties to the contract (e.g., a change in the billing address). Substantive modifications are awarded on a bilateral basis and generally involve changes in the rights of the parties to the contract (e.g., extensions to the period of performance).
 - d. Contracting Authority means the specific authority held by the Director of the Division of Administration, as the Corporation's chief contracting officer, to develop contracting policy, to solicit proposals, and to enter into, modify, and terminate contracts on behalf of the Corporation or any receivership or conservatorship. The Director of the Division of Administration's contracting authority may be redelegated only to Contracting Officers in the Division of Administration.
 - e. Contracting Officer means an employee of the Corporation within the Division of Administration with delegated authority to legally bind the Corporation by signing contracts and all modifications issued thereto.
 - f. COO means the Deputy to the Chairman and Chief Operating Officer or the Chief Operating Officer, as is applicable.
 - g. Expenditure Authority means the authority to approve planned expenditures associated with contracts, leases, legal services, and non-procurement related expenses. These expenditures include contractor fees, costs, and expenses associated directly with acceptable performance under Corporation contracts or legal referrals in the Corporate, receivership, or conservatorship capacities and non-procurement related expenses as defined herein. For legal services, expenditure authority includes the authority to approve expenditures associated with actions necessary and appropriate to protect the Corporation's interests. For leases and lease amendments, expenditure authority means the authority to approve all payments associated with the occupancy of the leased facility over the lease term, including base rent, tax and operating expense escalations, and the costs associated with the initial occupancy of the leased facility (including initial tenant alterations, cabling, wiring and moving costs).

- h. Expenditure Ceiling means a dollar limit on expenditures which have been approved in accordance with these delegations for contracts, legal referrals, and non--procurement related expenses. The total dollar amount approved for (1) a contract shall include the estimated cost for all contractual requirements for the initial period of performance and option periods, if applicable, (2) a BOA or multiple-order requirements contract shall include all orders to be awarded in an aggregate amount, and (3) a legal referral shall include the estimated cost to complete the legal referral. In addition, expenditure ceiling means the total dollar amount approved for a non-procurement related expense.
- i. Lease means an agreement between the FDIC and a landlord in which the landlord agrees to convey to the FDIC exclusive possession of real property over a designated period of time in exchange for payment of rent.
- j. Lease Amendment means any changes to the terms of a lease including, but not limited to, changes which extend the term of the lease, increase the rentable square footage of the premises leased, or increase the rent paid under the lease.
- k. Leasing Authority means the specific authority held by the Director of the Division of Administration, as the Corporation's senior leasing official, to develop leasing policy, to solicit proposals and to enter into, modify, sublease, and terminate leases on behalf of the Corporation or any receivership or conservatorship.
- l. Leasing Official means an employee of the Corporation within the Division of Administration to whom the Director of the Division of Administration has delegated authority to solicit proposals and to enter into, modify, sublease and terminate leases.
- m. Legal Referral Authority means the specific authority held by the General Counsel as the Corporation's chief contracting official for legal services to enter into, modify, and terminate legal referrals on behalf of the Corporation or any receivership or conservatorship. The Legal Division shall have sole authority to develop contracting policy for legal services and to solicit proposals for legal services. The General Counsel's legal referral authority may be redelegated only to senior lawyers ("Senior Legal Staff") in the Legal Division.
- n. Legal Referral means a binding legal relationship that obligates the legal services provider to furnish legal services. Legal referrals include referral letters, task order agreements, task orders, joint referrals, and all other agreements used by the General Counsel to acquire legal services on behalf of the Corporation or any receivership or conservatorship. All legal referrals not otherwise mentioned in this definition shall be subject to these delegations unless specifically excepted by these delegations or otherwise by the Board of Directors.
- o. Legal Referral Modification means any written change in the terms of a legal referral.
- p. Legal Services mean professional services provided by private attorneys or law firms, including services of non-lawyers in their employ, outside neutrals for alternative disputes resolution, including evaluators, mediators, and arbitrators, and supporting services provided by others outside the legal profession to support the professional services of private attorneys, law firms, or Legal Division lawyers.
- q. Noncompetitive Procurement means the acquisition of goods or services, except legal services, when only one source is solicited or when the goods or services can only be provided by a single source, according to policies and procedures developed by the Division of Administration. For legal services, a noncompetitive procurement means

the award of a legal referral when only one private attorney, law firm or service provider is considered.

- r. Non-procurement Related Expenses mean expenses that will result in payments by the Corporation or receiverships using approved methods and procedures other than contracts awarded by the Division of Administration or legal referrals awarded by the Legal Division. Such methods include, but are not limited to, Payment Authorization Vouchers issued in accordance with Corporate policies and procedures, Petty Cash vouchers, training reimbursements under form SF-182, Travel Authorizations/Notices of Relocation Authorization, Memoranda of Understanding, and Interagency Agreements.
- s. Senior Legal Staff means senior lawyers within the Legal Division with delegated authority to legally bind the Corporation by signing referral letters and modifications thereto.

II. General

- a. No official or employee of the Corporation may enter into a contract, lease, or legal referral or authorize an expenditure of funds for a contract, lease, legal referral, or non-procurement related expense in excess of the amount available in the program office's annual Budget without prior approval of the CFO. The Budget includes approved estimates of expenditures required to support Corporate objectives. However, it does not automatically constitute authority to enter into contracts or legal referrals or authorize the payment of non-procurement related expenses. All planned expenditures shall be reviewed and approved prior to procurement, execution of legal referral, or payment of non-procurement related expenses in accordance with delegated authority, subject to these Delegations.
- b. Expenditure authority for competitive and noncompetitive contracting or legal referrals or for authorizing payments of non-procurement related expenses is a program office responsibility. It relates to the process of approving the use of funds prior to the award of contracts, execution of legal referrals, or payment of non-procurement related expenses. Expenditure authority does not give the program office the approval to conduct and solicit contract actions or to execute contracts or legal referrals. These responsibilities belong solely to Contracting Officers in the Division of Administration with proper delegated authority and Senior Legal Staff in the Legal Division with proper delegated authority for legal services, respectively.
- c. For non-procurement related expenses, expenditure authority must be obtained prior to binding the Corporation to making payments thereunder. For contracts, expenditure authority must be obtained prior to issuance of the solicitation. Under unique circumstances, the Director of the Division of Administration may approve the issuance of a solicitation prior to obtaining expenditure approval.
- d. The Division of Administration is responsible for obtaining approval for leases and lease amendments.
- e. Notwithstanding any other provision of this resolution, the Vice Chairman and the Director (Appointive) may approve Petty Cash vouchers, training reimbursements under form SF-182, Travel Authorizations, and Travel Vouchers associated with the operations of their respective offices in accordance with applicable Corporation administrative policies and procedures.

- III. Basic Delegations. Expenditure authority for contracts, legal services, and non-procurement related expenses, in the Corporate, receivership, or conservatorship capacities, is delegated according to the dollar amounts set forth below and is subject to the Exceptions and the Limitations contained in sections IV and IX, respectively, of these Delegations. The authority delegated to a division or office director who reports to the Deputy to the Chairperson and Chief Operating Officer or the Chief Financial Officer is effective only when confirmed in writing by such official, as appropriate.

<u>Level of Authority</u>	<u>Dollar Limits</u>
Office Directors	Up to \$1,000,000
Inspector General	Up to \$2,000,000
Division Directors	Up to \$2,000,000
Deputies to the Chairperson	Up to \$3,000,000
COO and CFO jointly	Up to \$5,000,000
Chairperson	Up to \$5,000,000
Board of Directors	Over \$5,000,000

- IV. Exceptions to the Basic Delegations. The following exceptions apply to the Basic Delegations stated in section III.

- a. Noncompetitive Procurements. Expenditure authority with respect to noncompetitive procurements is delegated according to the dollar amounts set forth below. The authority delegated to a division or office director who reports to the Deputy to the Chairperson and Chief Operating Officer or the Chief Financial Officer is effective only when confirmed in writing by such official, as appropriate. Noncompetitive expenditure authority is calculated based on the total value of the specific noncompetitive requirement being considered for execution. This section shall not apply to contracts and legal referrals of \$5,000 or less in aggregate value. Contracts and legal referrals below this threshold shall be subject to and governed by contracting policies and procedures issued by the Director of the Division of Administration and by the General Counsel for the Legal Division, respectively.

<u>Level of Authority</u>	<u>Dollar Limits</u>
Division Directors/ Office Directors/ Inspector General	Up to \$50,000
COO and CFO jointly	Up to \$250,000
Chairperson	Up to \$250,000
Board of Directors	Over \$250,000

- b. Receivership Expenses. Receivership expenses, other than those arising under contracts for goods or services awarded by the Corporation as receiver, shall be approved and paid in accordance with applicable delegations of authority granted by the Board of Directors to employees of the Division of Resolutions and Receiverships. Those expenses include but are not limited to funding loan commitments, purchasing and selling assets, paying off secured borrowings, paying

any Federal Reserve debt, paying insured deposits, and paying administrative expenses of the receiver, as that term is used in section 360.4 of the Corporation's regulations; provided, however, that such administrative expenses must not be in connection with contracts for goods or for services awarded by the Corporation as receiver following the failure of the institution for which it is acting as receiver.

V. Approval Level Needed to Lease Space and Enter into Lease Amendments

- a. New Leases. The approval level needed for new leases is stated below in paragraph b. Receipt of approval to lease space from the appropriate authority shall constitute approval to make rental payments over the entire term of the lease. All leases are subject to review by the Legal Division with respect to form and content.
- b. Level of Authority to Approve New Leases. The Board of Directors retains the authority to approve leases for multi-division offices (including Field Service Centers and Regional Offices); and leases for single division offices when the lease term is three (3) years or more. The Director of the Division of Administration is hereby delegated the authority to approve all other leases including, but not limited to, single division offices when the lease term is less than three (3) years; leases for warehouse space; and leases for Field Offices for the Division of Supervision and/or the Division of Compliance and Consumer Affairs.
- c. Lease Amendments. The approval level required for lease amendments is delegated according to the dollar amounts set forth below in paragraph d. Approval is required for the estimated amount of the specific lease amendment being considered for execution including base rent, tax, and operating expense escalations over the remaining term of the lease. The authority delegated to the Director of the Division of Administration is effective only when confirmed in writing by the Deputy to the Chairman and Chief Operating Officer. All amendments to leases are subject to review by the Legal Division with respect to form and content.
- d. Level of Authority to Approve Lease Amendments. The following levels of authority shall be used to approve all lease amendments:

<u>Level of Authority</u>	<u>Dollar Limits</u>
Director, Division of Administration	Up to \$3,000,000
Board of Directors	Over \$3,000,000

VI. Expenditure Ceiling. The following describes how to determine the dollar amount of a planned expenditure so that proper approval may be obtained.

- a. Contracts. The expenditure ceiling for a contract shall include the aggregate dollar amount necessary for complete performance.
- b. Contract Modifications. Expenditure authority for contract modifications shall be based on the cumulative value of the contract plus modification. However, when a contract is awarded on a competitive basis and the modification is noncompetitive, then expenditure authority is only required for the value of the noncompetitive modification being considered for execution. Expenditure authority for multiple noncompetitive modifications under the same contract must be obtained on a cumulative value basis.

- c. Contracts with Options. If options are to be included in the proposed contract at the time of award, then the expenditure ceiling for the basic period of performance and all options shall be included in the approved expenditure authority.
- d. Orders Awarded Under Basic Ordering Agreements Multiple-Order Requirements Contracts. For all BOAs and multiple-order requirements contracts, the expenditure ceiling shall include the total cumulative dollar amount of all orders to be awarded thereunder during the basic term and, if applicable, all option terms. Expenditure authority for individual orders to be awarded under BOAs and multiple-order requirements contracts is not required as long as the cumulative amount of the orders does not exceed the expenditure ceiling. However, orders under BOAs or multiple-order requirements contracts shall be approved by the appropriate division or office director or designee.
- e. Legal Referral. The expenditure ceiling for a legal referral shall include the aggregate dollar amount necessary for complete performance of the legal referral, including any modifications thereto.
- f. Budget Approval. Expenditure authority shall always be obtained in the total cumulative amount for all contracts and legal referrals. Although expenditure authorization may be approved on a multi-year basis, Budget approval must still be obtained on an annual basis. With respect to existing multi-year leases which received approval from the required authority prior to execution of the lease or lease amendment, the Division of Administration shall provide, as part of the Budget preparation process, the anticipated rental amounts to be paid during the Budget year for all such leases which will be in effect at the beginning of the Budget year, and such rental amounts will be included in the Budget.

VII. Functional Concurrence Requirements. The Corporation has established, and will continue to establish from time to time, policies and procedures associated with the acquisition of certain types of goods and services. These policies and procedures generally establish a single division with functional responsibility for specific goods and services and, among other things, require that division's concurrence prior to contract award. The following goods and services shall require concurrence from the Division designated below prior to awarding any contract:

<u>Expenditure</u>	<u>Concurring Division</u>
Temporary help, furniture and equipment, facilities, and corporate goods and services.	Division of Administration
Information Resources Management goods and services	Division of Information Resources Management
Travel and Relocation	Division of Finance

VIII. Functional Concurrences Requirements for Legal Services. The Corporation has established, and will continue to establish from time to time, policies and procedures associated with the procurement of legal services. These policies and procedures generally establish the requirement that the division for whom the legal services are performed concur in the expenditure of funds for certain legal referrals. The Legal Division shall obtain the concurrence of the division for whom the legal services are performed when the expenditure ceiling for a legal referral, including modifications, exceeds \$2,000,000.

- IX. Limitations to the Basic Delegations - Prohibited Contracts/Legal Referrals. Contracts for services and legal referrals that establish an employer-employee relationship between the Corporation and the contractor's employees are designated as personal services contracts and are prohibited. The Director of the Division of Administration and the General Counsel shall be responsible for developing policies and procedures that will enforce this prohibition for their respective areas of contracting responsibility.
- X. Contracting Authority
- a. Director of the Division of Administration. The Director of the Division of Administration is authorized to serve as the Corporation's chief Contracting Officer with the authority to develop policies and procedures with respect to contracting and to sign and award contracts on behalf of the Corporation, when such contracts have been approved under the appropriate expenditure authority cited herein. The Director is also authorized to take other action necessary and appropriate to perform the contracting and procurement functions as assigned to the Division of Administration by the Corporation's Bylaws.
- b. The authority to develop policies and procedures with respect to contracting and to solicit proposals and to enter into, modify, and terminate contracts may be delegated from the Director of the Division of Administration to Contracting Officers within the Division of Administration. Any Corporation employees without the delegated contracting authority to solicit proposals or enter into, modify, and terminate contracts are acting outside the scope of their authority.
- c. General Counsel. The General Counsel is authorized to serve as the Corporation's chief contracting official for legal services with authority to develop policies and procedures with respect to contracting for legal services and to sign and award legal referrals on behalf of the Corporation, when such legal referrals have been approved under the appropriate expenditure authority cited herein. The General Counsel is also authorized to take other action necessary and appropriate to protect the Corporation's interests and to perform the legal services contracting function as assigned to the Legal Division by the Corporation's Bylaws.
- d. The authority to develop policies and procedures with respect to legal services contracting and to enter into, modify, amend, and terminate legal referrals may be delegated from the General Counsel to Senior Legal Staff within the Legal Division. Any Corporation employees who enter into, modify, amend, and terminate legal referrals, without delegated legal referral authority, are acting outside the scope of their authority.
- XI. Leasing Authority. The Director of the Division of Administration is authorized to develop policies and procedures with respect to leasing space and to enter into leases and lease amendments on behalf of the Corporation when such agreements have been approved in accordance with this Delegation. The Director is also authorized to take other action necessary and appropriate to acquire space for the Corporation as assigned to the Division of Administration by the Corporation's Bylaws. Any employees who solicit proposals or enter into, amend, sublease, or terminate leases without authority to do so are acting outside the scope of their authority. Notwithstanding the foregoing, the Director of the Division of Resolutions and Receiverships or his or her designee may, pursuant to paragraph C(35) of resolution bearing Seal No. 062371, dated May 6, 1997, lease temporary space for a period not to exceed 24 months for field liquidation operations based on prevailing market rates in

the area, provided that any such lease is in connection with the failure of an institution for which it is acting as receiver.

XII. Funding Authority. The Director of the Division of Finance is authorized to fund actions approved by appropriate authorities under this and other Corporation resolutions and the Rules and Regulations of the Corporation, unless prohibited by law. The Director of the Division of Finance is also authorized to take other actions necessary and appropriate to carry out the budgeting, funding, and accounting functions of the Division of Finance as set out in the Bylaws of the Corporation (to integrate budget execution and accounting functions in order to monitor the financial execution of the Corporation's Budget; to receive, deposit, disburse, manage, safely keep and account for all funds of the Corporation; and maintain all accounting records of the Corporation). This includes authority for write-off of miscellaneous Corporate receivables deemed to be uncollectible or for which the cost of collection is not justified, with the concurrence of the Director of the appropriate program office.

XIII. Miscellaneous Provisions

- a. Redelegation of Approval Authority. Any of the authorities delegated herein including but not limited to the Basic Delegations (section III) or in the Exceptions to the Basic Delegations (section IV), may be redelegated to responsible subordinate staff members in accordance with applicable procedures. Copies of any such redelegations shall be provided to the Director of the Division of Finance, the Director of the Division of Administration, and the Executive Secretary, and shall identify the staff member(s) to whom authority has been redelegated, state the specific authority redelegated, and be signed by the redelegating official or, in the case of a redelegation by the Board, by the Executive Secretary.
- b. Consistency with Applicable Laws and Regulations. These Delegations set out applicable delegated authority limits unless otherwise prohibited by law or by the Corporation's Rules and Regulations.
- c. Approval Consistent with Corporation Administrative Policy and Procedures. It is the responsibility of the approving authority to ensure that actions approved under these Delegations are approved in accordance with published Corporation administrative policies and procedures.
- d. Expenditure Decisions Affecting Corporation Policy. Expenditure authority delegated or redelegated pursuant to this resolution shall not be exercised when a potential expenditure decision could affect Corporation policy or attract unusual attention or publicity. The authority to make expenditure decisions in such circumstances is reserved to the Board of Directors.

CONFIRMATION OF DELEGATION OF AUTHORITY

On September 17, 1996, by resolution bearing Seal No. 060985, the Board of Directors delegated Expenditure Authority, as that term is defined therein and subject to certain exceptions and limitations, for contracts and non-procurement related expenses up to \$1,000,000 for office directors and up to \$2,000,000 for division directors (with a limit of up to \$50,000 for noncompetitive procurements for both division and office directors). In making the delegations described above, the Board provided that the authority delegated to a division or office director who reports to a deputy to the Chairperson is effective only when confirmed in writing by such deputy to the Chairperson. I hereby confirm the delegation of Expenditure Authority described above to each division and office Director under my general supervision.

9/19/96

Date

Dennis F. Allen

Deputy to the Chairman and
Chief Operating Officer

CONFIRMATION OF DELEGATION OF AUTHORITY

On September 17, 1996, by resolution bearing Seal No. 060985, the Board of Directors delegated Expenditure Authority, as that term is defined therein and subject to certain exceptions and limitations, for contracts and non-procurement related expenses up to \$1,000,000 for office directors (with a limit of up to \$50,000 for noncompetitive). In making the delegations described above, the Board provided that the authority delegated to a division or office director who reports to a deputy to the Chairperson is effective only when confirmed in writing by such deputy to the Chairperson. I hereby confirm the delegation of Expenditure Authority described above to each office Director under my general supervision.

09/17/96

Date

Paul J. ...

Deputy to the Chairman for Policy

CONFIRMATION OF DELEGATION OF AUTHORITY

On September 17, 1996, by resolution bearing Seal No. 060985, the Board of Directors delegated Expenditure Authority, as that term is defined therein and subject to certain exceptions and limitations, for contracts and non-procurement related expenses up to \$1,000,000 for office directors and up to \$2,000,000 for division directors (with a limit of up to \$50,000 for noncompetitive procurements for both division and office directors). In making the delegations described above, the Board provided that the authority delegated to a division or office director who reports to a deputy to the Chairperson is effective only when confirmed in writing by such deputy to the Chairperson. I hereby confirm the delegation of Expenditure Authority described above to each division and office director under my general supervision.

September 17, 1996
Date

William A. Longbeak
Deputy to the Chairman for Finance
and Chief Financial Officer

CONTRACTOR CONFIDENTIALITY AGREEMENT

[NOTE: THIS AGREEMENT SHOULD BE EXECUTED BY AN AUTHORIZED OFFICIAL OF THE RECIPIENT AND BY EACH EMPLOYEE OF THE RECIPIENT WHO WILL WORK ON SITE AT A FDIC FACILITY]

This Confidentiality Agreement ("Agreement") is executed this _____ day of _____, 200__ by _____ **[INSERT NAME OF CORPORATION OR OTHER ENTITY OR EMPLOYEE OF THE RECIPIENT WHO WILL WORK ON SITE AT A FDIC FACILITY]** ("Recipient") and Federal Deposit Insurance Corporation, acting in any capacity ("FDIC").

In consideration of the mutual promises set forth herein, Recipient and FDIC agree to the following:

1. Confidential Information. FDIC acting in any of its capacities, may provide Recipient with, or allow Recipient access to, or Recipient may obtain certain information not generally known to the public concerning federally insured depository institutions, Federal Deposit Insurance Corporation, Receiver, assets of the Receiver, Conservator, assets of the Conservator, and any other confidential information. All such information shall be known as "Confidential Information." Recipient might from time to time also obtain information or access to information that is not given directly to Recipient. All such information so obtained shall also be considered and treated as Confidential Information.

2. No Disclosure. Except as expressly permitted by Paragraph 3 below, Recipient shall not at any time disclose, permit the disclosure of, release, disseminate, or transfer, whether orally or by any other means, any part of such Confidential Information to any other person or entity of whatever kind or nature, including without limitation a corporation, government, or individual, without the express prior written consent of an authorized representative of FDIC. Recipient shall return any and all written Confidential Information, and all copies made of such items, to FDIC upon FDIC request, but in any event no later than the date that Recipient has performed all services to be performed for FDIC pursuant to any existing contract, or at the close of the solicitation in connection with which the Confidential Information was given to Recipient. Recipient hereby agrees that such Confidential Information and any documents provided may be used by Recipient only as authorized by FDIC. **[ADD THE FOLLOWING IF THE RECIPIENT IS A CORPORATION OR OTHER ENTITY]** Recipient shall take all reasonable measures to ensure that there shall be no disclosure of any such Confidential Information to any unauthorized person by Recipient's employees, agents, or attorneys.

3. Permitted Disclosure.

a. Court Order. Recipient shall immediately notify FDIC of any court order or subpoena requiring disclosure of Confidential Information and shall cooperate with legal counsel for FDIC in the appeal or challenge of any such order or subpoena. Recipient may disclose Confidential Information required to be disclosed pursuant to court order or subpoena, but only after the FDIC as Receiver has exhausted any lawful and timely appeal or challenge that the FDIC as Receiver elects to file or make in connection with such court order or subpoena.

b. Provision of Service to FDIC. If Recipient is required to perform services for FDIC pursuant to written contract with the Receiver, then Recipient may reveal to a third party only the Confidential Information that is reasonably necessary for Recipient to reveal in connection with the performance of Recipient's obligations to FDIC, and only so long as Recipient has first obtained from the third party a written agreement to abide by the terms of this Agreement in the same manner, and to the same extent, that Recipient is bound hereunder.

[USE THE FOLLOWING PARAGRAPH IF THE RECIPIENT IS A CORPORATION OR OTHER ENTITY]

4. Recipient as Corporation, Partnership, or Joint Venture. If Recipient is a corporation, partnership or joint venture, the provision of this Agreement relating to access to, and disclosure of, Confidential Information shall apply to all officers, directors, partners, employees, and agents of Recipient, as applicable, and Recipient shall be responsible for ensuring the compliance of all such parties with the terms hereof.

[USE THE FOLLOWING PARAGRAPH IF THERE ARE SUBCONTRACTORS]

5. Subcontractors. If Recipient has one or more subcontractors, Recipient shall obtain from each of them and their personnel who will work on site at a FDIC facility an agreement that is substantially the same as this Agreement and the Agreement for Recipient's personnel who will work on site at a FDIC facility, and Recipient shall ensure that all subcontractors adhere to the terms of such agreement.

6. Applicable Law --Jurisdiction. This Agreement shall be governed by Federal law, and, to the extent that State law would apply under applicable Federal law, the laws of the State of _____ . Recipient consents to venue and personal jurisdiction in the United States District Court for the _____

District of _____ should any dispute relating to this Agreement occur.

7. Attorney's Fees. If any legal action or other proceeding of any kind is brought for the enforcement of this Agreement, or because of any alleged breach, default, or any other dispute in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover all reasonable attorney's fees and other costs incurred in such action or proceedings, in addition to any relief to which it may be entitled.

8. Entire Agreement. This Agreement embodies the entire agreement between the parties in relation to the subject matter herein and supersedes all prior understandings or agreements, oral or written, between the parties hereto.

Recipient

By: _____

Title: _____

FDIC

By: _____

Title: _____

MAIL TO:

2. ESTIMATED SOLICITATION DATE (use numerals)

Month	Day	Year
-------	-----	------

3. ESTIMATED DATE BIDS OR PROPOSALS TO BE OPENED OR
NEGOTIATION BEGUN (use numerals)

Month	Day	Year
-------	-----	------

4. Date contract performance to begin (use numerals)

Month	Day	Year
-------	-----	------

5. PLACE(S) OF PERFORMANCE

6. SERVICES TO BE PERFORMED (describe)

7. INFORMATION ABOUT PERFORMANCE

A. Services now performed by a contractor B. Services now performed by Federal employees C. Services not presently being performed

8. IF BOX A IN ITEM 7 IS MARKED, COMPLETE ITEM 8 AS APPLICABLE

a. Name and address of incumbent contractor b. Number of any wage determination(s) in incumbent's contract

c. Name(s) of union(s) if services are being performed under collective bargaining agreement(s). Important: Attach copies of current applicable collective bargaining agreements.

RESPONSE TO NOTICE
(by Department of Labor)

- A. The attached wage determination(s) listed below apply to procurement.
- B. As of this date, no wage determination applicable to the specified locality and classes of employees is in effect.
- C. From information supplied, the Service Contract Act does not apply (see attached explanation).
- D. Notice returned for additional information (see attached explanation).

9. OFFICIAL SUBMITTING NOTICE

SIGNED:	DATE
TYPE OR PRINT NAME	TELEPHONE NO.

10. TYPE OR PRINT NAME AND TITLE OF PERSON TO WHOM RESPONSE IS TO BE SENT AND NUMBER AND ADDRESS OF DEPARTMENT OR AGENCY, BUREAU, DIVISION, ETC.

Signed: _____
(U.S. Department of Labor)

(Date)

FOR INFORMATION ONLY

GENERAL EXPLANATION

The amended Service Contract Act requires the Secretary of Labor to issue wage determinations applicable to employees engaged in the performance of service contracts in excess of \$2,500. Standard Form 98, Notice of Intention to Make a Service Contract, with Attachment A, provides an orderly procedure for a contracting agency to request such a wage determination and for the Department of Labor to respond. Any questions as to whether a notice is required in a particular procurement situation should be resolved by reference to Title 29, Part 4, Code of Federal Regulations, or by submission of the questions to the Department of Labor.

Under normal circumstances the Department of Labor will respond to a notice within 30 days of receipt. If there is urgent need for more expeditious handling, this should be explained when the notice is submitted. In the event the necessary response is not received by the contracting agency on a timely basis the Department of Labor should be contacted.

In any case where section 4(c) of the Act requires adherence to compensation provisions of a collective bargaining agreement applicable under a predecessor contract the agency desires to request a hearing on the issue of substantial variance between the wages and fringe benefits provided under such agreement and those prevailing in the locality, the request should be submitted with the notice of intent, in accordance with the provisions of 29 CFR 4.10, and sufficiently far in advance of the need for the wage determination to allow time for appropriate action as provided in that section of the regulations.

The notice is divided along functional lines (1) first part which must be completed by the contracting agency, items 2 through 10 of the basic form and items 11 through 14 of the attachment; and (2) the Response to Notice to be completed by the Department of Labor. The basic form and its attachment are provided in quadruplicate sets with carbon inserts. The original and two copies of the basic form and of each set of attachments used (with snap-out carbons removed and the forms fastened together) are to be sent to the address preprinted on the basic form. One copy of the basic form and one copy of the attachment are to be retained by the agency.

INSTRUCTIONS-AGENCY PORTION OF NOTICE Entries on Basic Form

Item 1-This number is preprinted on the basic form for identification and control purposes. Refer to this number when contacting the Department of Labor about the notice.

Item 2-Enter the estimated solicitation date.

Item 3-Enter the date the bids or proposals are expected to be opened or the negotiations started.

Item 4 Enter the date contract performance is expected to begin.

Item 5-The entry as to place of performance depends on a variety of factors. If the place of performance is fixed, as with a contract for janitorial services at a particular installation, enter the appropriate city, county and State. If performance is to be at several known places, attach a list. If the contract is for transportation services between points, enter the city, county and State of origin and of destination. If the place of performance may be anywhere depending on who is awarded the contract (as, for example, certain laundry contracts), enter "unknown." If necessary for clarity, attach a brief explanation of the entry in Item 5.

Item 6-Describe the services to be performed in such a manner that it will be clear what type or types of services are called for by the contract. In many instances simple codes will suffice: "Janitorial services at Headquarters Building Fort Sill." "Food service and kitchen/pulver service at Banquet Mess, Camp A.P. Hill." "Laundry and drycleaning services for Base Hospital, Eglin AFB." "Garbage collection at Ft. Hood." Unusual types of services must be described in more detail.

Item 7-Mark the appropriate box.

Item 8-It is very important under the amended Service Contract Act that appropriate entries be made in Item 8 if Box A of Item 7 has been marked.

- Enter the name and address of the incumbent contractor.
- Enter the number(s) of any wage determination(s) made part of the incumbent's contract. For example: 71-69 (Rev 3) and 69-43 (Rev 4).
- Enter the name(s) of union(s) if any of the services are being performed by the incumbent contractor under collective bargaining agreement(s). If an entry is required in c., a copy of all current applicable collective bargaining agreements must be furnished with the notice. The notice will be returned without action by the Department of Labor if this is not done.

Item 9-It is often necessary for the Department of Labor to get in touch with the contracting official who submitted the notice in order to clarify participants and expedite a response. The name of this official should be printed or typed in the space provided and he should sign his name above. The telephone number, including area code, should

Item 10-Print or type this entry in the space provided within the brackets. This is used by the Department of Labor to identify the contracting agency and for mailing purposes.

ENTRIES ON ATTACHMENT A

Item 11-Enter the notice number found in Item 1 of the basic form.

Item 12-Enter the classes of service employees to be employed in performing the contract. A simple entry may suffice: "Janitor," "Window cleaner," "Automotive mechanic," "Guard," "Stenographer," "Typist," "Warehouseman," "Till clerk." Where more complex jobs are involved, it will expedite handling to use a few lines below the entry for a class to describe briefly what the employee will do--a sort of capsule job description. The entries in Item 12 are crucial as they enable the Department of Labor to "match" the job to be performed against existing wage determinations or available wage payment data.

Item 13-Enter the number of employees to be employed in each class listed in Item 12. Do not omit this figure even though it may be necessary to use a rough estimate.

Item 14-The amended Service Contract Act (section 2(a)(5)) requires the contracting agency to include in the contract: "A statement of the rates that would be paid by the Federal agency to the various classes of service employees if section 5341 of Title 5, United States Code, were applicable to them." The Secretary of Labor is required to give "due consideration" to such rates in making wage and fringe benefit determinations.

For purposes of the entries in Item 14, assume that each class of employees listed in Item 12 is to be Federally employed; that is, to be employed directly as "wage board" or "blue collar" employees by the contracting agency and who, if so employed, would receive wages as provided in 5 United States Code 5341. Enter the hourly wage rate that each such listed class would be paid. The agency's personnel office may be of help in determining the appropriate hourly rate entries.

While the "statement" made part of the contract must include both the hourly wage rates and fringe benefits that would be paid to the various classes, it is not necessary to furnish fringe benefit information as part of the notice. In giving "due consideration" to the fringe benefits that would be paid, the Department of Labor will consult the formula previously made available to all contracting agencies for use in preparing the "Statement" required to be made part of the contract.

INSTRUCTIONS-RESPONSE PORTION OF NOTICE (Completed by Department of Labor)

The original copy of the basic form and the original copy of the attachment will be returned to the contracting agency with appropriate entries by the Department of Labor in that portion of the basic form reserved for Response to Notice.

- If this box is marked, the wage determination(s) applicable will be listed by number and attached. The wage rates and fringe benefits reflected in the attached wage determination(s) are applicable to the procurement and must be made part of the contract. (If wage rates and fringe benefits are not provided in the wage determination(s) for particular classes of service employees to be employed on the contract, conforming action must be taken as provided in Title 29, Part 4, section 4.6(b)(2), Code of Federal Regulations.)
- If this box is marked, no wage determination applicable to the specified locality and classes of employees is in effect. However, successor contractors may not pay less than the collectively bargained wage rates and fringe benefits, including any prospective increases, applicable to employees of the predecessor contractor except where, upon a hearing, it is found that such wage rates and fringe benefits are substantially at variance with those that prevail in the locality. In no case may an employee be paid less than the minimum wage under section 6(a)(1) of the Fair Labor Standards Act.
- From time to time the Department of Labor receives a notice with respect to a proposed contract which on the basis of the information supplied by the contracting agency, is not subject to the Service Contract Act. If box C is marked, an explanation will be attached.
- This box will be marked if the notice must be returned for additional information. An explanation will be attached so that the contracting agency will know what action to take.

ADDITIONAL WAGE DATA

The Department of Labor welcomes any wage rate and fringe benefits data the contracting agency may submit in connection with a notice, as well as any explanatory information that will assist in understanding the proposed procurement.

REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND RATE

CHECK APPROPRIATE BOX
 SERVICE CONTRACT
 CONSTRUCTION CONTRACT

NOTE: THE CONTRACTOR SHALL COMPLETE ITEMS 3 THROUGH 16 AND SUBMIT THE REQUEST, IN QUADRUPPLICATE, TO THE CONTRACTING OFFICER

1. TO:	2. FROM: (REPORTING OFFICE)
--------	-----------------------------

3. CONTRACTOR	4. DATE OF REQUEST			
5. CONTRACT NUMBER	6. DATE BID OPENED (SEALED BIDDING)	7. DATE OF AWARD	8. DATE CONTRACT WORK STARTED	9. DATE UPON EXERCISE (IF APPLICABLE) (SCA ONLY)

10. SUBCONTRACTOR (IF ANY)

11. PROJECT AND DESCRIPTION OF WORK (ATTACH ADDITIONAL SHEET IF NEEDED)

12. LOCATION (CITY, COUNTY AND STATE)

13. IN ORDER TO COMPLETE THE WORK PROVIDED FOR UNDER THE ABOVE CONTRACT, IT IS NECESSARY TO ESTABLISH THE FOLLOWING RATE(S) FOR THE INDICATED CLASSIFICATION(S) NOT INCLUDED IN THE DEPARTMENT OF LABOR DETERMINATION NUMBER: _____ RATE: _____

a. LIST IN ORDER: PROPOSED CLASSIFICATION TITLE(S), JOB DESCRIPTION(S), AND RATIONAL FOR PROPOSED CLASSIFICATIONS (SCA ONLY)	b. WAGE RATE(S)	c. FRINGE BENEFITS PAYMENTS

(Use reverse or attach additional sheets, if necessary)

14. SIGNATURE AND TITLE OF SUBCONTRACTOR REPRESENTATIVE (if any)	15. SIGNATURE AND TITLE OF PRIME CONTRACTOR REPRESENTATIVE
--	--

16. SIGNATURE OF EMPLOYEE OR REPRESENTATIVE	TITLE	CHECK APPROPRIATE BOX - Referencing Block 13 <input type="checkbox"/> AGREE <input type="checkbox"/> DISAGREE
---	-------	---

TO BE COMPLETED BY CONTRACTING OFFICER (CHECK AS APPROPRIATE - SEE FAR 22.1019 (SCA) OR FAR 22.406-3 (DBA))

THE INTERESTED PARTIES AGREE AND THE CONTRACTING OFFICER RECOMMENDS APPROVAL BY THE WAGE AND HOUR DIVISION. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.

THE INTERESTED PARTIES CANNOT AGREE ON THE PROPOSED CLASSIFICATION AND WAGE RATE. A DETERMINATION OF THE QUESTION BY THE WAGE AND HOUR DIVISION IS THEREFORE REQUESTED. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.

(See copies 1, 2, and 3 to Department of Labor)

17. SIGNATURE OF CONTRACTING OFFICER OR REPRESENTATIVE	BUSINESS AND COMMERCIAL TELEPHONE NO.	DATE SUBMITTED
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FOR INFORMATION ONLY

REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND RATE
(Continuation of Block 13)

a. LIST IN ORDER: PROPOSED CLASSIFICATION TITLE(S); JOB DESCRIPTION(S); AND RATIONAL FOR PROPOSED CLASSIFICATIONS (SCA ONLY)	b. WAGE RATE(S)	c. FRINGE BENEFITS PAYMENTS
FOR INFORMATION ONLY		

[Download form and modify as necessary]

FEDERAL DEPOSIT INSURANCE CORPORATION WAGE DETERMINATION

Notice of Wages Payable Pursuant to McNamara-O'Hara Service Contract Act of 1965

Wage Determination Number: [From FedWorld Database]

Solicitation Number:

Description: [Insert one or two sentence description of work to be performed]

Attachment: Copy of NITIS FedWorld Database

FDIC has determined that contractor employees covered by the Service Contract Act of 1965 (SCA) will be used in the labor classifications listed in **Column (A)**. The U. S. Department of Labor, under the direction of the Secretary of Labor, has determined that such employees shall not be paid less than the hourly wage rates listed in **Column (B)**, as applicable to the appropriate labor classification.

(A) Labor Classification Occupation Code and Title	(B) Minimum Hourly Wage Rate (1)
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

NOTE: (1) The contractor is required to add a location-specific health & welfare benefit add-on to the above rate. This add-on can be found in footnotes to the Wage Determination.

[Download form and modify as necessary]

FEDERAL DEPOSIT INSURANCE CORPORATION CONTRACT ADDENDUM- SCA

Notice of Wages Payable Pursuant to McNamara-O'Hara Service Contract Act of 1965

Contract/Task Order Number: [Insert Contract Number, PO number, and/or Task Order Number as appropriate]

Description of Work: [Insert one or two sentence description of work to be performed]

Attachment: Copy of NTIS FedWorld Database

FDIC has determined that contractor employees covered by the Service Contract Act of 1965 (SCA) will be used in the labor classifications listed in **Column (A)**. The U. S. Department of Labor, under the direction of the Secretary of Labor, has determined that such employees shall not be paid less than the hourly wage rates listed in **Column (B)**, as applicable to the appropriate labor classification. The amended Service Contract Act, Section 2(a)(5), also requires the contracting agency to include in the contract, a statement of the equivalent rates that would be paid by FDIC to the various classes of service employees if such employees were directly hired and paid as FDIC employees. These base FDIC GG/CG/WG Pay Scales can be accessed via the FDIC Intranet on the Personnel Services Branch Home page. These wage rates are to be listed below in **Column (C)**.

(A) Labor Classification Occupation Code and Title	(B) Minimum Hourly Wage Rate (1)	(C) FDIC Equivalent Wage Rate (2)
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		

NOTES: (1) The contractor is required to add a location-specific health & welfare benefit add-on to the above rate. This add-on can be found in footnotes to the Wage Determination. (2) The FDIC equivalent wage rate is the base FDIC wage rate as determined from the GG/CG/WG Pay Scales presented on the FDIC PSB Home Page. This rate would be adjusted to reflect current FDIC Locality Pay Differential, Regional Pay Differential, and the FDIC fringe benefit rate, for a total of 35%.

**Implementation Procedures for Contracting Out Decisions
for Contracts for Services
Article 17**

Reserved

**GUIDELINES FOR DEVELOPMENT OF COST ESTIMATES
FOR CONTRACTUAL GOODS OR SERVICES
Reference to APM, 4.I. and 4.I.2.b.(6)**

Cases presented to the Deputies to the Chairman, Chairman, and Board to request expenditure authority for contracts must include an independent cost estimate. It is important for these estimates to be as accurate as possible in reflecting the total amount to be spent over the entire contract period, including option years. The cost estimate provides:

- A basis for approving expenditure authority;
- Information for budget planning;
- A basis for comparing alternative approaches; and
- A foundation for cost evaluation of proposals from offerors.

Complete cost estimates include all aspects of required contractor performance, and should represent the total amount projected to be paid to the contractor. For complex or high dollar value contract actions, such as those subject to Board approval, cost estimates are to be detailed and include supporting data and analysis. Although an estimate, by definition, is not exact, using a systematic approach increases the precision of the estimate and provides a reasonable expectation of cost to be incurred by FDIC.

