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**FDIC**

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**ACQUISITION**

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**POLICY**

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**MANUAL**

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*Revision 2*



**FEDERAL DEPOSIT INSURANCE CORPORATION  
DIVISION OF ADMINISTRATION**



FEDERAL DEPOSIT INSURANCE CORPORATION

# DIRECTIVE SYSTEM

TYPE AND NUMBER

Circular 3700.16

CONTACT

Harry D. Baker

TELEPHONE NUMBER

202-942-3111

DATE

July 17, 2003

DATE OF CANCELLATION (*Bulletins Only*)

**TO:** All FDIC Divisions and Offices

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

**SUBJECT** FDIC Acquisition Policy Manual (APM) – Revision 2

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**1. Purpose** To revise and establish new policies and procedures for the FDIC Acquisition Policy Manual (APM). The revised manual titled FDIC Acquisition Policy Manual – Revision 2 is hereinafter referred to as APM, Revision 2.

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**2. Revision** FDIC Circular 3700.16, FDIC Acquisition Policy Manual, Revision 1, dated March 31, 2000, is hereby revised and superseded. The previously issued Interim Policy Memoranda dated February 12, 2002, and August 30, 2002, used to modify the APM are hereby superseded by APM, Revision 2.

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**3. Scope** APM, Revision 2 establishes an updated set of policies and procedures for:

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

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**4. Applicability** APM, Revision 2 applies to all corporate procurement processes and personnel, including:

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

**Applicability  
(cont'd)**

b. Oversight Managers and Technical Monitors involved with monitoring contractor performance; and

c. Divisions and Offices that participate in the procurement process.

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**5. Summary of Revisions**

Revisions have been made to every chapter. Therefore, an entirely new and updated APM is furnished.

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**6. Identification of Changes**

Change bars are used in the margin of each page of the manual and accompanying exhibits to identify substantive additions, deletions, or changes that occurred as part of this revision as they relate to Revision 1. The date of all changes will also be noted at the beginning of each paragraph containing a change.

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**7. FDICnet and Internet Access**

APM, Revision 2 may be accessed as follows:

a. **FDICnet.** This directive is available on the FDICnet on the "DOA Home Page," either under "Forms, Directives, & Records" or "Buying Goods and Services," under "Documents and Policy," and click on "FDIC Acquisition Policy Manual (APM) – Revision 2."

b. **Internet.** On the FDIC external home page ([www.fdic.gov](http://www.fdic.gov)), click on "Buying From, Selling to FDIC," then click on "Goods and Services" under "Selling to FDIC," and then click on "FDIC Acquisition Policy Manual – Revision 2."

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**8. Contacts**

Questions regarding the information contained in this manual may be directed to the Assistant Director, Policy and Compliance Section, Acquisition Services Branch, Division of Administration at (202) 942-3434.

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**9. Effective Date**

The provisions outlined in this directive are effective July 31, 2003.

Attachment

**FDIC ACQUISITION POLICY MANUAL**

**LIST OF CHANGES for REVISION 2**

Modified Section(s)	Subject of Change
Global Changes	<b>Resulting from reorganization</b> – ASB and CSB, Ethics Section to CLU Fitness and Integrity to Integrity and Fitness
1.A.1.a	<b>Acquisition and Corporate Services Branch</b> – changes as a result of the reorganization – global change
1.A.1.f.	<b>RTC-Transitioned Contracts</b> - delete
1.A.3.	<b>Superseded Directive</b> - Include the current directive
1.C.1.	<b>Organization</b> – revised pursuant to reorganization – global change
1.D.2.a.	<b>Team Concept</b> – change name of Contracting Law Unit – global change
1.D.2.c.	<b>Contract Review Program</b> – replaced with Article 17 – global change
1.D.2.d.	<b>Legal Division</b> – add contractor ethics responsibility
1.D.2.; 1.E.3.b.; 5.B.9.; 5.C.8.; 5.D.6; 5.F.1.d.; 6.A.10; 6.B.8.; 6.C.9.; 6.E.2.e.; 6.E.9.d.; 6.I.2.d.; 7.H.3.d.; Glossary	<b>Background investigations</b> – changes for greater clarity
1.D.2.g.	<b>Office of Executive Secretary</b> – delete and add responsibilities to Legal Division
1.D.2.g.	<b>Background investigations</b> – add “and other contracting documents as required”
1.D.2.k.	<b>Background Investigation Reviews</b> – deleted
1.E.1.b.	<b>Confidential information</b> - redefined
1.E.1.c.	<b>Role of Contracting Officer</b> – change “Ethics Section” to FOIA/Privacy Act Group, Legal Division
1.E.3.b.	<b>Applicable Regulation</b> – add “and Requests for Quotations for services”
2.A.2.d.	<b>Goals</b> – add “revocation”
2.B.5.	<b>Certificates of Appointment</b> – delete “Minimum Education Level”
2.D.,E.,F., & G.	<b>Warrant Levels</b> – change “up to” amount to “not to exceed” amount
2 – C.7., D.5; E.5; F.5; G.5	<b>Warrant Levels</b> – delete education requirements
2.H.	<b>Training for Contracting Officers</b> - revised
2.J.3. (NEW)	<b>Revocation of Warrant (NEW)</b> – distinguishes revocation from termination of warrant
2.J.4. (NEW)	<b>Termination of Warrant (NEW)</b> – distinguishes revocation from termination of warrant
3.A.3.c.	<b>Contractor Eligibility Information</b> – information requested by government agencies; information requested by non-government sources

Modified Section(s)	Subject of Change
3.A.5.b.	<b>Scope</b> – add that SDB preference is a one-time election
3.A.8.	<b>Competition Advocate Program</b> – deleted requirement for reports
3.B.2.	<b>Purchase Order</b> – provide for point of contact
3.B.11.a.(22)	<b>List of Standard Documents</b> – changed title of document
3.F.4.	<b>Performance Standards</b> – TBD
3.F.5.	<b>Start of Period</b> – TBD
3.G.5.d.	<b>Contractor Eligibility</b> – change reference from APM, 8.G. to 8.F.
3.G.6.	<b>Suspension and Exclusion</b> – change reference from APM, 8.H. to 8.G.
3.G.11 (NEW)	<b>Tax exempt status</b> - NEW
3.H.	<b>Noncompetitive Awards</b> – move to 3.G.12. and reworded for clarity
3.H.3.	<b>JNCP</b> – actions not requiring noncompetitive approval found in APM, 4.G.
3.I.	<b>Insurance</b> – renumbered to 3.H.
3.J.	<b>Contracting with Firms Having Unresolved Audit Issues</b> – moved to 3.G.7. and renumbered rest of subsections
3.K.	<b>Ethics Referral Procedures</b> – renumbered to 3.J.
4.A.1.c.(2); 6 - C.1., E.5.d., G.1.b., G.4.b., G.5.a., G.5.c., G.6.a., G.6.c., H.3.b., H.3.h., H.3.j., 8.B.8.b.; 9.E.4.a.	<b>Change</b> Assistant Director, Headquarters Acquisition Section to Associate Director, ASB
4.A.4. (NEW)	<b>Procurement Requisitions</b> – (NEW) requirements for original and if winning proposal amount is greater than original
4.A.4.	<b>Roles and Responsibilities</b> – renumber to 4.A.5.
4.A.5.a.(1)	<b>Program Office Responsibilities</b> – add requirements of APM, 4.A.4.
4.A.5.a.(12) (NEW)	<b>Program Office Responsibilities</b> – (NEW) ordering of on-line services must be authorized by the Library Services Unit
4.B.6.	<b>Contract Review Program</b> – changed to Contracting Out Program – Article 17
4.C.1. to 4.C.5. (NEW)	<b>Market research</b> – (NEW) definitions, responsibility, techniques, results, caution, prohibited acts, training
4.D.2.b.	<b>Procurement Requisition</b> - add “according to the requirements of APM, 4.A.4.”
4.D.3.b.(1)	<b>Requirements Package</b> – add “from appropriate delegated official(s) or Board of Directors as set forth in APM, 4.A.4.”
4.D.3.b.(7)	<b>Delete</b> this subsection [transferred to (1)] and renumber remaining subsections
4.D.7.	<b>NTEU Considerations</b> – changed to Article 17

Modified Section(s)	Subject of Change
4.E.1.a.	<b>Simplified Procurement</b> – add “prepared according to the requirements of APM 4.A.4.” in 3 <sup>rd</sup> sentence. In addition, delete “Also” in last sentence.
4.E.1.b.	<b>Formal Contracting</b> – add requirements of 4.A.4.
4.E.5.	<b>Task Assignments</b> – add “or any other contract”
4.G.9.d.	<b>Actions not requiring noncompetitive approval</b> – certain newspaper advertisements
4.I.2.b.(8)	<b>Case Content</b> – Policy Compliance - revised
4.J.	<b>Contract Review Program</b> - deleted
5.B.4.b.	<b>Award Document</b> – add that short form contract may be used
5.C.1.	<b>Receipt of Requirements Package</b> - add requirements of 4.A.4.
5.C.9.	<b>Contractor Confidentiality Agreements</b> – add web address
5.D.4.a.	<b>Contract File</b> – moved and included in 5.D.3.b.
5.D.4.b.	<b>Confirmation of Proposal</b> – move to 5.D.3.c.
5.D.5. through 5.D.8.	<b>Renumbered</b> as 5.D.4. through 5.D.7.
5.D.4.g.	<b>Record of Quotation Received</b> – add that Contracting Officer shall maintain written record in abstract form
5.D.4.h. (NEW)	<b>Safeguarding Proposals</b> - NEW
5.D.4.i.	<b>Technical Evaluation Factors</b> – state evaluation factors in solicitation and weight past performance equal to or higher than the other criteria
5.E.3.a.(2)	<b>Proposal Evaluation</b> – TEO must sign TEP Confidentiality Agreement and TEP Conflict of Interest Statement
5.F.1.d.	<b>Background Investigations</b> – revised for clarity
5.F.1.h.	<b>Contractor Confidentiality Agreement</b> – revised for clarity
5.F.3.	<b>Effective Date of Contract</b> – change last sentence to say “verbal authorization may be given”
6.B.2.	<b>Expenditure Approval Verification</b> – no award without expenditure approval
6.B.7.	<b>Contractor Confidentiality Agreements</b> – add web address
6.C.1	<b>Standard Document Format</b> – add “and the General Provisions” shall be pre-approved
6.C.6.	<b>Proposal Submission Instructions</b> – past performance shall be weighted the same as or higher than the other criteria.
6.C.15	<b>Solicitation List</b> – release of solicitation list to offerors
6.D.2.f.	<b>Eligibility</b> – move to 6.D.2.d.
6.D.2.g.(1)	<b>Past Performance</b> – evaluation criterion
6.D.2.i.(3)	<b>Technical Evaluation Adjustments</b> – offeror cannot change SDB election for price or technical evaluation adjustment after proposal submitted

