

CORHQ-09-C-0006
CONTRACT NUMBER

Contract executed on January 16, 2009 (Execution Date) and effective as of January 22, 2009 (Effective Date) between the FEDERAL DEPOSIT INSURANCE CORPORATION, acting in its corporate and Receivership capacity (FDIC), and Perella Weinberg Partners LP, a limited partnership organized and existing under the laws of Delaware with its principal place of business at New York, NY (Contractor).

WITNESSETH:

The FDIC, in its corporate and receivership capacity, desires to retain Contractor, and Contractor desires to perform the services or provide the goods described in this contract ("Contract"), upon the terms and conditions set forth below.

Now, therefore, in consideration of the mutual covenants and agreements set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the FDIC and Contractor agree as follows:

ARTICLE I. APPOINTMENT AND DUTIES OF CONTRACTOR

1.1 Independent Contractor

The FDIC hereby retains Contractor as an independent contractor for the sole purpose of performing the services or providing the goods described in this Contract. If this contract permits subcontracting, the use of the term "Contractor" herein shall refer to both the Contractor and any and all Subcontractors at all levels. Contractor must ensure that any and all Subcontractors adhere to all of the terms and conditions that have flow-down requirements.

1.2 Duties

Contractor hereby agrees to perform such services (the Services) or provide such goods (the Goods) on the terms and conditions set forth below and in the following documents, which are incorporated by reference:

- Statement of Work, Attachment 1 to this Contract.
- Contractor's Proposal or Amended Proposal, if any, Attachment 2 to this Contract.
- FDIC General Provisions, Attachment 3 to this Contract.
- Electronic Invoicing Instructions, Attachment 4 to this Contract

Contractor is required to notify the FDIC Contracting Officer and Oversight Manager in writing of any change in Contractor's physical location for the Place of Performance of this Contract. This must include without limitation any facilities relocation and/or re-construction activity or any other planned event that may impact the continued operation of contractor-operated network equipment located on the contractor's premises. The notification must be made at least thirty days in advance of the planned change or start date for any such activity to allow the FDIC time to take appropriate action.

Contractor must ensure that all connections and access to the FDIC network and systems are removed and no longer active using appropriate security procedures at the time of expiration or termination of this Contract, whether contractor or subcontractor employees are working on-site or off-site, and notice must be provided to the Oversight Manager upon completion of these requirements. Contractor must also undergo the FDIC pre-exit clearance procedures at the time of separation.

1.3 Standard of Performance

Contractor must at all times act in good faith and in the best interests of the FDIC, use its best efforts and exercise all due care and sound business judgment in performing its duties under this Contract. Contractor must at all times comply with FDIC policies, procedures and directives, which are incorporated by reference and made part of this Contract.

1.4 Calendar Days

Unless specifically provided otherwise in this Contract, the term "days" used anywhere in this Contract means calendar days.

1.5 Subcontracting Report

If subcontracting or joint venturing is approved, Contractor must submit to the Contracting Officer a Subcontractor or Joint Venture Activity Report, twice a year using the Standard Form 294 and Standard Form 295, while ensuring the following areas are addressed:

- a. Name, address, tax identification number and type of business concern [Minority Women Owned Business, Small Disadvantaged Business and applicable Standard Industrial Classification (SIC) Code and corresponding geographic location if applicable] for each subcontractor or Joint Venture participant.
- b. Period covered by Report.
- c. Description of work performed by subcontractor or Joint Venture participants during the report period.
- d. Percentage of services planned and actually provided by subcontractor or Joint Venture Participant during the report period and cumulative to date by SIC code if applicable.
- e. Total compensation paid to subcontractor or Joint Venture participants during the report period and cumulative to date.
- f. Percentage completion toward Subcontracting Plan goals and/or Joint Venture

commitments.

ARTICLE II. PERIOD OF PERFORMANCE

2.1 Period of Performance

This Contract has an effective period of performance starting on the Effective Date and a maximum period not to exceed two years from the contract effective date. However, at any time after the first year of performance the contracting officer may send written notice with thirty (30) days notice that performance will no longer continue. The FDIC is under no obligation to order services beyond those services expressly ordered in writing by either the oversight manager or contracting officer following award.

ARTICLE III. SECURITY AND CONFIDENTIALITY REQUIREMENTS

3.1 Background Investigations

3.1.1 Background investigations will be conducted for all contractor and subcontractor personnel, who are designated as key personnel under the contract, have access to FDIC's network, or work on site at FDIC's facilities. The extent of the investigations will be in direct relation to the risk level assigned to the contract or to the individual job classifications, which can be found in Section 3.2 of this contract. No background investigations or fingerprinting will be required under receiverships except when a receivership is of a long-term nature, when both are required.

3.1.2 Each contractor and subcontractor employee working on the contract must complete an electronic fingerprint application and credit report authorization. No employee will be permitted to begin work (including access to FDIC facilities, network, and systems) until a favorable fingerprint records check and credit report has been received by the FDIC, unless a waiver has been obtained.

3.1.3 Within 5 days after the effective date hereof, the contractor must provide the Contracting Officer with a list of all contractor and subcontractor personnel working on the contract. This list must include the employee's name and assigned risk level. The contractor must identify each employee who has a previous current or otherwise valid background investigation, and such background investigations must be furnished to FDIC with the list of personnel.

For those employees of the contractor or subcontractor who do not have a valid and current background investigation, a background investigation will be conducted for them. In that event, the requirements relating to background investigations contained herein will control.

NOTE: A valid background investigation is one that meets the minimum investigation for the risk level established for the contract or contract job

category, and that has been conducted within 5 years of the date of contract award.

- 3.1.4 An adverse finding during the background investigation or fingerprinting review (e.g., felony conviction), or a completed background investigation or fingerprint check that indicates that the employee cannot meet the designated security requirements, may prohibit a contractor or subcontractor employee from working on the contract. That employee may be removed at the discretion of the Contracting Officer and replaced with an employee acceptable to FDIC by the Contractor at no additional expense to FDIC and without relief in all contractual performance and delivery requirements.
 - 3.1.5 All contractor and subcontractor employees regularly working on-site at an FDIC facility will be issued a yellow identification/access control badge. Such employees will not be granted on-site access until FDIC receives a favorable fingerprint criminal records check from the FBI. The badges will be issued for a six-month period and must be renewed after each six-month period.
 - 3.1.6 Contractor must notify the Contracting Officer of any new contractor or subcontractor personnel assigned to the contract or any change in assignment of current personnel. FDIC will perform the appropriate background investigations and fingerprint check for any such personnel. Access to FDIC facilities, network, and systems will be as set forth in this section 3.1.
- 3.2 Risk Level Designation
- The following risk level has been assigned to this contract: High.

The post-award background investigations and fingerprinting required for all contractor employees (and subcontractor employees, if applicable) will be for this risk level.

3.3 Confidentiality of Information, Data, and Systems

Contractor must ensure the confidentiality of all information, data, and systems provided by FDIC or used or obtained by Contractor personnel under this contract. Contractor personnel who 1) are designated as key personnel under the contract, 2) have access to FDIC sensitive information or data, systems or network, or 3) work on site at FDIC's facilities must sign the Contractor Confidentiality Agreement (attached). The Agreement must be signed no later than five (5) business days after starting performance and prior to receiving badges or receiving such information. The signed Agreement must be returned to the Contracting Officer.

3.4 through 3.8 RESERVED

3.9 FDIC Access

The Contractor must afford FDIC, including the Office of Inspector General, access to the Contractor's and all subcontractors' facilities, installations, operations, documentation,

databases, and personnel used in performance of the contract. Access must be provided to the extent required to carry out a program of IT inspection, investigation and audit to safeguard against threats and hazards to the integrity, availability and confidentiality of FDIC data, systems, software and hardware or to the function of computer systems operated on behalf of FDIC or the network accessed by the Contractor personnel and to preserve evidence of computer crime or misuse. Notwithstanding the preceding, as well as Sections 16 and 17 of the FDIC General Provisions, FDIC acknowledges that any such inspection, investigation and audit will be conducted in a manner to allow Contractor to safeguard confidential information of other clients.

3.10 Subcontractor Requirements

Contractor must incorporate this Article in all subcontracts that meet the conditions or requirements stated in this Article.

ARTICLE IV. PERSONNEL AND SUBCONTRACTING

4.1 Key Personnel

The following key personnel are essential to the proper performance of Contractor's duties under this Contract ("Key Personnel") and will perform the roles specified below:

<u>Name</u>	<u>Title</u>
William Donaldson	Chairman of Advisory Council
Michael Kramer	Project Manager
Peter Weinberg	Project Manager
Arjay Jensen	Director
Agnes Tang	Director
MK Alisdari	Associate
Nadia A. Boujarwah	Analyst

Contractor's Proposal, or Amended Proposal, if any, identified the above individuals as Key Personnel and certified their availability to perform the duties specified. Contractor agrees to make the Key Personnel available as required for performance of the duties under this Contract as long as such persons are employed by Contractor or its related entities. Prior to diverting or reassigning any Key Personnel to any other projects, and prior to the time any Key Personnel separate from Contractor, Contractor must notify the Contracting Officer in writing at least fourteen (14) days in advance and must submit the name of the proposed substitute individual with a description of his/her educational and professional background. The determination of acceptability of proposed substitute personnel will be at the sole discretion of the FDIC.

All initial Key Personnel and every replacement Key Personnel are required to comply with FDIC Integrity and Fitness standards then in effect and throughout the period of performance. Contractor must not make any substitutions of Key Personnel until receipt of the Contracting Officer's written approval of each such substitution.

4.2 FDIC Personnel.

(a) FDIC Oversight Manager. The term "Oversight Manager" means the person designated in writing by the Contracting Officer to represent the FDIC for the purpose of monitoring technical performance under this Contract. The Oversight Manager is not authorized to issue any instructions or directions which effect any substantive change in this Contract, including but not limited to any increase or decrease in the price of this Contract, or change in the delivery date(s) or Period of Performance. Specific areas of delegated authority are more particularly defined in the Letter of Oversight Manager Confirmation.

(b) FDIC Contracting Officer. The term "Contracting Officer" means a person with FDIC delegated authority to enter into, modify, administer, and terminate contracts and orders.

4.3 Contractor Personnel

For purposes of this Contract, any individual who is performing any part of the work or other requirement of this Contract and who is an employee of Contractor is considered Contractor Personnel (Contractor Personnel).

4.4 Personnel Qualifications.

The personnel qualifications defined in the will be used to administer this contract for both Contractor Personnel and Subcontractor employees. Contractor must provide a written quarterly letter certifying to the FDIC Contracting Officer and Oversight Manager that all Contractor Personnel and Subcontractor employees currently working under this contract meet each of the personnel qualifications as stated in the contract. The FDIC Contracting Officer and Oversight Manager do not have the authority to approve any Contractor Personnel or Subcontractor employees who do not meet all the personnel qualifications unless the FDIC receives additional consideration from the Contractor.

4.5 Subcontractors

For purposes of this Contract, individuals and entities that perform Services or provide Goods under this Contract and are not included in the definition of "Contractor Personnel" in Section 4.3 above will be considered subcontractors. Self-employed individuals, independent contractors, contract laborers, individuals who are employees of a temporary employment/personnel agency, etc., who perform any part of the work or requirements of this Contract do not come within the definition of Contractor Personnel and are either subcontractors or employees of subcontractors.

4.5.1 Authorization; Selection of Subcontractors.

(a) Contractor will not engage subcontractors to perform any of its responsibilities under this Contract without the prior written approval of the FDIC. This prohibition does not apply to contracts or orders for purchase of equipment, materials or supplies to be used in the performance of this Contract. If Contractor's Proposal leading to this Contract requests approval for the use of named or designated subcontractor(s), and if the FDIC has accepted that Proposal, the subcontractor(s) will be deemed approved and further approval will not be needed.

(b) Consent by the FDIC to any proposed subcontractor will not: (1) constitute a determination of the acceptability of any subcontract terms or conditions; or (2) constitute a determination of the acceptability of any amount paid under any subcontract; or (3) relieve Contractor of any of its responsibilities under the Contract. Contractor will award subcontracts only to third parties that have filed FDIC Certifications with Contractor.

(c) The following subcontractors are approved for performance under this Contract:

None

(d) Contractor must notify the FDIC of any changes in subcontracting arrangements. If the subcontractor is a Small Disadvantaged Business (SDB), any changes must result in the same or greater SDB participation.

4.5.2 Contracts with Subcontractors

Contractor will not be reimbursed for subcontracting costs except as specifically provided for in this Contract. Contractor must assure that all contracts it enters into with subcontractors will be consistent with the terms of this Contract, including, but not limited to, certifications, termination, stop work, confidential information and insurance.

4.6 Use of Premises by Contractor Personnel

Contractor must comply with the regulations of the FDIC governing access to facilities and operations while on FDIC premises. Contractor must perform its contract activities in such a manner as to not interrupt or interfere with the conduct of FDIC business. All persons employed under the Contract must observe the regulations in effect while on FDIC premises.