The following steps are fundamental to development of a cost estimate:

- (1) Identify the appropriate cost components for the goods and/or services to be acquired.
- (2) Determine the quantity required for each cost component.
- (3) Determine the most appropriate source of equivalent cost data for each cost component.
- (4) Develop estimates for cost components based on equivalent cost data.

Each step is discussed in more detail below. A summary of these guidelines is provided in Attachment 1 of this Exhibit.

STEP 1 IDENTIFY APPROPRIATE COST COMPONENTS:

The first step in preparing a cost estimate is to identify the cost components that apply to the proposed contract. Identifying these components requires a clear understanding of the goods or services required.

Depending on the statement of work for the requirement, one or more cost components may be applicable to the estimate. For example, a cost estimate to purchase office furniture may entail only a few simple components, such as furniture, delivery services, and set-up services. An estimate for labor-hour based services requires more detail in the form of a breakdown of skill levels into labor categories. Some conventional cost components include:

- Labor
- Travel
- Purchases of Goods or Units of Service
- Delivery and Installation Services
- Maintenance/Repair Services
- Leases
- Supplies
- Contractor-Provided Space/Facilities

STEP 2 DETERMINE THE QUANTITY REQUIRED FOR EACH COST COMPONENT:

This step involves determining the level of goods and/or services needed to meet the program objective. Accurately estimating requirements is a critical step. The level of work to be provided for each cost component has a direct impact on the total cost of the contract. The projected number of units of work should be stated separately for each component. Further explanation is provided below:

- **Labor Hour Services:** Based on the volume of work and specific skill levels required (i.e., project manager, technician, analyst, clerk), determine the appropriate labor categories. Estimate the total number of work hours required for each labor category.
- **Travel:** In estimating reimbursable costs for travel, consider such factors as geographic location of work sites, the number of trips to be made, and number of contractor personnel required to travel. Use allowable per diem and transportation rates to develop estimates. Where appropriate, impose limits on the amount to be reimbursed for travel costs.
- **Purchases:** Determine the number of items or units of service to be purchased, and any associated delivery and installation charges. For example, purchases of equipment may be estimated by number of items while purchase of construction services requires estimates of square footage.

In the case of estimates for blanket purchase contracts, there may be a wide variety of items to be purchased, and it may be impossible to project exact quantities for each in advance. For this type of contract requirement, an alternative is to express requirements for each cost component in terms of minimum and maximum quantities. In this case, the maximum quantity will generally be used as a basis for projecting total potential contract costs and associated expenditure authority requirements.

- **Materials and Supplies:** For this component, routine costs should be provided in the form of a consolidated summary of individual material/supply quantities and the basis for pricing. Materials may include raw materials, parts, components, assemblies, and reimbursable services such as material handling. Supplies may include paper, computer supplies, etc. These are often estimated in terms of an

average expected consumption per month. Any non-routine items should be specifically identified with separate cost data.

- **Contractor-Provided Space and Facilities:** If the contractor will provide space and facilities (including furniture, computers, equipment, etc.), estimate the costs expected to be charged by the contractor for providing these items. This estimate can often be obtained from historical data, and is normally provided in terms of anticipated equivalent monthly charges.

STEP 3 DETERMINE COST DATA:

Once cost components and estimated quantities have been determined, the next step is to identify the most appropriate source of cost data for use in developing estimated costs for each identified component.

Cost estimates for recurring services or purchases are often based on historical costs of prior contracts, or on commercial prices obtained from market research, published catalogs, or GSA Federal Supply Schedules. Comparisons can also be made to similar in-house work. Listed below are the most frequently used sources for obtaining cost data:

- Historical FDIC contracts for same or similar services
- Historical in-house costs for performing services
- Costs of other government contracts for same or similar services
- GSA Schedule prices
- Vendor catalogs and published or advertised prices
- Market value or information gained through market survey

Generally, cost data should be no older than six months to remain relevant to the current requirement. The Management and Cost Analysis Section, Division of Finance can provide historical data on in-house work, and the Acquisition Services Branch can assist in obtaining market information or providing historical cost data from prior contracts.

Once cost information has been obtained, it may require adjustment as appropriate to include specific circumstances related to the requirement. Both internal and external factors can affect the applicability of costs for the requirement under consideration. Some of these include:

- **Market Conditions:** As time passes, prices are often impacted by changes in supply, demand, technology, inflation, and other factors. Generally, an estimate should be based on the most recent costs available. Ideally, estimates should be based on costs that were established under similar contract terms and market conditions. For example, rates for accounting services may be lower in the non-tax season when demand is less. Retailers experience seasonal fluctuations that may impact costs. Anticipating such factors increases the accuracy of the cost estimate. Cost estimates for option years may require adjustments for inflation, resulting in a higher contract price.
- **Quantity or Size:** Variations in ordering quantities can affect unit pricing for both goods and services. Usually, smaller ordering quantities produce higher unit prices.

Conversely, larger volume purchases often result in discount prices that are lower than published prices. It is important to provide estimates based on equivalent order quantities.

- **Geographic Location:** Because location can greatly impact cost comparability, attempts should be made to estimate costs using data related to the same geographic area. For example, costs of labor, hotels, office space, and transportation vary widely between sites. Therefore, when it is necessary to compare costs across geographic boundaries, price differences should be determined and the cost estimate adjusted accordingly.

Other typical influences to be considered in developing cost estimates are cost efficiencies resulting from new technology, highly specialized labor skill requirements, and schedule or delivery constraints.

STEP 4 DEVELOP COST ESTIMATES FOR COST COMPONENTS

Using the adjusted cost data from step 3 above, apply unit costs to the quantities developed in step 2 to determine the total cost for each cost component. The total of costs for all components is equivalent to the total contract price.

A suggested format for a contract cost estimate is provided as Attachment 2 of this Exhibit. This format can be used to present summarized contract cost estimates, including all option years. The format may be modified as required to meet specific needs.

Documentation supporting the summary cost estimate should explain the basis of costs, sources of data, and assumptions used in estimating each applicable cost component. Details vary with the dollar value and/or complexity of the proposed contract. For simple and lower dollar estimates, only a brief statement may be required defining projected costs to FDIC. Estimates for complex and high dollar value requirements should include more details of the analysis and cost schedules, as well as supporting data.

Development of Cost Estimates for Contractual Requirements

SUMMARY OF GUIDELINES

1. **Identify cost components that appropriately represent goods and/or services to be acquired through the contract. These include such components as:**
 - X Services provided by Labor Hour (defined by category/skill level)
 - X Travel
 - X Purchase of goods
 - X Leases
 - X Purchase of Units of Service (i.e., services charged per case, per document, per asset, per class, etc.)
 - X Maintenance/Repair requirements
 - X License or Copyright Fees
 - X Supplies
 - X Reimbursable Expenses (miscellaneous administrative expenses, material handling, etc.)
 - X Contractor-Provided Space/Facilities
 - X Storage Costs
 - X Other

2. **Determine the quantity required for each cost component (number of hours, number of items, etc.).**

3. **Estimate equivalent, comparable cost data for each component. Listed below are appropriate sources for obtaining cost information for use in developing cost estimates.**
 - X Historical FDIC contract costs for same or similar services
 - X Historical in-house costs for same or similar services
 - X Costs of other Government contracts for same or similar services
 - X GSA Schedule prices
 - X Vendor catalogs and published or advertised prices
 - X Market value or information gained through conduct of market survey

Adjust estimates for any specific circumstances that could impact costs for the requirement. Such circumstances include:

 - X Discounts for large volume purchases
 - X Cost efficiencies resulting from new technology
 - X Seasonal influences on prices
 - X Highly specialized labor skill requirements
 - X Geographic area for performing work
 - X Schedule or delivery constraints
 - X Inflation adjustments for option years

4. **Determine the total estimated cost of each component by applying adjusted unit costs obtained in Step 3 to quantities determined in Step 2. The total of costs for all cost components is equivalent to the Total Contract Cost.**

SAMPLE CONTRACT COST ESTIMATE

COST COMPONENTS AND ESTIMATED QUANTITIES							TOTAL COST (BASE PERIOD)	TOTAL COST OPT. YR 1	TOTAL COST OPT. YR 2	TOTAL CONTRACT COSTS
1. COST COMPONENT: Labor Hours										
CATEGORY	HOURS (BASE PERIOD)	RATE (BASE PERIOD)	HOURS (OPT YR 1)	RATE (OPT YR 1)	HOURS (OPT YR 2)	RATE (OPT YR 2)				
Project Manager	1,780	\$75.00	1,200	\$82.50	1,200	\$90.75	\$133,500	\$90,000	\$99,000	\$322,500
Analyst	2,000	\$50.00	700	\$55.00	500	\$60.50	\$100,000	\$35,000	\$38,500	\$173,500
Technician	800	\$40.00	200	\$44.00	200	\$48.40	\$32,000	\$8,000	\$8,800	\$48,800
Clerk	400	\$22.00	400	\$24.20	200	\$26.62	\$8,800	\$8,800	\$9,680	\$27,280
Total Labor Costs							\$274,300	\$141,800	\$155,980	\$572,080
2. COST COMPONENT: Travel										
DESTINATION	NUMBER OF TRIPS PER CONTRACT YR	NUMBER OF TRAVEL DAYS	NUMBER OF PERSONS TO TRAVEL	PER DIEM	AIR FARE					
ATLANTA	2	3	1	\$270	\$480	\$750	\$750	\$750	\$2,250	
CHICAGO	4	3	3	\$990	\$512	\$1,502	\$1,502	\$1,502	\$4,506	
IRVINE	3	4	2	\$1,000	\$780	\$1,780	\$1,780	\$1,780	\$5,340	
Total Travel Costs						\$4,032	\$4,032	\$4,032	\$12,096	
3. COST COMPONENT: Maintenance of Equipment										
MONTHLY COST PER ITEM	NUMBER OF ITEMS MAINTAINED	TOTAL MONTHLY COSTS	NUMBER OF MONTHS (BASE PERIOD)	NUMBER OF MONTHS (OPTION YR 1)	NUMBER OF MONTHS (OPTION YR 2)					
\$110	200	\$22,000	6	12	8	\$132,000	\$264,000	\$176,000	\$572,000	
GRAND TOTAL ESTIMATED CONTRACT COST:							\$410,332	\$409,832	\$336,012	\$1,156,176



December 19, 2003

TO: Headquarters and Regional Office Acquisition Services Branch Personnel

FROM: Ann Bridges Steely, Associate Director
Acquisition Services Branch

SUBJECT: Interim Acquisition Policy #2003-5
Implementing Price/Past Performance Tradeoff Best Value Approach

Purpose

The purpose of this memorandum is to expand the current Best Value Determination policies within APM to include Price/Past Performance Tradeoff (PPT) as a best value approach when evaluating formal contracting procurements for services.

Scope

This memorandum applies to all Acquisition Services Branch (ASB) personnel and Program Office personnel who participate in the FDIC acquisition process. For purposes of this memorandum, this policy shall be applied at the discretion of the Contracting Officer when evaluating procurements over \$100,000 in order to determine overall best value to the FDIC.

Background

The current Best Value Determination in APM involves seeking the most favorable combination of technical, price, delivery and other factors. Currently, APM states that weighing price vs. technical considerations will yield the maximum value to the FDIC when evaluating contractor proposals. In addition, current policy allows best value determinations to occur when awarding to a firm with other than the highest overall combine technical and price score. There are a number of best value policy determinations available in the federal acquisition community that will provide greater flexibility to the Contracting Officer in determining overall best value decisions. This memorandum will provide the procedures to incorporate the Price/Past Performance Tradeoff (PPT) as an additional best value approach that may be used at the discretion of the Contracting Officer.

Procedures

New and expanded APM procedures for implementing best value policies are set forth in this memorandum. The procedures are in addition to those currently stated in the APM, and include the following:

Under PPT procedures, the FDIC may elect to award to an Offeror who has a higher price but demonstrates superior past performance.

Evaluation Methodology

The TEP is responsible for conducting an in-depth review and evaluation of each Offeror's proposal against the solicitation requirements. Evaluation of the proposals will first consider each Offeror's abilities on a pass/fail basis under the Mission Capability evaluation sub-factors (technical capability, management capability, key personnel or any other pertinent sub-factors) stated in the solicitation. The Offeror must receive a favorable (i.e., pass) evaluation rating on each of the sub-factors to receive an overall favorable rating under the Mission Capability factor. Next, past performance on current and relevant contracts for all Offerors who receive a favorable rating will be evaluated. After the final evaluation of proposals is completed and documented, the TEP will prepare a Technical Evaluation Report for submission to Contracting Officer. The narrative findings will identify strengths, proposal inadequacies, weaknesses and deficiencies associated with each evaluation factor/sub-factor (*except price*). The Contracting Officer shall document the analysis performed in determining the offeror's proposal that best represents the overall best value decision utilizing the Price/Past Performance Best Value approach. Price and Past Performance are equally important. Any deviation from FDIC's standard methodology must be approved by the Associate Director of ASB.

Pass/Fail Assessment.

A pass/fail rating will be assigned at the Mission Capability factor level to depict how well each Offeror's proposal meets the evaluation criteria. The Offeror must receive a favorable (i.e., pass) evaluation rating on each of the primary factor sub-factors to be considered for award. The Contracting Officer shall document the results of the Pass/Fail Assessment.

Past Performance

The Contracting Officer will conduct a structured past performance evaluation (see attached sample Past Performance Questionnaire) that examines an Offeror's relevant present and past performance record to determine its ability to perform as proposed. The past performance evaluation will consider demonstrated accomplishment of the services outlined in the Statement of Work (SOW) to include the experience and capabilities of the contractor and its key personnel, and the Offeror's overall performance record. This will be assessed at the sub-factor level but rated at the factor level.

Past Performance is a key factor. Offerors without a record of relevant past performance or for whom information on past performance is not available will not be evaluated favorably or unfavorably on past performance and, as a result, will receive a "Neutral/Unknown Confidence" rating for the Past Performance factor. More recent and more relevant performance will have a greater impact on the Performance Confidence Assessment than less recent or relevant effort(s). A strong record of relevant past performance is considered more advantageous to the FDIC than a "Neutral/Unknown Confidence" rating. Likewise, a more relevant past performance record

may receive a higher confidence rating and may be considered more favorably than a less relevant record of favorable performance. Past performance information for subcontractors or team members will be valued in proportion to the relative amount of work expected for the duration of the contract. Data from previous source selections or contractor capability assessments will be used if the data is recent and relevant. Data will also be obtained from tailored questionnaires, Contractor Performance System (CPS), and non-government sources such as Dunn and Bradstreet, commercial vendors, plus any other sources deemed appropriate.

The definitions of relevancy are as follows:

HIGHLY RELEVANT – The effort is very similar to the proposed technical approach and includes the specific examples of previous work performed

RELEVANT – The effort is similar to the proposed technical approach and includes examples that provide some general characteristics that are germane to the requirement.

NOT RELEVANT – The effort is not similar and contains no characteristics that may be used to compare to the requirement.

A Past Performance confidence assessment rating shall be assigned using the definitions specified in the table below.

RATING	DEFINITION
Exceptional/High Confidence	Based on the Offeror's performance record, essentially no doubt exists that the Offeror will successfully perform the required effort.
Very Good/Significant Confidence	Based on the Offeror's performance record, little doubt exists that the Offeror will successfully perform the required effort.
Satisfactory/Confidence	Based on the Offeror's performance record, some doubt exists that the Offeror will successfully perform the required effort.
Neutral/Unknown Confidence	No performance record identifiable (see FAR 15.305(a)(2)(iii) and (iv))
Marginal/Little Confidence	Based on the Offeror's performance record, substantial doubt exists that the Offeror will successfully perform the required effort. Changes to the Offeror's existing processes may be necessary in order to achieve contract requirements.
Unsatisfactory/No Confidence	Based on the Offeror's performance record, extreme doubt exists that the Offeror will successfully perform the required effort.

Price

(1) The Price evaluation will be based on the completeness and reasonableness of the proposed work outlined in the Statement of Work (SOW). Costs for the base item and the option items will be compared to the FDIC Cost Estimate. The comparison of the total proposed price to perform the entire scope of work (base item inclusive of options) will fulfill the requirement to perform price analysis. The FDIC will further ensure that Offerors have provided an acceptable price proposal, i.e. a proposal that contains all information called for solicitation.

(2) Price Evaluation Adjustments. For procurements greater than \$100,000 in an industry eligible for SDB preference as determined by the appropriate NAICS codes, the price evaluation adjustment of 10% will be given to qualified SDB offerors. The adjustment will be used to reduce the SDB's price for evaluation purposes. No price evaluation adjustment shall be given to non-SDB offerors.

- (a) SDB firms who perform at least 50% of the work/dollars for goods and services (15% for construction and 25% for special trade construction) shall be entitled to the price evaluation adjustment. If more than the applicable percentage of the work/dollars is subcontracted, the offeror shall not be entitled to a price evaluation adjustment.

Price/Past Performance Tradeoff

The FDIC will make an integrated price/performance tradeoff assessment and award to the technically acceptable Offeror whose performance assessment and price provides the best value to the Corporation. Under PPT procedures, FDIC may elect to award to an Offeror who has a higher price but demonstrates superior past performance. A technically acceptable offer other than the one with the lowest-evaluated price may be awarded the contract. Price and Past Performance are equally important. Any deviation from FDIC's standard methodology must be approved by the Associate Director of ASB. The Contracting Officer shall document the rationale and the basis substantiating the Price/Past Performance analysis and place the document in the official contract file.

Contact

Questions regarding this memorandum should be addressed to Rodney C. Cartwright at (202) 942-3680.



March 4, 2004

TO: Headquarters and Regional Office
Acquisition Services Branch Personnel

FROM: Ann Bridges Steely, Associate Director
Acquisition Services Branch

SUBJECT: Interim Acquisition Policy #2004-2
Implementing Integrated Best Value Assessment Approach

Purpose

The purpose of this memorandum is to expand the current Best Value Determination policies within Acquisition Policy Manual (APM) to include an Integrated Best Value Assessment Approach to be used as a prototype for evaluating several formal contracting procurements for services.

Scope

This memorandum applies to all best value, competitive negotiated acquisitions conducted by the Acquisition Services Branch (ASB) and Regional Contracting Offices who participate in the FDIC acquisition process. For purposes of this memorandum, this policy shall be applied when evaluating procurements over \$100,000 in order to determine overall best value to the FDIC.

Background

The current Best Value Determination in APM involves seeking the most favorable combination of technical, price, and other factors. Currently, APM states that weighing price vs. technical considerations will yield the maximum value to the FDIC when evaluating contractor proposals. In addition, current policy allows best value determinations to occur when awarding to a firm with other than the highest overall combined technical and price score. Recently, interim policy guidance also added Price/Past Performance Tradeoffs as another Best Value approach. There are a number of best value policy determinations available in the federal acquisition community that will provide greater flexibility to the Contracting Officer in determining overall best value decisions. This memorandum will provide all Contracting Officers the Integrated Best Value Assessment as another approach to be utilized as a prototype while a comprehensive best value acquisition policy is being developed.

Procedures

New and expanded APM procedures for implementing the Integrated Best Value approach will be further defined in forthcoming acquisition policy guidance. But in general, the Contracting Officer shall evaluate all offerors proposals integrating past performance, key evaluation factors and sub-factors and price to determine which proposal represents the overall best value to the FDIC. Only the evaluation factors and subfactors set forth in the solicitation shall be used to evaluate proposals. The Contracting Officer must document the contract file to demonstrate the analysis that was conducted to determine best value.

Evaluation Methodology

The Technical Evaluation Panel (TEP) is responsible for conducting an in-depth review and evaluation of each Offeror's technical proposal against the solicitation requirements. It is essential to establish the absolute minimum number of factors necessary for evaluation of proposals. Integrated Best Value Assessment factors may be subdivided into subfactors that, in rare instances, may be further subdivided into elements if needed. Evaluation factors, subfactors and, if used, elements are the basis for assessing each offeror's ability to meet the Government's needs. They are the uniform baseline against which each offeror's proposal is compared to determine the confidence the Government has that the offeror will be able to actually perform the work that that offeror proposes. They establish the level an offeror's proposal must meet in order to be judged acceptable. Factors and subfactors shall be limited to those that are real discriminators.

Evaluation factors, subfactors, and elements:

- Shall be written in enough depth to communicate the measures of merit used to determine how the proposal will be evaluated and rating determined;
- Shall include only those specific program characteristics that are significant enough to have an impact on the source selection decision;
- Shall be set forth in the Evaluation Factors for Award Section of the draft and final RFP. In addition, the relative importance of all factors, subfactors, and elements shall be specified in the Evaluation Factors for Award Section of the RFP.

Integrated Best Value Selections shall use the following evaluation factors, in the order of importance specified in the Evaluation Factors for Award Section.

- Mission Capability (Technical)
- Past Performance
- Cost/Price

Additional factors may be used if approved by the Associate Director, Acquisition Services Branch.

All offerors will be evaluated using the following color-coded ratings for each subfactor and element (if used):

Rating Definition

- Blue Exceptional – Exceeds specified minimum performance or capability requirements in a way beneficial to the FDIC.
- Green Acceptable – Meets specified minimum performance or capability requirements necessary for acceptable contract performance.
- Yellow Marginal – Does not clearly meet some specified minimum performance or capability requirements necessary for acceptable performance, but any proposal inadequacies are correctable.
- Red Unacceptable – Fails to meet specified minimum performance capability requirements. Proposals with an unacceptable rating not awardable.

Evaluation Matrix

FACTORS

MISSION CAPABILITY (Technical)				
Subfactor 1 Color	Subfactor 2 Color	Subfactor 3 Color	Subfactor 4 Color	Subfactor 5 Color
PAST PERFORMANCE (Performance Confidence: assessed at subfactor, rated at factor level) Exceptional/High Confidence, Very Good/Significant Confidence, Satisfactory/Confidence, Neutral/Unknown Confidence, Marginal/Little Confidence, Unsatisfactory/No Confidence				
PRICE/COST				

Proposal Evaluation

Once the TEP has evaluated and rated each proposal based on the above color-coded system, the TEP in conjunction with the Contracting Officer may then make competitive range determination, if discussions are necessary. The determination for competitive range must be documented in the contract file.

After the TEP has completed its final technical evaluation of proposals a final technical evaluation report will be prepared for submission to the Contracting Officer. The TEP report must contain narrative findings that will identify the Offerors' proposed strengths, proposal inadequacies, and/or deficiencies (material failures to meet Government requirements) associated with each evaluation factor/sub-factor (*except price*).

Past Performance

The Past Performance Group (a team comprised of technical and contracting personnel) will conduct a structured past performance evaluation that examines an Offeror's relevant present and past performance record to determine its ability to perform as proposed. The past performance evaluation will consider demonstrated accomplishment of the services outlined in the Statement of Work (SOW) to include the experience and capabilities of the contractor and its key personnel, and the Offeror's overall performance record.

Past Performance is a key factor. Offerors without a record of relevant past performance or for whom information on past performance is not available will not be evaluated favorably or unfavorably on past performance and, as a result, will receive a "Neutral/Unknown Confidence" rating for the Past Performance factor. More recent and more relevant performance will have a greater impact on the Performance Confidence Assessment than less recent or relevant effort(s). A strong record of relevant past performance is considered more advantageous to the FDIC than a "Neutral/Unknown Confidence" rating. Likewise, a more relevant past performance record may receive a higher confidence rating and may be considered more favorably than a less relevant record of favorable performance. Past performance information for subcontractors or team members will be valued in proportion to the relative amount of work expected for the duration of the contract. Data from previous source selections or contractor capability assessments will be used if the data is recent and relevant. Data will also be obtained from tailored questionnaires, Contractor Performance System (CPS), and non-government sources such as Dunn and Bradstreet, commercial vendors, plus any other sources deemed appropriate.

The definitions of relevancy are as follows:

HIGHLY RELEVANT – The effort is very similar to the proposed technical approach and includes the specific examples of previous work performed.

RELEVANT – The effort is similar to the proposed technical approach and includes examples that provide some general characteristics that are germane to the requirement.

NOT RELEVANT – The effort is not similar and contains no characteristics that may be used to compare to the requirement.

A Past Performance confidence assessment rating shall be assigned using the definitions specified in the table below.

RATING	DEFINITION
Exceptional/High Confidence	Based on the Offeror's performance record, essentially no uncertainty exists that the Offeror will successfully perform the required effort.
Very Good/Significant Confidence	Based on the Offeror's performance record, little uncertainty exists that the Offeror will successfully perform the required effort.
Satisfactory/Confidence	Based on the Offeror's performance record, some uncertainty exists that the Offeror will successfully perform the required effort.
Neutral/Unknown Confidence	No performance record identifiable.
Marginal/Little Confidence	Based on the Offeror's performance record, substantial uncertainty exists that the Offeror will successfully perform the required effort. Changes to the Offeror's existing processes may be necessary in order to achieve contract requirements.
Unsatisfactory/No Confidence	Based on the Offeror's performance record, extreme uncertainty exists that the Offeror will successfully perform the required effort.

Price

The Price evaluation will be based on the completeness and reasonableness of the proposed work outlined in the Statement of Work (SOW). Costs for the base item and the option items will be compared to the FDIC Cost Estimate. The comparison of the total proposed price to perform the entire scope of work (base item inclusive of options) will fulfill the requirement to perform price analysis. The FDIC will further ensure that Offerors have provided an acceptable price proposal, i.e. a proposal that contains all information called for in the solicitation.

Price Evaluation Adjustments. For procurements greater than \$100,000 in an industry eligible for Small Disadvantaged Business (SDB) preference as determined by the appropriate North American Industry Classification System (NAICS) codes, the price evaluation adjustment of 10% will be given to qualified SDB offerors. The adjustment will be used to reduce the SDB's price for evaluation purposes. No price evaluation adjustment shall be given to non-SDB offerors.

SDB firms who perform at least 50% of the work/dollars for goods and services (15% for construction and 25% for special trade construction) shall be entitled to the price evaluation adjustment. If more than the applicable percentage of the work/dollars is subcontracted, the offeror shall not be entitled to a price evaluation adjustment.

Integrated Best Value Assessment

The FDIC will make an Integrated Best Value Assessment and award to the technically acceptable Offeror whose overall technical evaluation rating, past performance rating and price provides the best value to the Corporation. A technically acceptable offer other than the one with the lowest-evaluated price may be awarded the contract. The Contracting Officer shall document the analysis performed in determining the offeror's proposal that best represents the overall best value decision utilizing the Integrated Best Value Assessment approach. The Contracting Officer shall document the rationale and the basis substantiating the best value analysis and place the document in the official contract file.

Contact

Questions regarding this memorandum should be addressed to Rodney C. Cartwright at (202) 942-3680, or Michael L. Benavides at (202) 942-3557.

RFQ LOG

Requisition/Purchase Order No. _____

Award Date: _____

Delivery Date: _____

Description: _____

Contracting Officer: _____

Program Office: _____

COMPANY	CONTACT	PHONE NO.	DATE CALLED (for ORAL quote)	DELIVERY SCHEDULE COMPLIANCE YES/NO	QUOTED PRICE	ADDITIONAL TERMS/ CONDITIONS

NAME SUCCESSFUL BIDDERS	TAX ID.	ADDRESS	NCS CHECK YES/NO	EXPENDITURE AUTHORITY AMOUNT

AWARD RATIONALE:

Source Selection Plan Organization

Source Selection Plans (SSPs) shall be developed for all awards that use formal contracting procedures. The SSP shall be organized as follows:

- Part 1 Purpose
This section states the overall objective of conducting the proposal evaluation process.
- Part 2 Background
This section details the activities and events leading up to the decision to initiate a competitive solicitation process for the requirement and includes the anticipated contract type, single award vs. Basic Ordering Agreement, Contract Milestone Schedule and cost estimate.
- Part 3 Description of the Required Goods and/or Services
This section will provide a description of the requirement and include the delivery and/or performance schedule, key personnel requirements, and labor categories with qualifications (if time and materials or labor hour).
- Part 4 Description of the Evaluation Methodology
This section provides a description of the evaluation methodology an basis for contract award from APM 4.A.11., and includes a list of the technical evaluation criteria and application of the Small Disadvantaged Business (SDB) price and technical evaluation adjustments.
- Part 5 Organization and Members of the Technical Evaluation Panel
This section should list all Technical Evaluation Panel members, identifying the TEP Chairman, and the Contracting Officer, CLU representative and ODEO MWOB Specialist. This section also documents that the voting TEP members and other non-voting members of the TEP will complete the Confidentiality Agreement and Conflict of Interest Certification and are free from conflicts.
- Part 6 Special or Unique Requirements
This section should list all other elements of the evaluation including but not limited to the review of Contractor Eligibility Representations and Certifications, SDB status, financial review (if required), and all pre-award reviews. Also, this section identifies whether a Source Selection Official is to be used and identifies the individual and functional role.

**FEDERAL DEPOSIT INSURANCE CORPORATION
CONTRACT MILESTONE SCHEDULE**

<p>Program Office: POC Name : POC Tel. No.:</p> <p>Date Required by:</p> <p>RFP No.:</p> <p>Title: Contracting Officer:</p>	<p>Dates Received</p> <p>Original: (Date)</p> <p>Revision No.: (Date)</p>
---	--

Milestones	Projected Date or Not Applicable	Actual Date
1. Complete Requirements Package with Cost Estimate received		
2. Statement of Work finalized		
3. Contract Milestone Schedule completed		
4. Solicitation List completed		
5. Review of CCR and Excluded Parties Listing System		
6. ODEO Review of Solicitation List completed		
7. Wage Determination requested, if applicable		
8. Technical Evaluation Panel (TEP) Members and Chairperson Appointed		
9. Source Selection Plan completed (if over \$100,000)		
10. RFP with Contract prepared		
11. Legal Review of RFP/Contract (if over \$100,000) completed. ODEO review of RFP/Contract completed (if over \$100,000).		
12. Wage Determination received, if applicable		
13. Expenditure Authorization provided		
14. RFP issued		
15. Questions Due		
16. Offerors' Conference (if applicable)		
17. Responses to Questions		
18. Proposal Receipt Date		

Milestones	Projected Date or Not Applicable	Actual Date
19. TEP convened		
20. Contractor Past Performance Information requested		
21. Price Analysis/Price Reasonableness completed and provided to TEP		
22. Technical Evaluation completed		
23. TEP Consensus completed		
24. TEP Report completed		
25. Competitive Range Determination established, if applicable		
26. Technical Discussions/Negotiations initiated, if applicable		
27. Technical Discussions/Negotiations completed, if applicable		
28. Best and Final Offer requests sent, if applicable		
29. Best and Final Offer Proposals received, if applicable		
30. Best and Final Evaluation results (evaluation completed and provided to Contracting Officer)		
31. Contracting Officer Selection Recommendation Report Approved		
32. Pre-award Approvals obtained (specify) A. Eligibility Certification Review completed B. Background Investigation C. Business Reference Check D. Site Visit		
33. Source Selection Official Approval received, if applicable		
34. Executed contract received from successful Offeror		
35. Contract executed		
36. Notification to Unsuccessful Offerors distributed		

REPRESENTATIVES

Name	Signature
Program Office:	
Acquisition Services Branch:	

MEMORANDUM ESTABLISHING TECHNICAL EVALUATION GUIDELINES

MEMORANDUM TO: TEP Chairperson and Panel Members

FROM: (Name), Contracting Officer

SUBJECT: Technical Evaluation Guidelines for
RFP No. _____

The purpose of this memorandum is to set forth the technical evaluation guidelines for evaluating proposals. All proposals shall be evaluated by the Technical Evaluation Panel (TEP) strictly against the evaluation criteria listed in the Request for Proposal (RFP) to ensure that all proposals are evaluated in a uniform manner.

Proposals received in response to the subject RFP are listed in Attachment (*insert number*) along with a list of the technical proposals being distributed to you.

All members of the TEP shall complete and return executed Confidentiality Agreements and Conflict of Interest Statements prior to assuming any TEP responsibilities. Any potential conflict of interest situation between any TEP member and any prospective offeror should be brought to the Contracting Officer's attention prior to evaluating the proposals in question.

All members of the TEP must receive an orientation and briefing by the Contracting Officer before the evaluation process can begin, including the TEP video if members have not viewed it previously.

Technical Evaluation Process:

General Responsibilities. Each technical proposal shall be reviewed by the TEP to determine if it meets the requirements of the RFP. The Contracting Officer is responsible for ensuring that the TEP is convened and that it completes its work on a timely basis. The TEP members are responsible for evaluating proposals in accordance with the procedures established in the Source Selection Plan, the evaluation criteria specified in the RFP, the procedures established in FDIC's Acquisition Policy Manual (APM), and procedures set forth herein.

Safeguarding Proposals. All contracting staff, the TEP Chairman and TEP members shall safeguard proposals to prevent unauthorized disclosure. The Contracting Officer is responsible for proposals in the possession of the Acquisition Services Branch. During the evaluation process, the TEP Chairperson is responsible for all copies of proposals in possession of the TEP. Proposals shall be contained in a secured location.

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Conduct During Proposal Evaluation. The proposals are for evaluation purposes only and should not be duplicated, used or disclosed in whole or in part for any purpose other than evaluation under this RFP. Every precaution should be taken to ensure that the confidentiality of the proposals is maintained and proposals are accessible only to those who have a need to review them in connection with this proposal evaluation.

TEP Procedures.

- (1) **Initial Briefing by the Contracting Officer.** The briefing agenda shall cover:
 - (a) Evaluators' responsibility for protecting contracting information;
 - (b) The number of proposals received;
 - (c) The schedule for completing the evaluation;
 - (d) Key RFP terms and conditions and significant statement of work contents;
 - (e) Resumes of key personnel and how they will be reviewed;
 - (f) Any proposal format requirements;
 - (g) Evaluation criteria and their corresponding standards;
 - (h) Need to obtain and consider past performance information;
 - (i) Ranking procedures, including score and weight assignment;
 - (j) The application of price incentive points; and
 - (k) Documentation requirements including the standard protective marking statement ("*Confidential Contracting Information-Not for Public Disclosure*") to be included on all proposal evaluation documentation and recommendation reports; and
 - (l) The signing of a Confidentiality Agreement and a Conflict of Interest Certification, Attachment (*insert number*) by each evaluator.

The following briefly describes your roles and responsibilities as members of the Technical Evaluation Panel.

- (1) **Guidelines for Individual Evaluations.** Individual proposals shall be evaluated against the evaluation criteria, *not* compared against one another. Generally, evaluators should take the following steps:
 - (a) **Scan Each Proposal.** Evaluators should get a sense of the organization, contents, and style of the offeror's proposal.
 - (b) **Read Each Proposal Carefully.** Evaluators should analyze each proposal using the evaluation criteria as a checklist and any proposal instructions provided in the RFP.

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- (c) **Document the Review of Each Proposal.** All numeric scores must be supported with written narratives. Evaluators shall document all deficiencies. Evaluators shall also document all strong points, as well as all weak points, all mistakes and ambiguities, and point out where clarifications are needed. All review comments should be organized and referenced by proposal part (volume, chapter, section, page number, and so forth) and referenced by the evaluation criteria to which the comments pertain.
 - (d) **Summarize Review Findings of Each Proposal.** After evaluating a proposal, evaluators shall summarize its strengths and weaknesses.
 - (e) **Rate Each Proposal.** To complete the evaluation, evaluators shall assign a score to each proposal and support the score with a written (brief) narrative. Since the goal of the evaluation process is to predict success and narrow the field of possibilities, *it is imperative, regardless of the scoring system used, that evaluators assign positive scores only if clearly justified in accordance with the evaluation criteria.* It is inappropriate, for instance, to assign even a low number of points to any particular criterion, or to the proposal as a whole, in order to indicate an appreciation of effort on the part of the offeror. Evaluators shall complete the evaluation and scoring of each proposal before proceeding to the next one.
- (2) **Non-Responsive Proposals.** At the Contracting Officer's discretion, proposals that are nonconforming to the RFP shall be considered non-responsive and eliminated from further consideration.
 - (3) **Clarification of Proposals.** If during the evaluation process detailed above, or in the consensus meeting, TEP members need clarification of any aspect of a proposal, the TEP Chairperson shall request such clarification from the Contracting Officer. Only the Contracting Officer has the authority to request clarification from an offeror, and the request shall be made in writing.
 - (4) **Past Performance.** Past performance shall be a scored criterion. The TEP will obtain any available performance information on all offerors from the Contracting Officer and offerors' references and will use the information obtained in evaluating an offeror's proposal against the performance criterion.
 - (5) **TEP Consensus Meeting.** After the individual TEP members have completed and documented their evaluations, the TEP shall meet as a group to discuss the strengths and weaknesses of each proposal. The TEP shall achieve consensus using a rational, agreed upon method (e.g. through discussion). The TEP shall not just average scores to reach consensus.
 - (6) **TEP Memorandum Procedure.** Prior to receiving the price proposals from the Contracting Officer, the TEP Chairperson shall provide a memorandum documenting the panel's position

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on each proposal. The memorandum shall reflect the consensus reached at the TEP consensus meeting or the basis upon which the TEP Chairperson made a decision if a consensus could not be reached. All TEP members must sign the memorandum.

(7) **TEP Memorandum Content.** The TEP Memorandum (APM Exhibit XII) shall list proposals in descending order, starting with the top-rated proposal. The TEP Memorandum shall include:

- [1] An analysis, keyed to the specific evaluation criteria of the technically acceptable and unacceptable proposals, including an assessment of each offeror's ability to accomplish the technical requirements;
- [2] A narrative statement reflecting the strengths and weaknesses of each proposal;
- [3] A summary of technical scores plus each evaluator's individual scores and supporting narrative;
- [4] The evaluators' score sheets; and
- [5] A narrative statement which addresses the price realism.

(8) **Review of TEP Memorandum.** The Contracting Officer shall review the TEP Memorandum to ensure that all proposals were evaluated fairly and in accordance with the evaluation criteria listed in the RFP.

Award Selection and Debriefing:

The evaluation sheets will be used to form the basis of the determination of the competitive range, negotiations, and selection of the contractor. In addition, this information will be utilized to conduct all debriefings. If you have any questions regarding this evaluation or require assistance in any manner, please contact the Contract Specialist handling this RFP.

Attachments:

1. *(identify attachment)*
2. *(identify attachment)*
3. *(identify attachment)*
4. *(identify attachment)*

TECHNICAL EVALUATION PANEL RATING FORM

TECHNICAL RATING SUMMARY

Firm: _____ RFP No. : _____
 Tax I.D.: _____ RFP Description: _____
 Date: _____ TEP Member: _____

Total Technical Evaluation Score (from last page) _____

Ranking: Circle a number from the range corresponding to the rating and multiply by weight to arrive at score.

Criterion	Description	Out- Standing	Very Good	Satis- factory	Poor	Unsatis factory	Criterion Weight*	Score
1		10/9	8/7	6/5	4/3/2	1/0		
Comment: Specify Strength/ Weakness/ Deficiency								
Criterion	Description	Out- Standing	Very Good	Satis- factory	Poor	Unsatis factory	Criterion Weight	Score
2		10/9	8/7	6/5	4/3/2	1/0		
Comment: Specify Strength/ Weakness/ Deficiency								

- From Source Selection Plan

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Criterion	Description	Out- Standing	Very Good	Satis- factory	Poor	Unsatis- factory	Criterion Weight	Score
3		10/9	8/7	6/5	4/3/2	1/0		
Comment: Specify Strength/ Weakness/ Deficiency								
Criterion	Description	Out- Standing	Very Good	Satis- factory	Poor	Unsatis- factory	Criterion Weight	Score
4		10/9	8/7	6/5	4/3/2	1/0		
Comment: Specify Strength/ Weakness/ Deficiency								
Criterion	Description	Out- Standing	Very Good	Satis- factory	Poor	Unsatis- factory	Criterion Weight	Score
5		10/9	8/7	6/5	4/3/2	1/0		
Comment: Specify Strength/ Weakness/ Deficiency								

Criterion	Description	Out- Standing	Very Good	Satis- factory	Poor	Unsatis- factory	Criterion Weight	Score
6		10/9	8/7	6/5	4/3/2	1/0		
Comment: Specify Strength/ Weakness/ Deficiency								
Criterion	Description	Out- Standing	Very Good	Satis- factory	Poor	Unsatis- factory	Criterion Weight	Score
7		10/9	8/7	6/5	4/3/2	1/0		
Comment: Specify Strength/ Weakness/ Deficiency								
Criterion	Description	Out- Standing	Very Good	Satis- factory	Poor	Unsatis- factory	Criterion Weight	Score
8		10/9	8/7	6/5	4/3/2	1/0		
Comment: Specify Strength/ Weakness/ Deficiency								

TOTAL TECHNICAL EVALUATION SCORE	
---	--

PRICE PROPOSAL WEIGHTING AND RANKING ANALYSIS

*All entry directions relate to completion of Price Evaluation Scoring Summary on following page.
(See also Job Aid entitled "FDIC Proposal Evaluation.")*

STEP 1: Identify Total Technical Points Available

This information will normally be available from the RFP by multiplying the total number of criteria (typically 6 to 10) by the maximum points for each criteria (e.g. 9 criteria × 10 points = 90 technical points.) May include weighting on points.

STEP 2: Determine Price and Technical Weighting Factors

(APM requires standard 40% price and 60% technical weighting factors, unless supervisory approval is granted for a higher technical percentage.)