Modified Section(s)	Subject of Change
6.D.2.i.(3)(b)	<b>SDB Technical Evaluation Adjustment</b> – can aggregate to reach 10% minimum participation
6.D.4.c.(1)	<b>TEP Procedures</b> – add that the Contracting Officer will provide a copy of the SSP
6.D.5.a.	<b>Price Proposal Evaluation Process - Elements</b> – New price evaluation procedures for Contracting Officer
6.D.7.a.(2)	<b>Award Based on Initial Submission</b> – delete as repetitive of 6.D.7.e.
6.D.7.e.	<b>Financial Capability Evaluation</b> – Delete “Competitive Range” in title, and delete “targeted” in first sentence
6.E.2.e.	<b>Background investigations</b> – add security awareness training for contractor and subcontractor employees & Background Investigation forms to PCU
6.E.2.g.	<b>Contractor Confidentiality Agreement</b> - revised
6.E.4.g.	<b>Financial Responsibility</b> – new wording
6.E.9.a.	<b>Notification of Expenditures</b> – delete as repetitive of 6.I.4.
6.E.9.c.	<b>Award Prior to Completion of Reviews</b> – no network access before favorable criminal records check is received
6.F.2.a.	<b>Debriefings, When Required</b> – delete parenthetical phrase and combine first two sentences
6.H.3.c.	<b>Relationship Between FDIC and Contractors</b> – the Contracting Officer should refer questions to Legal Division
6.I.1.a.(5)	<b>Written Request of Work</b> - add requirements of 4.A.4.
6.I.2.	<b>Change title</b> to Solicitation and Evaluation of Task Orders
6.I.3.b.	<b>Award Based on Technical Proposals</b> – change title and add new language
6.I.4.	<b>Change title</b> to Task Order Contents. This now becomes 6.I.4.b.
6.I.4.a.	<b>Contents</b> – task order contents
6.I.4.b.	<b>Notification of Expenditures</b> – formerly 6.I.4.
7.A.1.e.(4)	<b>Contract Administration Planning</b> – delete reference to Chapter 4
7.A.2.h.	<b>Documentation and Filing</b> – change language to require that original documentation be organized in accordance with official file checklist
7.B.1.b.	<b>Letter of Oversight Manager Confirmation</b> – contractor must acknowledge receipt
7.B.1.f.	<b>Training Requirements</b> – revised for web-based training and provide for point of contact
7.B.1.i.(32) (NEW)	<b>Oversight Manager Responsibilities</b> – (NEW) perform market research related to exercise of an option in accordance with APM, 4.C.
7.B.1.i.(33) (NEW)	<b>Oversight Manager Responsibilities</b> – (NEW) shall support the claims and appeals process

Modified Section(s)	Subject of Change
7.B.2.a.(11),(15), & (18)	<b>Contracting Officer Responsibilities</b> – (11) – added from (15)(15) – added to (11)(18) – Contracting Officer sends CPERF to contractor for review
7.B.2.a.(20) (NEW)	<b>Contracting Officer Responsibilities</b> - notify Oversight Manager that option coming due
7.B.5.	<b>Contract Administration Plan</b> – add additional requirements for the CAP
7.C.3.	<b>Program Office Responsibility</b> - provide for point of contact
7.C.3.c.	<b>Program office responsibility</b> – electronic verification and approval of invoices after acceptance
7.D.2.e.	<b>Inspection &amp; Acceptance</b> – add Oversight Management Monitoring Plan
7.D.3.b.	<b>Determining level of oversight</b> – use Oversight Management Monitoring Plan
7.G.1.b.	<b>Contract Administration Plan</b> – new language for development of CAP
7.G.1.c.(7)(NEW)	<b>Contractor Personnel</b> – (NEW) Oversight Manager duties for new contractor personnel
7.H.1.c.	<b>Authority and Procedure</b> - add requirements of 4.A.4.
7.H.3.d.	<b>Changes in Key Personnel</b> – fingerprinting required for access to network
7.H.3.f. (NEW)	<b>Price Reasonableness Evaluation</b> – (NEW) for modifications and change orders – duties and documentation
7.H.3.g.(NEW)	<b>Change Order or Modification Accounting</b> – (NEW) change in contractor’s accounting system to accommodate special accounting procedures
7.H.3.h.(NEW)	<b>Change Order or Modification Accounting Contract Provision</b> – (NEW) when add accounting provision to contract
7.I.4.	<b>Invoice Review</b> – Contracting Officer and Oversight Manager will receive invoices simultaneously
7.I.6.b.(2), 7.I.6.b.(4)(a) 7.I.6.b.(4)(b) 7.I.6.b.(4)(c) 7.I.6.b.(5)(a), 7.I.6.b.(5)(b)	<b>Invoice review and approval</b> –Changes relating to use of EPRIS
7.K.2.d.	<b>Oversight Manager’s Files</b> – retain items in Oversight Manager File Checklist
7.L.1., 7.L.3.b., 7.L.4.a., 7.L.4.b.	<b>Pre-Exit Clearance</b> – to ensure return of FDIC property and access to FDIC systems and phones when end employment of personnel or contractor
8.A.1.h. (NEW)	<b>Checks Received</b> – (NEW) added for checks received
8.D.3.e., 8.D.4.e.	<b>Claim process</b> - Addition to address for OIG
8.D.3.g.	<b>Notification to Contractor</b> – add that ODEO shall be notified if MWOBs or SDBs are notified of more time to review request for review
8.D.4.a.	<b>Appeal of Contracting Officer’s Final Decision</b> – delete first phrase of last sentence and insert “For all purposes regarding claims,…”



Modified Section(s)	Subject of Change
8.D.4.a.,b.,c.,f.,g.,h8.D.4.e.	<b>Claim process</b> – Substitute "Inspector General or his designee" for "Principal Deputy Attorney General"
8.E.3.c.(1)	<b>Termination for Default</b> – Procedure Oversight Manager shall notify Contracting Officer of rejection or adjustment of invoices with explanation
8.F.3.b.(2)	<b>Roles, Responsibilities, and Procedures</b> – new title is The Legal Division; (a) is CLU & (b) is General Counsel
8.G.	<b>Suspension and Exclusion of Contractors</b> – revised to indicate that CLU responsible, not OES
8.J. (NEW)	<b>Checks Received</b> – (NEW) procedure for processing checks
9.A.1.g. (NEW)	<b>Scope</b> – (NEW) add section for the 8(a) program
9.B.2.	<b>Contracting Authority</b> – the APM reference is changed from 9.A.3. to 9.B.3.
9.B.3.a.(21)	<b>Non-procurement administrative-related expenses</b> – newspaper advertisements
9.B.3.b.(1)	<b>Non-Procurement Business/Legal-Related Expenses</b> – include expenses when FDIC is non-lead participant
9.B.3.b.(5)	<b>Proceedings</b> – DAS changed to DRR
9.B.4.	<b>Payments Authorized by PAV</b> – the APM reference is changed to 9.B.3.
9.B.5.	<b>Reporting Improper Use of PAVs</b> – report quarterly instead of monthly
9.C.1.e.(2)	<b>Maximum Order Threshold</b> – revised for clarity
9.C.3.	<b>FSS ordering procedures</b> – Correct no. of days for processing & change “purchase order” to “delivery order” – also, no evaluation adjustment for SDBs or MWOBs
9.C.3.a. & b.	<b>FSS ordering procedures</b> – change number of days for processing award - TBD
9.D.4.a.(1)	<b>Required Submissions for New and Succeeding IAAs</b> – add requirements of 4.A.4.
9.D.4.e. (NEW)	<b>Background Investigations</b> – (NEW) Background investigation required for private contractor in Interagency Agreements
9.D.4.e. & 9.D.4.f.	<b>Re-number</b> to 9.D.4.f. & 9.D.4.g.
9.E.4.c.(1)&(2)	<b>Credit card Approving Official</b> may not be subordinate to cardholder under AO’s authority
9.E.5.d.(1)(c)[8]	<b>Types of Acceptable Purchases (with Procurement Credit Card)</b> – external training courses – form changed
9.E.5.d.(1)(c)[16]	<b>Types of acceptable purchases with credit card</b> – add: newspaper advertisements — DOS & DCA changed to DSC
9.E.5.d.(3)(a)	<b>Delete</b> – “notwithstanding the prohibition set forth in APM, 9.E.5.d.(2)(h).”
9.E.5.d.(3)(b)(c)(d)	<b>Change ACSB to CSB</b>
9.E.5.d.(3)(b)	<b>Change DOS and DCCA regional to DSC field</b>
9.E.5.d.(3)(c)	<b>Office Furniture</b> – add artwork

Modified Section(s)	Subject of Change
9.E.5.d.(3)(e)	<b>Delete</b> Asset Services (DAS)
9.E.5.d.(3)(f) (NEW)	<b>Meals and Beverages</b> – (NEW) defined
9.E.5.e.	<b>Convenience Check Use</b> – new guidelines
9.E.5.e.(1)(c)	<b>Convenience Check Use</b> – Quantity – issued in books of 10, not 3
9.E.5.e.(3)	<b>Reporting Lost or Stolen Convenience Checks</b> – New guidelines
9.E.6.a.	<b>Delete</b> – contact AO for information for credit card
9.E.6.b. (NEW)	<b>Training Requirements</b> – NEW
9.E.6.b. through g.	<b>Renumber</b> as 9.E.6.c. through h.
9.E.6.f.	<b>Resignation or Reassignment</b> – new requirements
9.E.7.e.	<b>Disputed or Questioned Items</b> – change bank fax number, delete address, add form access, and add FDIC fax number
9.E.7.e.(2)	<b>Disputed or Questioned Item</b> – change form from “CSQI” to “dispute”
9.E.8.a.(2)	<b>Master Invoice</b> – add “authorized by the AO’s.” at the end of the last sentence; change “Service Center” to “Regional and Field Offices”
9 - E.8.a.(2), E.8.c.E.8.d.(2)(a), E.8.e.	<b>Credit card program</b> -Replace references to "DOF/FAS" with "DOA/ASB"
9.E.8.f.	<b>Record-Keeping</b> – add “for 5 years” as period for retaining records
9.F.7.a.(3)	<b>Solicitation Document</b> – change reference to 6.F.6.b. to 9.F.7.b.(2)
9.F.7.a.(4)	<b>Solicitation Document</b> – delete “Chapter 6, Formal Contracting” and insert 6.C.7.
9.G.9.d	<b>Service Contract Act</b> - Delete subsection (1) that negated the need for a determination if less than 5 employees, and renumber
9.H. (NEW)	<b>Section 8(a) Program</b> – NEW
10.B.6.a.(1)	<b>General</b> – add requirements of 4.A.4.
10.B.9.d.	<b>Invoicing</b> – delete section and replace with new language
10.C.	<b>Loan Servicing Contracts</b> – changes related to transfer of this function from DOF to DRR
10.D.6.b.(5)	<b>Contracting Officer Responsibilities</b> – add fingerprinting; add “in accordance with APM,6.E.2.e.” after “prior to award of the contract”
Exhibit IV	<b>Procedures for Contracting Out</b> - Reserved
Exhibit V	<b>Application for Contracting Officer Warrant</b> – revised
Exhibit VI	<b>Guidelines for Development of Cost Estimates for Contractual Goods and Services</b> – revised instructions
Exhibit IX	<b>Source Selection Plan</b> - Delete parenthetical phrase at end of Part 6 & conform to 6.A.9