4.7 Subcontracting Plan Compliance.

In contracts where subcontracting is permissible and in accordance with the Contractor's proposal as incorporated within the terms and conditions of the Contract, the Subcontracting Plan is considered a material part of the Contract. The Contractor's failure to comply with and make progress under the Subcontracting Plan may be considered a breach of contract. In addition, failure to achieve the stated subcontracting goals may result in the issuance of a cure notice or show cause letter for purposes of termination for default and/or have a negative and adverse impact on the Contractor's past performance record to be considered during proposal evaluation on future solicitations.

ARTICLE V. COMPENSATION AND BILLING

5.1 Firm Fixed Unit Prices

For satisfactory performance of this Contract, the FDIC will pay Contractor the agreed-upon monthly firm fixed unit prices specified in Contractor's Pricing Schedule (included

in Attachment 2 to this Contract). Contractor's fixed unit prices include any and all of Contractor's costs and expenses, direct and indirect, as well as any profit, fee, or any markups of any nature.

FDIC is a Federal Government corporation and is exempt from State sales tax. Therefore, it will not pay sales tax on invoices submitted to it that is charged by Contractor.

5.1.1 Compensation Ceiling

In no event will total FDIC compensation to Contractor, including any reimbursed costs and expenses, exceed the aggregate specified: \$9,120,000.

Contractor must notify the Contracting Officer, in writing, when Contractor has incurred charges to the FDIC, in the aggregate, of seventy-five percent (75%) of each dollar amount.

5.1.2 Reserved.

5.1.3 Travel Expenses

The FDIC will reimburse Contractor for necessary travel and per diem expenses ("Travel Expenses"), which include subcontractor travel expenses, if any, that do not exceed amounts allowable under the FDIC Contractor Travel Reimbursement Guidelines, a copy of which is attached to this Contract as **Attachment 7**. The FDIC will pay no markup on travel costs beyond actual direct reimbursables. All travel must be approved in advance, in writing (including by electronic correspondence), by the Contracting Officer or Oversight Manager unless such travel was set out in Contractor's Proposal which was accepted by the FDIC at the time of Contract award or modification. In no event will the FDIC separately reimburse Contractor, outside of the pricing set out in this Contract, for any other costs or expenses it incurs in connection with its performance under this Contract, including fees for labor hours incurred while traveling to, and from, the work site.

5.2 Billing Instructions

The FDIC will compensate Contractor as follows:

5.2.1 General Provisions

All invoices must be submitted in accordance with the attached General Provision, "Invoice Preparation and Submission" (Attachment 3 to this Contract) and **Attachment 4**, "Electronic Invoicing Instructions". NOTE: If the charges exceed the dollar-ceiling limit or the invoicing instructions above are not followed precisely, the invoice will be returned and processing of the invoice will be delayed until a corrected invoice is received.

5.2.2 Contractor's Remittance Address

Contractor must include on the invoice Contractor's remittance address, as specified below, in addition to the information specified in the attached General Provision, "Invoice Preparation and Submission" and **Attachment 4**, "Electronic Invoicing Instructions". The

remittance address must be included on Contractor's invoice regardless of whether payment will be made by check or electronic funds transfer (EFT). Contractor must notify the FDIC Contracting Officer, in writing, of any changes to the following remittance address:

Contractor's Remittance Address:

As stated in the Central Contractor Registration

5.2.3 Schedule for Invoicing

Contractor must submit invoices to the email address specified in **Attachment 4**, "Electronic Invoicing Instructions", with any appropriate supporting documentation so the FDIC can confirm acceptance. Invoices must be submitted within ten (10) days after the end of each month.

5.2.4 Certification of Contractor

Contractor must include on the invoice the following statement signed by an authorized company representative:

This is to certify that the services set forth herein were performed during the period stated.

Contractor's Authorized Representative

Date

5.2.5 FDIC Review

If errors are found on the invoices, the invoices will be returned to Contractor. When error-free invoices are received, the invoices will be processed for payment. Any discrepancies in the invoices will be resolved between the Contracting Officer and Contractor PRIOR to approval of the invoice by the FDIC. The Oversight Manager will review each invoice for reasonableness and accuracy prior to approving the invoice for payment.

5.3 Method of Payment-EFT

Payments by the FDIC under this Contract may be made by check or electronic funds transfer (EFT) at the option of the FDIC. If the FDIC makes payment by EFT, the FDIC may, at its option, also forward the associated payment information by electronic transfer. As used in this section, the term "EFT" refers to the funds transfer and may also include the information transfer. For further information, please refer to paragraph 8 of the FDIC General Provisions.

5.4 Central Contractor Registration

The FDIC awards procurements only to businesses that are registered in the Central Contractor Registration (CCR) database. The preferred method of completing your registration is via the World Wide Web at <http://www.ccr.gov>. Contractor must register its firm in the CCR database, complete the annual renewal process, and maintain current information on its firm in the CCR database in order to receive timely invoice payments. FDIC will not input any information into the CCR database on Contractor's behalf, and may reject any invoice from Contractor where processing of the invoice cannot be completed because Contractor has failed to maintain its registration in the CCR database.

ARTICLE VI. INSPECTION AND ACCEPTANCE

6.1 Inspection and Acceptance of Work Product

In accordance with the General Provision of this Contract, "Inspection of Goods or Services," the FDIC will have ten (10) business days from the date of Contractor's delivery of Work Product to determine if such Work Product is in compliance with the requirements of the Contract unless a different period of time is specified in a task order. Inspection by the FDIC will be conducted by the FDIC Oversight Manager.

6.2 Risk of Loss or Damage

Contractor retains title to all materials and equipment until receipt of the FDIC's written acceptance and payment after final inspection of the finished installation. Title may transfer at an earlier date but only upon written notice to Contractor by the Contracting Officer. Risks of loss or damage by fire or other causes to material or property ordered by Contractor are the sole responsibility of Contractor until acceptance by the FDIC. Contractor will be liable to the FDIC for any and all damage to FDIC-owned and FDIC-leased property as a result of this work.

ARTICLE VII. RIGHTS IN SOFTWARE AND SYSTEMS

7.1 Proprietary Interest and License in Software and Systems

The FDIC and Contractor agree that the FDIC has the exclusive and absolute right, title and interest in and to all systems and software owned by the FDIC, or otherwise obtained or developed for the FDIC at its expense, and furnished to Contractor for use in the performance of Contractor's Services under this Contract.

ARTICLE VIII. REPRESENTATIONS

8.1 Representations of Contractor

Contractor represents as follows:

8.1.1 The execution, delivery and performance of this Contract have been duly authorized by all necessary corporate action of Contractor.

8.1.2 Contractor currently possesses all necessary licenses, permits and approvals

required to execute, deliver and perform its duties under this Contract and is qualified to do business in all jurisdictions where such qualification is required for Contractor's performance of its duties under this Contract.

8.1.3 At the time of execution of this Contract, there has been no change in any of the Certifications Contractor submitted to the FDIC with its proposal. Contractor agrees to notify the Contracting Officer immediately, in writing, of any change to Contractor's Certifications.

ARTICLE IX. INFORMATION SECURITY AND PRIVACY

9.1 This contract is for services that require Contractor Personnel to have access to FDIC facilities and/or FDIC information ("access" includes access to FDIC information in hard copy (paper) format or electronic format via FDIC information systems). Therefore, Contractor shall adhere to the following:

(1) Protecting Sensitive Information

All Contractor Personnel shall comply with FDIC policy requirements to protect the confidentiality, integrity, and availability of sensitive information, including personally identifiable information (PII) to which they have access.

Source: FDIC Circular 1360.9, *Protecting Sensitive Information* for further information.

(2) Confidentiality Agreement

Contractor Personnel with access to FDIC information shall sign a confidentiality agreement.

ARTICLE X. INSURANCE COVERAGE

10.1 Liability Insurance

Contractor, before commencing work or permitting any subcontractor to commence work, must procure and maintain, at Contractor's own expense, the following insurance or, should such insurance be cancelled, the FDIC shall have the right to procure such insurance, and the cost thereof will be deducted from monies then due or which thereafter become due to Contractor. Contractor may carry any additional insurance as it may deem necessary. Contractor will not be deemed to be relieved of any responsibility by the fact that Contractor carries insurance. The FDIC requires any contractor of the FDIC performing work on FDIC premises to carry and maintain, at no expense to the FDIC:

- A. Worker's Compensation and Employer's Liability Insurance in accordance with the applicable laws of the state in which the work is to be performed or of the state in which Contractor is obligated to pay compensation to employees engaged in the performance of the work. The policy limit under the Employer's Liability Insurance section shall not be less than One Hundred Thousand Dollars (\$100,000) for any one accident; and

- B. Comprehensive Bodily Injury and Property Damage Liability Insurance covering the work, the performance of the work and everything incidental thereto, with Bodily Injury (including death) and Property Damage limits of not less than Five Million Dollars (\$5,000,000) per occurrence combined single limit. This policy must be endorsed to cover: Contractual liability coverage, completed operations coverage, broad form property damage endorsement and Contractor's protective liability coverage; and
- C. Such other insurance as may be required elsewhere in the Contract documents.

The FDIC must be named as Additional Insured under Contractor's Comprehensive Bodily Injury and Property Damage Liability coverage. Contractor's insurance must be primary.

10.2.1 Errors and Omissions Insurance

Contractor must obtain and maintain at all times during the Period of Performance of the Contract, errors and omissions insurance coverage in the amount of at least \$5,000,000 unless a higher amount is specified in each task order. Contractor must obtain and maintain such coverage with a responsible carrier with at least a financial rating of B+ VI from A.M. Best or equivalent rating agency. Contractor agrees to notify the FDIC Contracting Officer in writing within five (5) business days of the first notice or proposal of cancellation, termination or modification of coverage that Contractor receives. Contractor may, in lieu of insurance coverage, obtain and deliver to the FDIC an unconditional, irrevocable letter of credit issued in the FDIC's favor by a financial institution acceptable to the FDIC for the dollar amount required for insurance coverage. The letter of credit must have an expiration date no earlier than sixty (60) days after the termination or expiration of the Contract, as the Contract may be extended. The issuer, policy terms and forms and amounts of any errors and omissions insurance coverage, including applicable deductibles, must be satisfactory to the FDIC.

10.2.2 Fidelity Bond Coverage

Contractor must obtain and maintain at all times during the Period of Performance of the Contract fidelity bond (crime) coverage in the amount of at least \$2,000,000 per occurrence and \$4,000,000 in the aggregate. Contractor must obtain and maintain such coverage with a responsible carrier or bonding company with a financial rating of at least B+ VI from A.M. Best or equivalent rating agency. The policy must cover all of Contractor's employees, partners, trustees, brokers, subcontractors, agents, affiliates or other representatives involved in the day-to-day performance of the Contract, and must protect the FDIC against losses, including, without limitation, those arising from theft, embezzlement, fraud, or misplacement of funds, money, or documents. The FDIC must be named as "loss payee" under Contractor's policy. Contractor agrees to notify the FDIC Contracting Officer in writing within five (5) business days of the first notice or proposal of cancellation, termination or modification of coverage that Contractor receives. Contractor may, in lieu of insurance coverage, obtain and deliver an unconditional, irrevocable letter of credit issued in the FDIC's favor by a financial institution acceptable to the FDIC for the dollar amount required for insurance coverage. The letter of credit must have an expiration date no earlier than sixty (60) days

after the termination or expiration of the Contract, as the Contract may be extended.

10.3 Certificates of Insurance

Contractor must have its insurance carrier or carriers certify to the FDIC that all insurance required is in force, such certificates to stipulate that the insurance will not be cancelled or substantially changed without thirty (30) days prior notice by Certified Mail to the FDIC Contracting Officer. Contractor must, on request, permit the FDIC to examine original insurance policies.

Contractor must provide the FDIC, no later than ten (10) calendar days after the date of execution of the Contract, evidence of all insurance and bonds specified in this Article X. Such evidence of insurance may be (1) a binder or (2) a copy of the original policy. Contractor must also provide, no later than ten (10) calendar days after the date of execution, a Certificate of Insurance which must include the following mailing address and reference the Contract number:

Federal Deposit Insurance Corporation
Attention: Bernard Piper
3501 Fairfax Drive, Room E-4120
Arlington, VA 22226

10.4 Notice to the FDIC

Contractor must promptly advise the FDIC's authorized representative of all damages to property of the FDIC or of others, or injuries incurred by persons other than employees of Contractor in any manner relating, either directly or indirectly, to the work.

10.5 Cost of Insurance

Contractor's expenses in fulfilling the requirements of this Article X will not be reimbursed by the FDIC.

ARTICLE XI. MISCELLANEOUS

11.1 Certain Advice

Contractor will not be providing FDIC with, and FDIC will not look to Contractor for, tax, legal, accounting or other similar advice.

ARTICLE XII. CONFLICT OF INTEREST

12.1 Notice to the FDIC


Contractor must notify the FDIC Contracting Officer immediately whenever the work under this Contract conflicts with or appears to conflict with Contractor's obligation to another company or organization. Contractor must furnish sufficient details to permit evaluation of the situation. Contractor must not proceed with the performance of the work in question until written notification to do so is given by the FDIC Contracting Officer.

12.2 Conflicts

In recognition of Contractor's corporate advisory business and the nature of services to be provided hereunder, FDIC and Contractor will cooperate and establish procedures by which to determine whether a conflict may exist prior to the disclosure of confidential information; provided, however, the preceding does not alter or modify the parties' obligations under 12 C.F.R. Chapter III, Part 366. In addition, FDIC acknowledges Contractor's responses to questions 3(a) and 3(d) of Attachment F, Volume IV, to Contractor's Proposal, which responses are hereby incorporated herein by reference.