STEP 3: Determine Total Price Points Available (enter 60 @ Position B)

(To determine total price points, multiply technical points by ratio of price weight/technical weight.)

STEP 4: Determine Lowest Offered Price With Price Adjustment for SDB Firms

(To determine SDB-Adjusted price, multiply all SDB offers by 10% and subtract this "SDB Incentive" amount from the originally bid amount.)

STEP 5: Determine the Price Point Allocation Factor (Enter Percentages in Col. C6)

(To determine Price Weighting Factor, divide the lowest price by each Offeror's price. If the Offeror is an SDB, divide the lowest price by the SDB-Adjusted price. If the lowest price is the SDB-adjusted price, divide the SDB-adjusted price by each offerors' price.)

STEP 6: Determine Offerors' Allocated Price Points (Enter Price Points in Col. C7)

(To determine the Offerors' allocated price points, multiply the available price points by the Price Weighting Factor developed in STEP 5.)

STEP 7: Combine Technical Scores and Price Scores and Establish Overall Total Point Ranking

PRICE EVALUATION SCORING SUMMARY

RFP No. _____ DATE: _____

Contracting Officer: _____

A. Lowest Priced, Technically Acceptable Offer: [A1] _____	Adjusted Lowest Price: [A2] _____
--	---

B. Total Price Points Available:
 [B] _____

C. Allocation of Points to Price Proposals:(See Columns C1 Through C7 Below)

Offeror Name	SDB Status	Proposed Price \$	SDB Incentive \$	Proposed Price (-) SDB Incentive ⁽¹⁾	Price Weighting Factor ⁽²⁾	Offeror's Allocated Price Point Score ⁽³⁾
[C1]	[C2]	[C3]	[C4]	[C5]	[C6]	[C7]

(1) Price Proposals for technically qualified and eligible SDB firms shall be reduced by 10% for proposal evaluation purposes.

(2) Determine each Offeror's Price Weighting Factor, the percentage relationship of all prices to the lowest price, by dividing the lowest adjusted price (A2) by each Offeror's proposed price (lowest price equals 100%).

(3) Determine the Price Point Score for each price proposal by multiplying the total Price Points Available (See B) by each Offeror's Price Weighting Factor (Lowest Price equals 100%).

TECHNICAL EVALUATION SCORING SUMMARY

RFP No.: _____		Date: _____		
Contracting Officer: _____				
Total Technical Points Available: _____ Technical Evaluation Adjustment: _____				
Offeror Name	SDB Status	Original Technical Points	SDB Incentive ¹	Adjusted Technical Points

¹ SDB incentive (technical evaluation adjustment) is determined as follows:
 For an SDB firm subcontracting no more than 50% of work, all of technical points.
 For a non-SDB firm subcontracting to an SDB firm at least 10%, but no more than 50%,
 of the work, a percentage of the technical points based on amount of subcontracting.
 Example: $\frac{30\% \text{ subcontracting}}{50\% \text{ maximum subcontracting}} = 60\%$

60% X 20 technical points = 12 points for SDB incentive

SUMMARY SPREADSHEET: Combined Price/Technical Weighted Evaluation (Excel spreadsheet with formulas)
RFP NO:
DESCRIPTION OF SERVICES:
GSA SCHEDULE NO:
DATE PREPARED:

Ranking Order	Offeror	***** P R I C E *****						***** TECHNICAL *****					* SUMMARY *
		Total Price Points Available	SDB Status	Proposed Price	SDB 10% Price Evaluation Adjustment (if applicable)	Final Proposed Price (For Bid Evaluation Purposes)	TOTAL PRICE SCORE	Total Technical Points Available	TEP Consensus Technical Score*	SDB Technical Evaluation Adjustment (if applicable)	TOTAL TECHNICAL SCORE	TOTAL COMBINED WEIGHTED SCORE	
1						\$0	#DIV/0!				0	#DIV/0!	
2						\$0	#DIV/0!				0	#DIV/0!	
3						\$0	#DIV/0!				0	#DIV/0!	
4						\$0	#DIV/0!				0	#DIV/0!	
5						\$0	#DIV/0!				0	#DIV/0!	

_____ are certified SDB firms, as verified on the SBA's pro-net database, on XX/XX/03 (see attached pro-net print screens). XXX firms elected for the [price evaluation adjustment]

[technical evaluation adjustment].

*Prior to applying SDB Technical Evaluation Adjustment, if applicable

NOTE: Total Price and Technical Points Available were determined as follows:

PRICE/TECHNICAL WEIGHTING EVALUATION FACTORS: 60% Technical Vs. 40% Price

TOTAL TECHNICAL POINTS AVAILABLE : ___ points

TOTAL PRICE POINTS AVAILABLE : ___ points
 (CALCULATION: Total Technical Points Available (AAA) multiplied by the price weighting (40%) divided by the technical weighting (60%) = Total Price Points Available
 [AAA x .40 / .60 = 67]

TOTAL POINTS AVAILABLE (Price and Technical Combined): ___ points
 (CALCULATION: Total Technical Points Available plus Total Price Points Available = Total Points Available
 [XXX + YYY = ZZZ]

Prepared by:

 Contract Specialist Date

Approved by:

 Contracting Officer Date

Concur:

 TEP Chairperson Date

** Confidential Contracting Information -- Not for Public Disclosure **

TEP MEMORANDUM

- *In accordance with the policies and procedures specified in APM, 6.D.4.c.(7), prior to receiving the price proposals from the Contracting Officer, the TEP Chairperson shall provide the Contracting Officer with a memorandum documenting the panel's position on each proposal. The memorandum shall reflect the consensus reached at the TEP consensus meeting or the basis upon which the TEP Chairperson made a decision if a consensus could not be reached. All TEP members must sign the memorandum.*

- *At the bottom of each page of the TEP Memorandum, the following protective marking shall be stated: "Confidential Contracting Information-Not for Public Disclosure."*

- *The memorandum shall be organized as follows:*

TO: (*insert name*), Contract Specialist
 ASB/Acquisition Services Branch

FROM: (*insert name*), TEP Chairperson

SUBJECT: Technical Evaluation Panel (TEP) Memorandum
 RFP No.: _____
 RFP Title: _____

On (*insert date*) through (*insert date*), a Technical Evaluation Panel evaluated (*insert number*) proposal(s) in response to RFP No. _____. The TEP members are identified below:

_____, TEP Chairperson
_____, TEP Panel Member
_____, TEP Panel Member

A TEP kick-off meeting was held the morning of (*insert date*), with all voting panel members present and (*insert name, Contract Specialist*). During the meeting, instructions for evaluating the proposals, conflicts of interest, confidentiality issues and the point scoring system defining the maximum number of points were discussed. Additionally, the TEP members who had not seen the TEP video were required to view it. At the conclusion of the meeting, each person executed the required Conflict of Interest Statement and Confidentiality Agreement provided by the Contract Specialist. All members were briefed in this area and acknowledged each was free from actual and/or potential conflicts of interest.

The TEP reviewed and analyzed each of the technical proposals indicated below. In reviewing each proposal, panel members utilized the evaluation criteria noted on the attached individual Technical Evaluation Panel rating forms. Following the TEP's evaluation of all technical proposals, and after providing the Contracting Officer a memorandum documenting the panel's position on each proposal, the Contract Specialist forwarded a price analysis summary to the TEP for review.

-- Confidential Contracting Information – Not For Public Disclosure --

TECHNICAL EVALUATION CRITERIA:

The Technical Evaluation Criteria were as follows:

- A. _____ (___ points)
- B. _____ (___ points)
- C. _____ (___ points)
- D. _____ (___ points)
- E. _____ (___ points)

TECHNICAL EVALUATION AND SCORING:

Each proposal was reviewed independently of the others and each panel member gave an evaluation rating for each criterion to each proposal. After individual ratings were performed, the panel held a consensus meeting and determined a consensus rating for each offeror's technical proposal (*see attached TEP Consensus Technical Rating Forms*). Out of a possible total of (*insert number*) technical points, the final consensus scores were as follows:

<u>TECHNICAL RANKING</u>	<u>OFFEROR'S NAME</u>	<u>*INDIVIDUAL TEP SCORES</u>	<u>TEP CONSENSUS SCORE</u>
1.	_____	___ ___ ___	___
2.	_____	___ ___ ___	___
3.	_____	___ ___ ___	___

**[Insert TEP names]*

[Insert this sentence if ALL offerors were technically qualified]:

All of the offerors were considered technically qualified.

[Insert these sentences if any of the offerors were NOT technically qualified]:

All of the offerors were considered technically qualified except for _____. _____'s proposal was deemed "not technically qualified" by the TEP for reasons summarized below.

Non-responsive proposals should be identified too.

The following summarizes the TEP's assessment of each offeror's ability to accomplish the technical requirements, the offeror's strengths and weaknesses for each evaluation criterion, and includes the consensus score for each individual evaluation criterion.

1. OFFEROR: [insert name of top ranked firm]:

Evaluation Criterion A

Maximum Points Possible: __ points

(Example: management plan and plan to attract & retain qualified personnel)

CONSENSUS SCORE: __ points

STRENGTHS:

[Insert TEP consensus comments / strengths of proposal]

WEAKNESSES:

[Insert TEP consensus comments / weaknesses of proposal, if any]

NOTE: REPEAT THE ABOVE SEQUENCE FOR EACH EVALUATION CRITERION

2. OFFEROR: [insert name of 2nd ranked firm]:

[Insert strengths and weaknesses for each evaluation criterion, as was done for the top ranked firm in paragraph 1 above.]

3. OFFEROR: [insert name of 3rd ranked firm]:

[Insert strengths and weaknesses for each evaluation criterion, as was done for the top ranked firm in paragraph 1 above.]

If you have any questions regarding the information contained in this TEP Memorandum, please call me at (insert phone number of TEP Chairperson or designee).

TEP CONCURRENCE:

_____, TEP Chairperson

_____, Panel Member

_____, Panel Member

-- Confidential Contracting Information – Not For Public Disclosure --

PRICE REASONABLENESS DETERMINATION:

After the Contract Specialist reviewed the memorandum documenting the panel's position on each proposal which included the completed TEP Evaluation Rating Forms (*Individual and Consensus*), the Contract Specialist provided the price proposals and price analysis spreadsheets to the TEP for review. In order to determine price reasonableness, the TEP reviewed the price proposals of all firms to ensure that the proposed prices were realistic for the work to be performed, reflected a clear understanding of the requirements, and were consistent with the offeror's technical proposal. The TEP's review and determination included:

- (a) The number and caliber of people to be assigned to various aspects of the proposed work;
- (b) Proposed labor rates or proposed material fees;
- (c) Necessity and price of proposed resources for the requirement; and
- (d) The price, amount, and necessity of travel.

[The TEP should work with the Contract Specialist to draft a paragraph that addresses the reasonableness of the top ranked firm's proposal or the top two proposals, if appropriate]

Attachments: TEP Technical Evaluation Rating Forms (*Individual*)
TEP Technical Evaluation Rating Forms (*Consensus*)

MEMORANDUM ESTABLISHING TECHNICAL EVALUATION PANEL

MEMORANDUM

TO: Technical Evaluation Panel

FROM: Contracting Officer

DATE: _____

RE: Technical Evaluation of Proposals for RFP No. _____

The following individuals are designated as members of the Technical Evaluation Panel (TEP) for the subject procurement:

Chairperson _____

Members _____

The TEP will convene on _____ at _____. Copies of all technical proposals will be provided to the TEP members at that time, along with a Memorandum Establishing the Technical Evaluation Guidelines. All members shall be present for a TEP orientation and briefing by the Contracting Officer. Also, a video, entitled "*FDIC Guidelines for Technical Evaluation Panels*" will be shown for those who have not yet seen it or for those wishing to receive a refresher on the subject. All proposals shall be evaluated by the TEP strictly against the evaluation criteria listed in the RFP to ensure that all proposals are evaluated in a uniform manner.

Prior to the initiation of the Technical Evaluation, a "Confidentiality Agreement" and a "Conflict of Interest Statement" must be signed by each member of the TEP. All potential or real conflicts of interest must be disclosed to the Contracting Officer immediately.

You are reminded that TEP members will be required to participate throughout the pre-award phase of this procurement, i.e., Technical Evaluation, Technical Discussions, Final Technical Analysis, and analysis of Best and Final Offer (BAFO)/Negotiated Final Offers.

Each TEP member must complete an evaluation worksheet for each proposal with accompanying written justification for the point score. This documentation must be of sufficient detail to document a proposal's strengths and weaknesses against the technical evaluation criteria. All worksheets must be furnished to the contracting officer along with the narrative evaluation of the proposals.

The TEP Chairperson shall prepare a comprehensive TEP Consensus report at the conclusion of the evaluation process.

CONFLICT OF INTEREST STATEMENT

MEMORANDUM

TO: Technical Evaluation Panel Member

FROM: Contracting Officer

DATE: _____

RE: Conflict of Interest Guidance for RFP No. _____

It is important that complete objectivity be maintained in this evaluation proceeding; therefore, you must determine if you have any interest which might conflict with your duties in connection with the responsibilities as a panel member.

You should keep in mind that a conflict of interest situation may exist where your private interests (including previous employment) conflict or raise a reasonable question of conflict with your duties and responsibilities. The potential conflict is of concern whether it is real or apparent.

18 U.S.C. 208 prohibits personal and substantial participation of an individual in matters before the agency in which the individual, his or her spouse, minor child, or general partner has a financial interest¹ It extends to any organization in which the individual serves as an officer, director, trustee, general partner, or employee or an organization with which the individual is negotiating for prospective employment²

5 CFR 2635, Subpart E, Impartiality in Performing Official Duties, prohibits participation in a particular matter involving specific parties that is likely to have a direct and predictable effect on the financial interest of a member of the individual's household, or knows that a person with whom the individual has a covered relationship is a person or represents a party to such matter³

The purpose of this memorandum is to request that you review on a continuing basis your situation and if you identify any financial and/or employment interest related to yourself, your spouse, minor child or dependent(s) which may create a conflict of interest or the appearance thereof in the context of your duties and responsibilities as a technical evaluation official or as a member of, or advisor to, a technical evaluation panel, you should notify the Contracting Officer or Deputy Ethics Counselor immediately.

In reviewing your situation, you should ask yourself the following questions:

1. Have I, or my spouse, minor children, or dependent(s) (hereinafter "Family"), had any connection as an employee, officer, owner, director, member, trustee, general partner, advisor, or consultant to any of the organizations to be solicited or those who have submitted proposals, or do I, or my family, have any continuing financial interests through a pension or retirement plan, shared income, or other arrangement as a result of any current or prior employment or business or professional association?¹

2. Am I or my family now negotiating or do I or my family have any arrangement concerning prospective employment with any proposer? If you have sent a resume to, or had any discussions regarding employment with any of the firms whose proposals you are being requested to evaluate, you need to contact the Ethics Section. Unless the Ethics Section determines otherwise, you must recuse yourself--that is not participate in the review of any of the proposals.²

3. Do I or my family have any financial interest through the ownership of stock, stock options, bonds, securities, or other arrangements including trust, in any proposer?

4. Am I the immediate supervisor of any other member of the Technical Evaluation Panel?

The undersigned, as a member of the Technical Evaluation Panel, hereby acknowledges the notification that he/ she is subject to Federal statutes relating to conflicts of interest and the regulation promulgated thereunder, as more particularly set forth in FDIC Circular 2410-6, entitled, "Conflict of Interest for FDIC Employees."

If you believe that no present conflict of interest exists, please complete the attached agreement and return it to the Contracting Officer promptly.

AGREEMENT

This is to confirm that to the best of my knowledge and belief, I have no current conflict of interest which may interfere with my assignment and I agree to report promptly any such conflict of which I become aware.

Name / Title

Signature

Date

¹ Negotiation means discussion or communication with another person, or such person's agent or intermediary, mutually conducted with a view toward reaching an agreement regarding possible employment with that person. The term is not limited to discussions of specific terms and conditions of employment with a specific position.

² A covered relationship includes anyone with whom the individual has or seeks to have a business, contractual or other financial relationship that involves other than a routine consumer transaction. It includes a person who is a member of the employee's household, or who is a relative with whom the employee has a close personal relationship. It includes a person for whom the employee's spouse, parent or dependent child is, to the employee's knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee. It includes any person for whom the employee has, within the last year, served as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee. It also includes any organization, other than a political party, in which the employee is an active participant. Participation is active, for example, if it involves service as an official of the organization or in a capacity similar to that of a committee or subcommittee chairperson or spokesperson, or participation in directing the activities of the organization. In other cases, significant time devoted to promoting specific programs of the organization, including coordination of fundraising efforts, is an indication of active participation. Payment of dues or the donation or solicitation of financial support does not, in itself, constitute active participation.

³ A financial interest is any current or contingent ownership of you, your spouse or minor child with respect to any equity, or security interest in real or personal property or a business and may be an indebtedness of compensated employment relationship. It thus includes, for example, interests in the nature of stocks, bonds, partnership interests, fee and leasehold interests, mineral and other property rights, deeds of trust, and liens, and extends to any right to purchase or acquire any such interest, such as a stock option or commodity future.

CONFIDENTIALITY AGREEMENT

TO: Technical Evaluation Team (including Source Selection Official, if applicable)

FROM: Contracting Officer

DATE: _____

RE: Technical Evaluation of Proposals for RFP No. _____

You are a Source Selection Official, if applicable, or a member of, or advisor to, the panel formed to evaluate proposals submitted in response to the subject RFP. In order to ensure the confidentiality of financial and technical data that may have been submitted by private firms under the subject solicitation, you are requested to sign the following agreement and promptly return this Agreement to the contracting officer.

AGREEMENT

Prior to the award of a contract under the subject solicitation, I will not disclose or discuss information provided by the bidders concerning their bid prices or technical proposals. Moreover, I will not disclose or discuss the technical evaluation team's evaluation of bid prices, technical proposals, competitive range determinations, rankings of proposals, and reports of the evaluations of proposals.

Except, I may disclose or discuss such matters with the Office of Inspector General or the Office of Executive Secretary (Ethics) to the extent such disclosure or discussion is necessary to report possible wrongdoing or resolve an ethics issue.

Provided further that, I may disclose information on the solicitation list, the source selection plan, the scoring methodology, the number of proposals received, the names of the offerors, the number of SDB/MWOB proposals received, and any amendments to the solicitation upon request by an official in the Program Office who has an interest in and a need to know the outcome of the evaluation.

After the award of the contract, I cannot disclose or discuss the evaluation process or the activities of the evaluation team with anyone outside the FGDIC, except pursuant to legally enforceable service of process, after consultation with the FDIC's Legal Division.

Signature: _____

Date: _____

Name/Title: _____

NOTE: Release of confidential and privileged commercial or financial information to any person outside the FDIC included in the offerors' proposals is prohibited by the Freedom of Information Act, 5 U.S.C. 552, by criminal statute 18 U.S.C. 1905, and by the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. 2635. Failure to comply may result in sanctions under the law and/or appropriate disciplinary action.

**CONTRACTOR AUTHORIZATION TO START WORK BEFORE FULLY
EXECUTED CONTRACTUAL DOCUMENTS ARE IN PLACE**

[Insert Name and Address of Contractor]

TIN NO.: _____

Dear: _____

[Insert Name of Contractor] was authorized by the undersigned to commence work on [Insert date] and to expend up to \$_____ under [Insert Contract/Task Order/Modification Number], while the (contract/task/order modification) is being finalized. This (contract/task order/modification) provides for [Insert Purpose of Contract/Task Order/Modification], in accordance with the enclosed statement of work.

(OPTIONAL PARAGRAPH) Work performed under this authorization shall be limited as follows:

[Insert Any Limitations on Tasks to be Performed]

All work performed and costs incurred by your firm under this authorization are subject to the final negotiated terms and conditions of the (contract/task order/modification) [add only for task orders and modifications: and the terms and conditions of {Insert Purchase Order} Contract Number] ____-____-____. All work performed and costs incurred will also be subject to negotiation to determine applicability of the effort to the requirements of the (contract/task order/modification) and the acceptability of the cost to FDIC.

[Insert Name of Contractor] shall promptly notify this office in writing when 75% and 100% of the funds authorized above have been expended. No funds shall be expended in excess of the authorized amount without further authorization from this office. Any costs incurred or funds expended in excess of the authorized amount without proper authorization will not be reimbursed by FDIC.

If you have questions, please contact [Insert Name of Contracting Officer] at [Insert Phone Number].

Sincerely,

Contracting Officer

Enclosure

Federal Deposit Insurance Corporation
BACKGROUND INVESTIGATION QUESTIONNAIRE FOR CONTRACTORS

INSTRUCTIONS: Complete each item as it applies to your firm. *(Please type or print.)*

SECTION I - CONTRACTOR INFORMATION

1. NAME OF CONTRACTOR <i>(Do not use acronyms unless applicable.)</i>		2. FEDERAL TAX ID NUMBER
3. TRADE NAME <i>(If different from contractor name)</i>		
4. TYPE OF BUSINESS		
5. STREET ADDRESS <i>(Include City, State, and ZIP Code)</i>		
6. SOLICITATION/CONTRACT NO. <i>(If applicable)</i>	7. CONTACT NAME	8. TELEPHONE NUMBER

SECTION II - JOINT VENTURE ENTITIES

9. NAME OF JOINT VENTURE (1)		10. FEDERAL TAX ID NUMBER
11. STREET ADDRESS <i>(Include City, State, and ZIP Code)</i>		
12. CONTACT NAME		13. TELEPHONE NUMBER
14. NAME OF JOINT VENTURE (2)		15. FEDERAL TAX NUMBER
16. STREET ADDRESS <i>(Include, City, State, and ZIP Code)</i>		
17. CONTACT NAME		18. TELEPHONE NUMBER

Check this box if information on additional entities has been attached to this form.

SECTION III - CERTIFICATION AND AUTHORIZATION

I hereby authorize FDIC to conduct any investigation or inquiry necessary to verify the aforementioned information and the information provided to the FDIC regarding contracting with the FDIC in order to verify the contractor's fitness and integrity to provide services to or on behalf of the Federal Deposit Insurance Corporation. The background investigation I am authorizing may require information contained herein and acquired during the investigation to be disclosed to third parties, including credit-reporting businesses and State and local licensing agencies. I hereby authorize and give my consent to such disclosures.

NOTE: Management official means any shareholder, employee, or partner who controls a company and any individual who directs the day-to-day operations of a company. With respect to a partnership whose management committee or executive committee has responsibility for the day-to-day operations of the partnership, management official means only a member of such committee but, if no such committee exists, management official means each of the general partners. (12 U.S.C. § 366.2(l))

19. NAME OF MANAGEMENT OFFICIAL COMPLETING FORM <i>(Type or print)</i>		20. TITLE
21. SIGNATURE <i>(Sign in Ink)</i>		22. DATE

ESTIMATED REPORTING BURDEN

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Assistant Executive Secretary (Administration), OES, Room F-4001, FDIC, Washington, D.C. 20429; and to the Office of Management and Budget, Paperwork Reduction Project (3064-0072), Washington, D.C. 20503.

PRIVACY ACT STATEMENT

Collection of this information is authorized by 12 U.S.C. §§ 1819, 1820(a), 1821, and 1822(f); Executive Order 9397; and 12 C.F.R. Part 366. The information requested on this form will be used by FDIC personnel to conduct background investigations of contractors seeking to provide goods or services to the FDIC to determine whether the individual meets the FDIC fitness and integrity standards. Specifically, the information provided may be disclosed to third parties, including credit-reporting businesses and State and local licensing agencies, as necessary to conduct the background investigation authorized herein. Your Federal Tax Number [Social Security Number (SSN)] is requested to further ensure record accuracy and to differentiate you among others with similar or identical names. Disclosure of this information may also be made in accordance with the "routine uses of records" listed in the FDIC's Financial Information Management Records, #30-64-0012, including disclosure to: the General Accounting Office for inspection by auditors; appropriate Federal or State agencies for enforcement if a violation or possible violation of civil or criminal law is apparent; a court, magistrate, or administrative tribunal when the FDIC is a party to the proceeding or has a significant interest in the proceeding; the U.S. Office of Personnel Management and other appropriate agencies or offices to the extent disclosure is necessary to carry out government-wide personnel management, investigatory, and adjudicatory functions; a congressional office in response to an inquiry made at the request of the individual; the Internal Revenue Service, the Social Security Administration, State and local tax authorities; the FDIC Office of the Inspector General for audit purposes; a consultant, person or entity who contracts or subcontracts with the FDIC, to the extent necessary for the performance of the contract or subcontract; and to the Department of the Treasury, or another party for the purpose of collecting or assisting in the collection of a delinquent debt owed to the FDIC. Completing this form is voluntary. However, failure to provide all of the requested information (including your SSN) may delay or prevent the FDIC from conducting its investigation, which may preclude you and your employer from consideration for the award of a contract.

QUESTION 25. When is there a pattern or practice of defalcation? (12 CFR § 366.4)

You have a pattern or practice of defalcation under 12 CFR Section 366.3(c) when you, any person that owns or controls you, or any entity you own or control (see Note below) has a legal responsibility for the payment on at least two obligations that are:

- a. To one or more FDIC-insured depository institutions;
- b. More than ninety (90) days delinquent in the payment of principal, interest, or a combination thereof; and
- c. More than \$50,000 each.

QUESTION 26. What causes a substantial loss to a Federal deposit insurance fund? (12 CFR § 366.5)

You cause a substantial loss to a Federal deposit insurance fund under 12 CFR Section 366.3(d) when you, or any person that owns or controls you, or any entity you own or control (see Note below) has:

- a. An obligation to us that is delinquent for ninety (90) days or more and on which there is an outstanding balance of principal, interest, or a combination thereof of more than \$50,000;
- b. An unpaid final judgment in our favor that is in excess of \$50,000, regardless of whether it becomes discharged in whole or in part in a bankruptcy proceeding;
- c. A deficiency balance following foreclosure of collateral on an obligation owed to us that is in excess of \$50,000, regardless of whether it becomes discharged in whole or in part in a bankruptcy proceeding; or
- d. A loss to us that is in excess of \$50,000 that we report on IRS Form 1099C, Information Reporting for Discharge of Indebtedness.

QUESTION 27. What is a default on a material obligation? (12 CFR § 366.13 (b))

A default on a material obligation occurs when a loan or advance with an outstanding balance of more than \$50,000 is or was delinquent for ninety (90) days or more.

NOTE: How is my ownership or control determined? (12 CFR § 366.6)

- a. Your ownership or control is determined on a case-by-case basis and depends on the specific facts of your situation and the particular industry and legal entity involved. You must provide documentation to us to use in determining your ownership or control.
- b. The interest of a spouse or other family member in the same organization is imputed to you in determining your ownership or control.
- c. The following are examples of when your ownership or control may or may not exist. The examples are not inclusive.
 - (1) You have control if you are the president or chief executive officer of an organization.
 - (2) You have ownership or control if you are a partner in a small law firm.
 - (3) You have control if you are a general partner of a limited partnership. You have ownership of control if you have a limited partnership interest of twenty five percent (25%) or more.
 - (4) You have ownership or control if you have the:
 - (i) Power to vote, directly or indirectly, 25% or more interest of any class of voting stock of a company;
 - (ii) Ability to direct in any manner the election of a majority of a company's directors or trustees; or
 - (iii) Ability to exercise a controlling influence over the company's management and policies.

FEDERAL DEPOSIT INSURANCE CORPORATION

**Notice and Authorization
Pertaining to Consumer Reports
Pursuant to the Fair Credit Reporting Act of 1970, 15 U.S.C. § 1681, et seq.**

Please take notice that one or more consumer reports may be obtained for employment purposes. Because a background investigation will be conducted as part of a determination of your fitness for employment, or for performance under a contract, you are also entitled to request additional disclosures concerning the nature and scope of the investigation.

By signing this form, you are giving consent to have your consumer reports furnished by consumer reporting agencies as part of an investigation to determine your (1) fitness for Federal employment, (2) clearance to perform contractual service, and/or (3) security clearance or access. The information obtained may be redisclosed to other Federal agencies for the above purposes and in fulfillment of official responsibilities to the extent that such disclosure is permitted by law.

This authorization is valid for one (1) year from the date signed or upon my separation of employment/services from the FDIC.

I _____ hereby
(Name of Employee/Applicant)

authorize the Federal Deposit Insurance Corporation to obtain such report(s) from any consumer-reporting agency for employment purposes.

Signature

Date

Social Security Number

Executive Order 9397 (Nov. 22, 1943) asks Federal agencies to use Social Security Numbers (SSN) to help identify individuals in agency records. Your SSN is therefore needed to keep records accurate, because other people may have the same name. Providing your SSN is voluntary. However, failure to provide the requested information could result in the FDIC receiving an erroneous credit report.

SECTION III – AUTHORIZATION TO RELEASE INFORMATION AND CERTIFICATION

Carefully read the authorization to release information and the certification below, then sign and date in ink.

I hereby authorize FDIC to conduct any investigation or inquiry necessary to verify the aforementioned information, the information provided in my resume or other personal data in order to verify my fitness and integrity to provide services for the Federal Deposit Insurance Corporation. The background investigation I am authorizing may require information contained herein and acquired during the investigation to be disclosed to third parties, including credit-reporting businesses and state and local licensing agencies. I hereby authorize and give my consent to such disclosures. This authorization will remain valid for the life of the contract or until termination of my employment or affiliation with the contractor, whichever is sooner. Photocopies of this authorization that show my signature are as valid as the **original signed by me**. (Pursuant to section 604 of the Fair Credit Reporting Act, a separate notice in writing pertaining solely to obtaining a credit/consumer report will be provided to you. See 15 U.S.C. § 1681b(2)(A)).

I certify that I have read and understood each question asked of me on this form, and that the information provided, including attachments to this form, is true and correct to the best of my knowledge, information, and belief. I understand that anyone who knowingly or willfully makes false or fraudulent statements or representations in connection with disclosures or certifications herein may be subject to fines and/or imprisonment or both (18 U.S.C. § 1001 and § 1007). I agree to notify the FDIC immediately of any change in circumstances that would require disclosure hereunder.

32. PRINT OR TYPE NAME

32. SIGNATURE AND DATE (*Sign in ink*)

ESTIMATED REPORTING BURDEN

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Assistant Executive Secretary (Administration), OES, Room F-4001, FDIC, Washington, D.C. 20429; and to the Office of Management and Budget, Paperwork Reduction Project (3064-0072), Washington, D.C. 20503.

PRIVACY ACT STATEMENT

Collection of this information is authorized by the Federal Deposit Insurance Act (12 U.S.C. §§ 1819, 1821, and 1822(f)(3) and (4)), Executive Order 9397, as well as the FDIC regulations at 12 CFR Part 366. The requested information will be used by FDIC personnel to conduct background investigations of contractors seeking to provide services to the FDIC to determine whether the individual meets the FDIC's fitness and integrity standards. Specifically, the information provided may be disclosed to third parties including credit-reporting businesses and state and local licensing agencies as necessary to conduct the background investigation authorized herein.

Disclosure of information on this form may also be made to appropriate Federal or state agencies if a violation or possible violation of a civil or criminal law is apparent; to the General Accounting Office for inspection by auditors; and, to a Congressional office in response to an inquiry made at the request of the individual or in accordance with the other "routine uses of records" listed in the FDIC's Financial Information System 30-64-0012. Your Social Security Number (SSN) is requested to ensure record accuracy. Completion of this form is voluntary, but failure to provide the requested information, including your SSN, may preclude you and your employer from consideration for the award of a particular contract.

[Sample Contingent Award/Award Letter]

[PUT ON FDIC LETTERHEAD]

[DATE]

[Insert name and address of successful offeror]

Dear [Insert company's point of contact]:

The Federal Deposit Insurance Corporation ("FDIC") has completed its evaluations of the proposals submitted in response to RFP No. [Insert number of RFP] ("Insert title of RFP") and is pleased to inform you that [Insert name of offeror] has been selected for award. At this time, you are requested to sign the enclosed contracts (2 copies) and return both originals to me by [Insert date], at the address below.

Please be aware that the award of the Contract will be contingent upon (1) FDIC's successful completion of background investigations on your company and its key personnel, and (2) your company providing evidence of insurance, as specified in Article IX of the Contract (i.e., Liability Insurance). Such evidence may be (1) a binder or (2) a copy of the original policy. Your company shall also provide a Certification of Insurance which shall include the following mailing address and reference the Contract Number (*Insert contract number*):

Federal Deposit Insurance Corporation
Attn: [Insert name of contracting officer]
550 17th Street, NW, Room [Insert room number]
Washington, DC 20429

Your company's evidence of insurance shall be provided to FDIC no later than ten (10) calendar days after the date of execution of the Contract.

The FDIC will forward one fully executed contract to you for your files. **No binding contract will come into existence until both parties have signed the Contract.** Your interest in FDIC contracting and the efforts you have made to participate are appreciated. If you have any questions regarding the enclosed contract, please contact me at [Insert telephone number].

Sincerely,

[Insert name and title]

Enclosures

[Sample Unsuccessful Offeror Letter]

(PUT ON FDIC LETTERHEAD)

[Date]

[Insert name and address of the unsuccessful offeror]

Subject: *[Insert the Request for Proposal No.]*

Dear *[Insert company's point of contact]:*

The Federal Deposit Insurance Corporation (FDIC) has completed the review of all proposals received in response to the subject Request for Proposal for *[Insert title of RFP]*. Unfortunately, we must advise you that your company is an unsuccessful offeror. The FDIC selected *[Insert the name of the successful offeror]* to provide the required goods and/or services.

Your proposal was determined not to offer the best value for the requirement. We sincerely appreciate your interest in this important effort and invite your company to submit proposals for future requirements.

[Insert the following paragraph for offering debriefings if technical evaluations were conducted.]

If you would like to receive a debriefing, please contact *[Insert name and telephone number of the Contract Specialist]* in writing no later than ten (10) calendar days from the date of this letter. A debriefing will be scheduled and held by telephone or in person, within fifteen (15) days after receipt of a timely request.

If you have any questions, please contact me at (202) 942-XXXX.

Sincerely,

Contracting Officer

Federal Deposit Insurance Corporation
LETTER OF OVERSIGHT MANAGER CONFIRMATION

DATE:

MEMORANDUM TO: Oversight Manager/Program Office

FROM: Contracting Officer

SUBJECT: Confirmation as the Oversight Manager Under:
Contract/Agreement No.: _____; Task No.: _____

In accordance with program office designation, you are hereby confirmed as the Oversight Manager (OM) with respect to performance oversight matters within the scope of Contract _____, Task Order _____, or Interagency Agreement*, _____, which has been issued to _____.

Please note that this confirmation does not authorize the OM to: (1) modify or alter the contract or any of its terms and conditions; (2) waive Federal Deposit Insurance Corporation's (FDIC) rights with regard to the Contractor's compliance with the statement of work, price, delivery, or any other terms or conditions; or (3) approve any actions which would result in additional charges to FDIC. All such actions must be made in writing by the cognizant Contracting Officer.

- A. This confirmation authorizes you to perform the tasks listed below to the extent required by the terms of the contract.
1. Coordinate with the Contractor all technical matters of performance which may arise in the performance of this contract.
 2. Give technical clarification as to the meaning of the statement of work including inspection, testing, and acceptance procedures.
 3. Monitor and inspect the Contractor's progress and performance to assure compliance with the contract terms and conditions.
 4. Receive and accept deliverables (supplies, services, and/or reports) on behalf of FDIC.
 5. Verify satisfactory delivery of contract items and/or performance and approve invoices for payment.
 6. If this contract contains a warranty or maintenance clause, notify the Contracting Officer and Contractor of any deficiencies in material or workmanship immediately and monitor response and repair times as stipulated in the contract.
 7. For System Development Life Cycle (SDLC) based contracts, if the use of task assignments is intended, execute task assignments according to the provisions and requirements in the contract and the applicable contracting procedures.
- B. In addition, pursuant to this confirmation, you are responsible for:
1. Knowing the scope and limitations of your confirmation.
 2. Performing the specific duties assigned herein:
 - a. Promptly notifying the Contracting Officer in writing of any noncompliance or deviation in performance or failure to make progress; and
 - b. Reviewing and approving documents and invoices promptly. Delays in processing invoices may cause late payment by FDIC and the incurring of interest charges.
 3. Ensuring that the total dollar value of all invoices for the contract does not exceed the expenditure authority for the contract.
 4. Ensuring that the work does not go beyond the scope of the contract as provided in the SOW.
 5. Maintaining constant cognizance with respect to technical compliance with contract terms on the part of the Contractor.
 6. Knowing and understanding the terms and conditions of the contract.
 7. Using good judgment, skill, and reasonable care in the exercise of your designation.

* When using an Interagency Agreement, substitute "Interagency Agreement" for "Contract" and "Agency" for "Contractor."

8. Protecting privileged and sensitive information.
9. Visiting the Contractor's work site periodically, if appropriate, to check on the following aspects and informing the Contracting Officer of your findings through submission of a trip report prepared in accordance with your office's internal procedures:
 - a. Verifying actual performance versus scheduled performance; and
 - b. Taking action needed, if any, to restore contract schedule.
10. Implementing the FDIC-furnished property provisions of the contract, if applicable. The Oversight Manager responsibilities with respect to such property include:
 - a. Preparing an itemized list of such property showing serial numbers, if any;
 - b. Ensuring that delivery of the property to the Contractor is made in accordance with the contract;
 - c. Providing the Contracting Officer with the property list and Contractor acknowledges, in writing, receipt for such property; and
 - d. Inspecting each unit of property upon its return from the Contractor and notifying the Contracting Officer of such return and/or deficiencies.
11. With respect to identification badges for contractors, the Oversight Manager shall:
 - a. Prepare a list of all contractor and subcontractor employees who require and are issued a badge, and
 - b. Ensure that all badges are returned when each contractor and subcontractor employee terminates work on the subject contract.
12. Performing inspection and acceptance required by the contract in accordance with the time limitation stated therein. The results must be forwarded to the Contracting Officer.
13. Providing the Contractor with information, FDIC Directives, relevant FDIC policies, and other items necessary to successfully carry out its duties.
14. Preparing, upon completion of the contract, the Contractor Performance Evaluation Form and submitting it to the Contracting Officer.
15. Preparing, upon completion of the contract or when personnel changes occur, the Pre-Exit Clearance Form and ensuring that all badges, keys, and other items specified on that Form are returned.
16. Ensuring that new contractor personnel are approved by the Contracting Officer where required; ensuring that all contractor personnel possess the requisite experience; and that all contractor personnel are established and working under the appropriate contract labor categories.
17. Ensuring that all contractor and subcontractor personnel, including those added after contract award, undergo Background Investigation under contracts greater than \$100,000, and fingerprinting on every contract.
18. If information technology is included in the contract, adhering to the responsibilities set forth in any FDIC Circular relating to security for information technology.
19. Organizing and maintaining an Oversight Manager File.
20. Transferring the Oversight Manager File to any successor oversight manager(s), with instructions and information as necessary or desirable in assuming the duties of oversight management, with a written copy of the instructions and information to the Contracting Officer.

If you believe the delivered supplies or services should be rejected, the Contracting Officer should be notified in writing with a brief memorandum documenting the reasons for rejection. If questions arise which are not clearly answered in the contract (including the statement of work) or if disputes with the Contractor occur, a written report to the Contracting Officer shall be prepared setting forth the problem encountered. This confirmation is limited to the referenced contract. You may select one or more Technical Monitors to perform some of the tasks listed above. You should notify the Contracting Officer of the need for Technical Monitors, and the Contracting Officer shall issue a Letter of Technical Monitor Assignment to these individuals. Responsibility for successful completion of these tasks, however, remains with you.

This confirmation may be terminated at any time by written notice from the Contracting Officer. Please notify the Contracting Officer if you are transferred from your present position or unable to continue as Oversight Manager for the referenced contract.

ACKNOWLEDGEMENT OF RECEIPT BY OVERSIGHT MANAGER *(Sign and return the original to the Division of Administration, Acquisition Services Branch Contracting Officer (for placement in the contract file) and retain one copy for the Oversight Manager's File.)*

OVERSIGHT MANAGER'S SIGNATURE

DATE

Federal Deposit Insurance Corporation
LETTER OF TECHNICAL MONITOR CONFIRMATION

DATE:

MEMORANDUM TO: Technical Monitor

FROM: Contracting Officer

SUBJECT: Confirmation of Technical Monitor Under: _____
Contract/Agreement No.: _____; Task Order No.: _____

In accordance with program office designation, you are hereby confirmed as the Technical Monitor (TM) with respect to performance oversight matters within the scope of Contract/Agreement No.: _____, Task Order No.: _____, or Interagency Agreement*, _____, which has been issued to _____.

Be advised that your confirmation as TM does not authorize you to change the contract or task order scope, funding, delivery schedule, or final acceptance of deliverables. Direct written communication with the Contracting Officer must be from or through the Oversight Manager.