<b>Modified Section(s)</b>	<b>Subject of Change</b>
Exhibit XI	<b>Proposal Weighting and Ranking Analysis</b> – add Technical Evaluation Scoring Summary form & Excel spread sheet for summary calculations
Exhibit XII	<b>Documentation for Technical Evaluation Panel</b> – revised Memorandum Establishing Technical Evaluation Guidelines and TEP Memorandum for Section 508
Exhibit XIV	<b>Background Investigation Forms</b> – all revised
Exhibit XVI	<b>Letter of Oversight Manager Confirmation</b> – revised to add contractor’s signature acknowledging receipt
Exhibit XVII	<b>Letter of Technical Monitor Confirmation</b> – revised to add contractor’s signature acknowledging receipt
Exhibit XVIII	<b>Contractor Performance Evaluation</b> – forms revised
Exhibit XXII	<b>Contractor Travel Reimbursement Guidelines</b> – reflects current rates
Exhibit XXIII	<b>Contracting File Checklists</b> – revised Simplified Contracting File Checklist
Exhibit XXIV	<b>12 CFR 366 (Contractor Conflicts of Interest)</b> - revised
Exhibit XXVII	<b>Contract Administration Plan</b> - revised
Exhibit XXX	<b>Contractor Past Performance RFP Reference Check Questionnaire (FDIC 3700/29)</b> - revised
Exhibit XXXI	<b>Pre-Exit Clearance Record for Contractors (3700/25)</b> - revised
Exhibit XXXII	<b>Contractor Representations and Certifications</b> – revised FDIC Contractor Representations and Certifications (FDIC 3700/4a) for changes in MWOB and SDB programs
Exhibit XXXIII	<b>FDIC Eligibility Representations and Certifications (3700/12)</b> – Revised for changes in MWOB and SDB programs
Exhibit XXXVI	<b>Oversight Management Monitoring Plan</b> – NEW
Exhibit XXXVII	<b>Tax Exemption Letter</b> – NEW

# FDIC Acquisition Policy Manual

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# CHAPTER 1

## ***AUTHORITY, RESPONSIBILITY, AND POLICY***

### **SECTION 1.A. AUTHORITY**

#### **1.A.1. Acquisition Policy Manual**

##### **1.A.1.a. Authority (JUL 2003)**

The Federal Deposit Insurance Act (12 U.S.C. § 1819) empowers the Federal Deposit Insurance Corporation (FDIC) to enter into contracts using private sector firms to provide goods or services. This Act also provides that FDIC may promulgate policies and procedures to administer the powers granted to it, including the power to enter into contracts. The authority to establish policies and procedures and generate the contracting program has been redelegated by the Board of Directors to the Director, Division of Administration, in accordance with the Board Resolution discussed in APM, 1.B., *Expenditure Delegations of Authority*. This manual, the Acquisition Policy Manual (APM), is issued by the Acquisition Services Branch (ASB), Division of Administration (DOA), pursuant to such policies.

##### **1.A.1.b. Objectives**

The objective of the Acquisition Policy Manual (APM) is to establish and maintain policies and procedures and uniform standards for:

(1) Contracting. Contracting includes the solicitation and awarding of contracts for goods and services between FDIC and private sector firms to obtain the best value for FDIC. It also includes monitoring the performance of contractors under such contracts to ensure compliance with the terms of the contracts and applicable policies of FDIC.

(2) Oversight. Oversight includes ensuring that FDIC commits sufficient resources, including personnel, to contract oversight. It also includes lending technical expertise, evaluating and monitoring contractor performance, monitoring expenditures, evaluating and accepting deliverables, and reviewing invoices.

##### **1.A.1.c. Applicability (MAR 2000)**

FDIC may contract in its corporate, receivership, conservatorship, or corporate liquidator capacity, and FDIC's capacity must be stated in each of its contracts. FDIC, in all capacities, shall follow the policies and procedures contained in this manual when engaging private sector firms to provide goods or services to FDIC unless listed in APM, 1.A.1.e., *Exclusions*. The overall purpose of the contract shall generally dictate the capacity in which the contract is executed.

(1) Corporate Capacity. In its corporate capacity, FDIC contracts for the purpose of fulfilling corporate responsibilities and goals, such as employee training,

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marketing policies, information systems, etc. These contracts are issued from FDIC Headquarters in Washington, D.C. and the Regional Offices.

(2) Receivership Capacity. In its receivership capacity, FDIC becomes an organizational entity appointed to wind up the affairs of a failed insured depository institution by managing and liquidating its assets, collecting monies due, and paying its creditors. The FDIC as receiver succeeds to all the rights titles, powers, and privileges of the institution and its stockholders. In this capacity, FDIC contracts for the purpose of fulfilling its receivership responsibilities, i.e., to perform liquidation activities of receivership assets and to complete the business of closed institutions. These contracts are almost always issued from FDIC Regional Offices or other FDIC offices outside FDIC Headquarters in Washington, DC.

(3) Conservatorship Capacity. In its conservatorship capacity, FDIC becomes an organizational entity appointed to preserve the assets of a depository institution for the benefit of depositors and other creditors. The conservator takes possession of the books, records, and assets of the institution, and takes whatever action is necessary to preserve the business of the institution as a going concern. In this capacity, FDIC contracts for the sole purpose of fulfilling its conservatorship responsibilities on behalf of an open institution that is operating under FDIC's management and control. Contracts will likely include those for the performance of day-to-day operations or asset management and disposition.

(4) Corporate Liquidator Capacity. In the corporate liquidator capacity, the status and assets of the receiver or conservator have passed to the Corporation. Under this capacity, the FDIC contracting function supports the liquidation activities of those assets. Although this capacity is a corporate capacity, it is similar to the receivership capacity in terms of asset liquidation when contracting to dispose of those assets owned by the Corporation.

**1.A.1.d. Guiding Principles (MAR 2000)**

(1) The foundation of the FDIC acquisition process involves providing quality service and delivery, and incorporating sound business practices. In addition, the acquisition process is based upon the following policy objectives that are embodied in this Manual:

- (a) Streamlining the Acquisition Process;
- (b) Attaining Best Value in Award Decisions;
- (c) Strengthening Contract Administration;
- (d) Promoting Fair and Consistent Treatment of Offerors;
- (e) Providing Opportunities for Minority- or Women-Owned-Business Firms and Small Disadvantaged Business Firms; and

(f) Fostering and Promoting a Professional Acquisition Workforce.

(2) FDIC's mission is to deliver on a timely basis goods or services offering the best value to each Program Office. The process of best value involves using one's business judgment to make a series of quantitative and qualitative decisions among such factors as capability, capacity, past performance, and price.

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

**1.A.1.e. Exclusions (MAR 2000) (JUL 2003)**

(1) Office of the Inspector General. The policies and procedures in the APM are only applicable to the FDIC Office of the Inspector General (OIG) to the extent that they are consistent with provisions contained in the Inspector General Act of 1978, as amended. In this regard, and in accordance with the Inspector General Act, OIG is provided certain independent contracting authorities. The OIG shall follow the procedures in the APM to the extent possible within the parameters of its authorities and responsibilities. In addition, OIG shall have separate authority for final decisions on appeals relating to contractor claims and protests on OIG contracts, including those resulting from audits. Notwithstanding, ASB shall execute all contractual actions required to implement OIG appeal decisions.

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

(3) Leases. Leases for FDIC office and warehouse space are excluded from the provisions of this manual. For leasing policies and procedures, please refer to FDIC Circular 3450.1, *FDIC Leasing Policy Manual (LPM)*. In support of the LPM, services to assist in FDIC leasing, such as those mentioned in Section 4.B.11 of the LPM, should be obtained through ASB as set forth in the APM.

(4) Accounts at Insured Depository Institutions. The Chief Financial Officer (CFO) or designee may establish and maintain accounts at insured depository institutions on behalf of FDIC in its corporate, receivership, or conservatorship capacity without following the policies and procedures stated in the APM. This includes the authority to establish certain terms of the accounts such as the designation of signatories and the authorization of monthly statements, as well as the authority to acquire ancillary services for these accounts relating to the processing of receipts and disbursements and the purchase and sale of allowable investments. Notwithstanding the forgoing, the Division of Finance (DOF) may, in its sole discretion, elect to follow the APM and submit these requirements to ASB for processing.

**1.A.1.f. Implementation**

The APM is intended to provide uniform and consistent guidelines for identifying and selecting firms to provide goods or services to FDIC and for awarding and administering contracts to such firms.

**1.A.1.g. Reference to Contract**

As used in this manual, the term *contract* includes any contractual instrument including contracts, purchase orders, task orders awarded under basic ordering agreements, orders awarded under multiple-order requirements contracts, software licensing agreements, and all other contractual instruments issued by the Division of Administration (DOA) to acquire goods or services on behalf of the Corporation.

**1.A.1.h. Acronyms and Definitions**

Appendix A contains a list of acronyms and definitions used throughout the APM.

**1.A.2. Responsibility for Contracting Policy**

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

**1.A.3. Superseded Directive (MAR 2000) (JUL 2003)**

FDIC Circular 3700.16, FDIC Acquisition Policy Manual (APM), dated October 3, 1996, was revised by the FDIC Acquisition Policy Manual – Revision 1, dated March 31, 2000, which is now revised by the FDIC Acquisition Policy Manual – Revision 2, dated July 31, 2003. The original APM, dated October 3, 1996, and APM – Revision 1 amending it should be retained for historical reference.

**1.A.4. Arrangement and Numbering**

The APM contains numbered chapters, lettered sections, and numbered parts. Subdivisions below the part level are paragraphs lettered alphabetically in lower case and subparagraphs in parentheses. The numbering system for each chapter is as follows:

<b>1.</b>	<b>A.</b>	<b>3.</b>	<b>a.</b>	<b>(1)</b>	<b>(a)</b>	<b>[1]</b>
						subparagraph
						paragraph
			part			
		section				
		chapter				

**1.A.5. Citations**

Citations to the APM are by chapter, section, and part, followed by paragraph and further subdivision as needed. Section C of Chapter 7 is referred to “7.C.,” part 2 of section C is referred to as “7.C.2.” and paragraph k of part 2 of section C is referred to as “7.C.2.k.” If further subdivision is needed, subparagraph 1 under “7.C.2.k.” is referred to as “item (1) under 7.C.2.k.”