IN WITNESS WHEREOF, each party has caused this instrument to be signed on its behalf by its duly authorized agent.

CONTRACTOR: Perella Weinberg Partners LP

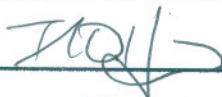
By: 

Name: Peter A. Weinberg

Title: Partner

Date: January 16, 2009

FEDERAL DEPOSIT INSURANCE CORPORATION

By: 

Name: Thomas D. Hamis

Title: Contracting Officer

Date: 1/16/09

INDEX TO ATTACHMENTS

Attachment [1]: Statement of Work

Attachment [2]: Contractor's Price Proposal, or Amended Proposal, if any
(including Contractor's Pricing Schedule and Quality Assurance Plan)

Attachment [3]: FDIC General Provisions

Attachment [4]: Electronic Invoice Instructions

Attachment [5]: Reserved

Attachment [6]: Reserved

Attachment [7]: FDIC Contractor Travel Reimbursement Guidelines: This can be obtained at the following website: <http://www.fdic.gov/buying/goods/acquisition/ContractorTravel.doc>

Attachment [8]: Reserved

Attachment [9]: Contractor Confidentiality Agreement

STATEMENT OF WORK FINANCIAL ADVISORY SERVICES (Mergers & Acquisitions)

1. Background

The Federal Deposit Insurance Corporation (FDIC), established under the Banking Act of 1933, maintains the stability and public confidence in the nation's financial system by insuring deposits, examining and supervising financial institutions, and managing receiverships. The primary objective of the FDIC as receiver is to maximize the value of the failing or failed institution assets to limit losses to the deposit insurance funds and repay uninsured depositors and general creditors. As such, the FDIC has an important role in liquidating these assets in the most cost-effective manner possible. The FDIC's Division of Resolutions and Receiverships (DRR) is responsible for resolving failing and failed FDIC-insured depository financial institutions (a "Bank").

2. Scope of Work

The FDIC requires the services of an advisor, to provide strategic advice on a range of issues relating to the evaluation, resolution, and marketing of financial institutions and complex financial instruments. The advisor will provide strategies on the marketing and sales of the institutions in their entirety and/or their individual assets and deposits, as well as on other strategies related to risk transference, on a whole or partial bank basis. The advisor will evaluate various strategies for resolving banks and will provide practical solutions that are consistent with our primary objectives, including whole bank sales and alternative structures, such as liquidating trusts, loss/gain sharing arrangements with buyers, and the sale of assets and deposits to multiple entities. The advisor may also evaluate proposed structural enhancements, such as warrants and options. In addition, to providing bank specific advice, the advisor on an as needed basis, will provide industry wide analysis and commentary on trends affecting large complex financial institutions and complex financial instruments. In situations where the advisor is providing bank specific advice, and after a confidentiality agreement has been signed, the FDIC shall provide potential advisors with salient information from which a strategic plan for sale can be proposed.

3. Performance Requirements

3.1. Post-award Conference

If requested by the Oversight Manager, Contractor shall attend a post-award conference at the FDIC's offices in Washington, DC, with the Oversight Manager, FDIC Legal representatives, and Contracting Staff to review the scope of the contract, technical requirements, rights and obligations of the parties, reporting requirements (including but not limited to minutes of meetings between contract participants) and FDIC personnel roles.

3.2. Macro Level Strategic Advice

The advisor will be available, on an as needed basis, to provide immediate advice to the FDIC Chairman or other FDIC staff on matters related to the issues described in the above scope of work. Due to the mission critical nature of the assignment, the contractor may be required to respond to requests from the FDIC under very short time constraints (24hrs or less). In

conjunction with these advisory services, the contractor may also be required to travel, on short notice, to FDIC headquarters, FDIC offices nationwide or to specific financial institutions or other locations. The contractor shall provide status reports that document activities relevant to performance.

3.3. Institution Level Disposition Strategies

3.3.1. The Contractor shall assess current market conditions regarding both the deposit structure and the loan assets or other assets and shall address the following, as appropriate, in a “Disposition Strategy Report” (the “Strategy Report”) to be prepared and delivered by the Contractor to the FDIC:

(1) Alternative sale or other disposition options for the sale of the institution, outlining and supporting the recommended alternatives, including:

- a. The best method and strategy for disposition of the institution and an estimation of the recovery value for each disposition option considered;
- b. An explanation of the valuation methodology employed in determining market value(s); and
- c. A cost-benefit analysis for each strategy considering all disposition costs and retained liabilities of the FDIC and estimated proceeds

(2) Discussion of other relevant assumptions and issues, as directed by the Oversight Manager.

3.3.2. The alternate sale or other disposition strategies to be discussed in the Disposition Strategy Report may include either or both of the following, with different strategies applicable to portions of the Loan Assets or other assets:

(1) Sale of the Loan Assets or other assets. The Strategy Report will set forth a proposed plan for marketing the Assets, including recommended pooling/stratification of the Assets, designed to result in the maximum net proceeds to the FDIC. While it is the FDIC’s strong preference to sell such assets “as is, where is” without representations, warranties or indemnification, the Strategy Report should discuss whether providing certain “standard industry” representations, warranties, and indemnification are likely to result in significantly greater net proceeds to the FDIC (after taking into account the FDIC’s potential continuing liability with respect to such representations, warranties and indemnification).

While it is also the FDIC’s strong preference to quickly dispose of all of the Assets, the Strategy Report should discuss whether it may be in the FDIC’s best interest (because it will maximize net proceeds to the FDIC or limit litigation risk) to retain some portion of the Assets on a temporary (or permanent) basis in order to complete loan workouts or modifications arrangements, to correct document or recording deficiencies or because of market conditions or issues regarding regulatory compliance.

(2) Contribution of the Loan Assets of other Assets by the FDIC to a business entity in exchange for participation or an equity interest. The FDIC will consider an arrangement where the Assets are acquired by a business entity managed by an independent third party with the FDIC retaining some interest that would allow it to participate in the anticipated future proceeds from the management and disposition of the Assets. If the Contractor recommends this strategy, the Strategy Report should set forth a recommended structure for this arrangement which will include the following:

- a. The form of business entity to be created [and by whom] such as a business trust, limited partnership, or limited liability company;
- b. The interest in the business entity to be acquired by the FDIC and whether the acquisition of that interest will (i) be solely in exchange for the FDIC's contribution of the Assets, (ii) involve a part sale/part contribution of the Assets, or (iii) require a cash capital contribution or loan, in addition to the contribution of the Assets. Regardless of the form of entity, the FDIC's liability with respect to the acquired interest must be limited to its capital contribution;
- c. The percentage interest to be acquired by the third party bidder and the contribution to made by the bidder to acquire such interest;
- d. Proposed compensation and economic returns to the third party bidder and the FDIC;
- e. The financial and other reports to be provided to FDIC and the FDIC's right to monitor the performance of the third party bidder; and
- f. The Contractor's ongoing oversight of the FDIC's interest in the entity.
- g. Assistance with structure design, in conjunction with FDIC/DRR business staff and internal, as well as external, counsel, to implement proposal(s).

3.3.3. The Strategy Report should include the evaluation and analysis of the alternative structures presented in a concise, logical format including a written analysis and rationale for specific pool stratification and composition decisions to the Oversight Manager for review and approval. For each option, the Contractor shall identify all steps to be performed by the Contractor to facilitate the disposition of the institution at the maximum net value to the FDIC. The Strategy Report must reflect: (i) a detailed time and responsibility schedule ("Plan") for each step necessary to implement and close each disposition strategy and (ii) a schedule of reports to be provided by the Contractor to the Oversight Manager to ensure that relevant progress is monitored (the schedule should state the purpose of the report and its frequency). The Contractor shall revise the Plan, as necessary, based on the direction of the FDIC Oversight Manager.

3.4. Implementation of Disposition Strategy

Contractor shall:

(1) Support internal FDIC approval processes including, but not limited to, preparation of case memoranda, oral presentation and/or related internal approval documentation to FDIC Senior Management and/or the Board of Directors to support the recommended disposition strategy. Drafts and final version of materials prepared by Contractor shall be provided for FDIC review, as requested by the Oversight Manager;

(2) Make recommendations to the FDIC concerning the development of disposition documents (sale documents including a sale agreement for a sale strategy; partnership agreement or limited liability company operating agreement for an equity retention strategy), instructions to bid, a form of bid sheet and other related documents needed to consummate the sale and transfer of ownership; and

(3) Preliminarily identify and qualify potential interested bidders.

3.5. Deliverables. All deliverables shall be delivered to the FDIC offices in Washington DC, or as otherwise agreed upon by the Oversight Manager and Contractor.

3.5.1. Initial Assessment Status Reports. The contractor shall provide the FDIC with a status report. This report shall be presented in a format acceptable to the FDIC and shall include the following information: (a) strategic objectives and key projects for the reporting period; (b) activities and accomplishments during the reporting period; (c) issues related to assigned tasks that were identified during the reporting period; (d) meetings in which the contractor participated during the reporting period; (e) contractor staff travel activity and expenses during the reporting period; (f) projected activities, priorities, travel for the next reporting period; One original and one copy of this status report shall be provided by the contractor to the Oversight Manager for this contract on a monthly basis as scheduled. Status reports shall be delivered at time intervals determined by the Oversight Manager or as mutually agreed to.

3.5.2. Institutional Disposition Strategy Report. The contractor shall provide the FDIC with a Disposition Strategy Report, as described above in section 3.3, no later than 30 calendars after the effective date of the contract. The Oversight Manager may extend the above delivery date at his discretion.

3.5.3. Global Economic Trend Report

In addition to contractor responses to FDIC inquiries for bank specific advice and reports required for these situations, the contractor shall provide, on a monthly basis, a report, in a format mutually agreed upon with the oversight manager, which describes macro level trends and issues affecting the financial industry and which may have an impact on the FDIC mission.

3.6 Contractor shall work with FDIC personnel and other FDIC contractors and agents as designated by the FDIC Oversight Managers.

3.7 Except for the monthly report described in 3.5.3 above, contractor shall provide reports and other deliverables based on timeframes provided by the FDIC Oversight Manager.

FDIC GENERAL PROVISIONS

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FDIC GENERAL PROVISIONS

1. Contractor Conflicts of Interest

Contractor is subject to the provisions of 12 Code of Federal Regulations Chapter III, Part 366, which is reprinted below.

PART 366--MINIMUM STANDARDS OF INTEGRITY AND FITNESS FOR AN FDIC CONTRACTOR

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Authority: 12 U.S.C. 1819(Tenth), 1822(f)(3) and (4); Sec. 19 of Pub. L. 103-204, 107 Stat. 2369.

§ 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.

§ 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 12 U.S.C. 1822(f)(3) and the prohibitions and the submission of information in accordance with 12 U.S.C. 1822(f)(4).

§ 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.

§ 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.

§ 366.4 When is there a pattern or practice of defalcation?

- (a) You have a pattern or practice of defalcation under § 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.

§ 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 § 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.

§ 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.

§ 366.7 Will the FDIC waive the prohibitions under § 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.

§ 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.

§ 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 §§ 366.10 through 366.13. You must also provide us with the information we require in § 366.14. Failure to meet these requirements may prevent you from contracting with us.

§ 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.

§ 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.

§ 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.
- (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.
- (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.

§ 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.

§ 366.14 What information must I provide the FDIC?

You must:

- (a) Certify in writing that you can perform services for us under § 366.3 and have no conflict of interest under § 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 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.

§ 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.

§ 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.

§ 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.

2. Limitation on Payments to Influence Certain Federal Transactions

- A. Applicability. This provision is applicable to solicitations and contracts expected to exceed \$100,000.
- B. Definitions. As used in this provision,
 - (1) "Agency," for purposes of this provision, means the FDIC.
 - (2) "Covered Federal action" means any of the following Federal actions:
 - (a) The awarding of any Federal contract.
 - (b) The making of any Federal grant.
 - (c) The making of any Federal loan.
 - (d) The entering into of any cooperative agreement.
 - (e) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
 - (3) "Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) and include Alaskan Natives.
 - (4) "Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.
 - (5) "Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.
 - (6) "Officer or employee of an agency" includes the following individuals who are employed by an agency:
 - (a) An individual who is appointed to a position in the Government under 5 U.S.C., including a position under a temporary appointment.
 - (b) A member of the uniformed services as

defined in 37 U.S.C. 101.

- (c) A special Government employee, as defined in 18 U.S.C. 202.
- (d) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, 5 U.S.C. Appendix 2.
- (7) "Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.
- (8) "Reasonable compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.
- (9) "Reasonable payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.
- (10) "Recipient" includes Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.
- (11) "Regularly employed" means, with respect to any officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.
- (12) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, or a multi-State, regional, or interstate entity having governmental duties and powers.

C. Prohibitions.

- (1) 31 U.S.C. 1352, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay 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 in connection with any of the following covered Federal actions: 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 the modification of any Federal contract, grant, loan or cooperative agreement.
- (2) The Act also requires contractors to furnish a disclosure if 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 in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(a) Agency and legislative liaison by own employees.