Your specific responsibilities shall be assigned by and coordinated with the Oversight Manager in accordance with the Letter of Oversight Manager Confirmation. Other assigned duties and responsibilities are as follows:

1. Provide technical guidance and monitoring of contractor activities as assigned by the OM in accordance with requirements stated in the contract.
2. If appropriate, conduct site visits to the contractor's work site to determine actual contractor performance; evaluate changes in technical performance affecting personnel, schedules, deliverables, and costs; and ensure that employees charged to the contract are actually performing the work under the contract.
3. Provide for the necessary analysis of the contractor's utilization of personnel for completing contract requirements.
4. Provide ongoing monitoring and evaluation of the contractor's technical and cost performance, including progress in accordance with the contract delivery schedule and projected budget.
5. Closely examine all contractor invoices and immediately identify any discrepancies.
6. Provide for review of contract deliverables.
7. Review and evaluate contractor recommended changes (e.g., scope, deliverables, schedules, and funding) for approval by the Oversight Manager and Contracting Officer.
8. Prepare written communications, as required, for approval by the Oversight Manager and/or Contracting Officer.
9. Submit documents relating to your area of responsibility for maintenance in the Oversight Manager's working file.
10. Review and evaluate contractor invoices, status reports, and report any problems to the Oversight Manager.
11. If information technology is included in the contract, adhering to the responsibilities set forth in any FDIC circular relating to security for information technology.

* When using an Interagency Agreement, substitute "Interagency Agreement" for "Contract" and "Agency" for "Contractor."

Also, to avoid the issuance of any conflicting instructions to the contractor, you shall not provide any directions which differ with those issued by the Oversight Manager.

In the event you have any questions pertaining to this assignment, please contact the Oversight Manager _____ at _____.

Thank you,

CONTRACT NUMBER	TASK NUMBER
-----------------	-------------

ACKNOWLEDGEMENT OF RECEIPT BY TECHNICAL MONITOR *(Sign and return the **original** to the Division of Administration, Acquisition Services Branch Contracting Officer (for placement in the contract file) and retain one copy for the Oversight Manager's file.)*

TECHNICAL MONITOR'S SIGNATURE	DATE
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Requirements Package Summary Checklist

Estimated NTE Contract Value: Base Period _____

Option 1 _____

Option 2 _____

Option 3 _____

Total _____

Work will be performed on-site in FDIC Buildings *Yes* *No*

Contractors will require access to FDIC Network *Yes* *No*

Procurement is for Electronic and Information Technology (EIT) *Yes* *No*

Part II – REQUIREMENTS PACKAGE ATTACHMENTS

Procurement Requisition, Form 3700-1 *Yes* *No* *N/A*

Approved Expenditure Authorization *Yes* *No* *N/A*

Statement of Work
(must include Labor Qualifications if applicable) *Yes* *No* *N/A*

Detailed Cost Estimate *Yes* *No* *N/A*

Technical Evaluation Criteria *Yes* *No* *N/A*

Suggested Sources for Solicitation
(if applicable) *Yes* *No* *N/A*

Price Structure for the Solicitation *Yes* *No* *N/A*

Justification for
Non-competitive Procurement *Yes* *No* *N/A*

Technical Information to be addressed
By Offerors *Yes* *No* *N/A*

Confidential Information *Yes* *No* *N/A*

EIT/Section 508 Determination and
Findings for Purchase Requests *Yes* *No* *N/A*

Requirements Package Summary Checklist

PART III - SPECIAL REQUIREMENTS/INSTRUCTIONS TO THE CONTRACTING OFFICER

NOTES:

Consent to Assignment - Version A
Version A should only be used when FDIC will not hold
Assignor liable for Assignee's actions.

CONSENT TO ASSIGNMENT

This Consent to Assignment ("Consent") is entered into this ___ day of _____, 19__, effective as of _____, 19__, ("Effective Date") by and between _____, a _____, whose principal office is located at _____, ("Assignee") and _____, a _____, whose principal office is located at _____ ("Assignor") and the Federal Deposit Insurance Corporation, as receiver/conservator for the institutions designated in the Agreement and/or the Federal Deposit Insurance Corporation, in its corporate capacity, a corporation organized and existing under the laws of the United States with its principal office in Washington, D.C. ("FDIC").

RECITALS:

A. FDIC and Assignor have previously entered into a Contract, Contract No. ____, dated as of _____, 19__ ("Contract"), pursuant to which Assignor agreed to perform certain services on behalf on FDIC in exchange for the various fees and payments described in the Contract. The Contract, together with all attachments, exhibits, amendments, modifications, and any other documents executed in contemplation of or during performance of the Contract including the Indemnity Agreement between Assignor and FDIC, shall be referred to as the "Contract Documents."

B. Assignor desires to assign and delegate to Assignee certain of Assignor's rights and obligations under the Contract Documents, and Assignee desires to assume such rights and obligations ("Assigned Rights"). The Contract entered into by Assignor and FDIC requires that the FDIC consent to any assignment of the Contract.

C. FDIC has agreed to permit the assignment of the Assigned Rights in accordance with the terms hereof and the terms and conditions of the Contract Documents.

NOW, THEREFORE, the parties, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby agree as follows:

1. Assignment.

1.1. As of the Effective Date of this Consent, Assignor hereby assigns, conveys, and transfers to Assignee all of its rights, obligations and duties, including, but not limited to, duties of performance to FDIC, liabilities and privileges of any kind whatsoever in, to, and under the Contract Documents, except for any continuing obligations and duties of Assignor as set forth elsewhere in this Consent.

1.2. As of the Effective Date of this Consent, Assignee hereby assumes from Assignor all rights, obligations, duties, including, but not limited to, duties of performance to FDIC, liabilities and privileges of any kind whatsoever in, to, and under the Contract Documents to FDIC.

1.3. FDIC hereby consents to the assignment of the Contract Documents in accordance with the terms and conditions of this Consent and the Contract Documents. Assignee shall hereafter be entitled to and shall enjoy all privileges and rights under the Contract Documents, including, without limitation, delegations of authority from FDIC to Assignor, if applicable, any indemnification provided pursuant to the Contract, and any Indemnity Agreement between Assignor and FDIC.

2. Indemnification.

2.1. Assignor hereby agrees to indemnify, defend, and hold harmless FDIC from any and all losses, liabilities, obligations, costs, claims of any and every kind including, without limitation, court costs and attorney's fees to which FDIC may be subject arising out of or related to the performance of obligations under the Contract Documents and/or this Consent prior to the Effective Date of this Consent.

2.2. Assignee hereby agrees to indemnify, defend, and hold harmless FDIC from any and all losses, liabilities, obligations, costs, claims of any and every kind including, without limitation, court costs and attorney's fees to which FDIC may be subject arising out of or related to the performance of obligations under the Contract Documents and/or this Consent as of the Effective Date of this Consent.

3. Authority. FDIC represents and warrants that the person[s] executing this Consent have the authority to bind FDIC hereto.

4. Fees and Other Compensation under the Contract Documents. All fees, costs, reimbursements, indemnification payments, other compensation and claims thereto of any type whatsoever (the "Fees") which have accrued prior to the Effective Date of this Consent under the Contract Documents shall be vested in Assignor. All Fees which accrue under the Contract Documents on or after the Effective Date of this Consent shall be vested in Assignee. The parties to this Consent acknowledge that payments from FDIC may be received by Assignor after the date of this Consent, and Assignor and Assignee hereby agree to resolve any and all disputes over any such payment between Assignor and Assignee and FDIC shall have no liability to Assignor or Assignee for incorrect payment of Fees. The parties further agree that FDIC is hereby released from any and all claims for Fees which have accrued prior to the Effective Date of this Consent.

5. Representations of Assignor. Assignor covenants, represents, and warrants as follows:

5.1. The Assigned Rights are not subject to any prior assignment, in whole or in part. Assignor has good title to, and is the sole owner of, all of the Assigned Rights, free and clear of all liens and other encumbrances, and such shall be the case upon the time of sale, assignment, and transfer to Assignee of the Assigned Rights.

5.2. Assignor has the rights, power, legal capacity, and authority to execute and deliver this Consent and to consummate the transaction contemplated hereby.

5.3. This Consent shall constitute the valid, legal, and binding agreement of Assignor, and is enforceable against Assignor in accordance with its terms.

5.4. Assignor has delivered or will deliver to Assignee true and complete copies of the Contract Documents; there have been no modifications to the Contract Documents, other than those modifications expressly identified to Assignee by Assignor; and as of the date of this Consent, there exists no event of default under any of the Contract Documents.

6. Representations of Assignee. Assignee covenants, represents and warrants as follows:

6.1. Assignee has the rights, power, legal capacity, and authority to execute and deliver this Consent and consummate the transaction contemplated hereby.

6.2. This Consent shall constitute the valid, legal, and binding agreement of Assignee, and is enforceable against Assignee in accordance with its terms.

7. Liability. Assignor agrees that, notwithstanding any provision to the contrary contained in this Consent, Assignor shall remain liable and be responsible to FDIC for any and all duties, obligations or liabilities arising from or related to the Contract Documents prior to the Effective Date of this Consent. Nothing contained herein shall be construed to release Assignor of its duties, responsibilities, or obligations with respect to the FDIC which under the Contract Documents survive expiration or termination.

8. Governing Law. This Consent shall be governed by and construed in accordance with the laws and regulations of the United States and, where no conflict exists, with the laws of the state that is indicated in the Contract Documents for governing law.

9. Limitations of Assignment. Except as may otherwise occur by operation of law, neither Assignor nor Assignee to this Consent may assign this Consent or any of the rights or obligations set forth herein or subject hereof without the specific written consent of all of the other parties to this Consent. Subject to the foregoing, this Consent shall inure to the benefit of and be binding upon the successors and assigns of the FDIC, Assignor and Assignee. Except for transfers of interest by FDIC, nothing in this Consent shall entitle any person or entity other than the parties hereto to any claim, cause of action, remedy, or right of any kind.

10. Duplicate Copies. This Consent and all amendments hereto shall be in writing and executed in duplicate copies by duly authorized agents of the parties. Each such duplicate shall be deemed an original but each duplicate copy shall constitute one and the same instrument.

11. No Waiver of Rights. This Consent sets forth the terms and conditions under which the parties have agreed to Consent to the assignment of the Assigned Rights. Nothing contained herein shall be construed to be a waiver of any rights or remedies that the parties may have under the Consent, the Contract Documents, or by operation of law.

12. Entire Agreement; Amendment. This Consent and the Contract Documents entered into pursuant to the terms hereof supersede all previous agreements between the parties concerning the consent to assignment and constitute the entire agreement between the parties concerning the consent to assignment. No oral statements or prior written material not specifically incorporated herein shall be of any force and effect, and no changes in or additions to the Consent shall be recognized unless incorporated herein by written amendment signed by all parties, such amendment to become effective on the date stipulated.

IN WITNESS WHEREOF, this Consent was entered into on the date set forth herein as first written above.

ASSIGNOR

FEDERAL DEPOSIT
INSURANCE CORPORATION
AS RECEIVER/CONSERVATOR

By: _____

By:

Name: _____

Name:

Title: _____

Title:

ASSIGNEE

FEDERAL DEPOSIT
INSURANCE CORPORATION
[in its corporate capacity]

By: _____

By:

Name: _____

Name:

Title: _____

Title:

Consent to Assignment - Version B
Version B should only be used when FDIC will hold
Assignor and Assignee joint and severally liable.

CONSENT TO ASSIGNMENT

This Consent to Assignment ("Consent") is entered into this ____ day of _____, 19__, effective as of _____, 19__, ("Effective Date") by and between _____, a _____, whose principal office is located at _____, ("Assignee") and _____, a _____, whose principal office is located at _____ ("Assignor") and the Federal Deposit Insurance Corporation, as receiver/conservator for the institutions designated in the Agreement and/or the Federal Deposit Insurance Corporation, in its corporate capacity, a corporation organized and existing under the laws of the United States with its principal office in Washington, D.C. ("FDIC").

R E C I T A L S:

A. FDIC and Assignor have previously entered into a Contract, Contract No. ____, dated as of ____, 19__ ("Contract"), pursuant to which Assignor agreed to perform certain services on behalf on FDIC in exchange for the various fees and payments described in the Contract. The Contract, together with all attachments, exhibits, amendments, modifications and any other documents executed in contemplation of or during performance of the Contract including the Indemnity Agreement between Assignor and FDIC, shall be referred to as the "Contract Documents."

B. Assignor desires to assign and delegate to Assignee certain of Assignor's rights and obligations under the Contract Documents, and Assignee desires to assume such rights and obligations ("Assigned Rights"). The Contract entered into by Assignor and FDIC requires that FDIC consent to any assignment of the Contract.

C. FDIC has agreed to permit the assignment of the Assigned Rights in accordance with the terms hereof and the terms and conditions of the Contract Documents.

NOW, THEREFORE, the parties, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby agree as follows:

1. Assignment.

1.1. As of the Effective Date of this Consent, Assignor hereby assigns, conveys, and transfers to Assignee all of its rights, obligations and duties, including, but not limited to, duties of performance to FDIC, liabilities and privileges of any kind whatsoever in, to and under the Contract Documents, except for any continuing obligations and duties of Assignor as set forth elsewhere in this Consent.

1.2. As of the Effective Date of this Consent, Assignee hereby assumes from Assignor all rights, obligations, duties, including, but not limited to, duties of performance to FDIC, liabilities and privileges of any kind whatsoever in, to, and under the Contract Documents to FDIC.

1.3. FDIC hereby consents to the assignment of the Contract Documents in accordance with the terms and conditions of this Consent and the Contract Documents. Assignee shall hereafter be entitled to and shall enjoy all privileges and rights under the Contract Documents, including, without limitation, delegations of authority from FDIC to Assignor, if applicable, any indemnification provided pursuant to the Contract, and any Indemnity Agreement between Assignor and FDIC.

2. Indemnification. Assignor and Assignee hereby agree to indemnify, defend, and hold harmless FDIC from any and all losses, liabilities, obligations, costs, claims of any and every kind including, without limitation, court costs and attorney's fees to which FDIC may be subject arising out of or related to the performance of obligations under the Contract Documents and/or the Consent.

3. Authority. FDIC represents and warrants that the person[s] executing this Consent have the authority to bind FDIC hereto.

4. Fees and Other Compensation under the Contract Documents. All fees, costs reimbursements, indemnification payments, other compensation and claims thereto of any type whatsoever (the "Fees") which have accrued prior to the Effective Date of this Consent under the Contract Documents shall be vested in Assignor. All Fees which accrue under the Contract Documents on or after the Effective Date of this Consent shall be vested in Assignee. The parties to this Consent acknowledge that payments from FDIC may be received by Assignor after the date of this Consent, and Assignor and Assignee hereby agree to resolve any and all disputes over any such payment between Assignor and Assignee, and FDIC shall have no liability to Assignor or Assignee for incorrect payment of Fees. The parties further agree that FDIC is hereby released from any and all claims for Fees which have accrued prior to the Effective Date of this Consent.

5. Representations of Assignor. Assignor covenants, represents, and warrants as follows:

5.1. The Assigned Rights are not subject to any prior assignment, in whole or in part. Assignor has good title to, and is the sole owner of, all of the Assigned Rights, free and clear of all liens and other encumbrances, and such shall be the case upon the time of sale, assignment, and transfer to Assignee of the Assigned Rights.

5.2. Assignor has the rights, power, legal capacity, and authority to execute and deliver this Consent and to consummate the transaction contemplated hereby.

5.3. This Consent shall constitute the valid, legal, and binding agreement of Assignor, and is enforceable against Assignor in accordance with its terms.

5.4. Assignor has delivered or will deliver to Assignee true and complete copies of the Contract Documents; there have been no modifications to the Contract Documents, other than those modifications expressly identified to Assignee by Assignor; and as of the date of this Consent, there exists no event of default under any of the Contract Documents.

6. Representations of Assignee. Assignee covenants, represents, and warrants as follows:

6.1. Assignee has the rights, power, legal capacity, and authority to execute and deliver this Consent and consummate the transaction contemplated hereby.

6.2. This Consent shall constitute the valid, legal, and binding agreement of Assignee, and is enforceable against Assignee in accordance with its terms.

7. Joint and Several Liability. Assignor and Assignee agree that, notwithstanding any provision to the contrary contained in this Consent, Assignor and Assignee shall remain jointly and severally liable and be responsible to FDIC for any and all duties, obligations, or liabilities arising from or related to this Consent and the Contract Documents. Nothing contained herein shall be construed to release Assignor from its duties, responsibilities, or obligations with respect to the FDIC which under the Contract Documents survive expiration or termination.

8. Governing Law. This Consent shall be governed by and construed in accordance with the laws of the United States and, where no conflict exists, with the laws of the state that is indicated in the Contract Documents for governing law.

9. Limitations of Assignment. Except as may otherwise occur by operation of law, neither Assignor nor Assignee to this Consent may assign this Consent or any of the rights or obligations set forth herein or subject hereof without the specific written consent of all of the other parties to this Consent. Subject to the foregoing, this Consent shall inure to the benefit of and be binding upon the successors and assigns of the FDIC, Assignor and Assignee. Except for transfers of interest by the FDIC, nothing in this Consent shall entitle any person or entity other than the parties hereto to any claim, cause of action, remedy, or right of any kind.

10. Duplicate Copies. This Consent and all amendments hereto shall be in writing and executed in duplicate copies by duly authorized agents of the parties. Each such duplicate shall be deemed an original but each duplicate copy shall constitute one and the same instrument.

11. No Waiver of Rights. This Consent sets forth the terms and conditions under which the parties have agreed to Consent to the assignment of the Assigned Rights. Nothing contained herein shall be construed to be a waiver of any rights or remedies that the parties may have under the Consent, the Contract Documents, or by operation of law.

12. Entire Agreement; Amendment. This Consent and the Contract Documents entered into pursuant to the terms hereof supersede all previous agreements between the parties concerning the consent to assignment and constitute the entire agreement between the parties concerning the consent to assignment. No oral statements or prior written material not specifically incorporated herein shall be of any force and effect, and no changes in or additions to the Consent shall be recognized unless incorporated herein by written amendment signed by all parties, such amendment to become effective on the date stipulated.

IN WITNESS WHEREOF, this Consent was entered into on the date set forth herein as first written above.

ASSIGNOR

FEDERAL DEPOSIT
INSURANCE CORPORATION
AS RECEIVER/CONSERVATOR

By: _____

By:

Name: _____

Name:

Title: _____

Title:

ASSIGNEE

FEDERAL DEPOSIT
INSURANCE CORPORATION
[in its corporate capacity]

By: _____

By:

Name: _____

Name:

Title: _____

Title:

INVOICE REVIEW CHECKLIST FOR CONTRACT SPECIALISTS

For each invoice review, obtain the following information from the contract, purchase order, or task order file:

- a. Cumulative approved expenditure authority document (i.e., case, board approval, purchase requisition)**
- b. Contract, purchase order or task order fee schedule**
- c. Invoicing procedures and requirements (i.e., content and format) specific to the contract, purchase order or task order**
- d. Contract, purchase order or task order expense pre-approval requirements**
- e. Period of performance**
- f. Modifications to the fee schedules, period of performance or invoicing procedures and related effective dates**

General			
DESCRIPTION	YES	NO	N/A
1. Is the invoice in the format required by the contract, purchase order or task order? Does the invoice contain the following information: Name of Vendor Vendor ID Invoice Date Mailing Address Contract, purchase order or task order number Description of the goods or services Quantities Price			
2. Are the cumulative and current amounts invoiced less than or equal to the authorized contract, purchase order, or task order value and the approved expenditure authority?			
3. Are the invoices mathematically correct and do amounts on the attached summary sheets, supporting schedules or receipts agree with the invoiced amounts?			
4. Is the payment of the invoice subject to the Prompt Payment Act and have the contract payment terms and vendor information been verified in the Purchase Order System?			
5. Does the invoice itemize the supplies or services in accordance with the terms and conditions of the contract, purchase order, or task order?			
6. Does the invoice include amounts that have been previously invoiced? If yes, are these amounts still unpaid?			

Services <i>(Includes services performed, workmanship and material furnished or used in performing services)</i>			
DESCRIPTION	YES	NO	N/A
1. Have the services been itemized and billed at the units and rates contained in the contract, purchase order or task order fee schedule?			
2. Were the services rendered during the contract, purchase order or task order period of performance?			
3. If the invoice includes labor hours, do the labor categories and rates agree with the contract, purchase order or task order? (and the Service Contract Act requirements, if applicable.)			
4. Do the number of hours and labor categories recorded on the supporting time sheets and/or subcontractor invoices agree with the number or hours and labor categories claimed on the invoice?			
5. Are the time sheets signed and dated by the employee and approved by contractor supervisory personnel?			
6. If the labor hours include overtime, are the overtime hours charged in accordance with the contract, purchase order or task order?			
7. Was subcontract labor pre-approved and have the associated costs been invoiced at the same amounts that the contractor actually paid or was billed by the subcontractor? (i.e., the amounts invoiced for subcontractor labor or materials do not include unallowable mark-ups or profit margin additions unless specifically allowed by the contract, purchase order or task order terms and conditions.)			
8. If the invoice includes amounts for materials, does the invoice include supporting documents (i.e., receipts or other third party support documentation) and have the materials been invoiced at actual cost or amounts established in the terms and conditions of the contract, purchase order, or task order?			

Supplies <i>(Includes but is not limited to raw materials, components, intermediate assemblies, end products, lots of supplies and data)</i>			
DESCRIPTION	YES	NO	N/A
1. Are the amounts invoiced for supplies itemized at unit prices authorized by the contract, purchase order, or task order fee schedule?			
2. Are the cumulative quantities invoiced below or equal to quantities authorized by the contract, purchase order, or task order?			

Other			
DESCRIPTION	YES	NO	N/A
1. Does the invoice include unauthorized late charges, penalties or interest and have these amounts been deducted from the approved invoice amounts?			
2. Does the invoice include sales tax and has the sales tax been deducted from the approved invoice amounts?			

INVOICE REVIEW CHECKLIST FOR OVERSIGHT MANAGERS

CONTRACT NUMBER: _____
TASK ORDER NUMBER (if applicable): _____
CONTRACTING OFFICER: _____
PROGRAM OFFICE: _____
OVERSIGHT MANAGER: _____
INVOICE NUMBER: _____
CONTRACTOR: _____
DATE: _____

DESCRIPTION	YES	NO	N/A
1. Does the invoice contain the following information: Name of Vendor Vendor ID Invoice Date Contract, purchase order or task order number Description of the goods or services Quantities Fee schedule or Price per delivery			
2. Are the cumulative and current amounts invoiced less than or equal to the authorized contract, purchase order or task order ceiling price.			
3. Are the invoices mathematically correct and do amounts on the attached summary sheets, supporting schedules or receipts agree with the invoiced amounts?			
4. Does the invoice include amounts that have been previously invoiced? If yes, are these amounts still unpaid?			
5. Have the services been itemized and billed at the units and rates contained in the contract, purchase order or task order fee schedule?			
6. Was the period billed within the period of performance?			

INVOICE REVIEW CHECKLIST FOR OVERSIGHT MANAGERS

DESCRIPTION	YES	NO	N/A
7. If the invoice includes labor hours, do the labor categories and rates agree with the contract, purchase order or task order? (or the Service Contract Act requirements, if applicable.)			
8. Do the number of hours and labor categories recorded on the supporting time sheets and/or subcontract invoices agree with the number or hours and labor categories claimed on the invoice?			
9. Are the time sheets signed and dated by the employee and approved by contractor supervisory personnel?			
10. If the labor hours include overtime, are the overtime hours charged in accordance with the contract, purchase order or task order.			
11. Was subcontract labor pre-approved and have the associated costs been invoiced at the same amounts that the contractor actually paid or was billed by the subcontractor? (i.e., the amounts invoiced for subcontractor labor or materials do not include unallowable mark-ups or profit margin additions unless specifically allowed by the contract, purchase order or task order terms and conditions.)			
12. If the invoice includes amounts for materials, does the invoice include supporting documents (i.e., receipts or other third party support documentation) and have the materials been invoiced at actual cost or amounts established in the terms and conditions of the contract, purchase order, or task order?			
13. Has travel been properly approved and do the costs appear to be normal?			

Certification

The information on the invoice referenced above correctly cross-references to the contract under which payment is requested as indicated above.

There is sufficient funding on the contract and under the expenditure authority to pay the invoiced amount.

The invoiced amount and contract number stated in POS are correct.

(Invoices that fail this certification shall not be provided to the Oversight Manager for review or AP for payment until the deficiency is corrected).

Oversight Manager

Date

CONTRACTOR TRAVEL REIMBURSEMENT GUIDELINES

January 2004

1.0 INTRODUCTION

The Contractor should have a policy that requires its employees to use sound business judgement in both determining the need for travel, as well as in expending Contractor financial resources when travel is necessary. The following guidelines are provided to assist the Contractor in its compliance with contractual requirements to limit expense reimbursement to those costs that do not exceed FDIC travel reimbursement guidelines. Travelers will not be reimbursed for excess costs caused by:

- An indirect route as a matter of personal preference
- Premature departure for personal reasons from a temporary location; or
- Extending a stay for personal reasons.

2.0 APPLICABILITY

To be entitled to Lodgings-Plus per diem reimbursement, the contract must allow for travel and the Contractor's employee must be on a temporary assignment that is at least 50 miles in distance from either his/her office or residence. If a temporary assignment concludes during the workday and is located within 100 miles of the Contractor's official station or residence, the Contractor employee is expected to return to their residence, rather than remain at the temporary location overnight. The cost of travel for spouses, other family members, and friends is not allowable under any circumstances.

3.0 TRAVEL AUTHORIZATION

Contractors shall ensure that all travel on behalf of the FDIC is necessary and allowable under the contract. A management official of the Contractor shall authorize all travel and travel vouchers reflecting travel expenditures.

4.0 AIR TRAVEL

Air travel should be in coach class only, unless the employee bears the cost of the difference between coach and first class. Travel should be planned as far in advance as possible to take advantage of discounted fares; especially, if reasonable certainty exists that the event will take place. If a restricted fare is booked and the Contractor's employee requires a change, a reasonable exchange fee may be claimed.

5.0 RENTAL CARS

Generally, no car larger than a mid-size should be rented. The Contractor should have a policy that requires employees to compare the cost of car rental with other forms of transportation and to choose the cheaper mode of transportation. The use of rental cars, even if authorized, must be justified in writing by the traveler and attached to the voucher. Claims for rental car gasoline must be supported by original receipts.

6.0 LODGING

The Contractor is expected to have a policy that provides for reasonable but not extravagant lodging accommodations for employees in travel status. The Contractor should make use of

government rates whenever possible; otherwise, corporate rates or other discounts should be obtained.

If the contract is a level of effort type of contract (e.g., labor hour or time and materials) with reimbursable travel, and the contractor must be in the Washington, D.C., area overnight, the contractor is required to stay at the L. William Seidman Center (Seidman Center) providing space is available. The contractor shall notify the Contracting Officer of the need for a reservation, and the Contracting Officer shall contact the Seidman Center to make the reservation. If space is not available, the Seidman Center management will obtain an alternate reservation, or provide permission for contractor to obtain alternate lodging. For reimbursement, the contractor must provide written evidence of lack of availability at the Seidman Center at the time of submission of travel voucher.

Any hotel expenses considered excessive or unreasonable will not be reimbursed. Instead, in those cases, lodging reimbursement will be limited to the U.S. Government GSA lodging rate for the city in question as listed in the most recent OAG Official Traveler – Travel Guide.

7.0 SUBSISTENCE

Employees on overnight travel status shall be reimbursed on a per diem basis. The current FDIC per diem rates allowable are listed in Section 16.0 of these Guidelines. Specific per diem rates for different localities may be found on the General Services Administration web site, the specific citation for which is as follows:

<http://policyworks.gov/org/main/mt/homepage/mtt/perdiem/travel.shtml>. When an employee is on per diem, incidental expenses such as laundry and dry cleaning are considered to be covered by the per diem.

8.0 MISCELLANEOUS EXPENSES

Employees in non-overnight travel status, who are away from their residence at least 11 consecutive hours excluding meal time, and the meal is specifically authorized, should be reimbursed on actual expense incurred basis with meal cost limited to a \$10.00 charge (receipt needed) or \$6.00 without a receipt. According to the IRS regulations, the Contractor must report this expense as income.

9.0 LONG DISTANCE PERSONAL CALLS

While on travel status, an employee may claim the actual amount incurred, not to exceed \$3 per day, for personal long-distance telephone calls while on an overnight travel assignment. This is in addition to per diem, if applicable.

10.0 USE OF PERSONAL OWNED VEHICLE

The Contractor may reimburse an employee for use of his/her personal vehicle while on Contractor related business. The maximum reimbursement rate will be the rate stipulated by the IRS (See Section 18.0 for the current rates).

In addition, a Contractor employee may be reimbursed 8 cents for the first additional Contractor employee passenger and 4 cents for each additional Contractor passenger. According to the IRS regulations, the additional expense reimbursement must be reported as income to the employee.

If an employee chooses to use his/her own vehicle in lieu of air travel, the maximum reimbursement will be the lesser of the cost of air travel or mileage reimbursement and the per diem difference.

NOTE: FDIC does **not insure** contractors, their employees, or their vehicles for liability.

11.0 TAXICABS

The use of taxicabs is permitted while Contractors are on official travel for FDIC. Taxi hire is appropriate when:

- a) public transportation, airport limousine service, and/or hotel courtesy transportation is not available or when time or other factors make it impractical to use available public conveyances;
- b) traveling between transportation terminals and the residence, hotel, or office while in an official travel status; or
- c) for travel from the Contractor's residence to the official station to depart on an assignment requiring at least one night's lodging, and from the official station to the residence on the day the employee returns from that trip.

Taxi fares for trips used to obtain meals will not be reimbursed.

Reimbursement for taxicab fares (plus the customary 15% tip) will be made only if an appropriate receipt is submitted with the voucher.

12.0 NON-REIMBURSEMENT EXPENSES

Examples of expenses that will not be reimbursed include the following:

- a. alcoholic beverages, entertainment;
- b. laundry, dry cleaning and pressing (per diem reimbursement);
- c. travel insurance;
- d. parking fines;
- e. charges incurred because of indirect travel for personal reasons;
- f. gratuities and tips paid to porters, waiters, bellboys, and hotel maids inside the lodging facility (per diem reimbursement);
- g. nonproductive time related to official travel to and from one's temporary duty station; and
- h. any charges, fees, or other associated costs related to the making of reservations or other accommodations for travel.

13.0 RECEIPTS

Except for per diem expenses, valid original receipts are required for all expenditures regardless of cost. If a receipt is not normally provided for the expense (metro, bus token, etc.), the certification signed by the traveler on the voucher will justify the expense.

Receipts submitted with the voucher should be originals indicating the name of the payee, date paid, amount, and the service rendered. This includes the original Passenger Receipt Coupon of the airline ticket. If an electronic ticket is used, the boarding passes for each flight must be submitted with the travel voucher.

14.0 TRAVEL VOUCHER COMPLETION

After completion of travel, a travel voucher (may use contractor’s voucher) must be submitted for reimbursement. In addition, dates and times of each departure from residence or office, arrival at and the name of the place of temporary assignment, and arrival at the office or residence must be shown on the travel voucher. A certification signed by the traveler must be included on the travel voucher that states that the trip indicated was actually taken and that all expenses are accurate and correct.

15.0 INVOICES

Contractors billing for reimbursement of travel expenses must submit an original and two (2) duplicates of each invoice to include all supporting documents.

The penalty for invoicing a travel voucher that falsifies any item in the claim forfeits the claim (28 U.S.C. 2514). Further, travelers who falsify a claim may be fined or imprisoned for not more than 5 years or both (18 U.S.C. Section 1001), and a corporation may be fined up to maximum of \$500,000 (18 U.S.C. Section 3571 (c)).

16.0 PER DIEM FOR OVERNIGHT TRAVEL:

AMOUNT OF PER DIEM TO BE CLAIMED:

DEPARTING Sites with per diem rate of:	\$30.00	\$34.00	\$38.00	\$42.00	\$46.00	\$50.00
If you leave between:						
12 Midnight to 5:59 AM	\$30.00	\$34.00	\$38.00	\$42.00	\$46.00	\$50.00
6:00 AM to 11:59 AM	\$22.50	\$25.50	\$28.50	\$31.50	\$34.50	\$37.50
12 Noon to 5:59 PM	\$15.00	\$17.00	\$19.00	\$21.00	\$23.00	\$25.00
6:00 PM to 11:59 PM	\$ 7.50	\$ 8.50	\$ 9.50	\$10.50	\$11.50	\$12.50
RETURNING Sites with per diem rate of:	\$30.00	\$34.00	\$38.00	\$42.00	\$46.00	\$50.00
If you return between:						
12 Midnight to 5:59 AM	\$ 7.50	\$ 8.50	\$ 9.50	\$10.50	\$11.50	\$12.50
6:00 AM to 11:59 AM	\$15.00	\$17.00	\$19.00	\$21.00	\$23.00	\$25.00
12 Noon to 5:59 PM	\$22.50	\$25.50	\$28.50	\$31.50	\$34.50	\$37.50
6:00 PM to 11:59	\$30.00	\$34.00	\$38.00	\$42.00	\$46.00	\$50.00

17.0 MEAL DEDUCTIONS

If meals are provided by another person or entity, the following amounts shall be deducted from per diem rates.

PROVIDED MEALS DEDUCTIBLE FROM MAXIMUM PER DIEM RATES*						
MAXIMUM PER DIEM RATES:	\$30.00	\$34.00	\$38.00	\$42.00	\$46.00	\$50.00
BREAKFAST	\$6	\$7	\$8	\$9	\$9	\$10
LUNCH	\$6	\$7	\$8	\$9	\$11	\$12
DINNER	\$16	\$18	\$20	\$22	\$24	\$26
INCIDENTALS	\$2	\$2	\$2	\$2	\$2	\$2

*For those destinations that are not listed, the maximum hotel expense shall be \$55.00 per day and the maximum per diem rate shall be \$30.00.

18.0 MILEAGE RATE FOR USE OF PERSONAL VEHICLE:

Effective January 1, 2004, the mileage rate allowed for use of a personal vehicle on business is 37.5 cents per mile.



SAMPLE LETTER
for CONTRACTOR to OBTAIN TAX EXEMPT TRAVEL STATUS

[DATE]

To Whom It May Concern:

This is to advise [CONTRACTOR EMPLOYEE NAME] of [CONTRACTOR, CITY STATE], is under contract to a government agency, the Federal Deposit Insurance Corporation, under [CONTRACT NUMBER], effective [DATE] extending for a period of [DURATION OF TIME].

Under this Delivery Order, [CONTRACTOR EMPLOYEE NAME] is required to travel within the continental United States on official government business. The Federal Deposit Insurance Company would appreciate the offering of government rates and the exemption from applicable taxes to this individual.

If you have any questions, or require any verification, please contact me at [PHONE NUMBER].

Sincerely yours,

[CONTRACTING OFFICER NAME]
[TITLE]
Acquisition Services Branch
Federal Deposit Insurance Corporation

FDIC PURCHASE ORDER (\$5000 OR LESS) FILE CHECKLIST

PR No.:	Descriptions Of Services:	RFQ No.:	
Program Office:	Program Office Representative/ Ext:	Contract No.:	
Contract Award Date:	Contract Specialist:	Oversight Manager (OM):	OM Extension:
Contractor:	Point Of Contact (POC):		POC Phone No:
<input type="checkbox"/> Corporate <input type="checkbox"/> Corporate Liquidator <input type="checkbox"/> Receivership			

INSTRUCTIONS: Check below as appropriate. (If not applicable, check N/A)

ITEM #	PART-I	IN	N/A
1	Requirements Package/ Expenditure Authority		
2	Solicitation List (1 Source ≤ \$5,000)		
3	Solicitation Method		
	a) Oral/ Amendments		
	b) RFQ/ Amendments		
4	Competitive Offers Only		
	a) RFQ Log		
	b) Abstract of Quotations/Offers		
	c) Technical/Price Evaluation Documentation		
	d) Successful Offer		
5	Contractor Verification		
	a) Review of CCR and Excluded Parties Listing System		

	PART - II		
1	Award		
	a) Award Decision Documentation/ POS Entry		
2	Modifications		
	a) Procurement Requisition /Expenditure Authority		
	b) Executed Modification/ POS Entry if applicable		
3	Contractor Payment		
	a) Invoice		
4	Competitive Offers Only		
5	General Correspondence		
6	Closeout		
	a) Final Payment/ POS Documentation (Screen 19)		

FDIC SIMPLIFIED CONTRACTING FILE CHECKLIST

PR NO.:	DESCRIPTIONS OF SERVICES:	RFQ/RFP NO.:
PROGRAM OFFICE (PO):	PROGRAM OFFICE REPRESENTATIVE/ EXT:	CONTRACT NO.:
CONTRACT AWARD DATE:	CONTRACT SPECIALIST:	OVERSIGHT MANAGER (OM):
		OM EXTENSION:
CONTRACTOR:	POINT OF CONTACT (POC):	POC PHONE NO.:

ρ PURCHASE ORDER

ρ CONTRACT

INSTRUCTIONS: Check below as appropriate. (If not applicable, check N/A)

ITEM #		IN	N/A	ITEM #		IN	N/A
	PART I SOLICITATION DOCUMENTATION				PART IV CONTRACT AWARD/ADMINISTRATION		
1	Requirements Package/Expenditure Authority			1	Award Letter / contingent on B.I.		
2	Solicitation List/MWOB Status			2	Purchase Order/Contract		
3	Solicitation Method			3	Modifications/POS Entry		
3a	Oral Solicitation			4	Oversight Manager/TM Letter		
3b	RFQ			5	OM/TM/POC Notice to Contractor		
3c	RFP			6	Delivery/Acceptance Documentation		
4	Amendments			7	Invoice Log and Invoices		
				8	Letter to Exercise Option		
	PART II EVALUATION DOCUMENTATION				PART V CORRESPONDENCE		
1	RFQ Log and Abstract of Written Quotations/Offer			1	External Correspondence		
2	Proposals			2	Internal Email		
3	Reference Check (Past Performances Data)			3	Internal Memoranda		
4	Proposals						
5	Technical Evaluation (TEO)						
6	Price Evaluation						
7	Combined Scoring Documentation						
	PART III SELECTION DECISION DOCUMENTATION				PART VI CLOSEOUT		
1	Check of CCR and Excluded Parties Listing System			1	Goods/Services Accepted		
2	Eligibility Certification (≥ \$25,000)			2	Final Payment		
3	Background Investigation Results (for on site personnel or if required)			3	POS Documentation (Screen 19)		
4	Unsuccessful Offeror Letters			4	Contractor Performance Report		
5	Debriefing Documentation						
6	POS Entry						

FDIC FORMAL CONTRACTING FILE CHECKLIST

PR No.:	Descriptions Of Services:	RFQ/RFP No.:
Program Office:	Program Office Representative/ Ext:	Contract No.:
Contract Award Date:	Contract Specialist:	Oversight Manager (OM):
		OM Extension:
Contractor:	Point of Contact (POC):	POC Phone No:
<input type="checkbox"/> Corporate <input type="checkbox"/> Corporate Liquidator <input type="checkbox"/> Receivership		
<input type="checkbox"/> Contract <input type="checkbox"/> Basic Ordering Agreement <input type="checkbox"/> Task Order		

INSTRUCTIONS: *Check below as appropriate. (If not applicable, check N/A)*

ITEM #		IN	N/A
PART I - SOLICITATION DOCUMENTATION			
1	Requirements Package/Expenditure Authority		
2	Contract Milestone Schedule		
3	Source Selection Plan		
4	Solicitation List/MWOB and SDB Status		
5	Check of Excluded Parties Listing System		
6	Legal Review (> \$100,000)		
7	ODEO Review (> \$100,000)		
8	RFP Package		
9	RFP Amendments		
10	Offerors Conference Documentation		
11	RFP Questions/Answers Documentation		
12	Proposal Submission List		
13	Proposals (Separate File with Evidence of Date/Time Stamped)		

PART II - PROPOSAL EVALUATION DOCUMENTATION			
1	TEP Written Instructions/Technical Criteria Sheets		
2	TEP Kick-Off Meeting Documentation		
3	TEP Confidentiality & Conflict of Interest Certifications		
4	TEP Members' Past Performance Questionnaire		
5	TEP Members' Evaluation Rating Sheets		
6	TEP Memorandum		
7	Price Proposal Scoring Documentation		
8	Combined Technical/Price Scoring Documentation		
9	Competitive Range Determination		
10	Clarifications Documentation		
11	Technical Discussions/Negotiations Documentation		
12	Best and Final Offer (BAFO) Requests		
13	BAFO Proposals (File with Original Proposals)		
14	Technical Evaluation of BAFO Proposals		
15	Addendum to TEP Memorandum		
16	BAFO Price Proposal Scoring Documentation		
17	Combined BAFO Technical/Price Scoring Documentation		

ITEM #		IN	N/A
PART III – SELECTION DECISION DOCUMENTATION			
1	Contractor Certification Form or documentation		
2	Background Investigation Request and Results		
3	Financial Capability Review		
4	Review of CCR and Excluded Parties Listing System		
5	Pre-Award Survey		
6	Selection Recommendation Report		
7	Successful Offeror Proposal/BAFO Proposal		
8	Unsuccessful Offeror Letters		
9	Debriefing Documentation		
10	Protest Documentation		
11	Pre-award Correspondence		

PART IV – CONTRACT AWARD DOCUMENTATION			
1	Award Letter / Award Letter contingent upon Background Investigations		
2	Executed Contract		
3	Contract Modifications		
4	Insurance Certificates		
5	Post-Award Kick-Off Meeting (Internal)		
6	Contract Administration Plan		
7	Oversight Manager/Technical Monitor Letters		
8	OM/TM Notification to Contractor		
9	POS Entry		

PART V – CONTRACTOR PERFORMANCE/ADMINISTRATION DOCUMENTATION			
1	Oversight Management Monitoring Plan		
2	Contractor Reports		
3	Site Visit Documentation		
4	Contractor Progress Report		
5	Deliverable Inspection and Acceptance Documentation		
6	Contractor Performance Report		
7	Subcontracting Plan		
8	Quarterly Subcontracting Activity Report		
9	Invoices & Invoice Log		
10	Claims Material/Documentation		
11	Key Personnel Changes/ Background Investigations		
12	Letter to Exercise Option		

PART VI – CORRESPONDENCE & CLOSEOUT			
1	Post Award Correspondence		
2	Internal Emails		
3	Closeout Checklist		
4	Acceptance of Deliverables		
5	Final Payment Documentation		
6	Other Closeout Documentation		

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 366

RIN 3064-AC29

Minimum Standards of Integrity and Fitness for an **FDIC** Contractor

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (**FDIC**) is issuing this rule which governs conflicts of interest, ethical responsibilities, and use of confidential information by independent contractors seeking to do business with the **FDIC**. This rule ensures that any individual who is performing, directly or indirectly, any function or service on behalf of the **FDIC** meets minimum standards of integrity and fitness. It also prohibits certain persons from performing any service on behalf of the **FDIC**. This rule makes four changes from the interim final rule that the **FDIC** published on May 15, 2002. These changes are described below in Section II of the Supplementary Information.