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**SECTION 1.B. EXPENDITURE DELEGATIONS OF AUTHORITY****1.B.1. General**

The Board of Directors, consistent with the authority in the Federal Deposit Insurance Act and the Bylaws of the Corporation, approved a Board Resolution, entitled "Expenditure Delegations of Authority for Contracts, Leases, Legal Services, and Non-Procurement Related Expenses" (Expenditure Delegations). The Board Resolution is provided as Exhibit I.

**1.B.2. Expenditure Authority**

The Expenditure Delegations establish a set of thresholds and approval levels for approving expenditures under competitive and noncompetitive contracts awarded in the corporate, receivership, conservatorship, and corporate liquidator capacities. All expenditures under contracts shall be approved in accordance with the Expenditure Delegations. Expenditure authority related to contract actions that require approval by the Deputies to the Chairman, Chairman, or Board of Directors shall be prepared in accordance with the procedures stated in APM, 4.I., *Preparation of Expenditure Authority Requests for the Deputies to the Chairman, Chairman, and Board of Directors*.

**1.B.3. Contracting Authority**

The Expenditure Delegations establish the Director, Division of Administration, as the Corporation's Chief Contracting Officer, with authority to develop contracting policy, to solicit proposals, and to enter into, modify, and terminate contracts on behalf of the Corporation or any receivership or conservatorship. The Director's contracting authority may be redelegated to Contracting Officers in the Division of Administration or as authorized in APM, Chapter 2, *Contracting Officer Warrant Program*. FDIC employees without delegated contracting authority who enter into, modify, and terminate contracts are acting outside the scope of their authority and may be subject to disciplinary action.

**1.B.4. Program Office Responsibility**

As stated in the Expenditure Delegations, obtaining expenditure authority is a Program Office responsibility and expenditures must be approved before the issuance of a solicitation unless approved in advance by the Director, Division of Administration, or designee.

**1.B.5. Expenditure Ceiling****1.B.5.a. Definition**

Expenditure Ceiling means a dollar limit on expenditures that have been approved in accordance with the Expenditure Delegations for contracts. The total dollar amount approved for (1) a contract shall include the estimated cost for all contractual requirements for the initial period of performance and option periods,

if applicable, and (2) a basic ordering agreement or multiple-order requirements contract shall include the estimated cost of all orders to be awarded in the aggregate amount.

**1.B.5.b. Calculating the Expenditure Ceiling**

The following sections describe how to determine the dollar amount of a planned expenditure so that proper approval may be obtained.

(1) Contracts. The expenditure ceiling for a contract shall include the aggregate dollar amount necessary for complete performance.

(2) Contract Modifications. Expenditure authority for contract modifications shall be based on the cumulative dollar amount of the contract plus modifications. However, when a contract is awarded on a competitive basis and the modification is noncompetitive, then expenditure authority is required only for the dollar value of the noncompetitive modification being considered for execution. Expenditure authority for multiple noncompetitive modifications under the same contract must be obtained on the contract and the cumulative value of all noncompetitive modifications.

(3) Contracts with Options. If options are to be included in the proposed contract at the time of award, then the expenditure ceiling for the basic period of performance and all options shall be included in the approved expenditure authority.

(4) Orders Awarded Under Basic Ordering Agreements and Multiple-Order Requirements Contracts. For all BOAs and multiple-order requirements contracts, the expenditure ceiling shall include the total cumulative dollar amount of all orders to be awarded thereunder during the basic term and, if applicable, all option terms. Expenditure authority for individual orders to be awarded under BOAs and multiple-order requirements contracts is not required as long as the cumulative amount of the orders does not exceed the expenditure ceiling. However, orders under BOAs or multiple-order requirements contracts shall be approved by the appropriate division or office director, or his/her designee.

**1.B.6. Budget Approval**

Expenditure authority shall always be obtained in the total cumulative amount for all contracts. Although expenditure authority may be approved on a multi-year basis, budget approval shall be obtained on an annual basis by appropriate program officials.

**1.B.7. Direct Award Authority (MAR 2000)**

Solicitation actions for contracts valued at \$5,000 or less shall not require noncompetitive approval if only one (1) firm is solicited. However, the Contracting Officer may solicit one (1) or more firms if it is considered to be in the best interest of the Corporation. Contracting Officer will ensure that these awards are not concentrated with the same contractors and that the awards include reasonable participation by MWOB and SDB firms.

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## SECTION 1.C. ORGANIZATION OF THE ACQUISITION SERVICES BRANCH (MAR 2000) (JUL 2003)

### 1.C.1. Acquisition Services Branch (ASB) (MAR 2000) (JUL 2003)

#### 1.C.1.a. Headquarters Acquisition Services Branch (MAR 2000) (JUL 2003)

The Headquarters Acquisition Services Branch is comprised of the following main units:

(1) Headquarters Operations Section: The Headquarters Operations Section accomplishes new contract awards and provides a full range of contract administration services in support of all Headquarters Program Offices. It also accomplishes contract awards for national contracts. This unit consists of two (2) client-based groups:

- (a) Information Resources Management Contracting Unit; and
- (b) Corporate Contracting Unit.

(2) Policy and Compliance Section: The Policy and Compliance Section develops and implements contracting policies and procedures, standard contracting documents, and contracting training courses. In addition, the unit administers a number of programs and systems that support the contracting process including the Procurement Credit Card Program, audit resolution, FDIC Contracting Officer Warrant Program, and the Contractor Performance Management System. This unit consists of two (2) groups:

- (a) Policy Development Unit; and
- (b) Program Compliance Unit (PCU).

(3) Operations Support Section. The Operations Support Section supports many of the systems for ASB. These support functions also include, but are not limited to, invoice processing, case preparation, ODEO outreach, field office liaison, FOIA responses, contract closeout, market research, the file room, and other support functions.

#### 1.C.1.b. Regional Offices (MAR 2000) (JUL 2003)

The contracting function is performed by the ASB personnel in the Dallas Regional Office, and by ASB personnel in other Regional offices. These organizations conduct all phases of the solicitation process through contract award and perform a full range of contract administration services on behalf of their offices.

#### 1.C.1.c. Subsidiary Contracting (MAR 2000)

A subsidiary for the purposes hereof is a corporation owned in whole or in part by a receivership. The board of directors and officers of a subsidiary, not FDIC or the

receivership, are responsible for managing the business and affairs of the subsidiary. FDIC contracting policies and procedures otherwise applicable to the receivership do not apply to the subsidiary. Under certain circumstances, as set forth in APM, 10.E., the subsidiary may be subject to specific FDIC contracting policies and procedures.

## **1.C.2. Specific Responsibilities**

### **1.C.2.a. Policy and Compliance Section (MAR 2000)**

(1) Policy. The Policy and Compliance Section is responsible for formulating contracting policies and procedures as they relate to all contracting functions. The Unit shall, as necessary, develop and maintain these contracting policies and procedures, and issue any required interpretations or clarifications.

(2) The Contracting Officer Warrant Program. The Policy and Compliance Section is responsible for the Contracting Officer Warrant Program (see APM, Chapter 2, *Contracting Officer Warrant Program*). Only warranted Contracting Officers are authorized to enter into, modify, administer, and terminate contracts. Contracting Officers may contractually bind FDIC only to the extent of the authority granted to them in their warrant. The warrant and any limitations imposed shall be visibly posted and readily available for review by the public and by FDIC personnel.

(3) Standard Contracting Documents. The Policy and Compliance Section, in conjunction with the Legal Division, is responsible for developing standard contracting documents for use by all FDIC ASBs. This Unit is the approval authority for modifications to these standard contracting documents.

### **1.C.2.b. Headquarters Operations Section and Regional Contracting Operations**

These organizations shall:

- (1) Ensure that there is adequate competition and fair and consistent treatment of offerors;
- (2) Follow procedures as described in this manual and assemble and preserve for future reference a complete record of the solicitation package, proposal evaluation, award, and contract administration processes;
- (3) Record all required contracting activity information in the Purchase Order System (POS) and prepare and distribute, as necessary, reports that fully describe the scope and status of FDIC's contracting activity;
- (4) Exercise sound business judgment while adhering to the requirements of the APM and other applicable FDIC directives;
- (5) Obtain advice from other offices, in carrying out their responsibilities, as necessary; and

(6) Maintain a centralized file system containing the official contract files, the official system of record, and retain those files in accordance with FDIC record retention policy.

<i>CHAPTER 1</i> <i>Authority, Responsibility, and Policy</i>	<i>FDIC ACQUISITION POLICY MANUAL</i>
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**SECTION 1.D. ROLES AND RESPONSIBILITIES****1.D.1. General**

Acquisition Services Branches are the only FDIC organizations authorized to award contracts and commit FDIC's funds through appropriate contractual instruments, except as noted in APM, 1.A.1.e., *Exclusions*, and the FDIC credit card program as defined in APM, 9.E., *FDIC Procurement Credit Card Program*. These offices shall manage, control, and direct the contracting process within their respective organizations. Contracting Officers in these organizations have sole authority for executing and modifying contracts on behalf of FDIC.

**1.D.2. Organizational Roles and Responsibilities****1.D.2.a. Team Concept (JUL 2003)**

ASBs are service organizations that support customers and the Program Office mission of FDIC by soliciting, executing, and administering contracts. However, the contracting process requires a team effort, with significant contributions from individuals in many FDIC functional areas including ASB, Program Offices, the Office of Diversity and Economic Opportunity (ODEO), the Contracting Law Unit (CLU) in the Legal Division, Security Management Section (SMS), and the Accounts Payable Processing Unit of the Division of Finance.

**1.D.2.b. Acquisition Services Branch (JUL 2003)**

Each ASB shall coordinate the activities of all persons involved in the contracting process. Specific contract process roles of ASB include:

- (1) Using adequate competition to select eligible firms, treating all firms in a fair and consistent manner, and evaluating proposals to ensure that firms offering the best value to FDIC are selected, awarding contracts only to firms that meet the requirements of FDIC's Contractor Integrity and Fitness regulation, and ensuring that FDIC and contractors abide by the terms of the contract;
- (2) Acting as the primary contact with private sector firms throughout the contracting process;
- (3) Working with the Program Office in the presolicitation phase to ensure that requirements are identified early, adequate statements of work and cost estimates are developed and that ASB resources are available to process requests in a timely manner;
- (4) Ensuring that the solicitation package meets the needs of the specific requirement;

- (5) Functioning as the only contact for private sector firms' questions and clarifications during the solicitation process with input from the Program Office and other offices, as necessary;
- (6) Overseeing the fairness and consistency of the technical and price evaluation process and being the final decision maker in such areas as the determination of competitive range decisions, best value decisions, and final award recommendations;
- (7) Working jointly with the Oversight Manager (and Technical Monitor(s), if required) designated by the Program Office, administering the contract to ensure that all contractual obligations are met by both parties;
- (8) Maintaining the official contract file associated with all phases of the contracting process, including records management and input to the Purchase Order System (POS);
- (9) Receiving, tracking, and ensuring timely payment of all approved contractor invoices and retaining copies of all invoices in the official contract file;
- (10) Determining if a modification is within or not within the scope of the contract, and issuing all modifications; and
- (11) Performing contract closeout activities and ensuring the integrity of the official contract files.