(i) The prohibition on the use of appropriated funds, in subparagraph C.(1) of this provision, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(ii) For purposes of subdivision C.(3)(a)(i) of this provision, providing any information specifically requested by an agency or Congress is allowable at any time.

(iii) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action;

[1] Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

[2] Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(iv) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

[1] Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action; and

[2] Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission.

(v) Only those services expressly authorized by subdivision C.(3)(a)(i) of this provision are permitted under this provision.

(b) Professional and technical services.

(i) The prohibition on the use of appropriated funds, in subparagraph C.(1) of this provision, does not apply in the case of—

[1] A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification

of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

[2] Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission or negotiation of any bid, proposal or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(ii) For purposes of subdivision C.(3)(b)(i) of this provision, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another, are not allowable under this provision because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(iv) Only those services expressly authorized by subdivision C.(3)(b)(i)[1] and [2] of this provision are permitted under this provision.

(v) The reporting requirements shall not

apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

D. Disclosure.

- (1) The contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph C.(1) of this provision, if paid for with appropriated funds.
- 2) The contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph D.(1) of this provision. An event that materially affects the accuracy of the information reported includes--
 - (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - (b) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
 - (c) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- (3) The contractor shall require the submittal of a certification and, if required, a disclosure form by any person who requests or received any subcontract exceeding \$100,000 under the Federal contract.
- (4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding contractor.

E. Prerequisite to Contracting. Submission of the certification, and disclosure if any, contained in FDIC Form 3700/04, "Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions", is a prerequisite to entering into or making this Contract, pursuant to section 1352, title 31, United States Code.

F. Agreement. Contractor agrees not to make any payment prohibited by this provision.

G. Penalties.

- (1) Any person who makes an expenditure prohibited under paragraph C of this provision or who fails to file or amend the disclosure form to be filed or amended by paragraph E of this provision shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the FDIC from seeking any other remedy that may be applicable.
- (2) Contractors may rely without liability on the representation made by their subcontractors in the certification and in the disclosure form.

- H. Cost Allowability. Nothing in this provision makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirement in this provision will not be made allowable under any other provision.

3. Covenant Against Contingent Fees

Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Contractor for the purpose of securing business. For breach or violation of this warranty, the FDIC shall have the right to annul this Contract without liability or, in its discretion, to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

4. Anti-Kickback Procedures

- A. Definitions. As used in this provision,

- (1) "Kickback" means any money, fee, commission, credit, gift, gratuity, thing of value or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.
- (2) "Person" means a corporation, partnership, business association of any kind, trust, joint-stock company or individual.
- (3) "Prime contract" means a contract or contractual action entered into by the FDIC for the purpose of obtaining supplies, materials, equipment or services of any kind.
- (4) "Prime Contractor" means a person who has entered into a prime contract with the FDIC.
- (5) "Prime Contractor employee" means any officer, partner, employee or agent of a prime Contractor.
- (6) "Subcontract" means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment or services of any kind under a prime contract.
- (7) "Subcontractor" (a) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (b) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.
- (8) "Subcontractor employee" means any officer, partner, employee or agent of a subcontractor.

- B. The Anti-Kickback Act of 1986 (41 U.S.C 51-58) (the Act) prohibits any person from--

- (1) Providing or attempting to provide or offering to provide any kickback;
- (2) Soliciting, accepting or attempting to accept any kickback;

- (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.
- C.
- (1) Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph B of this provision in its own operations and direct business relationships.
 - (2) When Contractor has reasonable grounds to believe that a violation described in paragraph B of this provision may have occurred, Contractor shall promptly report in writing the possible violation. Such reports shall be made to the Inspector General of the FDIC or to the Department of Justice.
 - (3) Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph B of this provision.
 - (4) The Contracting Officer may (a) offset the amount of the kickback against any monies owed by the FDIC under the prime contract and/or (b) direct that the prime Contractor withhold from the sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision C.(4)(b) of this provision be paid over to the FDIC unless the FDIC has already offset those monies under subdivision C.(4)(a) of this provision. In either case, the prime Contractor shall notify the Contracting Officer when the monies are withheld.
 - (5) Contractor agrees to incorporate the substance of this provision, including this subparagraph C.(5) but excepting subparagraph C.(1), in all subcontracts under this Contract.
- D. Subparagraphs C.(1) and (3) of this provision do not apply to a prime contract that is not greater than \$100,000 or to a prime contract for the acquisition of commercial items (as defined in 41 U.S.C. 403(12)).
- E. Notwithstanding paragraph D above, the prime Contractor agrees to cooperate fully with any Federal Government agency investigating a violation described in paragraph B of this provision.

5. Certification Regarding a Drug-Free Workplace

- A. Applicability. This provision is applicable if Contractor is an individual or, if other than an individual, to contracts exceeding \$100,000.
- B. Definitions. As used in this provision,
- (1) "Controlled substance" means a controlled substance in schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 C.F.R. 1308.11-1308.15.
 - (2) "Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.
 - (3) "Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.
 - (4) "Drug-free workplace" means a site for the

performance of work done by Contractor in connection with a specific contract at which employees of Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance.

- (5) "Employee" means an employee of a contractor directly engaged in performance of work under an FDIC contract.
- (6) "Individual" means an offeror or a contractor that has no more than one employee including the offeror or contractor.

C. Contractor, if other than an individual and the amount of this Contract exceeds \$100,000, shall--

- (1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- (2) Establish a drug-free awareness program to inform such employees about--
 - (a) The dangers of drug abuse in the workplace;
 - (b) Contractor's policy of maintaining a drug-free workplace;
 - (c) Any available drug counseling, rehabilitation and employee assistance programs; and
 - (d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (3) Provide all employees engaged in performance of the Contract with a copy of the statement required by subparagraph C.(1) of this provision;
- (4) Notify such employees in writing in the statement required by subparagraph C.(1) of this provision that, as a condition of continued employment on the Contract resulting from this solicitation, the employee will--
 - (a) Abide by the terms of the statement; and
 - (b) Notify the employer in writing of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) calendar days after such conviction;
- (5) Notify the Contracting Officer within ten (10) calendar days after receiving notice under subdivision C.(4)(b) of this provision from an employee or otherwise receiving actual notice of such conviction; and
- (6) Within thirty (30) calendar days after receiving notice under subdivision C.(4)(b) of this provision of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
 - (a) Take appropriate personnel action against such employee, up to and including termination; or,
 - (b) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local

health, law enforcement or other appropriate agency.

- (7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs C.(1) through (6) of this provision.
- D. Contractor, if an individual, certifies and agrees by award of the Contract or acceptance of a purchase order of any dollar value, not to engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in the performance of this Contract.
- E. In addition to other remedies available to the FDIC, Contractor's failure to comply with the requirements of paragraphs C or D of this provision may render Contractor subject to suspension of Contract payments, termination of the Contract for default, and suspension or debarment.

6. Equal Opportunity

- A. It is the policy of the FDIC that a contractor not discriminate in its employment practices, and, therefore, if, during any 12-month period (including the 12 months preceding the award of this Contract), Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, Contractor shall comply with subparagraphs B.(1) through (10) below. Upon request, Contractor shall provide the information necessary to determine the applicability of this provision.
- B. Contractor agrees that during the performance of this Contract:
 - (1) Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin.
 - (2) Contractor shall 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: (a) employment, (b) upgrading, (c) demotion, (d) transfer, (e) recruitment or recruitment advertising, (f) layoff or termination, (g) rates of pay or other forms of compensation, and (h) selection for training, including apprenticeship.
 - (3) Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer that explain this provision.
 - (4) Contractor shall, in all solicitations and advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex or national origin.
 - (5) Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contracting Officer advising the labor union or workers' representative of Contractor's commitments under this provision, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - (6) Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations and relevant orders of the Secretary of Labor.
 - (7) Contractor shall furnish all information and reports required by Executive Order 11246, as amended, and by the rules, regulations and orders of the Secretary of Labor.

(8) Contractor shall permit access to its books, records, and

accounts by the FDIC or the Office of Federal Contract Compliance Programs for the purposes of investigation to ascertain compliance with applicable rules, regulations and orders.

- (9) In the event of Contractor's noncompliance with this provision, or with any of the said rules, regulations or orders, this Contract may be canceled, terminated or suspended in whole or in part.
- (10) Contractor shall include the terms and conditions of this provision in each subcontract awarded for work under this Contract.

7. Section 508 Compliance

Section 508 of the Rehabilitation Act (29 U.S.C. 794d) requires that any contractor supplying Electronic and Information Technology (EIT) or related products to FDIC shall ensure that all such products allow all Federal employees with disabilities to have access to and use of all such EIT information and data that is comparable to the access and use by Federal employees who are not individuals with disabilities, unless it is determined by FDIC that such access is an undue burden. Similarly, any such contractor shall ensure that members of the public with disabilities seeking information or services from the FDIC have access to and use of all such EIT information and data that is comparable to persons who are not individuals with disabilities.

8. Method of Payment - EFT

A. Mandatory Submission of Contractor's EFT Information

- (1) Contractor is required, as a condition to any payment under this Contract, to provide the FDIC with the information required to make payment by EFT as described in this section, unless the FDIC Payment Office as identified at 4.2.3 of this Contract, determines that submission of the information is not required. However, in the event Contractor certifies in writing to the Payment Office that Contractor does not have an account with a financial institution or an authorized payment agent, payment shall be made by other than EFT.
- (2) If Contractor provides EFT information applicable to multiple contracts, Contractor shall specifically state the applicability of this EFT information in terms acceptable to the Payment Office.

B. Contractor's EFT Information

Prior to the submission of the first request for payment under this Contract, Contractor shall provide the information required to make Contract payment by EFT, as described in this section, directly to the FDIC Payment Office named in this Contract. In the event that the EFT information changes, Contractor shall be responsible for providing the changed information to the designated Payment Office(s).

C. Required EFT Information

The FDIC may make payment by EFT through either an Automated Clearing House (ACH) subject to the banking laws of the United States or the Federal Reserve Wire Transfer System at the FDIC's option. Contractor shall provide the information required on the Vendor Information for Automatic Deposit of Payment Form, and the Substitute Form W-9, which may be obtained from the FDIC Contracting Officer. Contractor may supply this data for this or multiple contracts.

D. Suspension of Payment

- (1) Notwithstanding any other provisions of this Contract, the FDIC is not required to make any payment under this Contract until after receipt, by the designated payment office, of the correct EFT payment information from Contractor or a certificate submitted in accordance with 4.3.1 of this section. Until receipt of the correct EFT information, any invoice shall be deemed not to be a proper invoice as defined in the Prompt Payment Act Procedures of the FDIC General Provisions.
 - (2) If the EFT information changes after submission of correct EFT information, the FDIC shall begin using the changed EFT information no later than the 30th day after its receipt to the extent payment is made by EFT. However, Contractor may request that no further payments be made until the changed EFT information is implemented by the payment office. If such suspension would result in a late payment under the Prompt Payment Act Procedures of the FDIC General Provisions, Contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.

E. Contractor EFT Arrangements

Contractor shall designate a single financial agent capable of receiving and processing the electronic funds transfer using the EFT methods described in this section. Contractor shall pay all fees and charges for receipt and processing of transfers.

F. Liability for Uncompleted or Erroneous Transfers

- Contractor-
- (1) If an uncompleted or erroneous transfer occurs because the FDIC failed to use provided EFT information in the correct manner, the FDIC remains responsible for (1) making a correct payment, (2) paying any prompt payment penalty due, and (3) recovering any erroneously directed funds.
 - (2) If an uncompleted or erroneous transfer occurs because Contractor-provided EFT information was incorrect at the time FDIC releases the EFT payment transaction instruction and (1) If the funds are no longer under the control of the payment office, the FDIC is deemed to have made payment and Contractor is responsible for recovery of any erroneously directed funds; or (2) If the funds remain under the control of the payment office, the FDIC retains the right to either make payment by mail or suspend the payment in accordance with this section.

G. EFT and Prompt Payment

- (1) A payment shall be deemed to have been made in a timely manner in accordance with the Prompt Payment Act Procedures of the FDIC General Provisions if, in the EFT payment transaction instruction, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.
- (2) When payment cannot be made by EFT because of incorrect EFT information provided by Contractor, no interest penalty is due after the date of the uncompleted or erroneous payment transaction, provided that notice of the defective EFT information is issued to Contractor within seven (7) days after the FDIC is notified of the defective EFT information.

H. EFT and Assignment of Claims

If Contractor assigns the proceeds of this Contract as provided for in Assignment of Claims of the FDIC General Provisions, the assignee shall provide the assignee's EFT information required by this section. In all respects, the requirements of this section shall apply to the assignee as if it were Contractor. EFT information that shows the ultimate recipient of the transfer to be other than Contractor, in the absence of a proper assignment of claims acceptable to the FDIC, is incorrect EFT information within the meaning of this section.

I. Payment Office Discretion

If Contractor does not wish to receive payment by EFT methods for one or more payments, Contractor may submit a request to the designated payment office to refrain from requiring EFT information or using the EFT payment method. The decision to grant the request rests solely with the FDIC.