EFFECTIVE DATE: December 20, 2002.

FOR FURTHER INFORMATION CONTACT: Martin A. Blumenthal, Counsel, (202) 736-0359, Peter M. Somerville, Counsel, (202) 736-0110, or Thomas E. Nixon, Senior Attorney, (202) 898-8766, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Overview

This rule sets forth integrity and fitness provisions for **FDIC** contractors in three areas. The first area regards those persons from whom the **FDIC** is prohibited from entering into a contract. The second area identifies integrity and fitness responsibilities for independent contractors. These include conflicts of interest, minimum standards of ethical responsibility, confidential information, and information that contractors must disclose to the **FDIC**. The last area regards a contractor's expectations, rights and obligations. These include what advice and determinations the **FDIC** will provide a contractor, reconsiderations and reviews of those determinations, and the possible consequences a person may face for violating the provisions of this rule.

B. Authority

The statutory authorities for adopting this rule are our general rulemaking authority found at section 9 (Tenth) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1819 (Tenth); and sections 12(f)(3) and (4) of the FDI Act, 12 U.S.C. 1822(f)(3) and (4). Section 19 of the Resolution Trust Corporation Completion Act (RTCCA), Public Law 103-204, 107 Stat. 2369 (1993), required the addition of section 12(f) to the FDI Act.

We may establish other integrity and fitness policies where we determine such policies are required by law or appropriate to maintain the integrity of our programs. Any such policies may be independent of, in conjunction with, or in addition to the restrictions set forth in this rule.

We may also, temporarily or permanently, suspend this rule or exempt a person from compliance with any part of this rule for good cause shown, in order to protect our interests or to provide an orderly transfer of services to another person.

C. Background

The contractor integrity and fitness rules, based on statutory requirements, are regulatory tools the **FDIC** uses to assure that certain of its contractors meet minimum standards of competence, experience, integrity and fitness. See Federal Home Loan Bank Act, section 21A(p)(6), as added by section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101-73, 103 Stat. 183. This statute was enacted to ensure that no person who contributed to the failure of an insured depository institution could contract with the **FDIC** without disclosure and considerable scrutiny.

On June 24, 1994, we published a proposed rule applicable to independent contractors (59 FR 32661-32668), as required by section 12(f)(3) of the FDI Act, 12 U.S.C. 1822(f)(3). That rulemaking proposed standards governing conflicts of interest, ethical responsibilities, and use of confidential information. It also proposed procedures for

ensuring that independent contractors meet minimum standards for competence, experience, integrity, and fitness. We received six comment letters. After careful consideration of each comment and numerous changes that the Office of Government Ethics (OGE) requested, we made appropriate modifications to the proposal resulting in the reorganization and modification of some provisions.

On March 11, 1996, we adopted an interim final rule entitled, "Contractor Conflicts of Interest", (61 FR 9590), with the concurrence of OGE. We determined that an interim final rule was appropriate in order to allow interested parties to comment on the rule while providing prompt implementation of the rule to satisfy concerns relating to the merger of the RTC into the **FDIC**. We received only one comment on the interim final rule and it was non-substantive.

On May 15, 2002, we published an interim final rule requesting public comment. The interim rule represented a fundamental reconsideration of our obligations under the RTCCA. We received no public comments in response to our May 2002 interim final rule.

II. Final Rule

We are adopting the May 2002 interim final rule with four minor changes. First, in the interim final rule, Sec. 366.12(c) stated that contractors are required to disclose waste, fraud, abuse or corruption to us. We are adding to Sec. 366.12(c) a telephone number and an email

address that can be used to make such reports to the **FDIC** Inspector General. Second, in the interim final rule, Sec. 366.12(d)(4) prohibited contractors from making impermissible gifts or entertainment to an **FDIC** employee. We are extending this prohibition to gifts made by **FDIC** contractors to other **FDIC** contractors, as well as **FDIC** employees. This is because there can be occasions in which **FDIC** contractors may make decisions on behalf of the **FDIC**. Third, in the interim final rule, Sec. 366.14(f) established retention requirements for information that **FDIC** contractors submit to the **FDIC** pursuant to this rule. The interim final rule broadly described the information that must be retained as any information that the contractor relies upon regarding their compliance with part 366. The final rule clarifies that information the contractor relies upon includes information that they prepare. Finally, because the May 2002 interim final rule was unclear as to which event triggers the three year retention period, we are adding the phrase "whichever occurs last" at the end of the sentence for further clarification. As a result, Sec. 366.12(f) will require contractors to retain any information they prepare or rely upon regarding the provisions of part 366 for a period of three years following termination or expiration and final payment of the related contract for services whichever occurs last.

III. Matters of Regulatory Procedure

A. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the **FDIC** certifies that the final rule will not have a significant economic impact on a substantial number of small entities. This rule, which finalizes the May 2002 interim final rule, imposes no new compliance burdens on small entities within the meaning of the Regulatory Flexibility Act.

Our May 2002 interim final rule noted that we were reviewing this rule pursuant to our responsibilities under section 610 of the Regulatory Flexibility Act and requested public comment about our review. A section 610 review requires us to consider how we could minimize the economic impact of the rule on small businesses while remaining consistent with the objectives of the statute that requires the rule. Our May 2002 interim rulemaking resulted from a careful consideration of how we could minimize the burden of the 1996 rule. Based on our review under section 610, we conclude that the May 2002 rule changes should successfully reduce burden on small businesses with whom we contract and that no further changes are necessary now.

B. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), we may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. We submitted two collections of information to OMB for review when we published the May 2002 interim final rule.

One collection is titled "Acquisition Services Information Requirements," and includes forms that we use to ensure compliance with our contractor integrity and fitness regulation and to make contracting decisions for contractors other than legal service providers. The May 2002 rule changed the definitions of some of the terms used on OMB approved contracting forms. Each of the changes reduced estimated burden on our contractors. OMB approved our changes to the information collection under control number 3064-0072, which will expire June 30, 2005.

The second collection is titled "Forms Relating to **FDIC** Outside Counsel Services" and includes forms we use to ensure compliance with our contractor integrity and fitness regulation, to make contracting decisions, and to control payments to law firms and legal support service providers. The May 2002 rulemaking affected the definition of terms on one of the 13 forms in that collection and reduced the estimated burden in completing the form. OMB approved our changes to the information collection under control number 3064-0122, which will expire June 30, 2005.

C. The Treasury and General Government Appropriations Act, 1999--Assessment of Federal Regulations and Policies on Families

We have determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and Government Appropriations Act, 1999, Public Law 105-277, 112 Stat. 2681 (1998).

D. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104-121) provides generally for agencies to report rules to Congress for review. The reporting requirement is triggered when the **FDIC** issues a final rule as defined by the Administrative Procedure Act (APA) at 5 U.S.C. 551. Because the **FDIC** is issuing a final rule as defined by the APA, the **FDIC** will file the reports required by the SBREFA. The Office of Management and Budget has determined that this final rule does not constitute a "major rule" as defined by the SBREFA.

List of Subjects in 12 CFR Part 366

Contractor conflicts of interest, Government contracts, Reporting and recordkeeping requirement.

For the reasons set forth in the preamble, we hereby revise part 366 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 366--MINIMUM STANDARDS OF INTEGRITY AND FITNESS FOR AN **FDIC CONTRACTOR**

Sec.

366.0 Definitions.

366.1 What is the purpose of this part?

366.2 What is the scope of this part?

366.3 Who cannot perform contractual services for the **FDIC**?

366.4 When is there a pattern or practice of defalcation?

366.5 What causes a substantial loss to a federal deposit insurance fund?

366.6 How is my ownership or control determined?

366.7 Will the **FDIC** waive the prohibitions under Sec. 366.3?

366.8 Who can grant a waiver of a prohibition or conflict of interest?

366.9 What other requirements could prevent me from performing contractual services for the **FDIC**?

- 366.10 When would I have a conflict of interest?
- 366.11 Will the **FDIC** waive a conflict of interest?
- 366.12 What are the **FDIC**'s minimum standards of ethical responsibility?
- 366.13 What is my obligation regarding confidential information?
- 366.14 What information must I provide the **FDIC**?
- 366.15 What advice or determinations will the **FDIC** provide me on the applicability of this part?
- 366.16 When may I seek a reconsideration or review of an **FDIC** determination?
- 366.17 What are the possible consequences for violating this part?

Authority: Section 9 (Tenth) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1819 (Tenth); sections 12(f)(3) and (4) of the FDI Act, 12 U.S.C. 1822(f)(3) and (4); and section 19 of Pub. L. 103-204, 107 Stat. 2369.

Sec. 366.0 Definitions.

As used in this part:

- (a) The word person refers to an individual, corporation, partnership, or other entity with a legally independent existence.
- (b) The terms we, our, and us refer to the Federal Deposit Insurance Corporation (**FDIC**), except when acting as conservator or operator of a bridge bank.
- (c) The terms I, me, my, mine, you, and yourself refer to a person who submits an offer to perform or performs, directly or indirectly, contractual services or functions on our behalf.
- (d) The phrase insured depository institution refers to any bank or savings association whose deposits are insured by the **FDIC**.

Sec. 366.1 What is the purpose of this part?

This part establishes the minimum standards of integrity and fitness that contractors, subcontractors, and employees of contractors and subcontractors must meet if they perform any service or function on our behalf. This part includes regulations governing conflicts of interest, ethical responsibility, and use of confidential information in accordance with section 12(f)(3) of the FDI Act, 12 U.S.C. 1822(f)(3), and the prohibitions and the requirements for submission of information in accordance with section 12(f)(4) of the FDI Act, 12 U.S.C. 1822(f)(4).

Sec. 366.2 What is the scope of this part?

- (a) This part applies to a person who submits an offer to perform or performs, directly or indirectly, a contractual service or function on our behalf.
- (b) This part does not apply to:
 - (1) An **FDIC** employee for the purposes of title 18, United States Code; or
 - (2) The **FDIC** when we operate an insured depository institution such as a bridge bank or conservatorship.

Sec. 366.3 Who cannot perform contractual services for the FDIC?

We will not enter into a contract with you to perform a service or function on our behalf, if you or any person that owns or controls you, or any entity you own or control:

- (a) Has a felony conviction;
- (b) Was removed from or is prohibited from participating in the affairs of an insured depository institution as a result of a federal banking agency final enforcement action;
- (c) Has a pattern or practice of defalcation; or
- (d) Is responsible for a substantial loss to a federal deposit insurance fund.

Sec. 366.4 When is there a pattern or practice of defalcation?

- (a) You have a pattern or practice of defalcation under Sec. 366.3(c) when you, any person that owns or controls you, or any entity you own or control has a legal responsibility for the payment on at least two obligations that are:
 - (1) To one or more insured depository institutions;
 - (2) More than 90 days delinquent in the payment of principal, interest, or a combination thereof; and
 - (3) More than \$50,000 each.
- (b) The following are examples of when you have or do not have a pattern or practice of defalcation. These examples are not inclusive.
 - (1) You have five loans at insured depository institutions. Three of them are 90 days past due. Two of the three loans have outstanding balances of more than \$50,000 each. You have a pattern or practice of defalcation.
 - (2) You have five loans at insured depository institutions. Two of them are 90 days past due. One of the two is with ABC Bank for \$170,000. The other one is with XYZ bank for \$60,000. You have a pattern or practice of defalcation.
 - (3) You have five loans at insured depository institutions. Three of them are 90 days past due. One of the three has an outstanding balance of more than \$50,000. The other two have outstanding balances of less than \$50,000. You do not have a pattern or practice of defalcation.
 - (4) You have five loans at insured depository institutions. Three of them have outstanding balances of more than \$50,000. Two of those three were 90 days past due but are now current. You do not have a pattern or practice of defalcation.

Sec. 366.5 What causes a substantial loss to a federal deposit insurance fund?

You cause a substantial loss to a federal deposit insurance fund under Sec. 366.3(d) when you, or any person that owns or controls you, or any entity you own or control has:

- (a) An obligation to us that is delinquent for 90 days or more and on which there is an outstanding balance of principal, interest, or a combination thereof of more than \$50,000;
- (b) An unpaid final judgment in our favor that is in excess of \$50,000, regardless of whether it becomes discharged in whole or in part in a bankruptcy proceeding;
- (c) A deficiency balance following foreclosure of collateral on an obligation owed to us that is in excess of \$50,000, regardless of whether it becomes discharged in whole or in part in a bankruptcy proceeding; or
- (d) A loss to us that is in excess of \$50,000 that we report on IRS Form 1099-C, Information Reporting for Discharge of Indebtedness.

Sec. 366.6 How is my ownership or control determined?

- (a) Your ownership or control is determined on a case-by-case basis. Your ownership or control depends on the specific facts of your situation and the particular industry and legal entity involved. You must provide documentation to us to use in determining your ownership or control.
- (b) The interest of a spouse or other family member in the same organization is imputed to you in determining your ownership or control.
- (c) The following are examples of when your ownership or control may or may not exist. These examples are not inclusive.
 - (1) You have control if you are the president or chief executive officer of an organization.
 - (2) You have ownership or control if you are a partner in a small law firm. You might not have ownership or control if you are a partner in a large national law firm.
 - (3) You have control if you are a general partner of a limited partnership. You have ownership or control if you have a limited partnership interest of 25 percent or more.
 - (4) You have ownership or control if you have the:
 - (i) Power to vote, directly or indirectly, 25% or more interest of any class of voting stock of a company;
 - (ii) Ability to direct in any manner the election of a majority of a company's directors or trustees; or
 - (iii) Ability to exercise a controlling influence over the company's management and policies.

Sec. 366.7 Will the FDIC waive the prohibitions under Sec. 366.3?

We may waive the prohibitions for entities other than individuals for good cause shown at our discretion when our need to contract for your services outweighs all relevant factors. The statute does not allow us to waive the prohibitions for individuals.

Sec. 366.8 Who can grant a waiver of a prohibition or conflict of interest?

The FDIC's Board of Directors delegates to the Chairman, or his designee, authority to issue waivers and implement procedures for part 366.

Sec. 366.9 What other requirements could prevent me from performing contractual services for the FDIC?

You must avoid a conflict of interest, be ethically responsible, and maintain confidential information as described in Sec. 366.10 through 366.13. You must also provide us with the information we require in Sec. 366.14. Failure to meet these requirements may prevent you from contracting with us.

Sec. 366.10 When would I have a conflict of interest?

- (a) You have a conflict of interest when you, any person that owns or controls you, or any entity you own or control:
 - (1) Has a personal, business, or financial interest or relationship that relates to the services you perform under the contract;
 - (2) Is a party to litigation against us, or represents a party that is;
 - (3) Submits an offer to acquire an asset from us for which services were performed during the past three years, unless the contract allows for the acquisition; or
 - (4) Engages in an activity that would cause us to question the integrity of the service you provided, are providing or offer to provide us, or impairs your independence.
- (b) The following are examples of a conflict of interest. These examples are not inclusive.
 - (1) You submit an offer to perform property management services for us and you own or manage a competing property.
 - (2) You audit a business under a contract with us and you or a partner in your firm has an ownership interest in that business.
 - (3) You perform loan services on a pool of loans we are selling, and you submit a bid to purchase one or more of the loans in the pool.
 - (4) You audit your own work or provide nonaudit services that are significant or material to the subject matter of the audit.

Sec. 366.11 Will the FDIC waive a conflict of interest?

- (a) We may waive a conflict of interest for good cause shown at our discretion when our need to contract for your services outweighs all relevant factors.
- (b) The following are examples of when we may grant you a waiver for a conflict of interest. These examples are not inclusive.
 - (1) We may grant a waiver to an outside counsel who has a representational conflict. We will weigh all relevant facts and circumstances in making our determination.
 - (2) We may grant a waiver to allow a contractor to acquire an asset from us who is providing or has provided services on that asset. We will consider whether granting the waiver will adversely affect the fairness of the sale, the type of services provided, and other facts and circumstances relevant to the sale in making our determination.

Sec. 366.12 What are the FDIC's minimum standards of ethical responsibility?

(a) You and any person who performs services for us must not provide preferential treatment to any person in your dealings with the public on our behalf.

(b) You must ensure that any person you employ to perform services for us is informed about their responsibilities under this part.

(c) You must disclose to us waste, fraud, abuse or corruption. Contact the Inspector General at 1-800-964-FDIC or Ighotline@fdic.gov.

(d) You and any person who performs contract services to us must not:

(1) Accept or solicit for yourself or others any favor, gift, or other item of monetary value from any person who you reasonably believe is seeking an official action from you on our behalf, or has an interest that the performance or nonperformance of your duties to us may substantially affect;

(2) Use or allow the use of our property, except as specified in the contract;

(3) Make an unauthorized promise or commitment on our behalf; or

(4) Provide impermissible gifts or entertainment to an FDIC employee or other person providing services to us.

(e) The following are examples of when you are engaging in unethical behavior. These examples are not inclusive.

(1) Using government resources, including our Internet connection, to conduct any business that is unrelated to the performance of your contract with us.

(2) Submitting false invoices or claims, or making misleading or false statements.

(3) Committing us to forgive or restructure a debt or portion of a debt, unless we provide you with written authority to do so.

Sec. 366.13 What is my obligation regarding confidential information?

(a) Neither you nor any person who performs services on your behalf may use or disclose information obtained from us or a third party in connection with an FDIC contract, unless:

(1) The contract allows or we authorize the use or disclosure;

(2) The information is generally available to the general public; or

(3) We make the information available to the general public.

(b) The following are examples of when your use of confidential information is inappropriate. These examples are not inclusive.

(1) Disclosing information about an asset, such as internal asset valuations, appraisals or environmental reports, except as part of authorized due diligence materials, to a prospective asset purchaser.

(2) Disclosing a borrower's or guarantor's personal or financial information, such as a financial statement to an unauthorized party.

Sec. 366.14 What information must I provide the FDIC?

You must:

(a) Certify in writing that you can perform services for us under Sec. 366.3 and have no conflict of interest under Sec. 366.10(a).

(b) Submit a list and description of any instance during the preceding five years in which you, any person that owns or controls you, or any entity you own or control, defaulted on a material obligation to an insured depository institution. A default on a material obligation occurs when a loan or advance with an outstanding balance of more than \$50,000 is or was delinquent for 90 days or more.

(c) Notify us within 10 business days after you become aware that you, or any person you employ to perform services for us, are not in compliance with this part. Your notice must include a detailed description of the facts of the situation and how you intend to resolve the matter.

(d) Agree in writing that you will employ only persons who meet the requirements of this part to perform services on our behalf.

(e) Comply with any request from us for information.

(f) Retain any information you prepare or rely upon regarding the provisions of this part for a period of three years following termination or expiration and final payment of the related contract for services whichever occurs last.

Sec. 366.15 What advice or determinations will the FDIC provide me on the applicability of this part?

(a) We are available to you for consultation on those determinations you are responsible for making under this part, including those with respect to any person you employ or engage to perform services for us.

(b) We will determine if this part prohibits you from performing services for us prior to contract award, after contract award, and during the performance of a contract.

(c) We may determine what corrective action you must take.

(d) We may grant you a waiver for good cause shown where provided for under this part.

Sec. 366.16 When may I seek a reconsideration or review of an FDIC determination?

(a) You may seek reconsideration or review of our initial determination by sending a written request to the individual who issued you the initial decision.

(b) You must provide new information or explain a change in circumstances for our reconsideration of an initial decision. The individual who issued you the initial decision may either make a new determination or refer your request to a higher authority for review.

(c) You must provide an explanation of how you perceive that we misapplied this part that sets forth the legal or factual errors for our review of an initial decision.

Sec. 366.17 What are the possible consequences for violating this part?

Depending on the circumstances, violations of this part may result in rescission or termination of a contract, as well as administrative, civil, or criminal sanctions.

Dated in Washington, DC, this 12th day of November, 2002.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 02-29407 Filed 11-19-02; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR

Banks and Banking

CHAPTER III

FEDERAL DEPOSIT INSURANCE CORPORATION

SUBCHAPTER B -- REGULATIONS AND STATEMENTS OF GENERAL POLICY

PART 367 -- SUSPENSION AND EXCLUSION OF CONTRACTOR AND
TERMINATION OF CONTRACTS

Sec.

- 367.1 Authority, purpose, scope and application.
- 367.2 Definitions.
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- 367.6 Causes for exclusion.
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- 367.12 Procedures.
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- 367.17 Duration of suspensions and exclusions.
- 367.18 Abrogation of contracts.
- 367.19 Exceptions to suspensions and exclusions.
- 367.20 Review and reconsideration of Ethics Counselor decisions.

Authority: 12 U.S.C. 1822(f) (4) and (5).

Source: 61 FR 68560, Dec. 30, 1996, unless otherwise noted.

§367.1 Authority, purpose, scope and application.

(a) *Authority.* This part is adopted pursuant to section 12(f) (4) and (5) of the Federal Deposit Insurance Act, 12 U.S.C. 1822(f) (4) and (5), and the rule-making authority of the Federal Deposit Insurance Corporation (FDIC) found at 12 U.S.C. 1819. Other regulations implementing these statutory directives appear at 12 CFR part 366.

(b) *Purpose.* This part is designed to inform contractors and subcontractors (including their affiliated business entities, key employees and management officials) regarding their rights to notice and an opportunity to be heard on FDIC actions involving suspension and exclusion from contracting and rescission of existing contracts. This part is in addition to, and not in lieu of, any other statute or regulation that may apply to such contractual activities.

(c) *Scope.* This part applies to:

(1) Contractors, other than attorneys or law firms providing legal services, submitting offers to provide services or entering into contracts to provide services to the FDIC acting in any capacity; and

(2) Subcontractors entering into contracts to perform services under a proposed or existing contract with the FDIC.

(d) *Application.* (1) This part will apply to entities that become contractors, as defined in §367.2(f), on or after December 30, 1996. In addition, this part will apply to contractors as defined in §367.2(f) that are performing contracts on December 30, 1996.

(2) This part will also apply to actions initiated on or after December 30, 1996 regardless of the date of the cause giving rise to the actions.

(3) Contracts entered into by the former Resolution Trust Corporation (RTC) that were transferred to the FDIC will be treated in the same manner as FDIC contracts under this part.

(4) RTC actions taken under the RTC regulations on or before December 31, 1995, will be honored as if taken by the FDIC. A contractor subject to an RTC exclusion or suspension will be precluded thereby from participation in the FDIC's contracting program unless that exclusion or suspension is modified or terminated under the provisions of this part.

§367.2 Definitions.

(a) *Adequate evidence* means information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) *Affiliated business entity* means a company that is under the control of the contractor, is in control of the contractor, or is under common control with the contractor.

(c) *Civil judgment* means a judgment of a civil offense or liability by any court of competent jurisdiction in the United States.

(d) *Company* means any corporation, firm, partnership, society, joint venture, business trust, association, consortium or similar organization.

(e) *Conflict of interest* means a situation in which:

(1) A contractor; any management officials or affiliated business entities of a contractor; or any employees, agents, or subcontractors of a contractor who will perform services under a proposed or existing contract with the FDIC:

(i) Has one or more personal, business, or financial interests or relationships which would cause a reasonable individual with knowledge of the relevant facts to question the integrity or impartiality of those who are or will be acting under a proposed or existing FDIC contract;

(ii) Is an adverse party to the FDIC, RTC, the former Federal Savings and Loan Insurance Corporation (FSLIC), or their successors in a lawsuit; or

(iii) Has ever been suspended, excluded, or debarred from contracting with a federal entity or has ever had a contract with the FDIC, RTC, FSLIC or their successors rescinded or terminated prior to the contract's completion and which rescission or termination involved issues of conflicts of interest or ethical responsibilities; or

(2) Any other facts exist which the FDIC, in its sole discretion, determines may, through performance of a proposed or existing FDIC contract, provide a contractor with an unfair competitive advantage which favors the interests of the contractor or any person with whom the contractor has or is likely to have a personal or business relationship.

(f) *Contractor* means a person or company which has submitted an offer to perform services for the FDIC or has a contractual arrangement with the FDIC to perform services. For purposes of this part, contractor also includes:

(1) A contractor's affiliated business entities, key employees, and management officials of the contractor;

(2) Any subcontractor performing services for the FDIC and the management officials and key employees of such subcontractors; and

(3) Any entity or organization seeking to perform services for the FDIC as a minority or woman-owned business (MWOB).

(g) *Contract(s)* means agreement(s) between FDIC and a contractor, including, but not limited to, agreements identified as "Task Orders", for a contractor to provide services to FDIC. Contracts also mean contracts between a contractor and its subcontractor.

(h) *Control* means the power to vote, directly or indirectly, 25 percent or more of any class of the voting stock of a company; the ability to direct in any manner the election of a majority of a company's directors or trustees; or the ability to exercise a controlling influence over the company's management and policies. For purposes of this definition, a general partner of a limited partnership is presumed to be in control of that partnership.

(i) *Conviction* means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, and includes pleas of nolo contendere.

(j) *FDIC* means the Federal Deposit Insurance Corporation acting in its receivership and corporate capacities, and FDIC officials or committees acting under delegated authority.

(k) *Indictment* shall include an information or other filing by a competent authority charging a criminal offense.

(l) *Key employee* means an individual who participates personally and substantially in the negotiation of, performance of, and/or monitoring for compliance under a contract with the FDIC. Such participation is made through, but is not limited to, decision, approval, disapproval, recommendation, or the rendering of advice under the contract.

(m) *Management official* means any shareholder, employee or partner who controls a company and any individual who directs the day-to-day operations of a company. With respect to a partnership, all partners are deemed to be management officials unless the partnership is governed by a management or executive committee with responsibility for the day-to-day operations. In partnerships with such committees, management official means only those partners who are a member of such a committee.

(n) *Material fact* means one that is necessary to determine the outcome of an issue or case and without which the case could not be supported.

(o) *Offer* means a proposal or other written or oral offer to provide services to FDIC.

(p) *Pattern or practice of defalcation regarding obligations* means two or more instances in which a loan or advance from an insured depository institution:

(1) Is in default for ninety (90) or more days as to payment of principal, interest, or a combination thereof, and there remains a legal obligation to pay an amount in excess of \$50,000; or

(2) Where there has been a failure to comply with the terms of a loan or advance to such an extent that the collateral securing the loan or advance was foreclosed upon, resulting in a loss in excess of \$50,000 to the insured depository institution.

(q) *Preponderance of the evidence* means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(r) *Subcontractor* means an entity or organization that enters into a contract with an FDIC contractor or another subcontractor to perform services under a proposed or existing contract with the FDIC.

(s) *Substantial loss to federal deposit insurance funds* means:

(1) A loan or advance from an insured depository institution, which is currently owed to the FDIC, RTC, FSLIC or their successors, or the Bank Insurance Fund (BIF), the Savings Association Insurance Fund (SAIF), the FSLIC Reserve Fund (FRF), or funds that were maintained by the RTC for the benefit of insured depositors, that is or has ever been delinquent for ninety (90) or more days as to payment of principal, interest, or a combination thereof and on which there remains a legal obligation to pay an amount in excess of \$50,000;

(2) An obligation to pay an outstanding, unsatisfied, final judgment in excess of \$50,000 in favor of the FDIC, RTC, FSLIC, or their successors, or the BIF, the SAIF, the FRF or the funds that were maintained by the RTC for the benefit of insured depositors; or

(3) A loan or advance from an insured depository institution which is currently owed to the FDIC, RTC, FSLIC or their successors, or the BIF, the SAIF, the FRF or the funds that were maintained by the RTC for the benefit of insured depositors, where there has been a failure to comply with the terms to such an extent that the collateral securing the loan or advance was foreclosed upon, resulting in a loss in excess of \$50,000.

§367.3 Appropriate officials.

(a) The *Ethics Counselor* is the Executive Secretary of the FDIC. The Ethics Counselor shall act as the official responsible for rendering suspension and exclusion decisions under this part. In addition to taking suspension and/or exclusion action under this part, the Ethics Counselor has authority to terminate exclusion and suspension proceedings. As used in this part, "Ethics Counselor" includes any official designated by the Ethics Counselor to act on the Ethics Counselor's behalf.

(b) The *Corporation Ethics Committee* is the Committee appointed by the Chairman of the FDIC, or Chairman's designee, which provides review of any suspension or exclusion decision rendered by the Ethics Counselor that is appealed by a contractor who has been suspended and/or excluded from FDIC contracting.

(c) Information concerning the possible existence of any cause for suspension or exclusion shall be reported to the Office of the Executive Secretary (Ethics Section). This part does not modify the responsibility to report allegations of fraud, waste and abuse, including but not limited to criminal violations, to the Office of Inspector General.

§367.4 [Reserved]

§367.5 Exclusions.

(a) The Ethics Counselor may exclude a contractor from the FDIC contracting program for any of the causes set forth in §367.6, using procedures established in this part.

(b) Exclusion is a serious action to be imposed when there exists a preponderance of the evidence that a contractor has violated one or more of the causes set forth in §367.6. Contractors excluded from FDIC contracting programs are prohibited from entering into any new contracts with FDIC for the duration of the period of exclusion as determined pursuant to this part. The FDIC shall not solicit offers from, award contracts to, extend or modify existing contracts, award task orders under existing contracts, or consent to subcontracts with such contractors. Excluded contractors are also prohibited from conducting business with FDIC as agents or representatives of other contractors. *Provided however*, that these limitations do not become effective upon the notification of the contractor that there is a possible cause to exclude under §367.13. Rather, they become effective only upon the Ethics Counselor's decision to exclude the contractor pursuant to §367.16. *Provided further*, that the causes for exclusion set forth in §367.6(a)(1) through (4) reflect statutorily established mandatory bars to contracting with the FDIC.

(c) Except when one or more of the statutorily established mandatory bars to contracting are shown to exist, the existence of a cause for exclusion does not necessarily require that the contractor be excluded; the seriousness of the contractor's acts or omissions and any mitigating or aggravating circumstances shall be considered in making any exclusion decision.

§367.6 Causes for exclusion.

The FDIC may exclude a contractor, in accordance with the procedures set forth in this part, upon a finding that:

(a) The contractor has been convicted of any felony;

(b) The contractor has been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, or the FDIC or their successors;

(c) The contractor has demonstrated a pattern or practice of defalcation;

(d) The contractor has caused a substantial loss to Federal deposit insurance funds;

(e) The contractor has failed to disclose, pursuant to 12 CFR 366.6, a material fact to the FDIC;

(f) The contractor has failed to disclose any material adverse change in the representations and certifications provided to FDIC under 12 CFR 366.6;

(g) The contractor has miscertified its status as a minority and/or woman owned business (MWOB);

(h) The contractor has a conflict of interest that was not waived by the Ethics Counselor or designee;

(i) The contractor has been subject to a final enforcement action by any federal financial institution regulatory agency, or has stipulated to such action;

- (j) The contractor is debarred from participating in other federal programs;
- (k) The contractor has been convicted of, or subject to a civil judgment for:
 - (1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, or conspiracy to do the same;
 - (2) Violation of federal or state antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging, or conspiracy to do the same;
 - (3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstructing of justice, or conspiracy to do the same;
 - (4) Commission of any other offense indicating a breach of trust, dishonesty or lack of integrity, or conspiracy to do the same;
- (l) The contractor's performance under previous contract(s) with FDIC or RTC has resulted in:
 - (1) The FDIC or RTC declaring such contract(s) to be in default; or
 - (2) The termination of such contract(s) for poor performance; or
 - (3) A violation of the terms of a contract that would have resulted in a default or termination of the contract for poor performance if that violation had been discovered during the course of the contract; or
- (m) The contractor has engaged in any conduct:
 - (1) Indicating a breach of trust, dishonesty, or lack of integrity that seriously and directly affects its ability to meet standards of present responsibility required of an FDIC contractor; or
 - (2) So serious or compelling in nature that it adversely affects the ability of a contractor to meet the minimum ethical standards required by 12 CFR part 366.

§367.7 Suspensions.

- (a) The Ethics Counselor may suspend a contractor for any of the causes in §367.8 using the procedures established in this section.
- (b) Suspension is an action to be imposed when there exists adequate evidence of one or more of the causes set out in §367.8. This includes, but is not limited to, situations where immediate action is necessary to protect the integrity of the FDIC contracting program and/or the security of FDIC assets during the pendency of legal or investigative proceedings initiated by FDIC, any federal agency or any law enforcement authority.
- (c) The duration of any suspension action shall be for a temporary period pending the completion of an investigation and such other legal proceedings as may ensue.
- (d) A suspension shall become effective immediately upon issuance of the notice specified in §367.13(b).
- (e) Contractors suspended from FDIC contracting programs are prohibited from entering into any new contracts with the FDIC for the duration of the period of suspension. The FDIC shall not solicit offers from, award contracts to, extend or modify existing contracts, award task orders under existing contracts, or consent to subcontracts with such contractors. Suspended contractors are also prohibited from conducting business with FDIC as agents or representatives of other contractors.

§367.8 Causes for suspension.

- (a) Suspension may be imposed under the procedures set forth in this section upon adequate evidence:
 - (1) Of suspension by another federal agency;
 - (2) That a cause for exclusion under §367.6 may exist;
 - (3) Of the commission of any other offense indicating a breach of trust, dishonesty, or lack of integrity that seriously and directly affects the minimum ethical standards required of an FDIC contractor; or
 - (4) Of any other cause so serious or compelling in nature that it adversely affects the ability of a contractor to meet the minimal ethical standards required by 12 CFR part 366.
- (b) Indictment for any offense described in §367.6 is adequate evidence to suspend a contractor.
- (c) In assessing the adequacy of the evidence, FDIC will consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated and what inferences can reasonably be drawn as a result.

§367.9 Imputation of causes.

- (a) Where there is cause to suspend and/or exclude any affiliated business entity of the contractor, that conduct may be imputed to the contractor if the conduct occurred in connection with the affiliated business entity's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.
- (b) Where there is cause to suspend and/or exclude any contractor, that conduct may be imputed to any affiliated business entity, key employee, or management official of a contractor who participated in, knew of or had reason to know of the contractor's conduct.
- (c) Where there is cause to suspend and/or exclude a key employee or management official of a contractor, that cause may be imputed to the contractor if the conduct occurred in connection with the key employee or management official's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(d) Where there is cause to suspend and/or exclude one contractor participating in a joint venture or similar arrangement, that cause may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(e) Where there is cause to suspend and/or exclude a subcontractor, that cause may be imputed to the contractor for which the subcontractor performed services, if the conduct occurred for or on behalf of the contractor and with the contractor's knowledge, approval, or acquiescence. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

§§367.10-367.11 [Reserved]

§367.12 Procedures.

(a) FDIC shall process suspension and exclusion actions as informally as practicable, consistent with its policy of providing contractors with adequate information on the grounds that give rise to the proposed action and affording contractors with a reasonable opportunity to respond.

(b) For purposes of determining filing dates for the pleadings required by this part, including responses, notices of appeal, appeals and requests for reconsideration, the provisions relating to the construction of time limits in 12 CFR 308.12 will control.

§367.13 Notices.

(a) *Exclusions.* Before excluding a contractor, the FDIC shall send it a written notice of possible cause to exclude. Such notice shall include:

(1) Notification that exclusion for a specified period of time is being considered based on the specified cause(s) in §367.6 to be relied upon;

(2) Identification of the event(s), circumstance(s), or condition(s) that indicates that there is cause to believe a cause for exclusion exists, described in sufficient detail to put the contractor on notice of the conduct or transaction(s) upon which an exclusion proceeding is based;

(3) Notification that the contractor is not prohibited from contracting with the FDIC unless and until it is either suspended from FDIC contracting or the FDIC Ethics Counselor issues a decision excluding the contractor, *provided however*, in any case where the possible cause for exclusion would also be an impediment to the contractor's eligibility pursuant to 12 CFR part 366, the contractor's eligibility for any contract will be determined under that part; and

(4) Notification of the regulatory provisions governing the exclusion proceeding and the potential effect of a final exclusion decision.

(b) *Suspensions.* Before suspending a contractor, the FDIC shall send it notice, including:

(1) Notice that a suspension is being imposed based on specified causes in §367.8;

(2) Identification of the event(s), circumstance(s), or condition(s) that indicate that there is adequate evidence to believe a cause for suspension exists, described in sufficient detail to put the contractor on notice of the basis for the suspension, recognizing that the conduct of ongoing investigations and legal proceedings, including criminal proceedings, place limitations on the evidence that can be released;

(3) Notification that the suspension prohibits the contractor from contracting with the FDIC for a temporary period, pending the completion of an investigation or other legal proceedings; and

(4) Notification of the regulatory provisions governing the suspension proceeding.

(c) *Service of notices.* Notices will be sent to the contractor by first class mail, postage prepaid. For purposes of compliance with this section, notice shall be considered to have been received by the contractor if the notice is properly mailed to the last known address of such contractor. Whenever practical, a copy of the notice will also be transmitted to the contractor by facsimile. In the event the notice is not sent by facsimile, a copy will be sent by an overnight delivery service such as Express Mail or a commercial equivalent.

§367.14 Responses.

(a) The contractor will have 15 days from the date of the notice within which to respond.

(b) The response shall be in writing and may include: information and argument in opposition to the proposed exclusion and/or suspension, including any additional specific information pertaining to the possible causes for exclusion; and information and argument in mitigation of the proposed period of exclusion.

(c) The response may request a meeting with an FDIC official identified in the notice to permit the contractor to discuss issues of fact or law relating to the suspension and/or proposed exclusion or to otherwise resolve the pending matters.

(1) Any such meetings between a contractor and FDIC shall take such form as the FDIC deems appropriate.

(2) In cases of suspensions, no meeting will be held where a representative of the Department of Justice has advised in writing that the substantial interests of the Government would be prejudiced by such a meeting and the Ethics Counselor determines that a suspension is based on the same facts as pending or contemplated legal proceedings referenced by the representative of the Department of Justice.

(d) Failure to respond to the notice shall be deemed an admission of the existence of the cause(s) for suspension and/or exclusion set forth in the notice and an acceptance of the period of exclusion proposed therein. In such circumstances, the FDIC may proceed to a final decision without further proceedings.

(e) Where a contractor has received more than one notice, the FDIC may consolidate the pending proceedings, including the scheduling of any meetings, in accordance with this section.

§367.15 Additional proceedings as to disputed material facts.

(a) In actions not based upon a conviction or civil judgment, if the Ethics Counselor finds that the contractor's submission raises a genuine dispute over facts material to the proposed suspension and/or exclusion, the contractor shall be afforded an opportunity to appear (with counsel, if desired), submit documentary evidence, present witnesses, and confront any witnesses the FDIC presents.

(b) The Ethics Counselor may refer disputed material facts to another official for analysis and recommendation.

(c) If requested, a transcribed record of any additional proceedings shall be made available at cost to the contractor.

§367.16 Ethics Counselor decisions.

(a) Standard of proof:

(1) An exclusion must be based on a finding that the cause(s) for exclusion is established by a preponderance of the evidence in the administrative record of the case; and

(2) A suspension must be based on a finding that the cause(s) for suspension is established by adequate evidence in the administrative record of the case.

(b) The administrative record consists of the portion of any information, reports, documents or other evidence identified and relied upon in the Notice of Possible Cause to Exclude, the Notice of Suspension and/or supplemental notices, if any, together with any material portions of the contractor's response. When additional proceedings are necessary to determine disputed material facts, the Ethics Counselor shall base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.