**1.D.2.c. Program Office (MAR 2000) (JUL 2003)**

The Program Office is the FDIC organizational unit requiring the goods or services. Specific contracting process roles of the Program Office include:

- (1) Initiating the requirement, developing the statement of work, preparing the FDIC cost estimate, and submitting the Requirements Package to ASB;
- (2) Obtaining expenditure authority for contract awards and ensuring that sufficient budget authority is available (i.e., sufficient funding has been approved in the Program Office's budget to cover the expenditure);
- (3) Playing an active role in the selection, solicitation, and evaluation phases to ensure that selected contractors are capable of meeting Program Office needs;
- (4) Designating an Oversight Manager and, if appropriate, a Technical Monitor(s), who shall oversee the performance of the contractor during the contract administration phase. Oversight Manager duties are specified in APM, 7.B., *Roles and Responsibilities*; and
- (5) Determining if the proposed contract is subject to Article 17 as defined in APM, 4.D.7. *NTEU Considerations*.

**1.D.2.d. Legal Division (JUL 2003)**

The Contracting Law Unit (CLU), Legal Division, supports the development of contracting policy and procedures when legal issues arise from statutory interpretation and compliance and provides advice and legal sufficiency reviews. In addition, the Legal Division performs the following functions:

- (1) Reviewing solicitation packages including contracts \$100,000 or greater in three (3) business days;
- (2) Reviewing complex contracting requirements as requested by the Contracting Officer;
- (3) Advising the Contracting Officer on contract terminations for convenience or default;
- (4) Providing advice as required on issues involving contract scope;
- (5) Providing advice to ASB when contract rights and remedies must be enforced;
- (6) Supporting the claims and disputes process;
- (7) Supporting audit resolution, as requested;
- (8) Supporting the withholding of payments; and
- (9) Providing other assistance as requested by the Contracting Officer.

In addition, CLU is responsible for FDIC's implementation of the Contractor Conflicts of Interest Regulation (12 C.F.R. part 366) and the Suspension and Exclusion of Contractors and Termination of Contracts Regulation (12 C.F.R. part 367). Specific contracting process roles include:

- (1) Determining whether conflicts of interest exist;
- (2) Determining whether conflicts of interest may be waived;
- (3) Interfacing with the Policy and Compliance Section in ASB on processing integrity and fitness reviews and waiver requests; and
- (4) Providing advice and guidance to ASB and relevant Program Offices on potential contractor ethics issues.

**1.D.2.e. Office of Diversity and Economic Opportunity (ODEO) (MAR 2000)**

ODEO has corporate wide responsibility for oversight and monitoring of the FDIC Minority and Women Outreach Program and oversight and monitoring the Small Disadvantaged Business (SDB) Program. In addition, ODEO participates in the contracting process for all actions that are \$100,000 or more as follows:

- (1) Reviewing contracting requirements, including the statements of work;

- (2) Identifying potential MWOB and SDB firms from outreach activities and through the National Contractor System;
- (3) Reviewing draft solicitations;
- (4) Ensuring that firms forwarded by ODEO are included on solicitation lists;
- (5) Participating in TEP as non-voting member;
- (6) Performing SDB subcontract and SDB Joint Venture compliance reviews;
- (7) Recommending appropriate action for failure to comply with SDB subcontract/Joint Ventures in accordance with terms of contract; and
- (8) Performing outreach activities to identify MWOB and SDB firms interested in doing business with FDIC.

**1.D.2.f. Accounts Payable (MAR 2000)**

The Accounts Payable Processing Unit in the Disbursements Section of the Division of Finance (DOF) (Accounts Payable) is responsible for processing payments to contractors providing goods or services to FDIC.

**1.D.2.g. Security Management Section, Employee/Contractor Security Unit (MAR 2000) (JUL 2003)**

The Security Management Section (SMS), Employee/Contractor Security Unit (E/CSU), CSB, conducts background investigations and fingerprinting for contracts including basic ordering agreements and Federal Supply Schedules, and other contracting documents as required. For more information see APM, 5.F.1.d. (simplified procurement) and 6.E.2.e (formal contracting).

**1.D.2.h. Office of the Inspector General (OIG)**

The OIG conducts independent audits and investigations of FDIC operations and FDIC contractors for the purpose of detecting fraud, waste, abuse, and gross mismanagement. When such improper activities are suspected, the matter shall be referred to the Contracting Officer. The referral may also be made to the OIG Hotline at 1-800-964-FDIC. *It is imperative that all FDIC contracts contain a right to audit provision in order to preserve the OIG's rights and authority to conduct audits and other investigations under FDIC contracts.*

**1.D.2.i. General Accounting Office (GAO)**

GAO is a nonpartisan, independent agency in the legislative branch of the Federal government which acts as an investigative arm of Congress, whose general statutory authority is found in 31 U.S.C. 701 et seq. GAO conducts audits and reviews of certain designated agencies, corporations, organizations and other entities, and issues reports to Congress.

**SECTION 1.E. GENERAL POLICIES****1.E.1. Public Release and Exchange of Information****1.E.1.a. Availability of Information**

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

**1.E.1.b. Confidential Information (MAR 2000) (JUL 2003)**

Confidential information is any information not made routinely available and generally known by the public. Contractors shall not disclose such information unless and until authorized in writing by the FDIC, or required by court order. Maintaining confidential information includes:

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

**1.E.1.c. Ensuring Confidentiality of Information with Contractors (MAR 2000) (JUL 2003)**

Contractors are required to take all appropriate measures to ensure the confidentiality of all information relating to any insured institution or any other business of the corporation obtained by any of its employees or subcontractors and to prevent its inappropriate use and disclosure.

**1.E.1.d. Referrals to the Contracting Officer**

Any FDIC employee receiving a request for information regarding a contract shall forward that request to the Contracting Officer.

**1.E.1.e. Role of the Contracting Officer (JUL 2003)**

If a request to the Contracting Officer is submitted pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552, the Contracting Officer shall forward the

request directly to the FOIA Specialist in the FOIA/Privacy Act Group, Legal Division.

### 1.E.2. Privacy Act Requirements

When a contractor designs, develops, or operates a system of records regarding personal information to accomplish a FDIC function, the contract shall require that the contractor comply with the Privacy Act. The Contracting Officer shall insure that the Privacy Act is included in all contracts, as appropriate.

### 1.E.3. Contractor Conflicts of Interest

#### 1.E.3.a. Purpose

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

#### 1.E.3.b. Applicable Regulation (MAR 2000) (JUL 2003)

Requirements for minimum standards and procedures for ensuring that contractors meet minimum standards of competence, experience, integrity, and fitness are defined in the Contractor Conflict of Interest Regulation (12 CFR Part 366). As stated in the Regulation, Part 366.1(c), *Scope*, these integrity and fitness requirements apply to contractors that submit proposals for services or enter into contracts for services with FDIC. When services are being procured, the Contracting Officer shall ensure that the FDIC Integrity and Fitness Representations and Certifications Form is included in the Request for Proposals and Requests for Quotations for services, or is available on the Internet at [www.fdic.gov](http://www.fdic.gov), and completed by all firms submitting proposals for services. **Contractors who submit proposals for goods or who enter into contracts for goods with FDIC are not subject to the Regulation. However, these contracts may still be subject to background investigations and fingerprinting in accordance with 5.F.1.d. (simplified procurement) and APM, 6.E.2.e. (formal contracting).**

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

**1.E.3.c. Responsibilities of Program and Contracting Personnel**

The Program Office and ASB personnel in consultation with CLU ensure that these conflict of interest regulations are enforced.

**1.E.3.d. Referral of Potential Contractor Conflicts of Interest (JUL 2003)**

Potential conflicts of interest issues shall be forwarded to CLU.

**1.E.3.e. Citation**

12 CFR Part 366.

**1.E.4. Employee Standards of Conduct****1.E.4.a. Applicable Regulations**

FDIC employees are held to the highest standards of conduct in performing their duties and shall conduct themselves so as to avoid even the appearance of any impropriety. FDIC identifies these standards of conduct in its Employee Standards of Conduct Regulation. It is the employee's responsibility to become familiar with, and to comply with, these regulations. Employees who have questions with regard to their standards of conduct may consult the Office of the Executive Secretary (Ethics).

**1.E.4.b. Prohibited Actions**

In particular, employees shall not take part in any action, whether or not specifically prohibited, that may result in or create the appearance of using their public offices for their private gain or the private gain of another person; giving preferential treatment to any person, such as friends and relatives; losing complete independence or impartiality; making FDIC decisions outside of official channels; or adversely affecting the public's confidence in the integrity of FDIC.

**1.E.4.c. Recusal for Conflicts of Interest**

Employees shall remove themselves from any FDIC matter in which they, their spouse, or dependent child have a financial interest or that may otherwise create a conflict of interest or an appearance thereof. Employees who believe that their assignment to a matter may result in or give the appearance of a conflict of interest shall report all relevant factors to their appropriate supervisor and Ethics Section, OES, immediately.

**1.E.4.d. Citation**

5 CFR Part 2635.

**1.E.5. Gifts**

**1.E.5.a. Applicable Regulations**

(1) FDIC employees are prohibited from accepting gifts from contractors or persons seeking contracts or other business from FDIC. Exceptions are allowed only in very limited cases. Subpart B of 5 CFR 2635 outlines the regulatory provisions that apply to all employees.

(2) Employees are prohibited from accepting gifts, entertainment, favors, loans, or anything of monetary value from certain prohibited sources, including a person who has or seeks contractual or other business or financial relationships with FDIC, or who has an interest that may be substantially affected by the performance or nonperformance of all employees' official duties.

(3) Competing contractors or their related entities, employees, or agents are prohibited from offering, giving, or promising to offer or give, directly or indirectly, anything of value to a FDIC employee.

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

**1.E.5.b. Referral of Suspect Practices (JUL 2003)**

Information or allegations concerning gratuities shall promptly be referred to the Office of the Executive Secretary (Ethics) and the Office of the Inspector General (OIG). The OIG shall coordinate its investigation and actions with the Office of the Executive Secretary (Ethics).

**1.E.5.c. Citation**

5CFR Part 2635, Subpart B.