J. Change of EFT Information by Financial Agent

Contractor agrees that Contractor's financial agent may notify the FDIC of a change to the routing transit number, Contractor account number, or account type. The FDIC shall use the changed data in accordance with this section. Contractor agrees that the information provided by the agent is deemed to be correct information as if it were provided by Contractor. Contractor agrees that the agent's notice of changed EFT data is deemed to be a request by Contractor in accordance with this section that no further payments be made until the changed EFT information is implemented by the payment office.

9. Affirmative Action for Handicapped Workers

A. General.

- (1) Contractor shall not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: Employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- (2) Contractor agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

B. Postings.

- (1) Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be provided by or through the Contracting Officer. Such notices shall state Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment and the rights of applicants and employees.
- (2) Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that Contractor is bound by the terms of section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified physically and mentally handicapped individuals.

C. Noncompliance. In the event of Contractor's noncompliance with the requirements of this provision, actions for noncompliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary issued pursuant to the Act.

D. Subcontracts. Contractor shall include the terms of this provision in every subcontract or purchase order in excess of \$2,500 unless exempted by rules, regulations, or orders of the Secretary issued pursuant to section 503 of the Act, so that such provisions shall be binding upon each subcontractor or vendor. Contractor shall take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

10. Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era

A. Definitions. As used in this provision,

- (1) "Appropriate office of the State employment service system" means the local office of the Federal-State national system of public employment offices assigned to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.
- (2) "Openings that Contractor proposes to fill from within its own organization" means employment openings for which no one outside Contractor's organization (including any affiliates, subsidiaries and the parent companies) shall be considered and includes any openings that Contractor proposes to fill from regularly established "recall" lists.
- (3) "Openings that Contractor proposes to fill under a customary and traditional employer-union hiring arrangement" means employment openings that Contractor proposes to fill from union halls, which is part of the customary and traditional hiring relationship which exists between Contractor and representatives of its employees.
- (4) "Suitable employment openings" includes, but is not limited to, openings that occur in the following job categories: Production and non-production; plant and office; laborers and mechanics; supervisory and non-supervisory; technical; and executive, administrative, and professional openings compensated on a salary basis of less than \$25,000 per year; This term includes full-time employment, temporary employment of over three (3) days, and part-time employment. It does not include openings that Contractor proposes to fill from within its own organization or pursuant to a customary and traditional employer-union hiring arrangement, or openings in an educational institution that are restricted to students of that institution. Under the most compelling circumstances, an employment opening may not be suitable for listing, including such situations where the needs of the FDIC cannot be otherwise supplied, where listing would be contrary to national security, or where the requirement of listing would otherwise not be for the best interest of the FDIC.

B. General.

- (1) Contractor shall not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans status in all employment practices, such as the following: Employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- (2) Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

C. Listing Openings.

- (1) Contractor agrees that all suitable employment openings of Contractor which exist at the time of the execution of this Contract and those which occur during the performance of this Contract, including those not generated by this Contract and including those occurring at an establishment of Contractor other than the one wherein the Contract is being performed, but excluding those of independently operated corporate

affiliates, shall be listed at an appropriate local office of the State employment service system wherein the opening occurs. Contractor further agrees to provide such reports to such local office regarding employment openings and hires as may be required.

- (2) The reports required by subparagraph C.(1) above shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or, where Contractor has more than one hiring location in a State, with the central office of that State employment service. Such reports shall indicate for each hiring location: (a) the number of individuals hired during the reporting period, (b) the number of non-disabled veterans of the Vietnam era hired, (c) the number of disabled veterans of the Vietnam era hired, and (d) the total number of disabled veterans hired. The reports should include covered veterans hired for on-the-job training under 38 U.S.C. 3687. Contractor shall submit a report within thirty (30) days after the end of each reporting period wherein any performance is made on this Contract identifying data for each hiring location. Contractor shall maintain at each hiring location copies of the reports submitted until the expiration of one year after final payment under the Contract, during which time these reports and related documentation shall be made available, upon request, for examination by any authorized representative of the Contracting Officer or of the Secretary of Labor. Documentation would include personnel records respecting job openings, recruitment and placement.
- (3) The listing of employment openings with the employment service system pursuant to this provision shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and non-veterans. The listing of employment openings does not require the hiring of any particular job applicant or from any particular group of job applicants.
- (4) Whenever Contractor becomes contractually bound to the listing terms of this provision, it shall advise the employment service system in each State where it has establishments of the name and location of each hiring location in the State. As long as Contractor is contractually bound to these terms and has so advised the State system, there is no need to advise the State system of subsequent contracts. Contractor may advise the State system when it is no longer bound by this Contract provision.
- (5) Under the most compelling circumstances, an employment opening may not be suitable for listing, including situations when (a) the FDIC's needs cannot reasonably be supplied, (b) listing would be contrary to national security or (c) the requirement of listing would not be in the FDIC's interest.

D. Applicability.

- (1) This provision does not apply to the listing of employment openings which occur and are filled outside of the 50 states, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.
- (2) The terms of paragraph C of this provision do not apply to openings that Contractor proposes to fill from within its own organization or under a customary and traditional employer-union

hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.

E. Postings.

- (1) Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be provided by or through the Contracting Officer stating (a) Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era, and (b) the rights of applicants and employees.
- (2) Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding that Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era.

F. Noncompliance. If the event of Contractor's noncompliance with the requirements of this provision, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

G. Subcontracts. Contractor shall include the terms of this provision in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to the Act, so that such provisions will be binding upon each subcontractor or vendor. Contractor shall take such action with respect to any subcontract or purchase order as the Director may direct to enforce such provisions, including action for noncompliance.

11. Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era

A. Contractor shall report at least annually, as required by the Secretary of Labor, on:

- (1) The number of special disabled veterans and the number of veterans of the Vietnam era in the workforce of Contractor by job category and hiring location; and
- (2) The total number of new employees hired during the period covered by the report and, of that total, the number of special disabled veterans and the number of veterans of the Vietnam era.

B. The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."

C. Reports shall be submitted no later than March 31 of each year beginning March 31, 1988.

D. The employment activity report required by subparagraph A.(2) of this provision shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by subparagraph A(1) of this provision. Contractors may select an ending date: (1) as of the end of any pay period during the period January through March 1 of the year the report is due, or (2) as of December 31, if Contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

E. The count of veterans reported according to paragraph A of this provision shall be based on voluntary disclosure. Each contractor subject to the reporting requirements at 38 U.S.C. 4212(d) shall invite all special disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to Contractor. The invitation shall state that the information is voluntarily provided, that the information shall be kept confidential, that disclosure or refusal to provide the information shall not subject the applicant or employee to any adverse treatment, and that the information shall be used only in

accordance with the regulations promulgated under 38 U.S.C. 4212.

- F. Subcontracts. Contractor shall include the terms of this provision in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

12. Service Contract Act of 1965, as Amended

- A. Applicability. This provision is applicable if a Wage Determination is attached to the solicitation and if the Contract will be entered into by the FDIC in its corporate capacity and not as conservator or receiver.

- B. Definitions. As used in this provision,

- (1) "Act" means the Service Contract Act of 1965, as amended (41 U.S.C. 351, et. seq.).
- (2) "Contractor" as used herein or in any subcontract shall be deemed to refer to the subcontractor, except in the term "FDIC prime Contractor."
- (3) "Service Employee" means any person engaged in the performance of this Contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29 CFR, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor and/or subcontractor and such persons.

- C. Compensation.

- (1) Each service employee employed in the performance of this Contract by Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this Contract.
- (2)
 - (a) If a wage determination is attached to this Contract, Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the Contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph.
 - (b) This conforming procedure shall be initiated by Contractor prior to the performance of Contract work by such unlisted class of employee. A written report of the proposed conforming action, including information regarding the agreement or disagreement of the authorized representative of the employees involved or, where there is no authorized representative, the employees themselves, shall be submitted by Contractor to the Contracting Officer no later than thirty (30) days after such unlisted class of employees performs any Contract work. The Contracting Officer shall review the proposed action and promptly submit a report of the action, together with the agency's recommendation and all pertinent information and including the position of Contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. The Wage and Hour Division will approve, modify, or disapprove the action or render a final

determination in the event of disagreement within thirty (30) days of receipt or will notify the Contracting Officer within thirty (30) days of receipt that additional time is necessary.

- (c) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify Contractor of the action taken. Each affected employee shall be furnished by Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.
- (d)
 - (i) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.
 - (ii) In the case of a contract modification, an exercise of an option or extension of an existing contract, or in any other case where a contractor succeeds a contract under which the classification in question was previously conformed pursuant to this section, a new conformed wage rate and fringe benefits may be assigned to such conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits where appropriate between the wages and fringe benefits specified for all wage determinations, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of the contract work by the unlisted class of employees, Contractor shall advise the Contracting Officer of the action taken, but the other procedures in subdivision C.(2)(b) of this provision need not be followed.
 - (iii) No employee engaged in performing work on this Contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.
- (e) The wage rate and fringe benefits finally determined pursuant to subparagraph C.(2) of this provision shall be paid to all employees performing in the classification from the first day on which Contract work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced Contract work shall be a violation of the Act and this Contract.
- (f) Upon discovery of failure to comply with subparagraph C.(2)(a) through (e) of this provision, the Wage and Hour Division shall make a final determination of

conformed classification, wage rate and/or fringe benefits which shall be retroactive to the date such class of employees commenced work.

- (3) Adjustment of Compensation. If the term of this Contract is more than one (1) year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this Contract shall be subject to adjustment after one (1) year and not less often than once every two (2) years, under wage determinations issued by the Wage and Hour Division.
- D. Obligation to Furnish Fringe Benefits. Contractor or the subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph C.(2)(b) of this provision by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments only in accordance with the applicable rules set forth in Subpart D of 29 CFR Part 4.
- E. Minimum Wage. In the absence of a minimum wage attachment for this Contract, neither Contractor nor any subcontractor under this Contract shall pay any person performing work under this Contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Nothing in this provision shall relieve Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.
- F. Successor Contracts. If this Contract succeeds a contract subject to the Act, under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this Contract setting forth collectively bargained wage rates and fringe benefits, neither Contractor nor any subcontractor under this Contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract) less than the wages and fringe benefits provided for in such collective bargaining agreements, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increase in wages and fringe benefits provided for under such agreement. No contractor or subcontractor under this Contract may be relieved of the foregoing obligation unless the limitations of 29 CFR, 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after hearing as provided in 29 CFR, 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR, 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR, 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the Contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.
- G. Notification to Employees. Contractor and any subcontractor under this Contract shall notify each service employee commencing work on this Contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this Contract, or shall post the wage

determination attached to this Contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the work site. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and this Contract.

H. Safe and Sanitary Working Conditions. Contractor or the subcontractor shall not permit any part of the services called for by this Contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of Contractor or the subcontractor which are unsanitary or hazardous or dangerous to the health or safety of the service employees. Contractor or the subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

I. Records.

(1) Contractor and each subcontractor performing work subject to the Act shall make and maintain for three (3) years from the completion of the work, and make them available for inspection and transcription of authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(a) For each employee subject to the Act:

(i) Name and address and social security number;

(ii) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(iii) Daily and weekly hours worked by each employee; and

(iv) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(b) For those classes of service employees not included in the wage determination attached to this Contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph C of this provision. A copy of the report required by subdivision C.(2)(b) of this provision will fulfill this requirement.

(c) Any list of the predecessor contractor's employees which had been furnished to Contractor as prescribed by paragraph N of this provision.

(2) Contractor shall also make available a copy of this Contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this Contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification of Contractor, shall take action to cause suspension of any further payment or advance of funds until such violation ceases.

(4) Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the work site during normal working hours.

J. Pay Periods. Contractor shall unconditionally pay to each

employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

- K. Withholding of Payments and Termination of Contract. The Contracting Officer shall withhold or cause to be withheld from the FDIC prime Contractor under this or any other FDIC contract with the prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by Contractor or the subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the agency may, after authorization or by direction of the Department of Labor and written notification to Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of these provisions relating to the Service Contract Act of 1965, as amended, may be grounds for termination of the right to proceed with the contract work. In such event, the FDIC may enter into other contracts or arrangements for completion of the work, charging Contractor in default with any additional cost.
- L. Subcontracts. Contractor agrees to insert this provision relating to the Service Contract Act of 1965, as amended, in all subcontracts subject to the Act.
- M. Collective Bargaining Agreements Applicable to Service Employees. If wages to be paid or fringe benefits to be furnished any service employees employed by the FDIC prime Contractor or any subcontractor under the Contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the Contract is being performed, the FDIC prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increase, to service employees engaged in work on the Contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the Contract; in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of Contract performance, such agreements shall be reported promptly after negotiation thereof.
- N. Seniority List. Not less than ten (10) days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a contractor (predecessor) or successor (29 CFR, 4.173), the incumbent prime Contractor shall furnish to the Contracting Officer a certified list of the names of all service employees on Contractor's or the subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor contractors of each such service employee. The Contracting Officer shall turn over such list to the successor contractor at the commencement of the succeeding contract.
- O. Rulings and Interpretations. Rulings and interpretations of the Act are contained in 29 CFR Part 4.
- P. Contractor's Certification.
- (1) By entering into this Contract, Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Act.

- (2) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract pursuant to section 5 of the Act.
- (3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

Q. Variations, Tolerances and Exemptions Involving Employment. Notwithstanding any of the provisions in paragraphs B through O of this provision, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Public Law 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

- (1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act, without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524 and 525).
- (2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524 and 525).
- (3) The Administrator will also withdraw, annul or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 528.

Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor or, if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to Contractor as to his entire work force under the registered program.

R. Tips. An employee engaged in an occupation in which he or she customarily and regularly receives more than \$30 a month in tips may have the amount of tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. However, the amount of such credit may not exceed \$1.34 per hour beginning January 1, 1981. To use this provision--

- (1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;
 - (2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);
 - (3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and
 - (4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.
- S. Disputes Concerning Labor Standards. The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the "Disputes" provision of this Contract. Disputes within the meaning of this provision include disputes between Contractor (or any of its subcontractors) and the FDIC, the U.S. Department of Labor, or the employees or their representatives.

13. Ozone-Depleting Substances (JUN 1996)

- A. Definitions. Ozone-depleting substance, as used in this provision, means any substance designated as Class I by the Environmental Protection Agency (EPA) (40 CFR Part 82), including but not limited to chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or any substance designated as Class II by EPA (40 CFR Part 82), including but not limited to hydrochlorofluorocarbons.
- B. Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d), and 40 CFR Part 82, Subpart E, as follows:

WARNING: Contains (or manufactured with, if applicable) _____*_____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

* Contractor shall insert the name of the substance(s).

14. Refrigeration Equipment and Air Conditioners (MAY 1995)

Contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this Contract.

15. OIG Fraud Hotline

Contractor shall post notices in each facility having employees working on FDIC contracts, and shall distribute pamphlets to employees working on FDIC contracts, giving those employees notice of the FDIC Office of Inspector General Fraud Hotline. Upon request, the FDIC shall supply Contractor with the Hotline posters and pamphlets which Contractor shall promptly post and distribute.

16. Examination of Records by Comptroller General

- A. Right to Examine Records. The Comptroller General of the United States or a duly authorized representative from the General Accounting Office, during the term of this Contract and for a period of three (3) years after the expiration or termination of this Contract, shall have access to, and the right to examine and copy, any directly pertinent books, documents, papers, records or other recorded information, and to examine any property within Contractor's possession or control, involving transactions related to this Contract.
- B. Subcontracts. Contractor agrees to include in all subcontracts under this Contract a clause to the effect that the Comptroller General or a duly authorized representative from the General Accounting Office shall, until three (3) years after final payment under the subcontract, have access to, and the right to examine and copy, any pertinent books, documents, papers, records or other recorded information, and to examine any property within the subcontractor's possession or control, involving transactions related to the subcontract.
- C. Extension of Periods of Access and Examination. The periods of access and examination in paragraphs A and B above for records relating to (1) litigation or settlement of claims arising from the performance of this Contract, or (2) costs and expenses of this Contract to which the Comptroller General or a duly authorized representative from the General Accounting Office has taken exception, shall be extended, if applicable, and continue until such appeals, litigation, claims, or exceptions are disposed of.
- D. Notification of Receipt of Request to Examine Records. Contractor shall notify the FDIC in writing within five (5) business days of its receipt of a request from the Comptroller General or a representative from the General Accounting Office to examine or obtain copies of Contractor's records.

17. Audit of Records

- A. Applicability. This provision is applicable if the amount of this Contract exceeds \$100,000.
- B. General. The Contracting Officer or any designated representatives of the Contracting Officer shall have the audit and inspection rights described in the applicable paragraphs C through G below.
- C. Examination of Costs. Contractor shall maintain, and the Contracting Officer or any designated representatives of the Contracting Officer shall have the right to examine and audit, books, records, documents, and other evidence and accounting procedures and practices, regardless of the form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., data bases, applications software, data base management software, utilities, etc.) sufficient to reflect properly all costs claimed to have been incurred in performing this Contract. This right of

examination shall include inspection at all reasonable times of Contractor's facilities, or parts of them, engaged in performing the Contract.

- D. Reports. If Contractor is required to furnish cost, funding or performance reports, the Contracting Officer or any designated representatives of the Contracting Officer shall have the right to examine and audit books, records, other documents and supporting materials, for the purpose of evaluating (1) the effectiveness of Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.
- E. Availability. Contractor shall make available at its office at all reasonable times the materials described in paragraphs C and D above for examination, audit or reproduction, until three (3) years after final payment under this Contract, or for any longer period required by statute or by other provisions of this Contract. Contractor shall also provide reasonable working space for such examination or audit. In addition--
 - (1) If this Contract is completely or partially terminated, the records relating to the work terminated shall be made available for three (3) years after any resulting final settlement; and
 - (2) Records relating to appeals under the "Disputes" provision of this Contract, or to litigation or the settlement of claims arising under or relating to this Contract, shall be made available until such appeals, litigation or claims are disposed of.
- F. Contractor may transfer computer data in machine readable form from one reliable computer medium to another. Contractor's computer data retention and transfer procedures shall maintain the integrity, reliability and security of the original data. Contractor's choice of form or type of materials described in paragraphs C, D and E of this provision affects neither Contractor's obligations nor the FDIC's rights under this provision.
- G. Contractor shall insert a provision containing all the terms of this provision, including this paragraph G, in all subcontracts under this Contract exceeding \$100,000, altering the provision only as necessary to identify properly the contracting parties and the Contracting Officer under the FDIC prime contract.

18. Inspection of Goods or Services

- A. All goods and services shall be subject to inspection and test by the FDIC, to the extent practicable, at all times and places during the term of the Contract. All inspections by the FDIC shall be made in such a manner as not to unduly delay the work.
- B. If any services performed or goods delivered hereunder are not in conformity with the requirements of this Contract, the FDIC shall have the right to require Contractor to reperform the services or redeliver the goods in conformity with the requirements of the Contract, at no additional increase in total Contract amount. When the services to be performed are of such a nature that the defect cannot be corrected by reperformance of the services, the FDIC shall have the right to (1) require Contractor immediately to take all necessary steps to ensure future performance of the services in conformity with the requirements of the Contract; and (2) reduce the contract price to reflect the reduced value of the services performed. In the event Contractor fails promptly to reperform the services or redeliver the goods, or to take necessary steps to ensure future performance of the services or delivery of the goods in conformity with the requirements of the Contract, the FDIC shall have the right to

either (1) by contract or otherwise, have the services performed or the goods

delivered in conformity with the contract requirements and charge to Contractor any cost occasioned to the FDIC that is directly related to the performance of such services or the delivery of such goods; or (2) terminate this Contract for default as provided in the provision of this Contract entitled "Termination for Default."

- C. Contractor shall provide and maintain an inspection system acceptable to the FDIC covering the goods or services to be delivered or performed hereunder. Records of all inspection work by Contractor shall be kept complete and available to the FDIC during the term of this Contract and for such longer period as may be specified elsewhere in this Contract.

19. Invoice Preparation and Submission

- A. Definitions. As used in this provision,

- (1) "Due date" means the date on which payment should be made.
- (2) "Invoice" means Contractor's bill or written request for payment under the Contract for the goods delivered or the services performed.
- (3) "Proper invoice" means a bill or written request for payment which meets the minimum standards specified in paragraph B below, and any other items and conditions contained in this Contract for invoice submission.

- B. Contents of Invoice. An invoice shall be prepared and submitted to the FDIC office specified in the Contract. A proper invoice must include the items listed in subparagraphs B.(1) through (15) of this provision. If the invoice does not comply with these requirements, Contractor will be notified of the defect.

- (1) Contractor letterhead.
- (2) Name, address, and telephone number of Contractor.
- (3) Contractor Federal Tax Identification Number.
- (4) Invoice date.
- (5) Invoice number.
- (6) Contract number for services performed.
- (7) Release number, if applicable.
- (8) Total invoice amount.
- (9) Invoice description, quantity, unit of measure, unit price and extended price of goods delivered or services performed by Contractor.
- (10) Invoice description, quantity, unit of measure, unit price and extended price of goods delivered or services performed by Subcontractor.
- (11) Remittance address.
- (12) Contractor contact person, with name, title, telephone number, fax number, and mailing address.
- (13) Certification of Contractor's MWOB and/or SDB status.
- (14) Line Item Number(s) as identified in the Contract, identifying the description of goods or services, and invoiced amount for each Line Item Number.
- (15) Shipping and payment terms (e.g., shipment number, date of shipment, and prompt payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on FDIC bills of lading. Shipping charges, if any, must be shown as a separate item on the invoice.

- (16) For level of effort contracts (i.e., time and material or labor hour), certified copies of time sheets in support of direct labor charges for all Contractor employees, and if applicable, subcontractor employees. Any other information or documentation required by other provisions of the Contract

NOTE: If the charges exceed the dollar-ceiling limit or the instructions above are not followed precisely, the invoice will be returned and processing of the invoice will be delayed until corrected.

C. Invoicing Travel Expenses. Contractor shall submit invoices for Travel Expenses, if reimbursable under the Contract, including subcontractor Travel Expenses, if any, with documentation, receipts and other proof of the expenses, as required by the FDIC Contractor Travel Reimbursement Guidelines.

D. Invoicing Subcontractor Expenses. Subcontractor expenses and costs, if reimbursable under this Contract, shall be separately identified on all invoices. The invoice shall identify the subcontractor's Minority and Women Owned Business status and include both the current invoice amount and the cumulative amount invoiced to date. The invoice must indicate the amount paid, shown as a percentage of the total paid, to the Minority or Woman Owned Business Entity. For all invoices containing subcontractor expenses and costs, a copy of applicable invoices shall be attached to Contractor's invoice. Contractor shall be responsible for payment of all subcontractor invoices. The FDIC shall have no responsibility under this Contract for the payment of any subcontractor invoices.

20. Prompt Payment Act Procedures

A. Applicability. This provision is applicable to contracts entered into by the FDIC in its corporate capacity and not as conservator or receiver.

B. Notwithstanding any other payment clause in this Contract, the FDIC will make invoice payments under the terms and conditions specified in this provision. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. All days referred to in this provision are calendar days, unless otherwise specified.

(1) For purposes of this provision, "invoice payment" means an FDIC disbursement of monies to a contractor under a contract or other authorization for supplies or services accepted by the FDIC. This includes payments for partial deliveries that have been accepted by the FDIC and final cost or fee payments where amounts owed have been settled between the FDIC and Contractor.

(2) The due date for making invoice payments by the designated payment office shall be the later of the following two events:

(a) The 30th day after the designated billing office has received a proper invoice from Contractor.

(b) The 30th day after FDIC acceptance of supplies delivered or services performed by Contractor. On a final invoice where the payment amount is subject to contract settlement actions, acceptance shall be deemed to have occurred on the effective date of the contract settlement. However, if the designated billing office fails to annotate the invoice with the actual date of receipt, the invoice payment due date shall be deemed to be the 30th day after the date Contractor's invoice is dated, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(c)

If the Contract does not require submission of

an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the Contract.

- (3) An invoice is Contractor's bill or written request for payment under the Contract for supplies delivered or services performed. An invoice shall be prepared and submitted to the designated billing officer specified in the Contract. A proper invoice must include the items listed in the clause entitled "Invoice Preparation and Submission" set out elsewhere in these General Provisions. If the invoice does not comply with these requirements, then Contractor will be notified of the defect within seven (7) calendar days after receipt of the invoice at the designated billing office. Untimely notification will be taken into account in the computation of any interest penalty owed Contractor in the manner described in subparagraph B.(6) of this provision.
- (4) An interest penalty shall be paid automatically by the FDIC, without request from Contractor, if payment is not made by the due date and the conditions listed in subparagraphs B.(4)(i) through B.(4)(iii) of this provision are met, if applicable.
 - (i) A proper invoice was received by the designated billing office.
 - (ii) A receiving report or other FDIC documentation authorizing payment was processed and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.
 - (iii) In the case of a final invoice for any balance of funds due Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the FDIC and Contractor.
- (5) The interest penalty shall be at the rate established by the Secretary of the Treasury under 41 U.S.C. 611 that is in effect on the day after the due date, except where the interest penalty is prescribed by other government authority. This rate is referred to as the Renegotiation Board Interest Rate, and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice payment amount approved by the FDIC and be compounded in 30-day increments inclusive from the first day after the due date through the payment date, i.e., interest accrued at the end of any 30-day period will be added to the approved invoice payment amount and be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify Contractor of a defective invoice within the periods prescribed in subparagraph B.(3) of this provision, then the due date on the corrected invoice will be adjusted by subtracting the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties, if requested by Contractor.
 - (i) For the sole purpose of computing an interest penalty that might be due Contractor, FDIC acceptance shall be deemed to have occurred constructively on the 7th day (unless otherwise specified in the Contract) after Contractor delivered the supplies or performed the services in accordance with the terms and conditions of the Contract, unless there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty

shall be based on the actual date of acceptance. The constructive acceptance requirement does not, however, compel FDIC officials to accept supplies or

services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The following periods of time will not be included in the determination of an interest penalty:

[1] The period taken to notify Contractor of defects in invoices submitted to the FDIC, but this may not exceed seven (7) days.

[2] The period between the defects notice and resubmission of the corrected invoice by Contractor.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under this Contract or for more than one (1) year. Interest penalties of less than \$1.00 will not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the FDIC and Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the Contract.

(6) An interest penalty shall also be paid automatically by the designated payment office, without request from Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated as described in subparagraph B.(5) of this provision on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when Contractor is paid.