(c) In actions based upon a conviction, judgment, a final enforcement action by a federal financial institution regulatory agency, or in which all facts and circumstances material to the exclusion action have been finally adjudicated in another forum, the Ethics Counselor may exclude a contractor without regard to the procedures set out in §§367.13 and 367.14. Any such decisions will be subject to the review and reconsideration provisions of §367.20.

(d) *Notice of decisions.* Contractors shall be given prompt notice of the Ethics Counselor's decision in the manner described in §367.13(c). If the Ethics Counselor suspends a contractor or imposes a period of exclusion, the decision shall:

(1) Set forth the cause(s) for suspension and/or exclusion included in the notice that were found by a preponderance of the evidence with reference to the administrative record support for that finding;

(2) Set forth the effect of the exclusion action and the effective dates of that action;

(3) Refer the contractor to its procedural rights of review and reconsideration under §367.20; and

(4) Inform the contractor that a copy of the exclusion decision shall be placed in the FDIC Public Reading Room.

(e) If the FDIC Ethics Counselor decides that a period of exclusion is not warranted, the Notice of Possible Cause to Exclude may be withdrawn or the proceeding may be otherwise terminated. A decision to terminate an exclusion proceeding may include the imposition of appropriate conditions on the contractor in their future dealings with the FDIC.

§367.17 Duration of suspensions and exclusions.

(a) *Suspensions.* (1) Suspensions shall be for a temporary period pending the completion of an investigation or other legal or exclusion proceedings.

(2) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless a representative of the Department of Justice requests its extension in writing. In such cases, the suspension may be extended for an additional six months. In no event may a suspension be imposed for more than 18 months, unless such proceedings have been initiated within that period.

(3) FDIC shall notify the Department of Justice of an impending termination of a suspension at least 30 days before the 12-month period expires to give the Department of Justice an opportunity to request an extension.

(4) The time limitations for suspension in this section may be waived by the affected contractor.

(b) *Exclusions.* (1) Exclusions shall be for a period commensurate with the seriousness of the cause(s) after due consideration of mitigating evidence presented by the contractor.

(2) If a suspension precedes an exclusion, the suspension period shall be considered in determining the exclusion period.

(3) Exclusion for causes other than the mandatory bars in 12 CFR 366.4(a) generally should not exceed three years, but where circumstances warrant, a longer period of exclusion may be imposed.

(4) The Ethics Counselor may extend an existing exclusion for an additional period if the Ethics Counselor determines that an extension is necessary to protect the integrity of the FDIC contracting program and the public interest. However, an exclusion may not be extended solely on the basis of the facts and circumstances upon which the initial exclusion action was based. The standards and procedures in this part shall be applied in any proceeding to extend an exclusion.

§367.18 Abrogation of contracts.

(a) The FDIC may, in its discretion, rescind or terminate any contract in existence at the time a contractor is suspended or excluded.

(b) Any contract not rescinded or terminated shall continue in force in accordance with the terms thereof.

(c) The right to rescind or terminate a contract in existence is cumulative and in addition to any other remedies or rights the FDIC may have under the terms of the contract, at law, or otherwise.

§367.19 Exceptions to suspensions and exclusions.

(a) Exceptions to the effects of suspensions and exclusions may be available in unique circumstances, where there are compelling reasons to utilize a particular contractor for a specific task. Requests for such exceptions may be submitted only by the FDIC program office requesting the contract services.

(b) In the case of the modification or extension of an existing contract, the Ethics Counselor may except such a contracting action from the effects of suspension and/or exclusion upon a determination, in writing, that a compelling reason exists for utilization of the contractor in the particular instance. The Ethics Counselor's authority under this section shall not be delegated to any lower official.

(c) In the case of new contracts, the Corporation Ethics Committee may except a particular new contract from the effects of suspension and/or exclusion upon a determination in writing that a compelling reason exists for utilization of the contractor in the particular instance.

§367.20 Review and reconsideration of Ethics Counselor decisions.

(a) *Review.* (1) A suspended and/or excluded contractor may appeal the exclusion decision to the Corporation Ethics Committee.

(2) In order to avail itself of the right to appeal, a suspended and/or excluded contractor must file a written notice of intent to appeal within 5 days of the Ethics Counselor's decision.

(3) The appeal shall be filed in writing within 30 days of the decision.

(4) The Corporation Ethics Committee, at its discretion and after determining that it is in the best interests of the FDIC, may stay the effect of the suspension and/or exclusion pending conclusion of its review of the matter.

(b) *Reconsideration.* (1) A suspended and/or excluded contractor may submit a request to the Ethics Counselor to reconsider the suspension and/or exclusion decision, reduce the period of exclusion or terminate the suspension and/or exclusion.

(2) Such requests shall be in writing and supported by documentation that the requested action is justified by:

(i) Reversal of the conviction or civil judgment upon which the suspension and/or exclusion was based;

(ii) Newly discovered material evidence;

(iii) Bona fide change in ownership or management;

(iv) Elimination of other causes for which the suspension and/or exclusion was imposed; or

(v) Other reasons the FDIC Ethics Counselor deems appropriate.

(3) A request for reconsideration based on the reversal of the conviction or civil judgment may be filed at any time.

(4) Requests for reconsideration based on other grounds may only be filed during the period commencing 60 days after the Ethics Counselor's decision imposing the suspension and/or exclusion. Only one such request may be filed in any twelve month period.

(5) The Ethics Counselor's decision on a request for reconsideration is subject to the review procedure set forth in paragraph (a) of this section.

FDIC PROCUREMENT CREDIT CARD ORDER LOG

CARDHOLDER NAME: _____

FOR THE MONTH OF: _____

Purchase Date	Receipt Date	Merchant Name	Description of Purchase	Purchase \$Amount	Accounting Code Key (ACK)				
					Prg/Org	Fin	Loc	Acct#	Proj Code

I certify that I have purchased, subject to Title 18 U.S. Code, Section 1001, the above goods or services in accordance with FDIC procurement credit card policies and that, to the best of my knowledge and belief, all of my statements are true, correct, complete and made in good faith.

Cardholder Signature: _____

Date: _____

SECTION III – SITE VISITS

DATE	PURPOSE

SECTION IV – SUBCONTRACTING ACTIVITY REPORTS

DATE DUE	DATE RECEIVED	DESCRIPTION OF CONTENTS

For additional reports, attach a separate sheet.

SECTION V – INVOICES

INVOICE NUMBER	INVOICE AMOUNT	DATE RECEIVED	DATE ACCEPTED	REASON FOR REJECTION

For additional invoices, attach a separate sheet

SECTION VI – MODIFICATIONS

MODIFICATION NUMBER	DESCRIPTION	FUNDING INCREMENT AMOUNT ADD/SUBTRACT	CUMULATIVE CEILING TOTAL

SECTION VI – MODIFICATIONS (Continued)

SECTION VII – OPTIONS EXERCISED

OPTION NUMBER	OPTION TERM	NOTICE OF EXERCISE TO CONTRACTOR	CUMULATIVE CEILING TOTAL
Option No. 1			
Option No. 2			
Option No. 3			

SECTION VIII – PERFORMANCE EVALUATION REPORT

REPORTING PERIOD	DUE DATE	DATE COMPLETED	DATE SENT TO CONTACTOR	DATE RECEIVED FROM CONTRACTOR
Base Period				
Option No. 1, if necessary				
Option No. 2, if necessary				
Option No. 3, if necessary				

SECTION IX – CLAIMS

DATE RECEIVED	AMOUNT CLAIMED	REASON FOR CLAIM	RESULT

SECTION X – CONTRACT CLOSEOUT

CATEGORY	ANTICIPATED DATE	ACTUAL DATE
All Deliverables Accepted		
FDIC Property Returned		
FDIC Records Returned		
Final Payment		
Release Obtained		
Contract File Complete		
File Archives		

SECTION XI – OVERSIGHT MANAGER APPOINTMENT

NAME	DATE	LETTER <i>(Place an "X" in the appropriate block.)</i>		FILES TRANSFERRED <i>(Place an "X" in the appropriate box.)</i>		DATE
		YES	NO	YES	NO	

Additional Comments

Name and Signature of Oversight Manager *(Please print and sign)*

Date Received by Oversight Manager

OVERSIGHT MANAGER FILE CHECKLIST

RFP No.:	Description of Services:	Contract No.:	
Program Office:	Program Office Representative:	Program Office Report No.:	
Contract Award Date:	Contract Specialist:	Oversight Manager (OM):	OM Extension:
Contractor:		Point of Contact (POC):	POC Phone No.:
<input type="checkbox"/> CORPORATE <input type="checkbox"/> CORPORATE LIQUIDATOR <input type="checkbox"/> RECEIVERSHIP			
<input type="checkbox"/> CONTRACT <input type="checkbox"/> BASIC ORDERING AGREEMENT <input type="checkbox"/> TASK ORDER			

INSTRUCTIONS: Check below as appropriate. (if not applicable, check N/A)

ITEM #		IN	N/A
PART I – Contract Award Documentation			
1	Executed Contract		
2	Executed Contract Modifications with proof of expenditure authority, if applicable		
3	Insurance Certificates (specialized)		
4	Contractor's Proposal		
5	Contract Administration Plan		
6	Oversight Manager / Technical Monitor Letters		
7	OM/TM Notification to Contractor		
PART II – Contractor Performance / Administration Documentation			
1	Oversight Management Monitoring Plan		
2	Contractor Reports		
3	Site Visit Documentation		
4	Performance Documentation / Evaluations		
5	Deliverable Inspection and Acceptance Documentation		
6	Track FDIC-furnished equipment and security and access devices		
7	Subcontracting Plan		
8	Quarterly Subcontracting Activity Report		
9	IT Security Plan, if applicable		
10	Expenditure Authority/Invoices & Invoice Log		
11	Invoice Review Checklist		
12	Claims Material / Documentation		
PART III – Correspondence and Closeout			
1	Post Award Correspondence		
2	Internal Emails		
3	Acceptance of Deliverables (including Section 508 compliance if applicable)		
4	Pre-Exit Clearance Record for Contractors (3700/25)		
5	Final Payment Documentation		
6	Closeout Checklist		
7	Other Documentation (e.g., issues and problems)		

Federal Deposit Insurance Corporation
**CONTRACTOR PAST PERFORMANCE RFP REFERENCE CHECK
 QUESTIONNAIRE**

ESTIMATED REPORTING BURDEN

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Assistant Executive Secretary (Administration), OES, Room F-4001, FDIC, Washington, D.C. 20429; and to the Office of Management and Budget, Paperwork Reduction Project (3064-0072), Washington, D.C. 20503.

SECTION I – REFERENCE CHECK ON

NAME OF CONTRACTOR _____

SECTION II – FDIC RFP NO

FDIC RFP NO.: _____

SECTION III – REFERENCE INFORMATION

COMPANY NAME _____

REFERENCE OBTAINED BY *(TEP MEMBER NAME)* _____

NAME OF INDIVIDUAL PROVIDING REFERENCE *(Please print or type)* _____

Signature _____

Date _____

SECTION IV – BACKGROUND

The contract for which this contractor is being considered is for the following services: *(To be completed by the Contract Specialist)*

DESCRIPTION OF CONTRACT: (Limit 5 Lines)

SECTION V – PERFORMANCE RATINGS

Ask each reference to answer the following questions with a rating that is based on objective measurable performance indicators to the maximum extent possible. Commentary to support rating shall be noted on page 3.

For the following performance indicators, assign each area a rating. Indicate the answer by circling the appropriate number within each group rating of Unsatisfactory (0/1), Poor (2/3/4), Satisfactory (5/6), Very Good (7/8), or Outstanding (9/10). Use the attached Rating Guidelines as guidance in making these evaluations. Use "N/A" if reference does not have information to make a determination.

QUALITY OF PRODUCT OR SERVICE		UNSATISFACTORY	POOR	SATISFACTORY	VERY GOOD	OUTSTANDING
1. COMPLIANCE WITH CONTRACT REQUIREMENTS/STATEMENT OF WORK	RATING	0/1	2/3/4	5/6	7/8	9/10 N/A
2. TIMELINESS AND ACCURACY OF REPORTS	RATING	0/1	2/3/4	5/6	7/8	9/10 N/A
3. CAPABILITY/EFFECTIVENESS OF PERSONNEL	RATING	0/1	2/3/4	5/6	7/8	9/10 N/A
COST CONTROL						
1. RECORD OF CONTROLLING COST	RATING	0/1	2/3/4	5/6	7/8	9/10 N/A
2. CURRENT, ACCURATE, AND COMPLETE BILLINGS	RATING	0/1	2/3/4	5/6	7/8	9/10 N/A
TIMELINESS OF PERFORMANCE						
1. ADHERENCE TO SCHEDULE	RATING	0/1	2/3/4	5/6	7/8	9/10 N/A
2. RESPONSIVE TO TECHNICAL DIRECTION	RATING	0/1	2/3/4	5/6	7/8	9/10 N/A

BUSINESS RELATIONS		UNSATISFACTORY	POOR	SATISFACTORY	VERY GOOD	OUTSTANDING
1. EFFECTIVE MANAGEMENT, INCLUDING MANAGEMENT OF SUBCONTRACTORS	RATING	0/1	2/3/4	5/6	7/8	9/10 N/A
.....						
2. REASONABLE/COOPERATIVE BEHAVIOR	RATING	0/1	2/3/4	5/6	7/8	9/10 N/A
.....						
3. RESPONSIVE TO REQUESTS/PROBLEMS	RATING	0/1	2/3/4	5/6	7/8	9/10 N/A

SUMMARY RATING: (Add the ratings above and divide by the number of areas rated.)

CUSTOMER SATISFACTION (Circle Yes or No)

1. THE CONTRACTOR IS COMMITTED TO CUSTOMER SATISFACTION. **YES** **NO**
2. WOULD YOU HIRE THIS FIRM AGAIN? **YES** **NO**

ADDITIONAL COMMENTS

ADDITIONAL COMMENTS

RATINGS GUIDELINES

CRITERIA:	QUALITY OF PRODUCT OR SERVICE	COST CONTROL	TIMELINESS OF PERFORMANCE	BUSINESS RELATIONS
	<ul style="list-style-type: none"> - Compliance with contract requirements/Statement of Work - Timely and accuracy of reports - Capability and effectiveness of personnel - Technical excellence 	<ul style="list-style-type: none"> - Record of controlling costs - Current, accurate, and complete billings - Relationship of the negotiated costs to actuals - Cost efficiencies 	<ul style="list-style-type: none"> - Met interim milestones - Reliability - Responsive to technical direction - Completed on time including wrap-up and contract administration - Met delivery schedules - No liquidated damages assessed 	<ul style="list-style-type: none"> - Effective management, including subcontracts - Reasonable/cooperative behavior - Responsive to contract requirements - Notification of problems - Flexibility - Pro-active vs reactive
0/1 - UNSATISFACTORY	Contractor is not in compliance and is jeopardizing the achievement of contract objectives.	Contractor is unable to manage costs effectively.	Contractor delays are jeopardizing performance of contract objectives.	Response to inquiries, technical/service/administrative issues is not effective.
2/3/4 - POOR	Major problems have been encountered.	Contractor is having major difficulty in managing costs effectively.	Contractor is having major difficulty meeting milestones and delivery schedules.	Response to inquiries, technical/service/administrative issues is marginally effective.
5/6 - SATISFACTORY	Minor inefficiencies/errors have been identified.	Contractor is usually effective in managing costs.	Contractor is usually effective in meeting milestones and delivery schedules.	Response to inquiries, technical/service/administrative issues is usually effective.
7/8 - VERY GOOD	Contractor is in compliance with contract requirements and/or delivers quality products/services.	Contractor is effective in managing cost and submits current, accurate, and complete billings.	Contractor is effective in meeting milestones and delivery schedules.	Response to inquiries, technical/service/administrative issues is effective.
9/10 - OUTSTANDING	The contractor has demonstrated an outstanding performance level in any of the above four categories that justifies adding points to the score. It is expected that this rating will be used in those rare circumstances when contractor performance clearly exceeds the performance level described as "Very Good."			

Federal Deposit Insurance Corporation
PRE-EXIT CLEARANCE RECORD FOR CONTRACTORS

INSTRUCTIONS: This form must be completed and submitted at least one week prior to the last day the contract is in effect. It is the responsibility of the Oversight Manager to take the necessary steps to ensure that proper clearance is secured. The Oversight Manager will obtain clearance from each appropriate office listed below.

1. Name of Contracting Employee <i>(Please print)</i>	2. Contract Number	3. Effective Date of Contract
4. Name of Contracting Firm	5. Name of Oversight Manager	6. Home Phone Number ()
7. Contracting Firm Address <i>(Number, Street, City, State, and ZIP Code)</i>		

8. Type of Action *(Check applicable box)*

Contract Completion Other Specify _____

9. Office/Division	10. Designated Official's Signature, If Cleared	11. Date	12. Remarks
A. OVERSIGHT MANAGER OR DESIGNEE			
YES NO NA			
If no, explain under remarks.			
Office Equipment			
Publications/Manuals			
Property <i>(calculators, typewriters, etc.)</i>			
Other <i>(list)</i>			
B. DIRM			
Network/Software			
Users IDs			
Equipment <i>(pagers, cellular phones, etc.)</i>			
Other <i>(list)</i>			
C. SECURITY MANAGEMENT SECTION OR FIELD FACILITY MANAGER			
Parking Permits			
ID Badges			
Office Keys			
Access Cards			
Building Passes			
Other <i>(list)</i>			

13. Oversight Manager/Designee Certification *(Check one)*

I certify that all required levels of clearance have been have not been obtained.

Oversight Manger's Signature	Date
------------------------------	------

Remarks:

PRIVACY ACT STATEMENT

Collection of this information is authorized by section 9 of the Federal Deposit Insurance Act 12 (U.S.C. § 1819) and Executive Order 9397. The requested information will be used by FDIC personnel for clearing contractors separating from the Corporation and to ensure that all Corporation-owed property is returned to the FDIC. Disclosures of information on this form may be made to appropriate Federal or state agencies for enforcement if a violation or possible violation of civil or criminal law is discovered; to appropriate agencies or offices to the extent disclosure is necessary to carry out government-wide management, investigatory and adjudicatory functions; to the General Accounting Office for inspection by auditors; to a state of local licensing authority; and to a Congressional office in response to an inquiry made at the request of the individual. This information may also be disclosed in accordance with the other "routine uses of records" listed in the FDIC's Financial Information System, 30-64-0012. Your Social Security Number (SSN) is requested to ensure record accuracy. Completion of this form is voluntary, but failure to provide the requested information, including your SSN, may result in the delay of releasing the final payment on your contract with the FDIC.

FDIC Contractor Representations and Certifications

SUBMITTED BY:

Contractor Name

FDIC CONTRACTOR REPRESENTATIONS AND CERTIFICATIONS

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ESTIMATED REPORTING BURDEN

Public reporting burden for this collection of information is estimated to average one-half hour per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Assistant Executive Secretary (Administration), OES, Room F-4001, Washington, D.C. 20429; and to the Office of Management and Budget, Paperwork Reduction Project (3064-0072), Washington, D.C. 20503.

PRIVACY ACT STATEMENT

Collection of this information is authorized by the Federal Deposit Insurance Act, 12 U.S.C.) § 1819, 1821, and Executive Order 9397. This information will be primarily used to examine a contractor's compliance with FDIC contracting regulations for potential FDIC contract awards and the information provided may be disclosed to licensing authorities by the FDIC in so examining the contractor's compliance.

Information may also be disclosed to appropriate Federal, state, or local agencies for law enforcement purposes when a violation or possible violation of a civil or criminal law is apparent; to individuals involved in judicial or administrative proceedings; and to a Congressional office in response to an inquiry made at the individual's request. Information may also be disclosed in accordance with the other routine uses set forth in the FDIC's Financial Information System 30-64-0012. Furnishing the requested information, including your Social Security Number, is voluntary. However, failure to furnish all requested information may preclude you from receiving an FDIC contract.

FDIC CONTRACTOR REPRESENTATIONS AND CERTIFICATIONS

The following representations and certifications shall be executed by an official authorized to bind the offeror, and shall be returned with its proposal. These representations and certifications concern matters within the jurisdiction of an agency of the United States, and the making of a false, fictitious, or fraudulent statement may render the maker subject to prosecution under 18 United States Code (U.S.C.) § 1001, 1007, and 1014. For purposes of these representations and certifications, the Federal Deposit Insurance Corporation (FDIC) is considered an agency of the United States only with respect to its rights and remedies under 18 U.S.C. The offeror shall provide immediate written notice to the Contracting Officer, if, at any time prior to contract award, the offeror learns that one or more of the representations or certifications was erroneous when submitted or has become erroneous by reason of changed circumstances.

1. MINORITY AND WOMEN-OWNED BUSINESS REPRESENTATIONS

a. It is, it is not, a minority-owned business concern. A minority-owned business concern is defined as a firm in which at least 51% of the ownership and control is directly and unconditionally held by one or more minorities. A firm which is principally owned by another business entity or a trust (including employee stock ownership trusts) that is in turn owned and controlled by one or more minorities does not meet this definition. In the case of a firm which is a corporation, at least 51% of each class of voting stock outstanding, and 51% of the aggregate of all stock outstanding, must be unconditionally owned by one or more minorities. Additionally, the firm(s) management and daily business operations must be conducted by one or more of the qualifying minority owner(s). The minority individuals must have managerial experience of the extent and complexity needed to run the firm. A minority owner's unexercised right to cause a change in the control of management of the firm does not constitute minority control and management, regardless of how quickly or easily the right could be exercised.

b. If a minority-owned business, please check the appropriate box below indicating racial/ethnic category.

- American Indian/Alaska Native Asian Black or African
 Hispanic or Latino Native Hawaiian or Other Pacific Islander

c. It is, it is not, a women-owned business. A women-owned business is defined as a firm in which at least 51% of the ownership and control is directly or unconditionally held by one or more women. A firm which is principally owned by another business entity or by a trust (including employee stock ownership trusts) that is in turn owned and controlled by one or more women does not meet this definition. In the case of a firm which is a corporation, at least 51% of each class of voting stock outstanding, and 51% of the aggregate of all stock outstanding, must be unconditionally owned by one or more women. Additionally, the firm(s) management and daily business operations must be conducted by one or more women. The women must have managerial experience of the extent and complexity needed to run the firm. A women owner's unexercised right to cause a change in control or management of the firm does not constitute minority control and management, regardless of how quickly or easily the right could be exercised.

d. If offeror is a minority or women-owned business, where did it hear about FDIC contracting opportunities.

- Convention/Procurement Fair Minority and/or Women's Organization Personal Contact
 Current Solicitation Other (explain) _____

FDIC CONTRACTOR REPRESENTATIONS AND CERTIFICATIONS

2. SMALL DISADVANTAGED BUSINESS CONCERN CERTIFICATION

[] It is, [] it is not, a small disadvantaged business concern that has been certified as a small disadvantaged business concern by the Small Business Administration, or [] it has filed an application with the Small Business Administration to be certified as a small disadvantaged business concern. A small disadvantaged business concern that has applied for but not yet received Small Business Administration certification may be entitled to treatment as a small disadvantaged business concern where certification can be obtained before the contract is awarded.

3. CERTIFICATE OF INDEPENDENT PRICE DETERMINATION

a. The offer certifies that:

- (1) The prices in this proposal have been arrived at independently, without, for the purposes of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer or (iii) the methods or factors used to calculate the prices offered;
- (2) The prices in this proposal have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before contract award unless otherwise required by law; and
- (3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit a proposal for the purpose of restricting competition.

b. Each signature on the proposal is considered to be a certification by the signatory that the signatory:

- (1) Is the person in the offeror's organization responsible within that organization for determining the prices being offered in this proposal, and that the signatory has not participated and will not participate in any action contrary to a.(1) through a.(3) above, or
- (2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs a.(1) through a.(3) above

(insert full name of person(s) in the offeror's organization responsible or determining the prices offered in this proposal, and the title of his or her position in the offeror's organization);

(ii) As an authorized agent, certifies that the principals named in subdivision b.(2)(i) above have not participated, and will not participate I, in any action contrary to subparagraphs a.(1) through a.(3) above; and (iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs a.(1) through a.(3) above.

c. A proposal will not be considered for award where a.(1), a.(3) or b. above has been deleted or modified. If the offeror deleted or modifies a.(2) above, the offeror must furnish with its proposal a signed statement setting forth in detail the circumstances of the disclosure.

FDIC CONTRACTOR REPRESENTATIONS AND CERTIFICATIONS

4. CONTINGENT FEE REPRESENTATION

Not applicable to proposals below \$100,000 or for the acquisition of commercial items.

The offeror represents that except for full-time bona fide employees working solely for the offeror, the offeror (a) has, has not, employed or retained any person or company to solicit or obtain this contract; and (b) has, has not, paid or agreed to pay any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract. The offeror agrees to provide information relating to this Representation as requested by the Contracting Officer when either (a) or (b) herein is answered affirmatively. As used herein, "bona fide employee" means a person, employed by an offeror or contractor and subject to the offeror's or the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain FDIC contracts, nor holds out as being able to obtain any FDIC contract or contracts through improper influence.

5. EQUAL OPPORTUNITY CERTIFICATION

a. Have you participated in any contractual agreement which contained the Equal Employment Opportunity provisions prescribed in Executive Order (E.O.) 11246?

Yes No

b. Were you required pursuant to the rules and regulations of Equal Employment Opportunity (41 CFR 60-1) to file a compliance report as the result of such contractual agreement?

Yes No

c. Did you file the necessary compliance report? (If "yes" answer questions d. and e.)

Yes No

d. Name of agency requiring report. _____

e. When was report filed? _____

f. Has any action been required of you to improve your compliance posture?

Yes No

g. Name and address of Government "Compliance Agency," if known

h. What is your current employment? _____

i. Have you prepared a written affirmative action compliance program?

Yes No

If "No," the reason for this is:

Offeror is an agency or instrumentality of state or local government.

Offeror employs less than 50 persons.

Offeror has not been awarded a Federal contract or subcontract since July 1, 1968.

FDIC CONTRACTOR REPRESENTATIONS AND CERTIFICATIONS

j. Data on subcontractors. *(Use supplementary sheets where required.)*

NAME OF SUBCONTRACTORS AND ADDRESSES

	(1)	(2)	(3)
	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes
	<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No
	(1)	(2)	(3)
	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes
	<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No

- (1) Previously held contracts subject to E.O. 11246.
 (2) Previously filed certificate of nonsegregated facilities.
 (3) Previously filed compliance report.

6. DUPLICATION OF COST

The offeror represents and certifies that any charges contemplated and included in its estimate of cost for performance are not duplicative of any charges against any other Government contract, subcontract, or other Government source.

7. CLEAN AIR AND WATER CERTIFICATION

(Applicable if the offer exceeds \$100,000, or if the Contracting Officer has determined that orders under an indefinite quantity contract in any year will exceed \$100,000 or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. § 1857 c-8 (c) (1)), or the Federal Water Pollution Control Act (33 U.S.C. § 1819 (c)) and is listed by the Environmental Protection Agency (EPA), or is not otherwise exempt.)

The offeror certifies as follows:

- a. Any facility to be utilized in the performance of this proposed contract [] has, [] has not, been listed on the EPA list of violating facilities.
- b. It will promptly notify the Contracting Officer, prior to award, of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that any facility which it proposes to use for the performance of the contract is under consideration to be listed on the EPA list of violating facilities.
- c. It will include substantially this certification, including this paragraph c., in every nonexempt subcontract.

FDIC CONTRACTOR REPRESENTATIONS AND CERTIFICATIONS

8. CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

Applicable to contracts exceeding \$100,000.

a. The offeror certifies that, to the best of its knowledge and belief, the following statements are true:

- (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.

Yes No

- (2) No nonappropriated funds (including profit or fee received under a covered Federal Transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the solicitation associated with this certification.

Yes No

If the offeror has checked the "No" box at 9a. (2) above, indicating that any funds other than Federal appropriated funds (including profit or fee received under a covered Federal Transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, "Disclosure of Lobbying Activities" (available upon request) to the Contracting Officer.

- b. The offeror certifies that it will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
- c. Submission of this certification and disclosure, and when required, a completed OMB Standard Form LLL is a prerequisite for making or entering into this contract imposed by 31 U.S.C. § 1352. Any person who makes an expenditure prohibited under the contract provision entitled "Limitation on Payments to Influence Certain Federal Transactions" in the FDIC General Provisions, or who fails to file or amend the disclosure form to be filed or amended with this certification, shall be subject to a civil penalty of not less than \$10, 000, and not more than \$100,000, for each failure.

FDIC CONTRACTOR REPRESENTATIONS AND CERTIFICATIONS

9. SIGNATURE

By signature hereto, the offeror certifies that all of the representations and certifications contained in its proposal are complete and accurate as required by this solicitation, and that it is aware of the penalty prescribed in 18 U.S.C. § 1001 for making false statements in proposals. The offeror also agrees to notify the FDIC in writing, within 10 days, after discovering that it or any person performing services under an FDIC contract has any of the disqualifying conditions contained within the representations and certifications. Such notification shall contain a detailed description of the disqualifying condition and may include a statement of how the offeror intends to resolve such condition. Further, the offeror by signature hereto gives express authorization and consent to the FDIC for the FDIC to release information contained herein to licensing authorities in the FDIC's examination of the contractor's compliance with FDIC non-ethics contracting regulations.

SOLICITATION NUMBER		
NAME OF OFFEROR <i>(Please print or type)</i>	OFFEROR'S TAX IDENTIFICATION NUMBER (TIN)	
TITLE		
NAME OF OFFEROR'S FIRM	OFFEROR'S TELEPHONE NUMBER ()	
OFFICE ADDRESS		
CITY	STATE	ZIP CODE
SIGNATURE		DATE SIGNED

EQUAL EMPLOYMENT OPPORTUNITY

September 24, 1965

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

PART I--NONDISCRIMINATION IN GOVERNMENT EMPLOYMENT

SEC. 101.

It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all qualified persons, to prohibit discrimination in employment because of race, creed, color, or national origin, and to promote the full realization of equal employment opportunity through a positive, continuing program in each executive department and agency. The policy of equal opportunity applies to every aspect of Federal employment policy and practice.

SEC. 102.

The head of each executive department and agency shall establish and maintain a positive program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in Section 101.

SEC. 103.

The Civil Service Commission shall supervise and provide leadership and guidance in the conduct of equal employment opportunity programs for the civilian employees of and applications for employment within the executive departments and agencies and shall review agency program accomplishments periodically. In order to facilitate the achievement of a model program for equal employment opportunity in the Federal service, the Commission may consult from time to time with such individuals, groups, or organizations as may be of assistance in improving the Federal program and realizing the objectives of this Part.

SEC. 104.

The Civil Service Commission shall provide for the prompt, fair, and impartial consideration of all complaints of discrimination in Federal employment on the basis of race, creed, color, or national origin. Procedures for the consideration of complaints shall include at least one impartial review within the executive department or agency and shall provide for appeal to the Civil Service Commission.

SEC. 105.

The Civil Service Commission shall issue such regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities under this Part, and the head of each executive department and agency shall comply with the regulations, orders, and instructions issued by the Commission under this Part.

PART II--NONDISCRIMINATION IN EMPLOYMENT BY GOVERNMENT CONTRACTORS AND SUBCONTRACTORS

SUBPART A--DUTIES OF THE SECRETARY OF LABOR

SEC. 201.

The Secretary of Labor shall be responsible for the administration of Parts II and III of this Order and shall adopt such rules and regulations and issue such orders as he deems necessary and appropriate to achieve the purposes thereof.

SUBPART B--CONTRACTORS' AGREEMENTS

SEC. 202.

Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

"During the performance of this contract, the contractor agrees as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(7) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rule, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

SEC. 203.

(a) Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: Provided, That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the contracting agency as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

(d) The contracting agency or the Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, creed, or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this Order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the Order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Secretary of Labor may require.

SEC. 204.

The Secretary of Labor may, when he deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order. The Secretary of Labor may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the contract: Provided, That such an exemption will not interfere with or impede the effectuation of the purposes of this Order: And provided further, That in the absence of such an exemption all facilities shall be covered by the provisions of this Order.

SUBPART C--POWERS AND DUTIES OF THE SECRETARY OF LABOR AND THE CONTRACTING AGENCIES

SEC. 205.

Each contracting agency shall be primarily responsible for obtaining compliance with the rules, regulations, and orders of the Secretary of Labor with respect to contracts entered into by such agency or its contractors. All contracting agencies shall comply with the rules of the Secretary of Labor in discharging their primary responsibility for securing compliance with the provisions of contracts and otherwise with the terms of this Order and of the rules, regulations, and orders of the Secretary of Labor issued pursuant to this Order. They are directed to cooperate with the Secretary of Labor and to furnish the Secretary of Labor such information and assistance as he may require in the performance of his functions under this Order. They are further directed to appoint or designate, from among the agency's personnel, compliance officers. It shall be the duty of such officers to seek compliance with the objectives of this Order by conference, conciliation, mediation, or persuasion.

SEC. 206.

(a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor, or initiate such investigation by the appropriate contracting agency, to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor and the investigating agency shall report to the Secretary of Labor any action taken or recommended.

(b) The Secretary of Labor may receive and investigate or cause to be investigated complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order. If this investigation is conducted for the Secretary of Labor by a contracting agency, that agency shall report to the Secretary what action has been taken or is recommended with regard to such complaints.

SEC. 207.

The Secretary of Labor shall use his best efforts, directly and through contracting agencies, other interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 or other provision of Federal law.

SEC. 208.

(a) The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

(b) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection (a) of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(a)(6) shall be made without affording the contractor an opportunity for a hearing.

SUBPART D--SANCTIONS AND PENALTIES

SEC. 209.

(a) In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary or the appropriate contracting agency may:

(1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.

(2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.

(3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964.

(4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.

(5) Cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with the non-discrimination provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the contracting agency.

(6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.

(b) Under rules and regulations prescribed by the Secretary of Labor, each contracting agency shall make reasonable efforts within a reasonable time limitation to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and

persuasion before proceedings shall be instituted under Subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under Subsection (a)(5) of this Section for failure of a contractor or subcontractor to comply with the contract provisions of this Order.

SEC. 210.

Any contracting agency taking any action authorized by this Subpart, whether on its own motion, or as directed by the Secretary of Labor, or under the rules and regulations of the Secretary, shall promptly notify the Secretary of such action. Whenever the Secretary of Labor makes a determination under this Section, he shall promptly notify the appropriate contracting agency of the action recommended. The agency shall take such action and shall report the results thereof to the Secretary of Labor within such time as the Secretary shall specify.

SEC. 211.

If the Secretary shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor or, if the Secretary so authorizes, to the contracting agency.

SEC. 212.

Whenever a contracting agency cancels or terminates a contract, or whenever a contractor has been debarred from further Government contracts, under Section 209(a)(6) because of noncompliance with the contract provisions with regard to nondiscrimination, the Secretary of Labor, or the contracting agency involved, shall promptly notify the Comptroller General of the United States. Any such debarment may be rescinded by the Secretary of Labor or by the contracting agency which imposed the sanction.

SUBPART E--CERTIFICATES OF MERIT

SEC. 213.

The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this Order.

SEC. 214.

Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

SEC. 215.

The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

PART III--NONDISCRIMINATION PROVISIONS IN FEDERALLY ASSISTED CONSTRUCTION CONTRACTS

SEC. 301.

Each executive department and agency which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 202 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the administering department or agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations, and relevant orders of the Secretary, (2) to obtain and to furnish to the administering department or agency and to the Secretary of Labor such information as they may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor or the administering department or agency pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

SEC. 302.

(a) "Construction contract" as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.

(c) The term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he becomes a recipient of such Federal assistance.

SEC. 303.

(a) Each administering department and agency shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor, and to furnish the Secretary such information and assistance as he may require in the performance of his functions under this Order.

(b) In the event an applicant fails and refuses to comply with his undertakings, the administering department or agency may take any or all of the following actions: (1) cancel, terminate, or suspend in whole or in part the agreement, contract, or other arrangement with such applicant with respect to which the failure and refusal occurred; (2) refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such applicant; and (3) refer the case to the Department of Justice for appropriate legal proceedings.

(c) Any action with respect to an applicant pursuant to Subsection (b) shall be taken in conformity with Section 602 of the Civil Rights Act of 1964 (and the regulations of the administering department or agency issued thereunder), to the extent applicable. In no case shall action be taken with respect to an applicant pursuant to Clause (1) or (2) of Subsection (b) without notice and opportunity for hearing before the administering department or agency.

SEC. 304.

Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: Provided, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof and the regulations of the administering department or agency issued thereunder.

PART IV--MISCELLANEOUS

SEC. 401.

The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order, except authority to promulgate rules and regulations of a general nature.

SEC. 402.

The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

SEC. 403.

(a) Executive Orders Nos. 10590 (January 19, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Civil Service Commission and the Secretary of Labor, as appropriate.

(b) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

SEC. 404.

The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

SEC. 405.

This Order shall become effective thirty days after the date of this Order.

LYNDON B. JOHNSON
THE WHITE HOUSE,
September 24, 1965.

Exec. Order No. 11246, 30 FR 12319, 1965 WL 7913 (Pres.)

AMENDING EXECUTIVE ORDER NO 11246, RELATING TO EQUAL EMPLOYMENT OPPORTUNITY

October 13, 1967

It is the policy of the United States Government to provide equal opportunity in Federal employment and in employment by Federal contractors on the basis of merit and without discrimination because of race, color, religion, sex or national origin.

The Congress, by enacting Title VII of the Civil Rights Act of 1964, enunciated a national policy of equal employment opportunity in private employment, without discrimination because of race, color, religion, sex or national origin.

Executive Order No. 11246 [FN1] of September 24, 1965, carried forward a program of equal employment opportunity in Government employment, employment by Federal contractors and subcontractors and employment under Federally assisted construction contracts regardless of race, creed, color or national origin.

It is desirable that the equal employment opportunity programs provided for in Executive Order No. 11246 expressly embrace discrimination on account of sex.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered that Executive Order No. 11246 of September 24, 1965, be amended as follows:

(1) Section 101 of Part I, concerning nondiscrimination in Government employment, is revised to read as follows:

"SEC. 101. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all qualified persons, to prohibit discrimination in employment because of race, color, religion, sex or national origin, and to promote the full realization of equal employment opportunity through a positive, continuing program in each executive department and agency. The policy of equal opportunity applies to every aspect of Federal employment policy and practice."

(2) Section 104 of Part I is revised to read as follows:

"SEC. 104. The Civil Service Commission shall provide for the prompt, fair, and impartial consideration of all complaints of discrimination in Federal employment on the basis of race, color, religion, sex or national origin. Procedures for the consideration of complaints shall include at least one impartial review within the executive department or agency and shall provide for appeal to the Civil Service Commission."

(3) Paragraphs (1) and (2) of the quoted required contract provisions in section 202 of Part II, concerning nondiscrimination in employment by Government contractors and subcontractors, are revised to read as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin."

(4) Section 203(d) of Part II is revised to read as follows:

"d) The contracting agency or the Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Secretary of Labor may require."

The amendments to Part I shall be effective 30 days after the date of this order. The amendments to Part II shall be effective one year after the date of this order.

Lyndon B. Johnson
THE WHITE HOUSE,
October 13, 1967.

FN1 30 F.R. 12319; 3 CFR, 1964-1965 Comp., p. 339
Exec. Order No. 11375, 32 FR 14303, 1967 WL 7772 (Pres.)

EQUAL EMPLOYMENT OPPORTUNITY IN THE FEDERAL GOVERNMENT

August 8, 1969

It has long been the policy of the United States Government to provide equal opportunity in Federal employment on the basis of merit and fitness and without discrimination because of race, color, religion, sex, or national origin. All recent Presidents have fully supported this policy, and have directed department and agency heads to adopt measures to make it a reality.

As a result, much has been accomplished through positive agency programs to assure equality of opportunity. Additional steps, however, are called for in order to strengthen and assure fully equal employment opportunity in the Federal Government.

NOW, THEREFORE, under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

SECTION 1.

It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal Government.

SECTION 2.

The head of each executive department and agency shall establish and maintain an affirmative program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in section 1. It is the responsibility of each department and agency head, to the maximum extent possible, to provide sufficient resources to administer such a program in a positive and effective manner; assure that recruitment activities reach all sources of job candidates; utilize to the fullest extent the present skills of each employee; provide the maximum feasible opportunity to employees to enhance their skills so they may perform at their highest potential and advance in accordance with their abilities; provide training and advice to managers and supervisors to assure their understanding and implementation of the policy expressed in this Order; assure participation at the local level with other employers, schools, and public or private groups in cooperative efforts to improve community conditions which affect employability; and provide for a system within the department or agency for periodically evaluating the effectiveness with which the policy of this Order is being carried out.

SECTION 3.

The Civil Service Commission shall provide leadership and guidance to departments and agencies in the conduct of equal employment opportunity programs for the civilian employees of and applicants for employment within the executive departments and agencies in order to assure that personnel operations in Government departments and agencies carry out the objective of equal opportunity for all persons. The Commission shall review and evaluate agency program operations periodically, obtain such reports from departments and agencies as it deems necessary, and report to the President as appropriate on overall progress. The Commission will consult from time to time with such individuals, groups, or organizations as may be of assistance in improving the Federal program and realizing the objectives of this Order.