**1.E.6. Service Contract Act**

**1.E.6.a. Applicable Statute**

The McNamara-O'Hara Service Contract Act of 1965 requires that contractors not pay less than prevailing wages and fringe benefits and provide safe work conditions under Federal contracts in excess of \$2,500 for the performance of non-professional services in the United States. Examples of non-professional services subject to the Act include but are not limited to:

- (1) Custodial, janitorial, or housekeeping services;
- (2) Snow, trash and garbage removal;
- (3) Guard services;



- (4) Temporary or secretarial support services;
- (5) Certain specialized services requiring special skills, such as graphic arts or stenographic reporting;
- (6) Packing, crating, or storage;
- (7) Maintenance and repair of equipment;
- (8) Data processing, collection, and analysis; and
- (9) Accounting clerks and bookkeepers.

**1.E.6.b. Applicability**

The Act does not apply to professional services or services provided in the receivership, conservatorship, or corporate liquidator capacities. FDIC shall comply with the Service Contract Act for all FDIC contracts entered into in its corporate capacity only and where the principal purpose of the contract is to furnish services in the United States through the use of non-professional service employees.

**1.E.6.c. Procedures**

Prevailing wage rates are established by the Department of Labor upon receipt of a request from the Contracting Officer (see Exhibit III, *Forms Used to Request Wage Determinations*).

**1.E.6.d. Citation**

41 USC 351-357.

**1.E.7. Davis-Bacon Act****1.E.7.a. Applicable Statute**

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

**1.E.7.b. Applicability**

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

**1.E.7.c. Procedures**

Wage determinations are published in the *Federal Register* and in the Government Printing Office Document entitled *General Wage Determinations Issued Under the Davis-Bacon and Related Acts*.

**1.E.7.d. Citation**

40 USC 276a.

**1.E.8. Walsh-Healey Public Contracts Act**

**1.E.8.a. Applicable Statute**

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

**1.E.8.b. Applicability**

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

**1.E.8.c. Procedures**

Solicitations for goods over \$10,000 shall contain a representation of compliance with the Walsh-Healey Public Contracts Act.

**1.E.8.d. Citation**

41 USC 35-45.

**1.E.9. Prompt Payment Act**

**1.E.9.a. General**

The Prompt Payment Act (PPA) requires that FDIC pay complete and correct invoices either on the date specified in the contract, or if there is no such date, within thirty (30) calendar days after acceptance of the goods or services or the Contracting Officer's receipt of a proper invoice from the contractor, whichever is later. In the event that FDIC fails to pay such invoices in the allotted times, interest shall begin to accrue at a rate set by the Department of Treasury. FDIC is obligated to pay such interest automatically until the invoice is paid without the request of the Contractor.

**1.E.9.b. Applicability**

It is FDIC's policy that the PPA shall apply to FDIC when acting in its corporate capacity, but does not apply to FDIC when acting in a receivership, conservatorship or corporate liquidator capacities.

**1.E.9.c. Citation**

31 CFR Part 3901.

**1.E.10. Timely Payment of Invoices**

It is FDIC's policy ordinarily to pay invoices within thirty (30) calendar days of receipt, unless the invoice is determined to be defective (i.e., missing required information to preclude processing); the goods or services being billed have not yet been received and accepted by FDIC; there is a disagreement with the contractor over compliance with a contract requirement; or billing errors are identified on the invoice.

**1.E.11. Prohibited Contracts**

Contracts for services that establish an employer-employee relationship between the Corporation and the contractor's employees are prohibited. These types of relationships are commonly referred to as prohibited personal services contracts. These prohibited contracts arise when the terms of the contract or actual contract performance create a situation when FDIC employees are providing day-to-day supervision of contractor employees or when the contractor's employees perform or engage in an inherent function of the Corporation. Contracting Officers in ASB shall be responsible for reviewing all contracts for services in accordance with the above prohibition and the procedures specified in APM, 7.F., *Maintaining Independent Status of Contractors*.

**1.E.12. Prohibition on Practices to Restrict Competition**

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

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**SECTION 1.F. FDIC CONTRACT FILE MANAGEMENT****1.F.1. Official Contract File**

Each ASB must maintain an official contract file system that shall include all contract information from the point that a completed Requirements Package is received by ASB through the point of official closeout of the contract.

**1.F.1.a. Responsibility**

The Head of each ASB shall appoint authorized contracting personnel who will be responsible for establishing and maintaining the contract file room or ensure that the contract files are properly secured.

**1.F.1.b. Filing Process**

All contract files should be placed in numerical order by contract.

**1.F.1.c. Restricted Access**

Access to the file room must be restricted to *only* authorized contracting personnel. All personnel shall be required to sign file cards to obtain files from the official contract file room.

**1.F.1.d. Retention of Files**

All documentation related to contractual actions, including invoices processed by ASB, must be maintained in the official contract file.

**1.F.1.e. Archiving of Information**

All information pertaining to a contract (see APM, 1.A.1.g., *Reference to Contract*), must remain in the official contract file through closeout and while in records storage. The exception is for unsuccessful proposals. These may be archived once all debriefings and contractor complaints have been resolved.

**1.F.1.f. Record Retention**

Contract information shall be retained in compliance with FDIC's Record Retention Policy stated in APM, 7.K., *Contract Files Record Retention*.

**1.F.2. Contract Numbering System**

Files for all contracts shall be numbered using only the official FDIC contract numbering system. This system is illustrated below.

**96 00189 F BB 002**

The definitions are:

- 96** The last two (2) digits of the year in which the purchase order or contract (see APM, 1.A.1.g., *Reference to Contract*) is being created;
- 00189** A sequential number created by contracting personnel for the contract;
- F** The class of order of the contract (class of order is explained in the Purchase Order System (POS) User Guide);
- BB** A buyer code that identifies the Contracting Officer who is creating the contract; and
- 002** A sequential number for all modifications to a contract.

**1.F.2.a. Task Order Numbering**

Task order designations are as follows:

96 00189 F BB 001 **96/002**

The definitions for (1) through (5) above remain the same with the addition of the two (2) task order designations below. The definition of the task order designation is as follows:

- 96** The last digits of the year in which a task order for a contract is issued. (Used only when task orders are issued for contracts.)
- 002** The number of a task order issued against a contract. Task orders are numbered sequentially beginning with 001. (Used only when task orders are issued for contracts.)

**1.F.3. Filing Requirements**

**1.F.3.a. Basis of Filing**

A file folder must be established for each contract by FDIC. The file shall be labeled with the relevant number.

**1.F.3.b. Initiation of File**

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

**1.F.3.c. Types of File Folder**

Once created, the file shall be maintained by the Contracting Officer until time of award. File folders shall be created for each of the following:

- (1) Purchase orders;

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

**1.F.3.d. Multiple Awards**

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

**1.F.3.e. Partitions of File (MAR 2000)**

Each official contract file shall comprise one (1) or more six-partition file folders. Purchase order files shall use a two-partition file folder. Exhibit XXIII, *Contracting File Checklists*, shows the required contents of each file partition.

**1.F.4. Review and Audit**

**1.F.4.a. Entry for Each Action**

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

**1.F.4.b. Other Reviews**

The FDIC's official contract files are subject to review by the Office of the Inspector General and the General Accounting Office.

**1.F.5. Requirements for the File Room**

**1.F.5.a. Responsibility**

The Head of each ASB shall designate an individual within ASB who is delegated responsibility for the creation and maintenance of the official contract file room. Authorized contracting personnel shall ensure that the file room is secure; that adequate staff are available to create, remove, and replace file folders at the request of the Contracting Officer.

**1.F.5.b. File Cards**

A "file card" must be prepared for every file folder. This card shall include the identity of the file (contract, task order agreement, task order, or purchase order) and a record of each date that the file is taken out of the file room. The card shall be signed by the person who removes the file, and should denote a responsible person

(e.g., the Contracting Officer) if removed by a procurement clerk. When files are returned, return shall be annotated on the card.

**1.F.5.c. Restricted Access**

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

**1.F.5.d. Service**

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

**1.F.5.e. Initiating the Contract File**

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

**1.F.5.f. Handling Requests for Information**

(1) Timely Response. The Contracting Officer shall request the removal of files from the file room in person, or by a designee. In a timely manner, the authorized contracting personnel shall retrieve the file.

(2) Signature on File Card. The authorized contracting personnel shall enter the date and responsible person's name on the file card and obtain the signature of the person retrieving the file. The authorized contracting personnel shall return the file card to the official contract file.

**1.F.5.g. Accountability for Contracting Files**

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

**1.F.5.h. Transfer**

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



**1.F.5.i. Recall by Contract File Manager**

Authorized contracting personnel shall perform an inventory control check on all contract files at least quarterly. At this point, Contracting Officers will be required to return all contract files for inventory reconciliation.

**1.F.5.j. Advance Notice**

Advance notice of at least three (3) business days will be given of all inventory control checks.

**1.F.5.k. Returned Files**

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

**1.F.6. Handling Proposals**

Because of the sheer volume, proposals may be filed separately from the remainder of the official contract file. The location of the proposals must however be noted in the official contract file. All proposals, except that of the selected vendor, may be archived within sixty-ninety (60-90) days after contract award.

**1.F.7. Inactive Files****1.F.7.a. Designation as Inactive**

The Contracting Officer may designate a contract file as inactive when the last invoice is paid and no outstanding issues remain.

**1.F.7.b. Separated Files**

To maximize the efficiency of the file room, inactive files may be filed in a separate location within the file room until contract closeout. After contract closeout, files will be archived in accordance with records management procedures set forth in APM, 7.K., *Contract Files Record Retention*.

**1.F.8. Responsibilities of the Contracting Officer****1.F.8.a. Maintaining the Contract File (MAR 2000)**

The Contracting Officer shall ensure that all documents are filed in the official contract file prior to contract award pursuant to APM, 5.F.1.i., *Completion of Official Contract File* (for simplified procurement), or APM, 6.E.2.f., *Completion of Official Contract File* (for formal contracting).

**1.F.8.b. Review by the Contracting Officer**

The responsible Contracting Officer shall periodically review the official contract files to ensure that all required documents are present, or a justification prepared to show why they are missing.

**1.F.8.c. Recreation of Missing Information**

If information is missing, the Contracting Officer must take immediate steps to obtain it (e.g., by obtaining copies from the Program Office or the contractor).

**1.F.8.d. Closeout**

A final review of the official contract file shall be made by the Contracting Officer prior to contract closeout.

**SECTION 1.G. ASB SYSTEMS (JUL 2003)****1.G.1. General (JUL 2003)**

The Systems Support Section, ASB is responsible for working with the Division of Information Resources Management (DIRM) in the implementation and maintenance of mainframe and PC-based systems to support the acquisition process. The Systems Support Section is also responsible for coordinating training and for preparing documentation associated with systems used by ASB. Each field ASB Information Systems Specialist works with Headquarters in providing systems support at each site.