(7) If this Contract was awarded on or after October 1, 1989, a penalty amount, calculated in accordance with regulations issued by the Office of Management and Budget (OMB), shall be paid in addition to the interest penalty amount if Contractor

(i) Is owed an interest penalty;

(ii) Is not paid the interest penalty within ten (10) days after the date the invoice amount is paid; and

(iii) Makes a written demand, not later than forty (40) days after the date the invoice amount is paid, that the FDIC pay such a penalty.

21. Changes

A. The Contracting Officer may, at any time, by written change order, and without notice to the sureties, if any, make changes within the general scope of this Contract in any one or more of the following:

(1) Description of services to be performed.

(2) Time of performance (i.e., hours of the day, days of the week, etc.).

(3) Place of performance of services.

(4) Drawings, designs or specifications when the supplies to be furnished are to be specially manufactured for the FDIC in accordance with the drawings, designs or specifications.

(5) Method of shipment or packing of supplies.

- (6) Place of delivery.
- B. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, the Contracting Officer shall make an adjustment in the contract price, the delivery schedule, or both, and shall modify the Contract.
- C. Contractor must assert its right to an adjustment under this clause within thirty (30) days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the Contract.
- D. If Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.
- E. Failure to agree to any adjustment shall be a dispute under the "Disputes" provision of this Contract. However, nothing in this clause shall excuse Contractor from proceeding with the Contract as changed.

22. Disclosure and Handling of Confidential Information

- A. Definition of Confidential Information. For purposes of this Contract, all information that the FDIC provides or causes to be provided to Contractor in connection with its duties under this Contract shall be deemed to be confidential information ("Confidential Information") until the FDIC specifically authorizes Contractor in writing to treat any such information as public. Confidential Information shall also include (1) any specifications, know-how, strategies or technical data, processes, business documents or information, marketing research and other data, customer or client lists, or sources of information which are owned, used or possessed exclusively by or for the benefit of the FDIC; (b) work product; and (c) all Confidential Information or materials obtained by Contractor from a third party in connection with performance under this Contract, until the FDIC specifically authorizes Contractor in writing to treat any such information under (a), (b) or (c) above as public.
- B. Duty to Maintain Confidential Information. Except as required by any law, court order, subpoena, or by the FDIC, or as required to perform Contractor's duties under this Contract, neither Contractor nor its related entities shall disclose Confidential Information to anyone, nor shall they use or allow the use of any Confidential Information to further any private interest other than as contemplated by this Contract. Contractor immediately shall notify the FDIC in writing of any subpoena or court order requiring disclosure of Confidential Information.

23. Definition of and Rights in Work Product

Work Product shall mean 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 any portion of any of the foregoing, prepared, generated, delivered or created by Contractor in connection with Contractor's performance

under this Contract. All Work Product shall be the sole property of the FDIC. Contractor hereby assigns all its rights, title and interest in any and all Work Product, and all drafts thereof, including all worldwide copyright ownership rights in such Work Product, to the FDIC. The FDIC has the right to legible and complete copies of any and all such work papers upon the FDIC's request (including original work papers). The FDIC shall be the sole decider of legibility and completeness.

24. Advertising and Publicity

The Contractor shall not issue or sponsor any advertising or publicity to anyone outside the Contractor's organization that states or implies, either directly or indirectly, that the FDIC endorses, recommends or prefers the Contractor's services. Contractor shall not use the FDIC's logo or FDIC material in any fashion without the FDIC's Office of Public Affairs prior written approval. The Contractor agrees to include this provision in all their subcontracts under this contract. However, photography by a Contractor for the purpose of recording stages of completion, or verification of quality, is allowed.

The Contractor shall submit all requests for approval to the Office of Public Affairs, 550 17th St., NW, Washington, DC 20429 with a copy to the Contracting Officer at least 45 days prior to release. The Contractor will be notified in writing by the Contracting Officer regarding the decision by the Office of Public Affairs to issue or advertise publicity statements, or to utilize photos, logos or other FDIC material in a public forum.

25. FDIC Property

- A. Applicability. This provision is applicable when FDIC property is furnished to Contractor pursuant to this Contract and if the Contract will be entered into by the FDIC in its corporate capacity and not as conservator or receiver.
- B. FDIC-Furnished Property.
 - (1) The FDIC shall deliver to Contractor, for use in connection with and under the terms of this Contract, the FDIC-furnished property described in the Statement of Work together with any related data and information that Contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as FDIC-furnished property).
 - (2) The delivery or performance dates for this Contract are based upon the expectation that FDIC-furnished property suitable for use (except for property furnished as-is) will be delivered to Contractor at the times stated in the Statement of Work, or, if not so stated, in sufficient time to enable Contractor to meet the Contract's delivery or performance dates.
 - (3) If FDIC-furnished property is received by Contractor in a condition not suitable for the intended use, Contractor shall, upon receipt of it, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at FDIC expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of Contractor, the Contracting Officer shall make an adjustment as provided in paragraph I of this clause.
 - (4) If FDIC-furnished property is not delivered to Contractor by the required time, the Contracting Officer shall, upon Contractor's timely written request, make a determination of the delay, if any, caused Contractor and shall make an adjustment in accordance with paragraph I of this clause.
 - (5) The Contracting Officer may delegate certain non-contracting responsibilities under this clause to the FDIC Oversight Manager.

C. Changes in FDIC-Furnished Property.

- (1) The Contracting Officer may, by written notice, (a) decrease the FDIC-furnished property provided or to be provided under this Contract, or (b) substitute other FDIC-furnished property for the property to be provided by the FDIC, or to be acquired by Contractor for the FDIC, under this Contract. Contractor shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by such notice.
- (2) Upon Contractor's written request, the Contracting Officer shall make an adjustment to the Contract in accordance with paragraph I of this clause, if the FDIC has agreed in the Statement of Work to make the property available for performing this Contract and there is any --
 - (a) Decrease or substitution in this property pursuant to subparagraph C.(1) above; or
 - (b) Withdrawal of authority to use this property, if provided under any other contract or lease.

D. Title in FDIC Property.

- (1) The FDIC shall retain title to all FDIC-furnished property.
- (2) All FDIC-furnished property and all property acquired by Contractor, title to which vests in the FDIC under this paragraph (collectively referred to as FDIC property), are subject to the provisions of this clause. Title to FDIC property shall not be affected by its incorporation into or attachment to any property not owned by the FDIC, nor shall FDIC property become a fixture or lose its identity as personal property by being attached to any real property.
- (3) Title to each item of facilities or special equipment acquired by Contractor for the FDIC under this Contract shall pass to and vest in the FDIC when its use in performing this Contract commences or when the FDIC has paid for it, whichever is earlier, whether or not title previously vested in the FDIC.
- (4) If this Contract contains a provision directing Contractor to purchase material for which the FDIC will reimburse Contractor as a direct item of cost under this Contract --
 - (a) Title to material purchased from a vendor shall pass to and vest in the FDIC upon the vendor's delivery of such material; and
 - (b) Title to all other material shall pass to and vest in the FDIC upon --
 - (i) Issuance of the material for use in contract performance;
 - (ii) Commencement of processing of the material or its use in contract performance; or
 - (iii) Reimbursement of the cost of the material by the FDIC, whichever occurs first.

E. Use of FDIC Property. The FDIC property shall be used only

for performing work for the FDIC under this Contract, unless otherwise provided in this Contract or approved by the Contracting Officer.

F. Property Administration.

- (1) Contractor shall be responsible and accountable for all FDIC property provided under this Contract.
- (2) Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of FDIC property in accordance with sound business practice.
- (3) If damage occurs to FDIC property, the risk of which has been assumed by the FDIC under this Contract, the FDIC shall replace the items or Contractor shall make such repairs as the FDIC directs. However, if Contractor cannot effect such repairs within the time required, Contractor shall dispose of the property as directed by the Contracting Officer. When any property for which the FDIC is responsible is replaced or repaired, the Contracting Officer shall make an adjustment in accordance with paragraph I of this clause.
- (4) Contractor represents that the contract price does not include any amount for repairs or replacement for which the FDIC is responsible. Repair or replacement of property for which Contractor is responsible shall be accomplished by Contractor at its own expense.

G. Access. The FDIC and all its designees shall have access at all reasonable times to the premises in which any FDIC property is located for the purpose of inspecting the FDIC property.

H. Risk of Loss. Unless otherwise provided in this Contract, Contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, FDIC property upon its delivery to Contractor or upon passage of title to the FDIC under paragraph D of this clause. However, Contractor is not responsible for reasonable wear and tear to FDIC property or for FDIC property properly consumed in performing this Contract.

I. Price Adjustment. When this clause specifies a price adjustment, it shall be made to any affected contract provision in accordance with the procedures of the "Changes" clause. When appropriate, the Contracting Officer may initiate an adjustment in favor of the FDIC. The right to an adjustment shall be Contractor's exclusive remedy. The FDIC shall not be liable for breach of contract for --

- (1) Any delay in delivery of FDIC-furnished property;
- (2) Delivery of FDIC-furnished property in a condition not suitable for its intended use;
- (3) A decrease in or substitution of FDIC-furnished property; or
- (4) Failure to repair or replace FDIC property for which the FDIC is responsible.

J. Final Accounting and Disposition of FDIC Property. Upon completing this Contract, or at such earlier dates as may be fixed by the Contracting Officer, Contractor shall submit, in both written form and electronic media, inventory schedules covering all items of FDIC property (including any resulting scrap) not consumed in performing this Contract or delivered to the FDIC. Unless otherwise specified by the Contracting Officer, the electronic form shall be in "Microsoft Word" format.

Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the FDIC property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the FDIC as the Contracting Officer directs.

K. Communications. All communications under this clause shall be in writing.

26. Liability to Third Persons

- A. The FDIC does not assume any liability to third persons, nor will the FDIC reimburse Contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this Contract or any subcontract hereunder.
- B. Contractor shall give the FDIC or its representatives immediate notice of any suit or action filed, or prompt notice of any claim made, against Contractor arising out of the performance of this Contract, the cost and expense of which may be reimbursable to Contractor under the provisions of this Contract. Contractor shall furnish immediately to the FDIC copies of all pertinent papers required by the FDIC, and authorize representatives of the FDIC to settle or defend any such claim and to represent Contractor in or take charge of any litigation in connection therewith. Contractor may, at its own expense, be associated with the representatives of the FDIC in the settlement or defense of any such claim or litigation.

27. Right to Offset Against Any Contract Payments for Delinquent Obligations

- A. General. This provision is included to establish the FDIC's right to make offsets against any payments due Contractor under this Contract for any Delinquent Obligation (as such term is defined below) which Contractor owes the FDIC.
- B. Definition. As used in this provision, "Delinquent Obligation" means:
 - (1) A delinquency of ninety (90) days or more as to payment of principal or interest on a loan or advance from the FDIC, in any of its various capacities, or any predecessor or successor thereto;
 - (2) With respect to a compromise settlement of any loan owed to the FDIC, in any of its various capacities, in cases where the borrower failed to recognize the amount of the balance reduction as income for Federal income tax purposes during the applicable tax year or in any subsequent tax year, the difference between (a) the outstanding unpaid principal balance of such loan immediately prior to such compromise settlement, and (b) the settlement amount; or
 - (3) A failure to comply with the terms and conditions of any contract with the FDIC, in any of its various capacities, or any predecessor thereto.
- C. Description of the FDIC's Right to Offset Against Payments Under this Contract. The FDIC may exercise its right of offset for any Delinquent Obligation which occurs prior to or during the term of this Contract. The Delinquent Obligation shall be deducted from the Contract until the Delinquent Obligation shall have been paid in full. However, if the total amount of the Delinquent Obligation exceeds fifteen (15) percent of the total amount of the consideration owed under the Contract resulting from this RFP, the FDIC will offset a minimum of fifteen (15) percent of the contract price, and the parties will negotiate the additional amount, up to 100 percent of the contract price, which the FDIC will withhold to apply towards satisfaction of the Delinquent Obligation.

Notwithstanding the foregoing, this right of offset shall not apply to the extent

such Delinquent Obligation is subject to (1) any litigation concerning this Contract instituted by either party to this Contract; or (2) any petition filed on behalf of or against Contractor seeking any arrangement, reorganization, composition, readjustment, liquidation or dissolution under the present or any future laws relating to bankruptcy, insolvency or other relief of debtors.

The FDIC may exercise this right of offset only upon the giving of thirty (30) days written notice to Contractor. Contractor shall have ten (10) days from the date of receipt of such written notice to provide the FDIC with written evidence offered to dispute any portion of the amount to be deducted from any payments due under this Contract. If Contractor demonstrates to the satisfaction of the FDIC that the grounds for this right of offset no longer exist or that the amount of any Delinquent Obligation to be deducted is incorrect, then the FDIC shall, as applicable, either discontinue the exercise of this right of offset or shall amend the amount to be deducted accordingly.

The exercise by the FDIC of this right of offset shall not under any circumstances release Contractor from any duties, obligations or responsibilities required by this Contract.

This right of offset by the FDIC shall not be exclusive with respect to the recovery of any Delinquent Obligation owed to the FDIC by Contractor and is in addition to every other right or remedy now or hereafter existing at law or in equity.