SECTION 4.

The Civil Service Commission shall provide for the prompt, fair, and impartial consideration of all complaints of discrimination in Federal employment on the basis of race, color, religion, sex, or national origin. Agency systems shall provide access to counseling for employees who feel aggrieved and shall encourage the resolution of employee problems on an informal basis. Procedures for the consideration of complaints shall include at least one impartial review within the executive department or agency and shall provide for appeal to the Civil Service Commission.

SECTION 5.

The Civil Service Commission shall issue such regulations, orders, and instructions as it deems necessary and appropriate to carry out this Order and assure that the executive branch of the Government leads the way as an equal opportunity employer, and the head of each executive department and agency shall comply with the regulations, orders, and instructions issued by the Commission under this Order.

SECTION 6.

This Order applies (a) to military departments as defined in section 102 of title 5, United States Code, and executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code, and to the employees thereof (including employees paid from nonappropriated funds), and (b) to those portions of the legislative and judicial branches of the Federal Government and of the Government of the District of Columbia having positions in the competitive service and to the employees in those positions. This Order does not apply to aliens employed outside the limits of the United States.

SECTION 7.

Part I of Executive Order No. 11246 of September 24, 1965, and those parts of Executive Order No. 11375 of October 13, 1967, which apply to Federal employment, are hereby superseded.

Richard Nixon
THE WHITE HOUSE,
August 8, 1969.

Exec. Order No. 11478, 34 FR 12985, 1969 WL 9664 (Pres.)

Consolidation of Contract Compliance Functions for Equal Employment Opportunity

October 5, 1978

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c), in order to provide for the transfer to the Department of Labor of certain contract compliance functions relating to equal employment opportunity, it is hereby ordered as follows:

1-1. Transfer of Functions.

1-101. The functions concerned with being primarily responsible for the enforcement of the equal employment opportunity provisions under Parts II and III of Executive Order No. 11246, as amended, are transferred or reassigned to the Secretary of Labor from the following agencies:

- a) Department of the Treasury.
- b) Department of Defense.
- c) Department of the Interior.
- d) Department of Commerce.
- e) Department of Health, Education, and Welfare.
- f) Department of Housing and Urban Development.
- g) Department of Transportation.
- h) Department of Energy.
- i) Environmental Protection Agency.
- j) General Services Administration.
- k) Small Business Administration.

1-102. The records, property, personnel and positions, and unexpended balances of appropriations or funds related to the functions transferred or reassigned by this Order, that are available and necessary to finance or discharge those functions, are transferred to the Secretary of Labor.

1-103. The Director of the Office of Management and Budget shall make such determinations, issue such orders, and take all actions necessary or appropriate to effectuate the transfers or reassignments provided by this Order, including the transfer of funds, records, property, and personnel.

1-2. Conforming Amendments to Executive Order No. 11246.

1-201(a). In order to reflect the transfer of enforcement responsibility to the Secretary of Labor, Section 201 of Executive Order No. 11246, as amended, is amended to read:

"Sec. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order."

(b) Paragraph (7) of the contract clauses specified in Section 202 of Executive Order No. 11246, as amended, is amended to read:

"(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

1-202. In subsection (c) of Section 203 of Executive Order No. 11246, as amended, delete "contracting agency" in the proviso and substitute "Secretary of Labor" therefor.

1-203. In both the beginning and end of subsection (d) of Section 203 of Executive Order No. 11246, as amended, delete "contracting agency or the" in the phrase "contracting agency or the Secretary."

1-204. Section 205 of Executive Order No. 11246, as amended, is amended by deleting the last two sentences, which dealt with agency designation of compliance officers, and revising the rest of that Section to read:

"Sec. 205. The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require."

1-205. In order to delete references to the contracting agencies conducting investigations, Section 206 of Executive Order No. 11246, as amended, is amended to read:

"Sec. 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.

"(b) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order."

1-206. In Section 207 of Executive Order No. 11246, as amended, delete "contracting agencies, other" in the first sentence.

1-207. The introductory clause in Section 209(a) of Executive Order No. 11246, as amended, is amended by deleting "or the appropriate contracting agency" from "In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary or the appropriate contracting agency may:".

1-208. In paragraph (5) of Section 209(a) of Executive Order No. 11246, as amended, insert at the beginning the phrase "After consulting with the contracting agency, direct the contracting agency to", and at the end of paragraph (5) delete "contracting agency" and substitute therefor "Secretary of Labor" so that paragraph (5) is amended to read:

"(5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor."

1-209. In order to reflect the transfer from the agencies to the Secretary of Labor of the enforcement functions, substitute "Secretary of Labor" for "each contracting agency" in Section 209(b) of Executive Order No. 11246, as amended, so that Section 209(b) is amended to read:

"(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section."

1-210. In order to reflect the responsibility of the contracting agencies for prompt compliance with the directions of the Secretary of Labor, Sections 210 and 211 of Executive Order No. 11246, as amended, are amended to read:

"Sec. 210. Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.

"Sec. 211. If the Secretary of Labor shall so direct, contracting agencies shall not enter into contracts with any bidder of prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor."

1-211. Section 212 of Executive Order No. 11246, as amended, is amended to read:

"Sec. 212. When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States."

1-212. In order to reflect the transfer of enforcement responsibility to the Secretary of Labor, references to the administering department or agency are deleted in clauses (1), (2), and (3) of Section 301 of Executive Order No. 11246, as amended, and those clauses are amended to read:

"(1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order."

1-213. In order to reflect the transfer from the agencies to the Secretary of Labor of the enforcement functions "Secretary of Labor" shall be substituted for "administering department or agency" in Section 303 of Executive Order No. 11246, as amended, and Section 303 is amended to read:

"Sec. 303(a). The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.

"(b) In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.

"(c) In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing."

1-214. Section 401 of Executive Order No. 11246, as amended, is amended to read:

"Sec. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order."

1-3. General Provisions.

1-301. The transfers or reassignments provided by Section 1-1 of this Order shall take effect at such time or times as the Director of the Office of Management and Budget shall determine. The Director shall ensure that all such transfers or reassignments take effect within 60 days.

1-302. The conforming amendments provided by Section 1-2 of this Order shall take effect on October 8, 1978; except that, with respect to those agencies identified in Section 1-101 of this Order, the conforming amendments shall be effective on the effective date of the transfer or reassignment of functions as specified pursuant to Section 1-301 of this Order.

JIMMY CARTER
THE WHITE HOUSE,
October 5, 1978.
Exec. Order No. 12086, 43 FR 46501, 1978 WL 21943 (Pres.)

TITLE 41--PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

**CHAPTER 60--OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, EQUAL EMPLOYMENT OPPORTUNITY,
DEPARTMENT OF LABOR**

PART 60-1--OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS--Table of Contents

Subpart A--Preliminary Matters; Equal Opportunity Clause; Compliance Reports

Sec. 60-1.1 Purpose and application.

The purpose of the regulations in this part is to achieve the aims of parts II, III, and IV of Executive Order 11246 for the promotion and insuring of equal opportunity for all persons, without regard to race, color, religion, sex, or national origin, employed or seeking employment with Government contractors or with contractors performing under federally assisted construction contracts. The regulations in this part apply to all contracting agencies of the Government and to contractors and subcontractors who perform under Government contracts, to the extent set forth in this part. The regulations in this part also apply to all agencies of the Government administering programs involving Federal financial assistance which may include a construction contract, and to all contractors and subcontractors performing under construction contracts which are related to any such programs. The procedures set forth in the regulations in this part govern all disputes relative to a contractor's compliance with his obligations under the equal opportunity clause regardless of whether or not his contract contains a "Disputes" clause. Failure of a contractor or applicant to comply with any provision of the regulations in this part shall be grounds for the imposition of any or all of the sanctions authorized by the order. The regulations in this part do not apply to any action taken to effect compliance with respect to employment practices subject to title VI of the Civil Rights Act of 1964. The rights and remedies of the Government hereunder are not exclusive and do not affect rights and remedies provided elsewhere by law, regulation, or contract; neither do the regulations limit the exercise by the Secretary or Government agencies of powers not herein specifically set forth, but granted to them by the order.

Sec. 60-1.2 Administrative responsibility.

The Deputy Assistant Secretary has been delegated authority and assigned responsibility for carrying out the responsibilities assigned to the Secretary under the Executive Order. All correspondence regarding the order should be directed to the Deputy Assistant Secretary, Office of Federal Contract Compliance Programs, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.
[43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

Sec. 60-1.3 Definitions.

"Administering agency" means any department, agency and establishment in the executive branch of the Government, including any wholly owned Government corporation, which administers a program involving federally assisted construction contracts.

"Administrative law judge" means an administrative law judge appointed as provided in 5 U.S.C. 3105 and Subpart B of Part 930 of Title 5 of the Code of Federal Regulations (see 37 FR 16787) and qualified to preside at hearings under 5 U.S.C. 557.

"Agency" means any contracting or any administering agency of the Government.

"Applicant" means an applicant for Federal assistance involving a construction contract, or other participant in a program involving a construction contract as determined by regulation of an administering agency. The term also includes such persons after they become recipients of such Federal assistance.

"Compliance evaluation" means any one or combination of actions OFCCP may take to examine a Federal contractor or subcontractor's compliance with one or more of the requirements of Executive Order 11246.

"Construction work" means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

"Contract" means any Government contract or subcontract or any federally assisted construction contract or subcontract.

"Contracting agency" means any department, agency, establishment, or instrumentality in the executive branch of the Government, including any wholly owned Government corporation, which enters into contracts.

"Contractor" means, unless otherwise indicated, a prime contractor or subcontractor.

"Deputy Assistant Secretary" means the Deputy Assistant Secretary for Federal Contract Compliance, United States Department of Labor, or his or her designee.

"Equal opportunity clause" means the contract provisions set forth in Sec. 60-1.4 (a) or (b), as appropriate.

"Federally assisted construction contract" means any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

"Government" means the government of the United States of America.

"Government contract" means any agreement or modification thereof between any contracting agency and any person for the purchase, sale or use of personal property or nonpersonal services. The term "personal property," as used in this section, includes supplies and contracts for the use of real property (such as lease arrangements), unless the contract for the use of real property itself constitutes real property (such as easements). The term "nonpersonal services" as used in this section includes, but is not limited to, the following services: Utilities, construction, transportation, research, insurance, and fund depository. The term Government contract does not include:

- (1) Agreements in which the parties stand in the relationship of employer and employee; and
- (2) Federally assisted construction contracts.

"Minority group" as used herein shall include, where appropriate, female employees and prospective female employees.

"Modification" means any alteration in the terms and conditions of a contract, including supplemental agreements, amendments, and extensions.

"Order," "Executive Order," or "Executive Order 11246" means parts II, III, and IV of the Executive Order 11246 dated September 24, 1965 (30 FR 12319), any Executive order amending such order, and any other Executive order superseding such order.

"Person" means any natural person, corporation, partnership, unincorporated association, State or local government, and any agency, instrumentality, or subdivision of such a government.

"Prime contractor" means any person holding a contract and, for the purposes of Subpart B of this part, any person who has held a contract subject to the order.

"Recruiting and training agency" means any person who refers workers to any contractor or subcontractor or who provides for employment by any contractor or subcontractor.

"Rules, regulations, and relevant orders of the Secretary of Labor" used in paragraph (4) of the equal opportunity clause means rules, regulations, and relevant orders of the Secretary of Labor or his designee issued pursuant to the order.

"Secretary" means the Secretary of Labor, U.S. Department of Labor, or his or her designee.

"Site of construction" means the general physical location of any building, highway, or other change or improvement to real property which is undergoing construction, rehabilitation, alteration, conversion, extension, demolition, or repair, and any temporary location or facility at which a contractor, subcontractor, or other participating party meets a demand or performs a function relating to the contract or subcontract.

"Subcontract" means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

- (1) For the purchase, sale or use of personal property or nonpersonal services which, in whole or in part, is necessary to the performance of any one or more contracts; or
- (2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken or assumed.

"Subcontractor" means any person holding a subcontract and, for the purposes of Subpart B of this part, any person who has held a subcontract subject to the order. The term "first-tier subcontractor" refers to a subcontractor holding a subcontract with a prime contractor.

"United States," as used herein, shall include the several States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Wake Island.

[43 FR 49240, Oct. 20, 1978, as amended at 61 FR 19988, May 3, 1996; 62 FR 44188, Aug. 19, 1997; 62 FR 66971, Dec. 22, 1997]

Sec. 60-1.4 Equal opportunity clause.

(a) Government contracts. Except as otherwise provided, each contracting agency shall include the following equal opportunity clause contained in section 202 of the order in each of its Government contracts (and modifications thereof if not included in the original contract):

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) the contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(b) Federally assisted construction contracts. (1) Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions:

Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(c) Subcontracts. Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

(d) Incorporation by reference. The equal opportunity clause may be incorporated by reference in all Government contracts and subcontracts, including Government bills of lading, transportation requests, contracts for deposit of Government funds, and contracts for issuing and paying U.S. savings bonds and notes, and such other contracts and subcontracts as the Deputy Assistant Secretary may designate.

(e) Incorporation by operation of the order. By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order and the regulations in this part to include such a clause whether or not it is physically incorporated in such contracts and whether or not the contract between the agency and the contractor is written.

(f) Adaptation of language. Such necessary changes in language may be made in the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.
[43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

Sec. 60-1.5 Exemptions.

(a) General--(1) Transactions of \$10,000 or under. Contracts and subcontracts not exceeding \$10,000, other than Government bills of lading, and other than contracts and subcontracts with depositories of Federal funds in any amount and with financial institutions which are issuing and paying agents for U.S. savings bonds and savings notes, are exempt from the requirements of the equal opportunity clause. In determining the applicability of this exemption to any federally assisted construction contract, or subcontract thereunder, the amount of such contract or subcontract rather than the amount of the Federal financial assistance shall govern. No agency, contractor, or subcontractor shall procure supplies or services in a manner so as to avoid applicability of the equal opportunity clause: Provided, that where a contractor has contracts or subcontracts with the Government in any 12-month period which have an aggregate total value (or can reasonably be expected to have an aggregate total value) exceeding \$10,000, the \$10,000 or under exemption does not apply, and the contracts are subject to the order and the regulations issued pursuant thereto regardless of whether any single contract exceeds \$10,000.

(2) Contracts and subcontracts for indefinite quantities. With respect to contracts and subcontracts for indefinite quantities (including, but not limited to, open end contracts, requirement-type contracts, Federal Supply Schedule contracts, "call-type" contracts, and purchase notice agreements), the equal opportunity clause shall be included unless the purchaser has reason to believe that the amount to be ordered in any year under such contract will not exceed \$10,000. The applicability of the equal opportunity clause shall be determined by the purchaser at the time of award for the first year, and annually thereafter for succeeding years, if any. Notwithstanding the above, the equal opportunity clause shall be applied to such contract whenever the amount of a single order exceeds \$10,000. Once the equal opportunity clause is determined to be applicable, the contract shall continue to be subject to such clause for its duration, regardless of the amounts ordered, or reasonably expected to be ordered in any year.

(3) Work outside the United States. Contracts and subcontracts are exempt from the requirements of the equal opportunity clause with regard to work performed outside the United States by employees who were not recruited within the United States.

(4) Contracts with State or local governments. The requirements of the equal opportunity clause in any contract or subcontract with a State or local government (or any agency, instrumentality or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract or subcontract. In addition, any agency, instrumentality or subdivision of such government, except for educational institutions and medical facilities, are exempt from the requirements of filing the annual compliance report provided for by

Sec. 60-1.7(a)(1) and maintaining a written affirmative action compliance program prescribed by Sec. 60-1.40 and Part 60-2 of this chapter.

(5) Contracts with certain educational institutions. It shall not be a violation of the equal opportunity clause for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion. The primary thrust of this provision is directed at religiously oriented church-related colleges and universities and should be so interpreted.

(6) Work on or near Indian reservations. It shall not be a violation of the equal opportunity clause for a construction or nonconstruction contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation. The use of the word "near" would include all that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day. Contractors or subcontractors extending such a preference shall not, however, discriminate among Indians on the basis of religion, sex, or tribal affiliation, and the use of such a preference shall not excuse a contractor from complying with the other requirements contained in this chapter.

(b) Specific contracts and facilities--(1) Specific contracts. The Deputy Assistant Secretary may exempt an agency or any person from requiring the inclusion of any or all of the equal opportunity clause in any specific contract or subcontract when he deems that special circumstances in the national interest so require. The Deputy Assistant Secretary may also exempt groups or categories of contracts or subcontracts of the same type where he finds it impracticable to act upon each request individually or where group exemptions will contribute to convenience in the administration of the order.

(2) Facilities not connected with contracts. The Deputy Assistant Secretary may exempt from the requirements of the equal opportunity clause any of a prime contractor's or subcontractor's facilities which he finds to be in all respects separate and distinct from activities of the prime contractor or subcontractor related to the performance of the contract or subcontract, provided that he also finds that such an exemption will not interfere with or impede the effectuation of the order.

(c) National security. Any requirement set forth in these regulations in this part shall not apply to any contract or subcontract whenever the head of an agency determines that such contract or subcontract is essential to the national security and that its award without complying with such requirement is necessary to the national security. Upon making such a determination, the head of the agency will notify the Deputy Assistant Secretary in writing within 30 days.

(d) Withdrawal of exemption. When any contract or subcontract is of a class exempted under this section, the Deputy Assistant Secretary may withdraw the exemption for a specific contract or subcontract or group of contracts or subcontracts when in his judgment such action is necessary or appropriate to achieve the purposes of the order. Such withdrawal shall not apply to contracts or subcontracts awarded prior to the withdrawal, except that in procurements entered into by formal advertising, or the various forms of restricted formal advertising, such withdrawal shall not apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of the bids.

[43 FR 49240, Oct. 20, 1978; 43 FR 51400, Nov. 3, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

Sec. 60-1.6 [Reserved]

Sec. 60-1.7 Reports and other required information.

(a) Requirements for prime contractors and subcontractors. (1) Each prime contractor and subcontractor shall file annually, on or before the September 30, complete and accurate reports on Standard Form 100 (EEO-1) promulgated jointly by the Office of Federal Contract Compliance Programs, the Equal Employment Opportunity Commission and Plans for Progress or such form as may hereafter be promulgated in its place if such prime contractor or subcontractor (i) is not exempt from the provisions of these regulations in accordance with Sec. 60-1.5; (ii) has 50 or more employees; (iii) is a prime contractor or first tier subcontractor; and (iv) has a contract, subcontract or purchase order amounting to \$50,000 or more or serves as a depository of Government funds in any amount, or is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes: Provided, That any subcontractor below the first tier which performs construction work at the site of construction shall be required to file such a report if it meets requirements of paragraphs (a)(1) (i), (ii), and (iv) of this section. (2) Each person required by Sec. 60-1.7(a)(1) to submit reports shall file such a report with the contracting or administering agency within 30 days after the award to him of a contract or subcontract, unless such person has submitted such a report within 12 months preceding the date of the award. Subsequent reports shall be submitted annually in accordance with Sec. 60-1.7(a)(1), or at such other intervals as the Deputy Assistant Secretary may require. The Deputy Assistant Secretary may extend the time for filing any report.

(3) The Deputy Assistant Secretary or the applicant, on their own motions, may require a contractor to keep employment or other records and to furnish, in the form requested, within reasonable limits, such information as the Deputy Assistant Secretary or the applicant deems necessary for the administration of the order.

(4) Failure to file timely, complete and accurate reports as required constitutes noncompliance with the prime contractor's or subcontractor's obligations under the equal opportunity clause and is ground for the imposition by the Deputy Assistant Secretary, an applicant, prime contractor or subcontractor, of any sanctions as authorized by the order and the regulations in this part.

(b) Requirements for bidders or prospective contractors--(1) Certification of compliance with Part 60-2: Affirmative Action Programs. Each agency shall require each bidder or prospective prime contractor and proposed subcontractor, where appropriate, to state in the bid or in writing at the outset of negotiations for the contract: (i) Whether it has developed and has on file at each establishment affirmative action programs pursuant to Part 60-2 of this chapter; (ii) whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; (iii) whether it has filed with the Joint Reporting Committee, the Deputy Assistant Secretary or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements.

(2) Additional information. A bidder or prospective prime contractor or proposed subcontractor shall be required to submit such information as the Deputy Assistant Secretary requests prior to the award of the contract or subcontract. When a determination has been made to award the contract or subcontract to a specific contractor, such contractor shall be required, prior to award, or after the award, or both, to furnish such other information as the applicant or the Deputy Assistant Secretary requests.

(c) Use of reports. Reports filed pursuant to this section shall be used only in connection with the administration of the order, the Civil Rights Act of 1964, or in furtherance of the purposes of the order and said Act.

[43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

Sec. 60-1.8 Segregated facilities.

To comply with its obligations under the Order, a contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensuring that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. This obligation extends to all contracts containing the equal opportunity clause regardless of the amount of the contract. The term "facilities," as used in this section, means waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, wash rooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees; Provided, That separate or single-user restrooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes. [62 FR 44189, Aug. 19, 1997]

Sec. 60-1.9 Compliance by labor unions and by recruiting and training agencies.

(a) Whenever compliance with the equal opportunity clause may necessitate a revision of a collective bargaining agreement the labor union or unions which are parties to such an agreement shall be given an adequate opportunity to present their views to the Deputy Assistant Secretary.

(b) The Deputy Assistant Secretary shall use his best efforts, directly and through agencies, contractors, subcontractors, applicants, State and local officials, public and private agencies, and all other available instrumentalities, to cause any labor union, recruiting and training agency or other representative of workers who are or may be engaged in work under contracts and subcontracts to cooperate with, and to comply in the implementation of, the purposes of the order.

(c) In order to effectuate the purposes of paragraph (a) of this section, the Deputy Assistant Secretary may hold hearings, public or private, with respect to the practices and policies of any such labor union or recruiting and training agency.

(d) The Deputy Assistant Secretary may notify any Federal, State, or local agency of his conclusions and recommendations with respect to any such labor organization or recruiting and training agency which in his judgment has failed to cooperate with himself, agencies, prime contractors, subcontractors, or applicants in carrying out the purposes of the order. The Deputy Assistant Secretary also may notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever he has reason to believe that the practices of any such labor organization or agency violates title VII of the Civil Rights Act of 1964 or other provisions of Federal law. [43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

Sec. 60-1.10 Foreign government practices.

Contractors shall not discriminate on the basis of race, color, religion, sex, or national origin when hiring or making employee assignments for work to be performed in the United States or abroad. Contractors are exempted from this obligation only when hiring persons outside the United States for work to be performed outside the United States (see 41 CFR 60-1.5(a)(3)). Therefore, a contractor hiring workers in the United States for either Federal or nonfederally connected work shall be in violation of Executive Order 11246, as amended, by refusing to employ or assign any person because of race, color, religion, sex, or national origin regardless of the policies of the country where the work is to be performed or for whom the work will be performed. Should any contractor be unable to acquire a visa of entry for any employee or potential employee to a country in which or with which it is doing business, and which refusal it believes is due to the race, color, religion, sex, or national origin of the employee or potential employee, the contractor must immediately notify the Department of State and the Deputy Assistant Secretary of such refusal. [43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

Sec. 60-1.11 Payment or reimbursement of membership fees and other expenses to private clubs.

(a)(1) A contractor which maintains a policy or practice of paying membership fees or other expenses for employee participation in private clubs or organizations shall ensure that the policy or practice is administered without regard to the race, color, religion, sex, or national origin of employees.

(2) Payment or reimbursement by contractors of membership fees and other expenses for participation by their employees in a private club or organization which bars, restricts or limits its membership on the basis of race, color, sex, religion, or national origin constitutes a violation of Executive Order 11246 except where the contractor can provide evidence that such restrictions or limitations do not abridge the promotional opportunities, status, compensation or other terms and conditions of employment of those of its employees barred from membership because of their race, color, religion, sex, or national origin. OFCCP shall provide the contractor with the opportunity to present evidence in defense of its actions.

(b) The contractor has the responsibility of determining whether the club or organization restricts membership on the basis of race, color, religion, sex, or national origin. The contractor may make separate determinations for different chapters of an organization, and where it does so, may limit any necessary corrective action to the particular chapters which observe discriminatory membership policies and practices. [46 FR 3896, Jan. 16, 1981]

Effective Date Note: At 46 FR 3896, Jan. 16, 1981, Sec. 60-1.11 was added. At 46 FR 18951, Mar. 27, 1981, the effective date was deferred until further notice.

Sec. 60-1.12 Record retention.

(a) General requirements. Any personnel or employment record made or kept by the contractor shall be preserved by the contractor for a period of not less than two years from the date of the making of the record or the personnel action involved, whichever occurs later. However, if the contractor has fewer than 150 employees or does not have a Government contract of at least \$150,000, the minimum record retention period shall be one year from the date of the making of the record or the personnel action involved, whichever occurs later. Such records include, but are not necessarily limited to, records pertaining to hiring, assignment, promotion, demotion, transfer, lay off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship, and other records having to do with requests for reasonable accommodation, the results of any physical examination, job advertisements and postings, applications and resumes, tests and test results, and interview notes. In

the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of not less than two years from the date of the termination, except that contractors that have fewer than 150 employees or that do not have a Government contract of at least \$150,000 shall keep such records for a period of not less than one year from the date of the termination. Where the contractor has received notice that a complaint of discrimination has been filed, that a compliance evaluation has been initiated, or that an enforcement action has been commenced, the contractor shall preserve all personnel records relevant to the complaint, compliance evaluation or enforcement action until final disposition of the complaint, compliance evaluation or enforcement action. The term "personnel records relevant to the complaint," for example, would include personnel or employment records relating to the complainant and to all other employees holding positions similar to that held or sought by the complainant and application forms or test papers submitted by unsuccessful applicants and by all other candidates for the same position as that for which the complainant unsuccessfully applied. Where a compliance evaluation has been initiated, all personnel and employment records described above are relevant until OFCCP makes a final disposition of the evaluation.

(b) Affirmative action programs. A contractor establishment required under Sec. 60-1.40 to develop a written affirmative action program (AAP) shall maintain its current AAP and documentation of good faith effort, and shall preserve its AAP and documentation of good faith effort for the immediately preceding AAP year, unless it was not then covered by the written AAP requirement.

(c) Failure to preserve records. Failure to preserve complete and accurate records as required by paragraphs (a) and (b) of this section constitutes noncompliance with the contractor's obligations under the Executive Order and this Part. Where the contractor has destroyed or failed to preserve records as required by this section, there may be a presumption that the information destroyed or not preserved would have been unfavorable to the contractor: Provided, That this presumption shall not apply where the contractor shows that the destruction or failure to preserve records results from the circumstances that are outside of the contractor's control.

(d) Effective date. The requirements of this section shall apply only to records made or kept on or after December 22, 1997. [62 FR 44189, Aug. 19, 1997, as amended at 62 FR 66971, Dec. 22, 1997]

Sec. 60-1.21 Filing complaints.

Complaints shall be filed within 180 days of the alleged violation unless the time for filing is extended by the Deputy Assistant Secretary for good cause shown. [43 FR 49240, Oct. 20, 1978; 43 FR 51400, Nov. 3, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

Sec. 60-1.22 Where to file.

Complaints may be filed with the OFCCP, 200 Constitution Avenue, NW., Washington, DC 20210, or with any OFCCP regional or area office.

Sec. 60-1.23 Contents of complaint.

(a) The complaint shall include the name, address, and telephone number of the complainant, the name and address of the contractor or subcontractor committing the alleged discrimination, a description of the acts considered to be discriminatory, and any other pertinent information which will assist in the investigation and resolution of the complaint. The complaint shall be signed by the complainant or his/her authorized representative. Complaints alleging class-type violations which do not identify the alleged discriminatee or discriminatees will be accepted, provided the other requirements of this paragraph are met.

(b) If a complaint contains incomplete information, OFCCP shall seek the needed information from the complainant. In the event such information is not furnished to the Deputy Assistant Secretary within 60 days of the date of such request, the case may be closed. [43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

Sec. 60-1.24 Processing of matters.

(a) Complaints. OFCCP may refer appropriate complaints to the Equal Employment Opportunity Commission (EEOC) for processing under Title VII of the Civil Rights Act of 1964, as amended, rather than processing under E.O. 11246 and the regulations in this chapter. Upon referring complaints to the EEOC, OFCCP shall promptly notify complainant(s) and the contractor of such referral.

(b) Complaint investigations. In conducting complaint investigations, OFCCP shall, as a minimum, conduct a thorough evaluation of the allegations of the complaint and shall be responsible for developing a complete case record. The case record should contain the name, address, and telephone number of each person interviewed, the interview statements, copies, transcripts, or summaries (where appropriate) of pertinent documents, a reference to at least one covered contract, and a narrative report of the investigation with references to exhibits and other evidence which relate to the alleged violations.

(c)(1) [Reserved]

(2) If any complaint investigation or compliance review indicates a violation of the equal opportunity clause, the matter should be resolved by informal means whenever possible. Such informal means may include the holding of a compliance conference.

(3) Where any complaint investigation or compliance review indicates a violation of the equal opportunity clause and the matter has not been resolved by informal means, the Deputy Assistant Secretary shall proceed in accordance with Sec. 60-1.26.

(4) When a prime contractor or subcontractor, without a hearing, shall have complied with the recommendations or orders of the Deputy Assistant Secretary and believes such recommendations or orders to be erroneous, he shall, upon filing a request therefor within ten days of such compliance, be afforded an opportunity for a hearing and review of the alleged erroneous action.

(5) For reasonable cause shown, the Deputy Assistant Secretary may reconsider or cause to be reconsidered any matter on his/her own motion or pursuant to a request.

(d) Reports to the Deputy Assistant Secretary. (1) With the exception of complaints which have been referred to EEOC, within 60 days from receipt of a complaint or within such additional time as may be allowed by the Deputy Assistant Secretary for good cause shown, the complaint shall be processed and the case record developed containing the following information:

(i) Name and address of the complainant;

(ii) Brief summary of findings, including a statement regarding the contractor's compliance or noncompliance with the requirements of the equal opportunity clause;

(iii) A statement of the disposition of the case, including any corrective action taken and any sanctions or penalties imposed or, whenever appropriate, the recommended corrective action and sanctions or penalties.

(2) A written report of every preaward compliance review required by this regulation or otherwise required by the Deputy Assistant Secretary, shall be developed and maintained.

(3) A written report of every other compliance review or any other matter processed involving an apparent violation of the equal opportunity clause shall be made. Such report shall contain a brief summary of the findings, including a statement of conclusions regarding the contractor's compliance or noncompliance with the requirements of the order, and a statement of the disposition of the case, including any corrective action taken or recommended and any sanctions or penalties imposed or recommended.

[43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

Sec. 60-1.25 Assumption of jurisdiction by or referrals to the Deputy Assistant Secretary.

The Deputy Assistant Secretary may inquire into the status of any matter pending before an agency. Where he considers it necessary or appropriate to the achievement of the purposes of the order, he may assume jurisdiction over the matter and proceed as provided herein. Whenever the Deputy Assistant Secretary assumes jurisdiction over any matter, or an agency refers any matter he may conduct, or have conducted, such investigations, hold such hearings, make such findings, issue such recommendations and directives, order such sanctions and penalties, and take such other action as may be necessary or appropriate to achieve the purposes of the order. The Deputy Assistant Secretary shall promptly notify the agency of any corrective action to be taken or any sanctions to be taken or any sanction to be imposed by the agency. The agency shall take such action, and report the results thereof to the Deputy Assistant Secretary within the time specified.

[43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

Sec. 60-1.26 Enforcement proceedings.

(a) General. (1) Violations of the Order, the equal opportunity clause, the regulations in this chapter, or applicable construction industry equal employment opportunity requirements, may result in the institution of administrative or judicial enforcement proceedings. Violations may be found based upon, inter alia, any of the following:

(i) The results of a complaint investigation;

(ii) The results of a compliance evaluation;

(iii) Analysis of an affirmative action program;

(iv) The results of an on-site review of the contractor's compliance with the Order and its implementing regulations;

(v) A contractor's refusal to submit an affirmative action program;

(vi) A contractor's refusal to allow an on-site compliance evaluation to be conducted;

(vii) A contractor's refusal to provide data for off-site review or analysis as required by the regulations in this chapter;

(viii) A contractor's refusal to establish, maintain and supply records or other information as required by the regulations in this chapter or applicable construction industry requirements;

(ix) A contractor's alteration or falsification of records and information required to be maintained by the regulations in this chapter; or

(x) Any substantial or material violation or the threat of a substantial or material violation of the contractual provisions of the Order, or of the rules or regulations in this chapter.

(2) OFCCP may seek back pay and other make whole relief for victims of discrimination identified during a complaint investigation or compliance evaluation. Such individuals need not have filed a complaint as a prerequisite to OFCCP seeking such relief on their behalf. Interest on back pay shall be calculated from the date of the loss and compounded quarterly at the percentage rate established by the Internal Revenue Service for the under-payment of taxes.

(b) Administrative enforcement. (1) OFCCP may refer matters to the Solicitor of Labor with a recommendation for the institution of administrative enforcement proceedings, which may be brought to enjoin violations, to seek appropriate relief, and to impose appropriate sanctions. The referral may be made when violations have not been corrected in accordance with the conciliation procedures in this chapter, or when OFCCP determines that referral for consideration of formal enforcement (rather than settlement) is appropriate. However, if a contractor refuses to submit an affirmative action program, or refuses to supply records or other requested information, or refuses to allow OFCCP access to its premises for an on-site review, and if conciliation efforts under this chapter are unsuccessful, OFCCP may immediately refer the matter to the Solicitor, notwithstanding other requirements of this chapter.

(2) Administrative enforcement proceedings shall be conducted under the control and supervision of the Solicitor of Labor and under the Rules of Practice for Administrative Proceedings to Enforce Equal Opportunity under Executive Order 11246 contained in part 60-30 of this chapter and the Rules of Evidence set out in the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges contained in 29 CFR part 18, subpart B: Provided, That a Final Administrative Order shall be issued within one year from the date of the issuance of the recommended findings, conclusions and decision of the Administrative Law Judge, or the submission of any exceptions and responses to exceptions to such decision (if any), whichever is later.

(c) Referrals to the Department of Justice. (1) The Deputy Assistant Secretary may refer matters to the Department of Justice with a recommendation for the institution of judicial enforcement proceedings. There are no procedural prerequisites to a referral to the Department of Justice. Such referrals may be accomplished without proceeding through the conciliation procedures in this chapter, and a referral may be made at any stage in the procedures under this chapter.

(2) Whenever a matter has been referred to the Department of Justice for consideration of judicial enforcement, the Attorney General may bring a civil action in the appropriate district court of the United States requesting a temporary restraining order, preliminary or permanent injunction (including relief against noncontractors, including labor unions, who seek to thwart the implementation of the Order and regulations), and an order for such additional sanctions or relief, including back pay, deemed necessary or appropriate to ensure the full enjoyment of the rights secured by the Order, or any of the above in this paragraph (c)(2).

(3) The Attorney General is authorized to conduct such investigation of the facts as he/she deem necessary or appropriate to carry out his/her responsibilities under the regulations in this chapter.

(4) Prior to the institution of any judicial proceedings, the Attorney General, on behalf of the Deputy Assistant Secretary, is authorized to make reasonable efforts to secure compliance with the contract provisions of the Order. The Attorney General may do so by providing the contractor and any other respondent with reasonable notice of his/her findings, his/her intent to file suit, and the actions he/she believes necessary to obtain compliance with the contract provisions of the Order without contested litigation, and by offering the contractor and any other respondent a reasonable opportunity for conference and conciliation, in an effort to obtain such compliance without contested litigation.

(5) As used in the regulations in this Part, the Attorney General shall mean the Attorney General, the Assistant Attorney General for Civil Rights, or any other person authorized by regulations or practice to act for the Attorney General with respect to the enforcement of equal employment opportunity laws, orders and regulations generally, or in a particular matter or case.

(6) The Deputy Assistant Secretary or his/her designee, and representatives of the Attorney General may consult from time to time to determine what investigations should be conducted to determine whether contractors or groups of contractors or other persons may be engaged in patterns or practices in violation of the Executive Order or these regulations, or of resistance to or interference with the full enjoyment of any of the rights secured by them, warranting judicial proceedings.

(d) Initiation of lawsuits by the Attorney General without referral from the Deputy Assistant Secretary. In addition to initiating lawsuits upon referral under this section, the Attorney General may, subject to approval by the Deputy Assistant Secretary, initiate independent investigations of contractors which he/she has reason to believe may be in violation of the Order or the rules and regulations issued pursuant thereto. If, upon completion of such an investigation, the Attorney General determines that the contractor has in fact violated the Order or the rules and regulations issued thereunder, he/she shall make reasonable efforts to secure compliance with the contract provisions of the Order. He/she may do so by providing the contractor and any other respondent with reasonable notice of the Department of Justice's findings, its intent to file suit, and the actions that the Attorney General believes are necessary to obtain compliance with the contract provisions of the Order without contested litigation, and by offering the contractor and any other respondent a reasonable opportunity for conference and conciliation in an effort to obtain such compliance without contested litigation. If these efforts are unsuccessful, the Attorney General may, upon approval by the Deputy Assistant Secretary, bring a civil action in the appropriate district court of the United States requesting a temporary restraining order, preliminary or permanent injunction, and an order for such additional sanctions or equitable relief, including back pay, deemed necessary or appropriate to ensure the full enjoyment of the rights secured by the Order or any of the above in this paragraph (d).

(e) To the extent applicable, this section and part 60-30 of this chapter shall govern proceedings resulting from any Deputy Assistant Secretary's determinations under Sec. 60-2.2(b) of this chapter.
[62 FR 44190, Aug. 19, 1997, as amended at 62 FR 66971, Dec. 22, 1997]

Sec. 60-1.27 Sanctions.

(a) General. The sanctions described in subsections (1), (5), and (6) of section 209(a) of the Order may be exercised only by or with the approval of the Deputy Assistant Secretary. Referral of any matter arising under the Order to the Department of Justice or to the Equal Employment Opportunity Commission shall be made by the Deputy Assistant Secretary.

(b) Debarment. A contractor may be debarred from receiving future contracts or modifications or extensions of existing contracts, subject to reinstatement pursuant to Sec. 60-1.31, for any violation of Executive Order 11246 or the implementing rules, regulations and orders of the Secretary of Labor. Debarment may be imposed for an indefinite term or for a fixed minimum period of at least six months.
[62 FR 44191, Aug. 19, 1997]

Sec. 60-1.28 Show cause notices.

When the Deputy Assistant Secretary has reasonable cause to believe that a contractor has violated the equal opportunity clause he may issue a notice requiring the contractor to show cause, within 30 days, why monitoring, enforcement proceedings or other appropriate action to ensure compliance should not be instituted.
[43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

Sec. 60-1.29 Preaward notices.

(a) Preaward compliance reviews. Upon the request of the Deputy Assistant Secretary, agencies shall not enter into contracts or approve the entry into contracts or subcontracts with any bidder, prospective prime contractor, or proposed subcontractor named by the Deputy Assistant

Secretary until a preaward compliance review has been conducted and the Deputy Assistant Secretary or his designee has approved a determination that the bidder, prospective prime contractor or proposed subcontractor will be able to comply with the provisions of the equal opportunity clause.

(b) Other special preaward procedures. Upon the request of the Deputy Assistant Secretary, agencies shall not enter into contracts or approve the entry into subcontracts with any bidder; prospective prime contractor or proposed subcontractor specified by the Deputy Assistant Secretary until the agency has complied with the directions contained in the request.
[43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

Sec. 60-1.30 Notification of agencies.

The Deputy Assistant Secretary shall ensure that the heads of all agencies are notified of any debarment taken against any contractor.
[62 FR 44191, Aug. 19, 1997]

Sec. 60-1.31 Reinstatement of ineligible contractors.

A contractor debarred from further contracts for an indefinite period under the Order may request reinstatement in a letter filed with the Deputy Assistant Secretary at any time after the effective date of the debarment. A contractor debarred for a fixed period may request reinstatement in a letter filed with the Deputy Assistant Secretary 30 days prior to the expiration of the fixed debarment period, or at any time thereafter. The filing of a reinstatement request 30 days before a fixed debarment period ends will not result in early reinstatement. In connection with the reinstatement proceedings, all debarred contractors shall be required to show that they have established and will carry out employment policies and practices in compliance with the Order and implementing regulations. Before reaching a decision, the Deputy Assistant Secretary may conduct a compliance evaluation of the contractor and may require the contractor to supply additional information regarding the request for reinstatement. The Deputy Assistant Secretary shall issue a written decision on the request.
[62 FR 44192, Aug. 19, 1997]

Sec. 60-1.32 Intimidation and interference.

(a) The contractor, subcontractor or applicant shall not harass, intimidate, threaten, coerce, or discriminate against any individual because the individual has engaged in or may engage in any of the following activities:

(1) Filing a complaint;

(2) Assisting or participating in any manner in an investigation, compliance evaluation, hearing, or any other activity related to the administration of the Order or any other Federal, state or local law requiring equal opportunity;

(3) Opposing any act or practice made unlawful by the Order or any other Federal, state or local law requiring equal opportunity; or

(4) Exercising any other right protected by the Order.