**1.G.2. National Contractor System (NCS)****1.G.2.a. Purpose**

National Contractor System (NCS) is a mainframe system used to support contracting activities. Inquiry and reporting access is available to ASBs. NCS serves as a vendor solicitation source list of firms who are interested in providing goods or services to FDIC.

**1.G.2.b. Contents**

The system is composed of the following four (4) subsystems:

(1) Contractor Database Subsystem. The Contractor Database Subsystem contains information on prospective vendors who have registered to provide specific goods or services to FDIC. Interested vendors register by completing a vendor application, form FDIC 3700/13. This database subsystem contains key information on prospective vendors including:

- (a) Name and address;
- (b) Structure;
- (c) Affiliations;
- (d) Officers/directors;
- (e) MWOB status;
- (f) Products/services that the vendor can provide;
- (g) Geographic areas that are serviced by the vendor;
- (h) Vendor ethnicity; and
- (i) Contractor eligibility.

(2) ODEO Contractor Statistics Database Subsystem. The ODEO Contractor Statistics Database Subsystem contains summary level information on solicitations sent out and proposals received by ethnicity.

(3) Contractor Conflicts Database Subsystem. The Contractor Conflicts Database Subsystem contains information on firms who have potential conflicts that may preclude them from entering into contractual relationships with FDIC.

(4) Security Subsystem. The Security Subsystem contains administrative tables required to maintain the system.

**1.G.3. Procurement Action Log (PAL) (MAR 2000)**

**1.G.3.a. Purpose (MAR 2000)**

PAL is a multi-user PC LAN-based data system used at each site to track the processing of requisition packages through ASB.

**1.G.3.b. Contents (MAR 2000)**

The following PAL information is available on-line for ASB users:

- (1) Procurement requisition number;
- (2) Description of goods or services;
- (3) Name of contact person in requesting office;
- (4) Name of Contracting Officer assigned;
- (5) Date received in ASB;
- (6) Date completed (contract issued or requisition canceled);
- (7) Contract number; and
- (8) Dollar amounts of requisition and contract.

**1.G.4. Purchase Order System (POS)**

**1.G.4.a. Purpose**

Purchase Order System (POS) is a mainframe, Walker Interactive product used by ASBs to capture information related to the acquisition of and payment for goods or services. It is part of an integrated financial information system that includes Accounts Payable, Accounts Receivable, and the General Ledger. A unique Order Number is established in POS for each purchase order. This number is used to control and track purchase orders and related documents such as invoices and receiving documents.

**1.G.4.b. Contents**

Information available on-line for ASB users includes:

- (1) Vendor Information
  - (a) Associated purchase orders;
  - (b) Associated invoices; and
  - (c) Individual check inquiry;
- (2) Account Code Information
- (3) Milestone dates
  - (a) Purchase order award date; and
  - (b) Require date;
- (4) Description of Contract goods or services
  - (a) Requisition number;
  - (b) Delivery contact person; and
  - (c) Dollar amount of purchase order.

**1.G.5. Contractor Performance Management System (CPMS)****1.G.5.a. Purpose**

CPMS is a multi-user PC LAN-based data system which records performance evaluations of contractors prepared by Oversight Managers.

**1.G.5.b. Contents**

The following evaluation data is provided to Contracting Officers by ASB as required:

- (1) Contractor Federal tax ID number;
- (2) Name and address of contractor;
- (3) Contract number;
- (4) Description of goods or services to be supplied under the contract; and
- (5) Evaluation data.

**1.G.5.c. Outside Inquiries (MAR 2000) (JUL 2003)**

In order to ensure that information on past performance provided to those outside FDIC is consistent and dependable, any and all inquiries regarding the past performance of an FDIC contractor shall be forwarded to the Program Compliance Unit (PCU), Acquisition Services Branch, 1730 Pennsylvania Avenue, N.W.,

Washington, D.C. 20006. The CRG will respond to all such inquiries on behalf of FDIC.

**1.G.5.d. Contractor Performance Evaluation and Reporting Form (MAR 2000)**

Oversight Managers shall evaluate contractors' performance using the Contractor Performance Evaluation and Reporting Form (FDIC Form 3700/24) and the reporting instructions in accordance with the procedures specified in APM, 7.G.4., *Performance Evaluation*. This form, along with the instructions, is provided as APM Exhibit XVIII, *Contractor Performance Evaluation and Reporting Form*, and is also available for use on FDICnet (Resources, Standardized Forms).

**1.G.6. Contractor Application Tracking System (CATS)**

**1.G.6.a. Purpose**

CATS is a multi-user PC LAN-based data system which tracks the receipt and processing of vendor applications. The system enables ASB management to determine the status of a vendor application in progress. CATS facilitates the first step in processing a Contractor Application. The next step is entering the Contractor Application into NCS (see APM, 1.G.2., *National Contractor System (NCS)*).

**1.G.6.b. Contents**

The following information is available in CATS:

- (1) Contractor Federal tax ID number;
- (2) Name of contractor;
- (3) Name of staff person assigned;
- (4) Problems and questions concerning application;
- (5) Date application received by ASB;
- (6) Date problem letter sent to contractor;
- (7) Date problem letter returned from contractor; and
- (8) Narrative notes on application processing.

**SECTION 1.H. POLICY CHANGES AND DEVIATIONS****1.H.1. APM Changes (JUL 2003)****1.H.1.a. Submission and Content of Proposed Changes (JUL 2003)**

Proposed changes to the APM shall be sent in writing to the Associate Director, ASB, and shall include the following information:

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

**1.H.1.b. Approval (JUL 2003)**

All APM revisions shall be approved by the Associate Director, ASB.

**1.H.1.c. Consideration (JUL 2003)**

The Associate Director, ASB, may obtain comments and advice on proposed changes from other FDIC functional areas, including field organizations when appropriate. The advice of specialists shall be obtained, as needed, in areas requiring their expertise. The extent of evaluation shall be commensurate with the significance of the matter being considered.

**1.H.1.d. Disposition (JUL 2003)**

A proposed APM change shall be acknowledged by the Associate Director, ASB, and acted upon in a reasonable period of time. A proposed change may be approved, approved with modifications, or disapproved by the Associate Director, ASB. If approved, or approved with modifications, it shall be issued by the Associate Director, ASB. If disapproved, the submitter will receive an explanation of why the proposed change was not adopted.

**1.H.2. APM Deviations****1.H.2.a. Authorization for Deviations (JUL 2003)**

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

ASB. Other offices may be consulted on proposed deviations affecting certain functional areas.

**1.H.2.b. Approval in Advance of Use (JUL 2003)**

Deviations from the APM shall be approved by the Associate Director, ASB, in advance of their use.

**1.H.2.c. Recurring Need**

If a recurring need for a deviation is foreseen, a change to the APM shall be proposed and considered in accordance with APM, 1.H.1., *APM Changes*, above.

**1.H.2.d. Request for Approval (JUL 2003)**

The originating ASB office shall forward a request for deviation to the Associate Director, ASB, in the same manner as APM, 1.H.1.c., *Consideration*, above. Each request shall include the following information:

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

**1.H.2.e. Disposition (JUL 2003)**

A request for a deviation from the APM shall be acknowledged and acted upon within a reasonable period of time by the Associate Director, ASB. The requester shall be notified in writing of the decision of the Associate Director, ASB.

**1.H.2.f. Records (JUL 2003)**

Copies of all correspondence requesting, authorizing, denying, or otherwise dealing with deviations shall be maintained by ASB.



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# CHAPTER 2

## **CONTRACTING OFFICER WARRANT PROGRAM**

### **SECTION 2.A. PROGRAM DESCRIPTION**

#### **2.A.1. Scope**

This chapter sets forth the FDIC-wide program for the certification ("warranting") of FDIC Contracting Officers in ASB.

##### **2.A.1.a. Applicability**

The Contracting Officer Warrant Program covers ASB personnel who issue contracts for goods or services, excluding those contracts listed in APM, 1.A.1.e., *Exclusions*, on behalf of FDIC in any of its capacities. All ASB contracts personnel who obligate FDIC funds shall meet the requirements of the program.

##### **2.A.1.b. Terminology**

Throughout this manual the term *Contracting Officer* means a warranted Contracting Officer with delegated authority sufficient to execute contracts, as defined in APM, 1.A.1.g., *Reference to Contract*.

#### **2.A.2. Program Description**

##### **2.A.2.a. Purpose**

FDIC requires that contracts for goods or services be executed by a warranted Contracting Officer appointed by FDIC. The Contracting Officer Warrant Program seeks to ensure that FDIC personnel are appropriately qualified and authorized to award contracts and obligate funds.

##### **2.A.2.b. Responsibility for Contracts (JUL 2003)**

- (1) The FDIC contracting program operates using the approach that a Contracting Officer is responsible for a contract from the requirements planning stage to contract award and through all phases of contract administration and closeout. This approach maximizes customer service by providing continuity and consistency in all phases of the acquisition management process.
- (2) A warranted Contracting Officer shall be responsible for each solicitation and contract. It is recognized that, from time to time, the Contracting Officer may not be available to execute modifications. In that case, a warranted Contracting Officer may act on behalf of any other warranted Contracting Officer as long as the action is within the acting Contracting Officer's authority and warrant level.
- (3) A warranted Contracting Officer shall be identified as responsible for each contract. The warrant level of the Contracting Officer applies to the

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ability to execute contracts and modifications and changes thereto in accordance with contracting authority delegated by the Associate Director, ASB. However, for purposes of performing day-to-day staff work involved with processing a solicitation and performing the non-substantive contract administration functions, a specific warrant level commensurate to the estimated price in the solicitation or the awarded price in the contract is not a requirement. These duties may be performed by contract specialists and/or purchasing agents as necessary.

**2.A.2.c. Levels**

ASB administers a five-tiered Contracting Officer Warrant Program under which Contracting Officers are assigned contracting responsibilities based on training, experience and position. The five (5) levels are:

- (1) Level V Contracting Officer (unlimited).
- (2) Level IV Contracting Officer (up to \$10,000,000);
- (3) Level III Contracting Officer (up to \$5,000,000);
- (4) Level II Contracting Officer (up to \$1,000,000);
- (5) Level I Contracting Officer (up to \$100,000).

**2.A.2.d. Goals (JUL 2003)**

The Contracting Officer Warrant Program establishes uniform procedures and minimum standards for certification, maintenance, revocation, and termination of Contracting Officer warrants issued to Contracting Officers. It promotes quality performance and effective contracting by ensuring that warranted Contracting Officers are properly qualified. The Warrant Program:

- (1) Standardizes Contracting Officer certification requirements to ensure that Contracting Officers meet FDIC's mission and needs;
- (2) Sets forth the minimum experience and training requirements for FDIC Contracting Officers; and
- (3) Establishes approved and required FDIC-sponsored and external training courses and programs.