28. Federal, State and Local Taxes

- A. The contract price includes all applicable Federal, State and local taxes and duties.
- B. The FDIC shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when Contractor requires such evidence and a reasonable basis exists to sustain the exemption.

29. Notice and Certification of Claims

Contractor agrees that it will provide the Contracting Officer written notice of any claim it may have against the FDIC arising under or in connection with this Contract and that it will refrain from filing suit with respect to any such claim for a period of sixty (60) days following FDIC's receipt of such notice, that it will promptly meet with the FDIC after providing such notice in a good faith effort to resolve the claim and that the written notice of the claim shall be accompanied by a certificate signed by an officer or general partner or senior official of Contractor that:

- (a) The claim is made in good faith;
- (b) Supporting data are accurate and complete to the best of Contractor's knowledge and belief; and
- (c) The amount requested accurately reflects the contract adjustment for which Contractor believes the FDIC is liable.

30. Disputes

- A. Except as otherwise provided in this Contract, any dispute concerning a question of fact arising under this Contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his or her decision to writing and shall mail or otherwise furnish a copy thereof to Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within sixty (60) days from the date of such decision, the FDIC receives from the Contractor a written request for review of the decision addressed to the Associate Director, Acquisition Services Branch, Division of Administration. The decision of the Associate Director shall be final and conclusive for matters with a dollar value of less than \$100,000.00. The

determination of the value of the matter, only for purposes of review within FDIC, shall be made exclusively by the FDIC and is not reviewable. For matters valued at \$100,000.00 or more, the decision of the Associate Director shall be final and conclusive unless, within sixty (60) days from the date of such decision, the FDIC receives from the Contractor a written notice of appeal to the Director, Division of Administration. The decision of the Director shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal processing under this provision, Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal, if requested. Pending final decision of a dispute hereunder, Contractor shall proceed diligently with the performance of the Contract and in accordance with the Contracting Officer's decision. In addition, Contractor is hereby advised that receivership claims fall under sections 11(d)(3)-(13) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1821(d)(3)-(13)).

- B. This "Disputes" provision does not preclude consideration of questions of law in connection with decisions provided for in paragraph A above; *provided*, that nothing in this Contract shall be construed as making final the decision of any administrative official, representative or board on a question of law.

31. Assignment of Claims

Under the Assignment of Claims Act (31 U.S.C. 3727) (the Act), as amended, claims for monies due or to become due Contractor from the FDIC under this Contract may be assigned to a bank, trust company or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this Contract and not already paid, and shall not be made to more than one party except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Written notice must be provided to the FDIC in accordance with the Act.

32. Excusable Delays

Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this Contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if such failure arises out of causes beyond the control and without the fault or negligence of Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the FDIC in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of Contractor. If the failure to perform is caused by the failure of a subcontractor to perform or make progress, and if such failure arises out of causes beyond the control of both Contractor and the subcontractor, and without the fault or negligence of either of them, Contractor shall not be deemed to be in default, unless (a) the supplies or services to be furnished by the subcontractor were obtainable from other sources, (b) the Contracting Officer shall have ordered Contractor in writing to procure such supplies or services from such other sources, and (c) Contractor shall have failed to comply reasonably with such order. Upon request of Contractor, the Contracting Officer shall ascertain the facts and extent of such failure and, if he shall determine that any failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the FDIC under the provisions hereof entitled "Termination for Default" or "Termination for Convenience of the FDIC." (As used in this provision, the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.)

33. Stop Work Order

The FDIC may, at its sole discretion, direct Contractor to stop all remaining work, including work in progress, under this Contract, if applicable, if the Contracting Officer determines that such action is in the best interests of the FDIC ("Stop Work Order"). The written Stop Work Order shall be prepared by the

Contracting Officer and sent to Contractor. Upon receipt of the Stop Work Order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize any costs associated with the Contract during the period of the Stop Work Order. Within ninety (90) days of receipt of the Stop Work Order, or within any extension of that period to which the FDIC and Contractor shall have agreed, but before the end of the then current period of performance of the Contract, the Contracting Officer shall either:

- (a) Cancel the Stop Work Order; or
- (b) Terminate the work covered by the Stop Work Order as provided in the termination provisions in the Contract.

If the Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated, the FDIC shall consider necessary, unavoidable and reasonable costs resulting from the Stop Work Order for the period until the issuance of the Notice of Termination.

If the Stop Work Order is canceled, or the period of the Stop Work Order or any extension thereof expires, Contractor shall immediately resume work. If a Notice of Termination is issued during the period of a Stop Work Order, Contractor shall not resume work during any period prior to the effective date of the termination, unless otherwise directed in the Notice of Termination. The FDIC shall make an adjustment in performance schedule, or contract amount, or both, and the Contract shall be modified if:

- (a) The Stop Work Order results in an increase in the time required to perform the work and/or the costs to do the work; and
- (b) Contractor asserts its rights to the adjustment, in writing, to the Contracting Officer within thirty (30) days after the end of the period of the work stoppage.

34. Termination for Convenience of the FDIC

- A. The FDIC may terminate this Contract, or any task order, in whole or in part, at any time and in its sole discretion, if the Contracting Officer determines that such termination is in the best interests of the FDIC. The FDIC shall terminate by delivering to Contractor a notice of termination for the convenience of the FDIC specifying the extent of termination and the effective date. The notice of termination shall be delivered to Contractor at least thirty (30) days before the effective date of the termination. After receipt of the notice, Contractor shall complete performance of work not terminated and shall take whatever action is necessary for an orderly and timely discontinuation of the work terminated. Contractor shall deliver to the FDIC, completed or partially completed, any plans, drawings, information, data, materials or equipment that, if the Contract had been completed, would have been required to be furnished to the FDIC.
- B. If the termination is partial, Contractor may file a proposal with the Contracting Officer for an adjustment of the price(s) of the continued portion of the Contract or task order. The Contracting Officer shall make any adjustment agreed upon. Any proposal by Contractor for an adjustment under this provision shall be requested within ninety (90) days from the effective date of termination unless extended in writing by the Contracting Officer. The FDIC shall not be liable or responsible for payment to 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.

35. Termination for Default

- A. (1) Time is of the essence in Contractor's performance of its duties under this Contract, and the FDIC may, subject to paragraphs C and D below, by written notice of default to Contractor, terminate this Contract in whole or in part if Contractor fails to--

- (a) Deliver the supplies or perform the services within the time specified in this Contract or any extension;
 - (b) Make progress, so as to endanger performance of this Contract (but see subparagraph A.(2) below); or
 - (c) Perform any of the other provisions of this Contract (but see subparagraph A.(2) below).
- (2) The FDIC's right to terminate this Contract under subdivisions A.(1)(b) and A.(1)(c) above may be exercised if Contractor does not cure such failure within ten (10) days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.
- B. If the FDIC terminates this Contract in whole or in part as provided in paragraph A of this provision, the FDIC may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and Contractor shall be liable to the FDIC for any excess costs for those supplies or services. However, Contractor shall continue the performance of the work under this Contract which has not been terminated.
- C. Except for defaults of subcontractors at any tier, Contractor shall not be liable for any excess costs described at paragraph B above if the failure to perform this Contract arises from causes beyond the control and without the fault or negligence of Contractor. Examples of such causes include: (1) acts of God or of the public enemy, (2) acts of the FDIC, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of Contractor.
- D. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both Contractor and the subcontractor, and without the fault or negligence of either, Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for Contractor to meet the required delivery schedule.
- E. If this Contract is terminated for default, the FDIC may require Contractor to transfer title and deliver to the FDIC, as directed by the Contracting Officer, any (1) completed supplies and (2) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (collectively referred to as "manufacturing materials" in this provision) that Contractor has specifically produced or specifically acquired for the terminated portion of this Contract. Upon direction of the Contracting Officer, Contractor shall also protect and preserve property in its possession in which the FDIC has an interest.
- F. The FDIC shall pay the contract price for completed supplies delivered and accepted. Contractor and the Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of property. Failure to agree will be a dispute

under the provision of this Contract entitled "Disputes." The FDIC may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the FDIC against loss because of outstanding liens or claims of former lien holders.

- G. If, after termination, it is determined that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the FDIC.
- H. The rights and remedies of the FDIC in this provision are in addition to any other rights and remedies provided by law or under this Contract.

36. Order of Precedence

Any inconsistency in this Contract shall be resolved by giving precedence in the following order:

- (a) Contract Clauses, other than the General Provisions
- (b) FDIC General Provisions
- (c) Statement of Work
- (d) Exhibits and Attachments
- (e) Contractor's Proposal or Amended Proposal, if any.

If this is a contract for construction, and a clause of the same or similar title exists in both the FDIC General Provisions and the Additional General Provisions-Construction, the clause in the Additional General Provisions-Construction shall take precedence.

37. Joint and Several Liability

If Contractor is organized as a joint venture, the liability of the joint venturers in connection with all duties, obligations and liabilities under this Contract shall be joint and several.

38. Work Hours and Holidays

- A. Official work hours for the FDIC are between 6:30 a.m. and 6:00 p.m. Monday through Friday. All work under this Contract is to be performed during this time frame, unless specifically authorized in writing by the FDIC Oversight Manager.
- B. FDIC offices will be closed on all Federal holidays and all announced official snow days. Contractor will not be authorized to work nor will Contractor be allowed access to FDIC offices on these days unless specifically authorized in writing by the FDIC Oversight Manager.

39. Security

The FDIC reserves the right to reject any Contractor employee for reasons of a security breach or for lack of suitability as determined by a background investigation, or otherwise. If the FDIC has reason to believe that a Contractor employee has violated FDIC security policies, the FDIC may immediately revoke the Contractor employee's access to all FDIC systems and premises. Such a revocation does not constitute a personnel action, as Contractor will be so notified immediately and requested to provide another equivalent employee at once. Contractor employees on FDIC property shall observe all applicable FDIC security regulations.

40. Governing Law

This Contract shall be governed by and construed in accordance with all applicable Federal laws and regulations and, to the extent applicable, the laws of the State or District in which the FDIC office executing this Contract is located.

41. Entire Contract; Modification

This Contract, the materials incorporated herein by reference, and Contractor's Proposal, or Amended Proposal, if any, incorporated herein by reference, constitute the entire agreement between the parties. If there is any inconsistency between the terms of this Contract and those of Contractor's Proposal, or Amended Proposal, if any, the terms of this Contract shall govern. There are no promises or other agreements, oral or written, express or implied, other than as set forth in this Contract. No change or modification of, or waiver under, this Contract shall be valid unless it is in writing and signed by a duly authorized representative of the party against which it is to be enforced.

42. Privacy Act

The Contractor may be required to design, develop, or operate a system of records on individuals, to accomplish an FDIC function subject to the Privacy Act of 1974 ("the Act"), Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable FDIC regulations. Violation of the Act may involve the imposition of criminal penalties.

(a) If the Contractor is required to design, develop, or operate a system of records on individuals to accomplish an FDIC function, the Contractor agrees to:

(1) Comply with the Act and the FDIC rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies:

(i) The systems of records; and

(ii) The design, development, or operation work that the contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the design, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which require the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the FDIC when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an FDIC function, and criminal penalties may be imposed upon the officers or employees of the FDIC when the violation concerns the operation of a system of records on individuals to accomplish an FDIC function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an FDIC function, the Contractor and any employee of the Contractor is considered to be an employee of the FDIC.

(c)(1) Operation of a system of records, as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) Record, as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(3) System of records on individuals, as used in this clause means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

Attachment 4
Electronic Invoicing Instructions

1. Contractor shall email electronic invoices to the FDIC's Division of Finance/Accounts Payable at the following address:
DOFAPInvoice@fdic.gov
2. Contractor shall **only email their invoices to the above address and not the Oversight Manager (OM) or Contracting Officer**. The FDIC will not accept hand-delivered invoices or invoices sent to any other address (i.e., FDIC street address or any other email addresses).
3. Contractor shall submit the electronic invoice as a single file document, in pdf format. The file should include the exact same information that has been submitted physically via mail in the past. (FDIC only wants one electronic file because we will be uploading the single pdf into a database and we only want one file associated with an invoice. However, if the size of a single pdf file exceeds 30 MB, the invoice may either be submitted as two pdf files, with neither pdf file exceeding 30 MB, or it may be submitted as a zip file that does not exceed 30 MB. If two pdf files are used, each email must clearly identify that the invoice has been separated into two pdf files to accommodate the size limitation. If a zip file is used, the individual files inside the zip file must be kept to a minimum and each must have a descriptive file name, such as "Invoice cover page", "Timesheets", etc.)
4. Contractor shall not include more than one electronic invoice in the same email. (For example, if a Contractor has four Task Orders, a separate email with a single invoice must be submitted for each of the four Task Orders.)
5. Contractor shall name the pdf file or zip file in the following format:

invoice date and invoice number (for example, 2007-01-31 1067876)
6. Contractor shall have the subject line of the email read as follows:

" Contractor Invoice - CORHQXXX" (The CORHQXXX is where Contractor's PO # belongs.)
7. Task Assignments: For Task Orders containing provisions for Task Assignments, a separate invoice shall be submitted via a separate email for each Task Assignment.
8. The counting of days for Prompt Payment begins on the date the invoice is received in the inbox of the DOF email address, until 4PM. Invoices received after 4PM will be counted as being received the following FDIC workday.