(b) The contractor, subcontractor or applicant shall ensure that all persons under its control do not engage in such harassment, intimidation, threats, coercion or discrimination. The sanctions and penalties contained in this part may be exercised by OFCCP against any contractor, subcontractor or applicant who violates this obligation.
[62 FR 44192, Aug. 19, 1997]

Sec. 60-1.33 Conciliation agreements.

(a) If a compliance review, complaint investigation or other review by OFCCP or its representative indicates a material violation of the equal opportunity clause, and (1) if the contractor, subcontractor or bidder is willing to correct the violations and/or deficiencies, and (2) if OFCCP or its representative determines that settlement (rather than referral for consideration of formal enforcement) is appropriate, a written agreement shall be required. The agreement shall provide for such remedial action as may be necessary to correct the violations and/or deficiencies noted, including, where appropriate (but not necessarily limited to), remedies such as back pay and retroactive seniority.

(b) The term "conciliation agreement" does not include "letters of commitment" which are appropriate for resolving minor technical deficiencies.
(E.O. 11246 (30 FR 12319) as amended by E.O. 11375 and 12086) [44 FR 77002, Dec. 28, 1979]

Sec. 60-1.34 Violation of a conciliation agreement or letter of commitment.

(a) When a conciliation agreement has been violated, the following procedures are applicable:

(1) A written notice shall be sent to the contractor setting forth the violations alleged and summarizing the supporting evidence. The contractor shall have 15 days from receipt of the notice to respond, except in those cases in which such a delay would result in irreparable injury to the employment rights of affected employees or applicants.

(2) During the 15-day period the contractor may demonstrate in writing that it has not violated its commitments.

(3) If the contractor is unable to demonstrate that it has not violated its commitments, or if the complaint alleges irreparable injury, enforcement proceedings may be initiated immediately without issuing a show cause notice or proceeding through any other requirement contained in this chapter.

(4) In any proceeding involving an alleged violation of a conciliation agreement OFCCP may seek enforcement of the agreement itself and shall not be required to present proof of the underlying violations resolved by the agreement.

(b) If the contractor has violated a letter of commitment, the matter shall be handled, where appropriate, pursuant to 41 CFR 60-2.2(c) or 60-4.8. The violation may be corrected through a conciliation agreement, or an enforcement proceeding may be initiated. (E.O. 11246 (30 FR 12319) as amended by EO 11375 and 12086) [44 FR 77002, Dec. 28, 1979, as amended at 62 FR 44192, Aug. 19, 1997]

Sec. 60-1.40 Affirmative action compliance programs.

(a) Requirements of programs. Each contractor who has 50 or more employees and (1) has a contract of \$50,000 or more; or (2) has Government bills of lading which in any 12-month period, total or can reasonably be expected to total \$50,000 or more; or (3) serves as a depository of Government funds in any amount; or (4) is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount, shall develop a written affirmative action compliance program for each of its establishments. Each contractor and subcontractor shall require each subcontractor who has 50 or more employees and (i) has a subcontract of \$50,000 or more; or (ii) has Government bills of lading which in any 12-month period, total or can reasonably be expected to total \$50,000 or more; or (iii) serves as a depository of Government funds in any amount; or (iv) is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount, to develop a written affirmative action compliance program for each of its establishments. A necessary prerequisite to the development of a satisfactory affirmative action program is the identification and analysis of problem areas inherent in minority employment and an evaluation of opportunities for utilization of minority group personnel. The contractor's program shall provide in detail for specific steps to guarantee equal employment opportunity keyed to the problems and needs of members of minority groups, including, when there are deficiencies, the development of specific goals and time tables for the prompt achievement of full and equal employment opportunity. Each contractor shall include in its affirmative action compliance program a table of job classifications. This table should include but need not be limited to job titles, principal duties (and auxiliary duties, if any), rates of pay, and where more than one rate of pay applied (because of length of time in the job or other factors), the applicable rates. The affirmative action compliance program shall be signed by an executive official of the contractor.

(b) Utilization evaluation. The evaluation of utilization of minority group personnel shall include the following:

(1) An analysis of minority group representation in all job categories.

(2) An analysis of hiring practices for the past year, including recruitment sources and testing, to determine whether equal employment opportunity is being afforded in all job categories.

(3) An analysis of upgrading, transfer and promotion for the past year to determine whether equal employment opportunity is being afforded.

(c) Maintenance of programs. Within 120 days from the commencement of the contract, each contractor shall maintain a copy of separate affirmative action compliance programs for each establishment, including evaluations of utilization of minority group personnel and the job classification tables, at each local office responsible for the personnel matters of such establishment. An affirmative action compliance program shall be part of the manpower and training plans for each new establishment and shall be developed and made available prior to the staffing of such establishment. A report of the results of such program shall be compiled annually and the program shall be updated at that time. This information shall be made available to representatives of the Deputy Assistant Secretary upon request and the contractor's affirmative action program and the result it produces shall be evaluated as part of compliance review activities.

[43 FR 49240, Oct. 20, 1978; 43 FR 51400, Nov. 3, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

Sec. 60-1.41 Solicitations or advertisements for employees.

In solicitations or advertisements for employees placed by or on behalf of a prime contractor or subcontractor, the requirements of paragraph (2) of the equal opportunity clause shall be satisfied whenever the prime contractor or subcontractor complies with any of the following:

(a) States expressly in the solicitations or advertising that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin;

(b) Uses display or other advertising, and the advertising includes an appropriate insignia prescribed by the Deputy Assistant Secretary. The use of the insignia is considered subject to the provisions of 18 U.S.C. 701;

(c) Uses a single advertisement, and the advertisement is grouped with other advertisements under a caption which clearly states that all employers in the group assure all qualified applicants equal consideration for employment without regard to race, color, religion, sex, or national origin;

(d) Uses a single advertisement in which appears in clearly distinguishable type the phrase "an equal opportunity employer."
[43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

Sec. 60-1.42 Notices to be posted.

(a) Unless alternative notices are prescribed by the Deputy Assistant Secretary, the notices which contractors are required to post by paragraphs (1) and (3) of the equal opportunity clause in Sec. 60-1.4 will contain the following language and be provided by the contracting or administering agencies:

Equal Employment Opportunity is the Law--Discrimination is Prohibited by the Civil Rights Act of 1964 and by Executive Order No. 11246

Title VII of the Civil Rights Act of 1964--Administered by:

The Equal Employment Opportunity Commission

Prohibits discrimination because of Race, Color, Religion, Sex, or National Origin by Employers with 15 or more employees, by Labor Organizations, by Employment Agencies, and by Apprenticeship or Training Programs

Any person
Who believes he or she has been discriminated against
Should Contact

The Equal Employment Opportunity Commission
1801 L Street NW., Washington, DC 20507

Executive Order No. 11246--Administered by:

The Office of Federal Contract Compliance Programs

Prohibits discrimination because of Race, Color, Religion, Sex, or National Origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

By all Federal Government Contractors and Subcontractors, and by Contractors Performing Work Under a Federally Assisted Construction Contract, regardless of the number of employees in either case.

Any person
Who believes he or she has been discriminated against
Should Contact

The Office of Federal Contract Compliance Programs
U.S. Department of Labor, Washington, DC 20210

(b) The requirements of paragraph (3) of the equal opportunity clause will be satisfied whenever the prime contractor or subcontractor posts copies of the notification prescribed by or pursuant to paragraph (a) of this section in conspicuous places available to employees, applicants for employment, and representatives of each labor union or other organization representing his employees with which he has a collective-bargaining agreement or other contract or understanding.

[43 FR 49240, Oct. 20, 1978, as amended at 62 FR 44192, Aug. 19, 1997; 62 FR 66971, Dec. 22, 1997]

Sec. 60-1.43 Access to records and site of employment.

Each contractor shall permit access during normal business hours to its premises for the purpose of conducting on-site compliance evaluations and complaint investigations. Each contractor shall permit the inspecting and copying of such books and accounts and records, including computerized records, and other material as may be relevant to the matter under investigation and pertinent to compliance with the Order, and the rules and regulations promulgated pursuant thereto by the agency, or the Deputy Assistant Secretary. Information obtained in this manner shall be used only in connection with the administration of the Order, the Civil Rights Act of 1964 (as amended), and any other law that is or may be enforced in whole or in part by OFCCP.

[62 FR 44192, Aug. 19, 1997]

Sec. 60-1.44 Rulings and interpretations.

Rulings under or interpretations of the order or the regulations contained in this part shall be made by the Secretary or his designee.

Sec. 60-1.45 Existing contracts and subcontracts.

All contracts and subcontracts in effect prior to October 24, 1965, which are not subsequently modified shall be administered in accordance with the nondiscrimination provisions of any prior applicable Executive orders. Any contract or subcontract modified on or after October 24, 1965, shall be subject to Executive Order 11246. Complaints received by and violations coming to the attention of agencies regarding contracts and subcontracts which were subject to Executive Orders 10925 and 11114 shall be processed as if they were complaints regarding violations of this order.

Sec. 60-1.46 Delegation of authority by the Deputy Assistant Secretary.

The Deputy Assistant Secretary is authorized to redelegate the authority given to him by the regulations in this part. The authority redelegated by the Deputy Assistant Secretary pursuant to the regulations in this part shall be exercised under his general direction and control.

[43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

Sec. 60-1.47 Effective date.

The regulations contained in this part shall become effective July 1, 1968, for all contracts, the solicitations, invitations for bids, or requests for proposals which were sent by the Government or an applicant on or after said effective date, and for all negotiated contracts which have not been executed as of said effective date. Notwithstanding the foregoing, the regulations in this part shall become effective as to all contracts executed on and after the 120th day following said effective date. Subject to any prior approval of the Secretary, any agency may defer the effective date of the regulations in this part, for such period of time as the Secretary finds to be reasonably necessary. Contracts executed prior to the effective date of the regulations in this part shall be governed by the regulations promulgated by the former President's Committee on Equal Employment Opportunity which appear at 28 FR 9812, September 2, 1963, and at 28 FR 11305, October 23, 1963, the temporary regulations which appear at 30 FR 13441, October 22, 1965, and the orders at 31 FR 6881, May 10, 1966, and 32 FR 7439, May 19, 1967.

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

Reporting Entity: _____ Page _____ of _____

FDIC Integrity and Fitness Representations and Certifications

SUBMITTED BY:

Contractor Name

FDIC INTEGRITY AND FITNESS REPRESENTATIONS AND CERTIFICATIONS

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ESTIMATED REPORTING BURDEN

Public reporting burden for this collection of information is estimated to average one-hour per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Assistant Executive Secretary (Administration), OES, Room F-4001, FDIC, Washington, D.C. 20429; and to the Office of Management and Budget, Paperwork Reduction Project (3064-0072), Washington, D.C. 20503.

PRIVACY ACT STATEMENT

Collection of this information is authorized by the Federal Deposit Insurance Act, 12 U.S.C. §§ 1891, 1821, and Executive Order 9397. This information will be primarily used to examine a contractor's eligibility for potential FDIC contract awards and the information provided may be disclosed to licensing authorities by the FDIC in examining the contractor's eligibility.

Information may also be disclosed to appropriate Federal, state, or local agencies for law enforcement purposes when a violation or possible violation of a civil or criminal law is apparent; to individuals involved in judicial or administrative proceedings; and to a Congressional office in response to an inquiry made at the individual's request. Information may also be disclosed in accordance with the other routine uses set forth in the FDIC's Financial Information System 30-64-0012. Furnishing the requested information, including your Social Security Number, is voluntary. However, failure to furnish all requested information may preclude you from receiving an FDIC contract.

FDIC INTEGRITY AND FITNESS REPRESENTATIONS AND CERTIFICATIONS

I. PREAMBLE

The following representations and eligibility certifications shall be executed by an official authorized to bind the contractor, and shall be returned with its proposal. These representations and certifications concern matters within the jurisdiction of an agency of the United States, and the making of a false, fictitious, or fraudulent certification may render the contractor and/or certifying official subject to prosecution under 18 United States Code (U.S.C.) § 1001, 1007, and 1014. For purposes of these certifications, the Federal Deposit Insurance Corporation (FDIC) is considered an agency of the United States only with respect to its rights and remedies under 18 U.S.C. The offeror shall provide notice to the Contracting Officer within 10 business days or at any time prior to contract award, if the contractor learns that one or more of these certifications was erroneous when submitted or has become erroneous by reason of changed circumstances. In addition, any such misrepresentations or miscertifications may render the contractor and/or the certifying official subject to administrative remedies by the FDIC, to include suspension and/or exclusion from contracting, or termination of contract, (12 CFR 366.16; 12 CFR Part 367).

II. IDENTIFYING INFORMATION

1. Type of Organization

The contractor operates as an individual, a State or local agency, a partnership, a joint venture, a nonprofit organization, an educational institution, a corporation organized and existing under the laws of the state of _____.

2. Parent Information

The contractor is, is not, owned or controlled by a parent company. If it is, complete the blanks below and include an organizational chart of parent company:

NAME OF PARENT COMPANY		TAXPAYER IDENTIFICATION NUMBER (TIN)	
ADDRESS			
CITY	STATE	ZIP CODE	

FDIC INTEGRITY AND FITNESS REPRESENTATIONS AND CERTIFICATIONS

3. Joint Venture Information

The contractor [] is, [] is not, a joint venture. If contractor is a joint venture, complete the information below.

NAME OF JOINT VENTURE PARTNER		
JOINT VENTURE PARTNER'S TAXPAYER IDENTIFICATION NUMBER (TIN)		
JOINT VENTURE TAXPAYER IDENTIFICATION NUMBER (TIN) <i>(If different)</i>		
MAIN OFFICE ADDRESS		
CITY	STATE	ZIP CODE

Has a Joint Venture Agreement been executed? [] Yes, [] No *(If yes, attach Agreement.)*

4. Subcontractor Information

The contractor [] will, [] will not, use subcontractors in the performance of the contract. If it will, complete the information below.

NAME OF SUBCONTRACTOR	TAXPAYER IDENTIFICATION NUMBER (TIN)	
MAIN OFFICE ADDRESS		
CITY	STATE	ZIP CODE

NAME OF SUBCONTRACTOR	TAXPAYER IDENTIFICATION NUMBER (TIN)	
MAIN OFFICE ADDRESS		
CITY	STATE	ZIP CODE

NAME OF SUBCONTRACTOR	TAXPAYER IDENTIFICATION NUMBER (TIN)	
MAIN OFFICE ADDRESS		
CITY	STATE	ZIP CODE

(If additional space is necessary, attach separate sheets.)

FDIC INTEGRITY AND FITNESS REPRESENTATIONS AND CERTIFICATIONS

III. PART 366 INTEGRITY AND FITNESS

1. Unique Terms

Unique terms used in these representations and certifications are described in 12 CFR Part § 366, as follows:

- (a) **Conflict of interest** occurs when a contractor, any entity that owns or controls a contractor, or any entity the contractor owns or controls:
- (1) Has a personal, business, or financial interest or relationship that relates to the services performed under the contract; or
 - (2) Is a party to litigation against the FDIC, or represents a party that is; or
 - (3) Submits an offer to acquire an asset from FDIC for which services were performed during the past three years, unless the contract allows for the acquisition.
- (b) **Ownership or control:**
- (1) The president or chief executive officer has control of an organization.
 - (2) A partner in a small law firm has ownership or control. A partner in a large multinational law firm may not have ownership or control.
 - (3) A general partner of a limited partnership has control. Ownership or control exists when there is an interest of twenty five percent (25%) or more in a limited partnership.
 - (4) Ownership or control is evidenced by the:
 - (i) Power to vote, directly or indirectly, 25% or more interest of any class of voting stock of a company;
 - (ii) Ability to direct in any manner the election of a majority of a company's directors or trustees; or
 - (iii) Ability to exercise a controlling influence over the company's management and policies.
- (c) **Default on a material obligation** occurs when a loan or advance with an outstanding balance of more than \$50,000 is or was delinquent for ninety (90) days or more.
- (d) **FDIC-insured depository institution** includes any bank or savings association the deposits of which are insured by the FDIC.
- (e) **Management official** includes any shareholder, employee, or partner who controls a company and any individual who directs the day-to-day operations of a company. With respect to a partnership whose management committee or executive committee has responsibility for the day-to-day operations of the partnership, management official includes a member of such a committee but, if no such committee exists, management official includes each of the general partners.
- (f) **Pattern or practice of defalcation regarding obligations:**
- A pattern or practice of defalcation under 12 CFR section 366.3(c) exists when the contractor, any person that owns or controls the contractor, or any entity the contractor owns or controls has a legal responsibility for the payment on at least two obligations that are:
- (1) To one or more FDIC-insured depository institutions;
 - (2) More than ninety (90) days delinquent in the payment of principal, interest, or a combination thereof; and

FDIC INTEGRITY AND FITNESS REPRESENTATIONS AND CERTIFICATIONS

Unique Terms (Continued)

(3) More than \$50,000 each.

(g) **Person** includes an individual, corporation, partnership or other entity with a legally independent existence.

(h) **Substantial loss to Federal deposit insurance fund:**

A substantial loss to a Federal deposit insurance fund under 12 CFR section 366.3(d) exists when the contractor, or any person that owns or controls the contractor, or any entity the contractor owns or controls has:

(1) An obligation to us that is delinquent for ninety (90) days or more and on which there is an outstanding balance of principal, interest, or a combination thereof of more than \$50,000;

(2) An unpaid final judgment in our favor that is in excess of \$50,000, regardless of whether it becomes discharged in whole or in part in a bankruptcy proceeding;

(3) A deficiency balance following foreclosure of collateral on an obligation owed to us that is in excess of \$50,000, regardless of whether it becomes discharged in whole or in part in a bankruptcy proceeding; or

(4) A loss to us that is in excess of \$50,000 that we report on IRS Form 1099-C, Information Reporting for Discharge of Indebtedness.

2. Representations as to Eligibility (12 CFR 366.3)

To the best of the contractor's knowledge:

(a) Has the contractor been convicted of a felony?

Yes No *(If yes, explain below.)*

(b) Has the contractor been removed from or prohibited from participating in the affairs of an FDIC-insured depository institution because of a Federal banking agency action?

Yes No *(If yes, explain below.)*

(c) Has the contractor demonstrated a pattern or practice of defalcation regarding obligations?

Yes No *(If yes, explain below.)*

FDIC INTEGRITY AND FITNESS REPRESENTATIONS AND CERTIFICATIONS

(d) Is the contractor responsible for a substantial loss to a Federal deposit insurance fund?

Yes No (*if yes, explain below.*)

As used herein, "pattern or practice of defalcation" is described in 12 CFR 366.4 and "a substantial loss to a Federal deposit insurance fund" is described in 12 CFR 366.5 both are reproduced in Part III of these representations and certifications for your convenience.

3. Representations as to Conflicts of Interest (12 CFR 366.9)

Answers to the following four (4) questions regarding conflicts of interest are provided for the contractor, its officers, directors, any management officials, any persons that own or control you or you own or control; and any employees, agents, or subcontractors who will perform services under the contract:

(a) Do any such person(s) have a personal, business, or financial interest or relationship that relates to the services you perform under the contract?

Yes No (*if yes, explain below.*)

(b) Are any such person(s) a party to litigation against us, or represents a party that is?

Yes No (*if yes, explain below.*)

(c) Are any such person(s) submitting an offer to acquire an asset from us for which services were performed during the past three years, unless the contract allows for the acquisition?

Yes No (*if yes, explain below.*)

(d) Does the contractor recognize that it generally may not later purchase assets it will manage under this contract and performance of this contract may disqualify the contractor from follow-up work where information obtained in the performance of the contract gives the contractor an unfair competitive advantage?

Yes No (*if no, explain below.*)

FDIC INTEGRITY AND FITNESS REPRESENTATIONS AND CERTIFICATIONS

If the contractor cannot certify that there are no conflicts of interest, it may describe the circumstances of any conflicts and request a waiver in accordance with CFR 366.10 or propose a method for the elimination of the conflict.

4. Representations as to Defaults (CFR 366.13(b))

Has the contractor or any company under the contractor's control defaulted on a material obligation during the five (5) years proceeding the submission of this offer?

Yes No (If yes, attach a description of all such instances.)

A "default on a material obligation" occurs when a loan or advance with an outstanding balance of more than \$50,000 is or was delinquent for ninety (90) days or more.

5. Representations as to Employees and Subcontractors (CFR 366.13(d))

Does the contractor agree that without a waiver, it will employ only persons who meet the requirements of 12 CFR part 366 to perform services on behalf of FDIC?

Yes No (If no, explain below.)

IV. SIGNATURE

By signature hereto, the offeror certifies that all of the representations and certifications contained in its proposal are complete and accurate as required by this solicitation, and that it is aware of the penalty prescribed in 18 U.S.C. § 1001 for making false statements in proposal. The contractor also agrees to notify the FDIC in writing within 10 days after discovering that it or any person performing services under an FDIC contract has any change for any answer contained within these representations and certifications. Such notification shall contain a detailed description of the condition and may include a statement of how the contractor intends to resolve such condition. Further, the offeror by signature hereto gives express authorization and consent to the FDIC for the FDIC to release information contained herein to licensing authorities in the examination of the contractor's eligibility for potential contract awards.

SOLICITATION NUMBER		
NAME OF CONTRACTOR (Please print or type)		CONTRACTOR'S TAX IDENTIFICATION NUMBER (TIN)
TITLE		CONTRACTOR'S TELEPHONE NUMBER
OFFICE ADDRESS		
CITY	STATE	ZIP CODE
SIGNATURE		DATE SIGNED

[Sample Contract Closeout Letter to Contractor]

[FDIC LETTERHEAD]

[DATE]

[CONTRACTOR NAME AND ADDRESS]

Subject: Final Closeout of Contract No. **[NUMBER]**

Dear **[NAME OF CONTRACTOR]**:

Our records indicate that all activities under the contract listed above have been completed and the contract is ready to be formally closed. Our records also show that you have received and accepted payment for all work performed.

According to our records, during the contract period you were given **[specify FDIC property, equipment, records, documents, software, hardware, manuals, user IDs, telephone connections, passes, ID badges, keys, passwords, etc., as applicable]**. By signing the attached, you certify that all of the items listed herein and/or provided by FDIC under the contract have been returned to FDIC in good condition, normal wear and tear excepted.

We have attached a form for your endorsement and written concurrence or to list any outstanding issues that would delay the proposed closeout of the contract. If we do not receive the attached endorsement form within ten (10) business days from the date of this letter, we will assume that you have complied with all contractual requirements and will proceed to closeout the contract. The FDIC will, if applicable, request a final invoice as the final step to effect closeout of the contract.

If you have any questions regarding this notification, please call me at **[TELEPHONE NUMBER]**.

Sincerely,

[NAME OF CONTRACTING OFFICER]

Contracting Officer

Attachment

[CONTRACTOR NAME]

Contract No. **[CONTRACT NUMBER]**

_____ To the best of our knowledge, all deliverables have been accepted by FDIC, and any and all claims against FDIC have been satisfactorily settled, and the contract may now be closed.

_____ To the best of our knowledge, all equipment and/or material furnished by FDIC under the subject contract have been returned to FDIC in good condition, normal wear and tear excepted.

_____ The contract listed above should not be closed for the following reason:

Signature

Title

Date

DATE: _____

MEMORANDUM TO: _____
Oversight Manager

FROM: _____
Contracting Officer

SUBJECT: _____

FDIC Contract No. _____

Contractor Name: _____

The Referenced Contract is ready to be officially closed. As Oversight Manager, please complete the attached form in order to complete the closeout and return to my attention via e-mail within 10 business days of the date of this memorandum. Please contact [NAME], Contracting Officer, at [PHONE NUMBER] if you have any questions.

Please respond to the following questions:

	YES	NO
1. Have all deliverables, including reports, been delivered to and accepted by FDIC? If NO, please explain.		
2. Have all funds due FDIC been collected (e.g., overpayment of invoices, funds due from collections by contractor, loan servicing fee adjustments, etc.)? If NO, please explain.		
3. Has DIRM confirmed that all property, software, hardware, equipment, and manuals have been returned? If NO, please explain.		
4. Has DIRM confirmed that all user IDs for all systems have been revoked, and that all telephone connections have been terminated? If NO, please explain.		

	YES	NO
5. Has the Security Management Section confirmed that all FDIC parking passes, identification badges, keys, and other passes been returned? If NO, please explain.		
6. Has the Pre-Exit Clearance Record for Contractors been signed by the contractor, placed in the O.M. file, and a copy supplied to the C.O.? If NO, please explain.		
7. Has the Contractor Performance Report been completed? If NO, please explain.		
8. Is this contract ready to be closed and the file completed? If NO, please explain.		
9. Has the Oversight Manager's file been submitted to the Contracting Officer for inclusion in the Official Contract File? If NO, please explain.		

Oversight Manager

Date

PURCHASE ORDER AND SIMPLIFIED CONTRACT CLOSEOUT CHECKLIST

Page 1 of 1

Contractor:

Contract/Purchase Order No:	Contracting Officer:	
	Date Completed:	
Effective Date:	Total Payments:	
Program Office:	Date Closeout Completed:	
Oversight Manager:	Closeout Completed By:	

DESCRIPTION	Yes	No	N/A
1. The purchase order file contains the expenditure authority approval (signed procurement requisition, case or memorandum).			
2. The purchase order amount, including modifications if any, does not exceed the procurement requisition amount.			
3. Perform a payment verification and reconciliation. Any exceptions noted to the following items should be reviewed to determine requirements for administrative deviation or waiver.			
Verify that goods were received and accepted during the purchase order period of performance or as modified, if appropriate.			
Verify that payments made to the contractor do not exceed the procurement requisition or case expenditure approval amount, or as modified, if appropriate.			
Verify that any over or duplicate payments to the contractor have been recovered.			
Verify that all invoices have been paid and accounted for.			
4. POS data has been updated to reflect closed out status and actual performance period and amount of the contract.			
5. File is prepared for storage.			

COMMENTS

CONTRACTING OFFICER STATEMENT
This contract is complete and closed.
<div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="border-top: 1px solid black; width: 45%;"></div> <div style="border-top: 1px solid black; width: 45%;"></div> </div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> Signature Date </div>

FORMAL CONTRACT CLOSEOUT CHECKLIST

Contractor:

Contract No:		Contracting Officer:	
Task Order No:		Date Completed:	
Effective Date:		Total Payments:	
Program Office:		Date Closeout Completed:	
Oversight Manager:		Closeout Completed By:	

DESCRIPTION	Yes	No	N/A
1. POS report showing contract is complete			
NOTIFICATION			
2. Memo to Oversight Manager, with copies to Legal, Ethics, ODEO, and OIG.			
3. Letter to Contractor.			
CONTRACT FILE REVIEW			
4. Review contract file to determine that, at a minimum, key contractual and solicitation documents are contained in the file checklist (reference APM, Exhibit XXIII, Contracting File Checklist). If the Documents are not located in the files or are not properly executed, determine requirements for administrative deviation or waiver. Document findings in a file index.			
PAYMENT VERIFICATION AND RECONCILIATION			
5. Perform a payment verification and reconciliation. Any exceptions noted to the following items should be discussed with the contracting officer for possible administrative deviation or waiver.			
Verify that all invoiced work was performed during the contract period of performance, or as modified if appropriate.			
Verify that payments made to the contractor do not exceed the contract expenditure approval amount or, as modified if appropriate, and all payments due the contractor have been made.			
Verify that any over or duplicate payments to the contractor have been recovered.			
Verify that all invoices have been paid and accounted for.			

MEMORANDUM OF UNDERSTANDING

BETWEEN

The Federal Deposit Insurance Corporation (FDIC)

And

_____ (Vendor)

Article I. Purpose

Vendor is a company located at _____ and is in the business of _____. Specifically, the Vendor (Provide a brief description of the product and/or software that Vendor would like to test and/or demonstrate to the FDIC) (“Product”).

Vendor has approached the FDIC to allow it to demonstrate said Product at FDIC’s offices. The FDIC has agreed to a demonstration of the Product for a test period of _____ days (“test period”).

To accommodate the demonstration, testing, and review of the Product, the FDIC and Vendor are entering into this Memorandum of Understanding (MOU).

Article II. Vendor Responsibilities

Vendor will ship the Product, at Vendor’s expense, to the FDIC’s offices located at _____. The Vendor will notify the FDIC one (1) week prior to the anticipated delivery date of the Product.

Upon arrival of the Product at the FDIC’s offices, Vendor will install the Product at the FDIC’s offices.

Vendor will provide training and written materials to FDIC personnel relating to the operation and usage of the Product. Vendor will also be available for questions from FDIC personnel regarding the Product during the test period.

After the first half of the test period, Vendor will contact the FDIC to insure that there are no problems with the Product.

Vendor shall not conduct or utilize this review by the FDIC for Product endorsement purposes.

Article III. FDIC Responsibilities

The FDIC's participation in the demonstration of the Product does not constitute a commitment to purchase the Product before, during, or after the test period. If the Product is software, the use of the software for demonstration purposes does not bind the FDIC to the Vendor's software licensing agreement. However, FDIC shall abide by the Confidentiality Agreement set forth in Article V.

The FDIC is not liable for any loss, damage, or breakage that occurs to the Product during the shipping, installation, usage, or return of the Product to Vendor.

The FDIC shall not participate in or conduct any Product endorsements based upon the review of the Product for the Vendor.

Within five days prior to the end of the test period, the FDIC and Vendor may mutually agree in writing to extend the test period. All terms and conditions of the MOU shall remain in effect and applicable during the extension of the test period.

Upon completion of the test period and any extension thereof, the FDIC agrees within ten (10) working days to (dispose of and/or return the Product – please specify and indicate how the Product will be shipped back to Vendor) to Vendor. Vendor will incur all costs of shipping the Product.

Article IV. Costs

All costs of shipping, installation, de-installation and the return of the Product shall be born by Vendor.

Article V. Confidentiality Agreement

A Confidentiality Agreement is attached as Exhibit 1 and incorporated into the MOU.

Article VI. Term and Termination of MOU

This MOU is effective upon signature by both FDIC and the Vendor and shall remain in force until the end of the test period, as extended, or sooner by mutual agreement of the parties hereto.

Article VII. Entire Agreement

This MOU is the entire understanding of the parties. The terms contained in this MOU shall not be modified or amended except as agreed to by the parties hereto in writing.

Article VIII. Severability

If any provision of this MOU is held to be unenforceable, invalid or illegal by any court of competent jurisdiction, such unenforceable, invalid, or illegal provision shall not affect the remainder of the MOU.

Article IX. Governing Law

This MOU shall be construed in accordance with and governed by the laws of the United States and in the absence of controlling Federal Law, in accordance with the laws of the District of Columbia.

Article X. Survival

The provisions contained in this MOU which, by their terms, require performance after the expiration or termination of this MOU shall be enforceable notwithstanding the expiration or other termination of this MOU.

Article XI. Counterparts

This MOU may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

In witness whereof, each party has caused this instrument to be signed on its behalf by its duly authorized agents.

Federal Deposit Insurance Corporation

By: _____

Title: Contracting Officer

Date: _____

By: _____

Title: _____

Date: _____

Exhibit 1

Confidentiality Agreement

This Confidentiality Agreement ("Agreement") is executed this _____ day of _____, 1999 by _____ ("Vendor") and Federal Deposit Insurance Corporation, acting in any capacity ("FDIC").

In consideration of the mutual promises set forth herein and other valuable considerations, Vendor and FDIC agree to the following:

1. Confidential Information. Vendor may provide FDIC with, or allow FDIC access to, certain information not generally known to the public regarding certain product and/or software that is being tested by the FDIC. All such information shall be known as "Confidential Information."
2. No Disclosure. Except as expressly permitted by Paragraph 3 below, FDIC shall not at any time disclose, permit the disclosure of, release, disseminate, or transfer, whether orally or by any other means, any part of such Confidential Information to any other person or entity whether corporate, governmental, or individual, without the express prior written consent of an authorized representative of Vendor. FDIC shall return any written Confidential Information, and all copies made of such items, to Vendor upon Vendor's request, but in any event no later than the date that FDIC has agreed to either return or dispose of the product and/or software pursuant to the Memorandum of Understanding dated _____ between Vendor and FDIC. FDIC hereby agrees that such Confidential Information and any documents provided may be used by FDIC only as authorized by Vendor. FDIC shall take reasonable measures to avoid any disclosure of any such Confidential Information to any unauthorized person by FDIC's employees, agents, or attorneys.
3. Permitted Disclosure. FDIC shall immediately notify Vendor of any court order or subpoena requiring disclosure of Confidential Information and shall cooperate with legal counsel for Vendor in the appeal or challenge of any such order or subpoena. FDIC may disclose Confidential Information required to be disclosed pursuant to court order or subpoena, but only after the FDIC has exhausted any lawful and timely appeal or challenge that the FDIC elects to file or make in connection with such court order or subpoena.
4. Applicable Law. This Agreement shall be governed by Federal law, and, to the extent that State law would apply under applicable Federal law, the laws of the District of Columbia.
5. Attorney's Fees. If any legal action or other proceeding of any kind is brought for the enforcement of this Agreement, or because of any alleged breach, default, or any other

dispute in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover all reasonable attorney's fees and other costs incurred in such action or proceedings, in addition to any relief to which it may be entitled.

6. Entire Agreement. This Agreement embodies the entire agreement between the parties in relation to the subject matter herein and supersedes all prior understandings or agreements, oral or written, between the parties hereto.

Federal Deposit Insurance Corporation

By: _____

Title: _____

(VENDOR)

By: _____

Title: _____

SAMPLE

OVERSIGHT MANAGEMENT Monitoring Plan

GENERAL INFORMATION

CONTRACT/BASIC ORDER AGREEMENT/FSS SCHEDULE NO.	TASK ORDER/DELIVERY ORDER NUMBER
CONTRACTOR NAME	
CONTRACT DESCRIPTION	
CONTRACTING OFFICER	PROGRAM OFFICE
CONTRACTING SPECIALIST	AUTHORIZED EXPENDITURE (TOTAL) \$ _____
CONTRACT CEILING PRICE (<i>Initial Period</i>)	Base Period \$ _____ 1st Option \$ _____ 2nd Option \$ _____ 3rd Option \$ _____
PERIOD OF PERFORMANCE	OPTION PERIODS CEILING PRICE 1 - _____ 2 - _____ 3 - _____
OPTION PERIODS (DATES)	1 - _____ 2 - _____ 3 - _____
POST AWARD CONFERENCE YES <input type="checkbox"/> NO <input type="checkbox"/>	CONFERENCE DATE
KEY PERSONNEL ASSIGNED YES <input type="checkbox"/> NO <input type="checkbox"/>	DATE
OVERSIGHT MANAGER	CONFIRMATION LETTER DATE
TECHNICAL MONITOR	CONFIRMATION LETTER DATE

SECTION I – FDIC DELIVERABLES

*For additional deliverables, attach separate sheet.
From FDIC to Contractor*

DELIVERABLE DESCRIPTION	DATE REQUIRED	DATE DELIVERED	ACCEPTANCE/ REJECTION AND DATE

SECTION II – MEETINGS/PHONE CONFERENCES/COMMUNICATIONS

For additional meetings/phone conference/communication, attach separate sheet.

TYPE	DATE	TOPIC	FOLLOW-UP

SECTION III - SITE VISITS

DATE	PURPOSE	RESULTS/FOLLOW-UP

SECTION IV - STATUS REPORTS

From Contractor to FDIC

REPORT DESCRIPTION (including drafts)	DATE REQUIRED	DATE RECEIVED	ACCEPTANCE/ REJECTION CRITERIA	ACCEPTANCE/ REJECTION TIMEFRAME	ACCEPTANCE/ REJECTION DATE

SECTION V – SCHEDULED MILESTONES

DATE	PLANNED MONITORING/OVERSIGHT ACTION	DATE COMPLETED

SECTION VI – CONTRACTOR DELIVERABLES

For additional deliverables, attach separate sheet.

From Contractor to FDIC

DELIVERABLE DESCRIPTION	DATE REQUIRED	DATE DELIVERED	DATE OF ACCEPTANCE/ REJECTION

SECTION VII – PROBLEMS and FOLLOW-UP *(For additional reports, attach separate sheet.)*

DATE NOTIFIED	DESCRIPTION AND RESPONSE	FOLLOW-UP

SECTION VIII – INVOICES (For additional invoices, attach separate sheet.)

INVOICE NUMBER	INVOICE AMOUNT	DATE RECEIVED	DATE ACCEPTED OR REJECTED	REMAINING AMOUNT	REASON FOR REJECTION

SECTION IX – SUBCONTRACTOR MONTHLY ACTIVITY REPORTS

CONTRACTOR NAME:

MO.	PERIOD OF REPORT	DESCRIPTION OF WORK	TOTAL COMPENSATION PAID – PERIOD & CUMUL.	MARKUP AS APPROVED	SDB PERCENT - GOAL & CMPL'D	SUB PERCENT - GOAL & CMPL'D	SPECIAL INSUR.	CERTIFICATION
JAN								
FEB								
MAR								
APR								
ETC.								

SECTION X - MODIFICATIONS

Including Options

MODIFICATION NUMBER	DESCRIPTION	FUNDING INCREMENT AMT. ADD/SUBTRACT	CUMULATIVE CEILING TOTAL

SECTION XI - CHANGE IN OVERSIGHT MANAGER/ TECHNICAL MONITOR APPOINTMENT

NAME:	OM/TM	LETTER YES/NO	DATE	FILES TRANSFERRED YES/NO	DATE:

SECTION XI I– PERSONNEL CHANGES

DEPARTING PERSONNEL – PRE-EXIT CLEARANCE COMPLETION DATE	“NEW” PERSONNEL – BACKGROUND INVESTIGATION INITIATED & FINGERPRINTING DATE

SECTION XIII – PERSONNEL ACCESS CONFIRMATION (when contractor personnel have access to FDIC facilities, Security Management Section (SMS) requires confirmation of the continued need for access to the facilities every six months)

NAME AND DIVISION/SECTION	ACCESS CONFIRMED DATE	ACCESS WITHDRAWN DATE

SECTION XIV – SYSTEMS ACCESS & NETWORK ID CONFIRMATION (when contractor personnel have access to FDIC systems, FDIC requires confirmation of the continued need for access to the systems and confirmation that the FDIC Security Awareness Website has been reviewed within 5 days of receiving network ID and annually thereafter.)

PART A - NAME AND DIVISION/SECTION	INITIAL CERTIFICATION	ANNUAL CERTIFICATION

PART B - CONTRACTOR/SUBCONTRACTOR ANNUAL CONFIRMATION LETTER

NAME	DATES RECEIVED

SECTION XV - OPTIONS EXERCISED

NUMBER OF DAYS REQUIRED TO NOTIFY:

OPTION NUMBER	OPTION TERM	NOTICE OF EXERCISE TO CONTRACTOR	CUMULATIVE CEILING TOTAL
Option No. 1			
Option No. 2			
Option No. 3			

SECTION XVI – CONTRACTOR PERFORMANCE REPORT

REPORTING PERIOD	DUE DATE	DATE COMPLETED	DATE SENT TO CONTRACTOR	DATE RECEIVED FROM CONTRACTOR
Base Period				
Option No. 1, if necessary				
Option No. 2, if necessary				
Option No. 3, if necessary				

SECTION XVII - CLAIMS

DATE RECEIVED	AMOUNT CLAIMED	REASON FOR CLAIM	RESULT

SECTION XVIII - CONTRACT CLOSEOUT

CATEGORY	DATE	PROBLEMS/ISSUES
All deliverables accepted		
FDIC property returned		
FDIC records returned		
FDIC access and logon IDs suspended		
Final payment processed		
Pre-Exit Clearance performed and submitted to SMS		
Performance Evaluation completed		
Oversight and Technical Monitor(s) files completed and combined		
Oversight file to Contracting Officer		

Dear Contractor:

SUBJECT: Tax Exempt Status
Identification Number 53-0185558

The Federal Deposit Insurance Corporation was created by an Act of Congress, 12 U.S.C.A. 1811, effective June 16, 1933, as an instrumentality of the United States with certain governmental privileges.

The privileges, as addressed in 12 U.S.C.A. 1825, include that the Corporation, including its franchise, its capital, its reserves and surplus, and its income, shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority, except for real property.

In addition, the Corporation is an organization described and defined under Section 501(c)(1) of the Internal Revenue Code as being exempt from Federal income taxes.

The following is Section 15 of the Federal Deposit Insurance Act, codified as 12 U.S.C.1825:

“All notes, debentures, bonds or other such obligations issued by the Corporation shall be exempt, both as to principal and interest, from all taxation (except estate and inheritance taxes) now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority:

Provided. That interest upon or any income from any such obligations and gain from the sale or other disposition of such obligations shall not have any exemption, as such, and loss from the sale or other disposition of such obligations shall not have any special treatment, as such, under the Internal Revenue Code, or laws amendatory or supplementary thereto. **The Corporation, including its franchise, its capital reserves, and surplus, and its income, shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, country, municipality, or local taxing authority,** except that any real property of the Corporation shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.”

(Emphasis supplied)