**2.A.3. Authority (JUL 2003)**

The authority for the Contracting Officer Warrant Program originates with the Director, Division of Administration, as delegated in the FDIC By-Laws. It is re delegated down to the Associate Director, ASB. The Associate Director, ASB, further re delegates this authority as set forth in this chapter.

**2.A.4. Application of Warrant (JUL 2003)**

Certification of individuals as warranted Contracting Officers does not affect established personnel policies and practices for recruiting and hiring contracts staff. The Contracting Officer Warrant Program does not define eligibility for promotion or reassignment. Warrant levels are provided on the basis of FDIC need.

**2.A.4.a. Certificate of Appointment (JUL 2003)**

At the time of appointment, a warranted Contracting Officer shall receive a Certificate of Appointment signed by the Associate Director, ASB. The Certificate shall serve as the official contracting delegation of authority and shall specify the Contracting Officer Warrant Level, limitations, if applicable, and the effective date of the appointment. See APM, 2.I., *Issuance, Documentation, and Display of Warrants* for procedures for issuing Contracting Officer Warrants.

**2.A.4.b. Redelegations (MAR 2000)**

A Contracting Officer shall not redelegate his or her contracting authority, except as specified in APM, 2.C.2., *Limitations*. However, a Contracting Officer may assign routine contract solicitation and administration functions to contracting staff personnel in ASB to facilitate the processing of work. These routine functions do not require delegated contracting authority and include, but are not limited to, preparing solicitation packages, preparing source lists, identifying prospective offerors, accepting and logging proposals, receiving and logging invoices, reviewing and approving invoices, assembling contract files, and preparing administrative modifications.

**2.A.4.c. Maintenance of the Warrant (JUL 2003)**

To maintain a Contracting Officer warrant, an individual must complete a minimum of twenty (20) hours of acceptable classroom training every year. To be considered acceptable, such training must consist of courses or course content approved by the Assistant Director, Policy and Compliance Section, ASB.

**2.A.4.d. RTC Warrants (MAR 2000)**

Warrants issued to RTC Contracting Officers are valid under the FDIC Contracting Officers Warrant Program. In addition, the contracting authorities stated in the Expenditure Delegations apply to FDIC and RTC-transitioned contracts.

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**SECTION 2.B. PROGRAM RESPONSIBILITIES****2.B.1. Associate Director, ASB (JUL 2003)**

The Associate Director, ASB, has overall responsibility and authority for establishing, administering, and maintaining the Contracting Officer Warrant Program and appointing all warrants based on nominations from the Assistant Director, Headquarters Operations Section, or the Heads of the Regional contracting function.

**2.B.2. Contracting Officer Warrant Levels (MAR 2000)**

All Contracting Officer Warrant Levels shall be prepared and issued by ASB as follows:

**2.B.2.a. Level V (MAR 2000) (JUL 2003)**

Level V is reserved for the Associate Director, ASB, and the Assistant Director, Headquarters Operations Section.

**2.B.2.b. Levels I Through IV (MAR 2000)**

Warrant Levels I through IV will be assigned throughout the Corporation to those individuals needing contracting signature authority at the appropriate levels.

**2.B.2.c. Warrant Responsibilities (JUL 2003)**

The Assistant Director, Headquarters Operations Section, and the Heads of Regional contracting function are responsible for the following:

- (1) Reviewing the qualifications of candidates for Contracting Officer authority and nominating qualified candidates for appropriate warrants;
- (2) Distributing Warrants and Letters of Termination issued by the Associate Director, ASB, to FDIC employees appointed as Contracting Officers; and
- (3) Maintaining all program requirements (i.e., qualification documentation, training) for their respective organizations.

**2.B.2.d. Other Responsibilities**

In addition to the above, the Heads of contracting functions are responsible for the following:

- (1) Establishing and maintaining the organizational placement of the contracting function so as to ensure that its integrity and independence are preserved;
- (2) Dedicating sufficient resources to ensure that the contracting function can be accomplished professionally, including the training of Contracting Officers;

- (3) Ensuring that Contracting Officers have access to and cooperation from representatives of other FDIC organizational units as necessary to accomplish the contracting process; and
- (4) Ensuring that information on contracting actions is entered into the Purchase Order System (POS) as required by this manual.

**2.B.3. Dollar Limits for Contracting Officers (JUL 2003)**

The dollar signatory limits for the warranted Contracting Officer levels are the maximum amounts. Under no circumstances shall these limits be increased above or decreased below those listed in this manual unless authorized by the Associate Director, ASB.

**2.B.4. Reports (MAR 2000) (JUL 2003)**

The Assistant Director, Policy and Compliance Section, shall submit a semiannual report detailing the status of all ASB warranted Contracting Officers to the Associate Director, ASB. The report will include a list of new and terminated warrants and a Continuing Education Profile for each active Contracting Officer. A change in any office's warranted personnel, however, shall be reported immediately to the Associate Director, ASB, with a copy to the Assistant Director, Policy and Compliance Section.

**2.B.5. Certificates of Appointment (JUL 2003)**

A warrant is not effective until the Certificate of Appointment is signed by the Associate Director, ASB. The table below shows contract execution authority by warrant level, and the minimum requirements associated with each.

<b>WARRANT LEVEL EXPERIENCE REQUIREMENTS</b>			
<b>Level</b>	<b>Dollar Threshold</b>	<b>Business Experience *</b>	<b>Contracting Experience *</b>
V	Unlimited	8 years	5 years
IV	Not to exceed \$10 M	7 years	4 years
III	Not to exceed \$5 M	6 years	3 years
II	Not to exceed \$1 M	5 years	3 years
I	Not to exceed \$100,000	4 years	2 years

\* The experience requirements are minimums, however, contracting experience may also be used to partially satisfy the business experience requirements.

**2.B.6. Education Equivalencies (MAR 2000)**

**2.B.6.a. Graduate Level Substitution (MAR 2000)**

Successful completion of graduate level study in business related fields may be substituted for business experience, but not contracting experience, at the rate of six (6) semester credit hours for three (3) months of experience.

**2.B.6.b. Bachelor's Degree Substitution**

A bachelor's degree from a four (4) year undergraduate program may be substituted for two (2) years of business experience, but cannot be substituted for the contracting experience requirements.

**2.B.6.c. Associate's Degree Substitution**

An associate's degree in a business-related field of study may be substituted for six (6) months of business experience, but cannot be substituted for the contracting experience requirements.

**2.B.6.d. Professional Development (MAR 2000)**

Successful completion of a comprehensive professional development program for contracts personnel or of an examination leading to certification by a nationally recognized professional association, such as the National Contract Management Association or the National Association of Purchasing Management, may be used to substitute for one (1) year of contracting experience.

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**SECTION 2.C. LEVEL V CONTRACTING OFFICER****2.C.1. Organizational Position (MAR 2000) (JUL 2003)**

The Level V Contracting Officer is appointed by the Director, Division of Administration, in conjunction with his or her position as Associate Director, ASB, or as Assistant Director, Headquarters Operations Section.

**2.C.2. Limitations (MAR 2000) (JUL 2003)**

A Level V Contracting Officer warrant is reserved for the Associate Director, ASB and for the Assistant Director, Headquarters Operations Section. It may be redelegated on a case-by-case basis. A Level V redelegation shall be in writing from the Associate Director, ASB, and state the specific dollar limitation and the functional authorities that are redelegated. The redelegation shall also specify the applicable time period and any other limitations as necessary.

**2.C.3. Authority**

The Level V Contracting Officer has unlimited authority:

**2.C.3.a. Contract and Basic Ordering Agreements**

To execute contracts including task orders, delivery orders, purchase orders, basic ordering agreements (BOAs), and administrative changes, and modifications thereunder;

**2.C.3.b. Terminations**

To execute contract terminations; and

**2.C.3.c. Claims**

To decide and execute contract claim settlements.

**2.C.4. Documentation**

The level of authority shall be documented on the individual's Certificate of Appointment.

**2.C.5. Minimum Standards**

The following minimum standards shall be met prior to certification as a Level V Contracting Officer:

**2.C.5.a. Business Experience**

Eight (8) years of business experience is required. Business experience must include five (5) years of current, progressively complex and responsible contracting experience including staff or policy support;

**2.C.5.b. Training (JUL 2003)**

Successful completion of the ASB-sponsored or developed training courses; and

**2.C.5.c. Assignment**

Full-time assignment to operational contracting duties.

**2.C.6. Knowledge, Skills, and Abilities**

Level V is the highest Contracting Officer proficiency level, emphasizing advanced contracting methodology and techniques associated with the effective management of the most complex and highest value contracts. Level IV knowledge, skills, and abilities are prerequisites for Level V. Whereas Level IV is concerned with general contract knowledge, Level V demands expert knowledge and experience in the most complex and specialized contract areas. The knowledge, skills, and abilities for Level V include:

**2.C.6.a. Policies and Procedures**

In-depth knowledge of and demonstrated compliance with FDIC contract policies and procedures applicable to the solicitation, evaluation, award, administration, and termination of contracts of the highest dollar value;

**2.C.6.b. Contract Types**

In-depth knowledge of all types of contracts and solicitations for high value actions, and the particular contract terms that are associated with contract performance and price;

**2.C.6.c. Complex Contracts**

Significant experience in performing the most complex contract actions;

**2.C.6.d. Complex Contract Administration**

Significant experience in making complex determinations concerning effective buying plans, types of contracts, price disallowances, equitable adjustments, terminations, and claims;

**2.C.6.e. Communications**

Demonstrated ability to communicate appropriately with personnel at the most senior levels in the public and private sectors;

**2.C.6.f. Ethics**

Ethical conduct in business dealings;

- 2.C.6.g. Planning**  
Thorough understanding and skill in the planning and management of high dollar, complex contracts;
- 2.C.6.h. Markets**  
Demonstrated ability to analyze and interpret private sector market conditions, and apply advanced source evaluation and selection processes and techniques;
- 2.C.6.i. Price Analysis**  
Thorough knowledge and successful experience in complex price analysis, including the ability to interpret financial statements and determine business viability;
- 2.C.6.j. Complex Claims Processing**  
Thorough knowledge of the policies and procedures involved in settling complex termination claims, ratifications, and constructive contract changes;
- 2.C.6.k. Management**  
Demonstrated ability to manage assigned contract areas to ensure professional and functional performance;
- 2.C.6.l. Review**  
Ability to review contractual actions for complete and correct documentation;
- 2.C.6.m. Resource Allocation**  
Demonstrated skill in managing resources to ensure that operational objectives are met; and
- 2.C.6.n. Leadership**  
Ability to supervise, lead and train subordinates.

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**SECTION 2.D. LEVEL IV CONTRACTING OFFICER****2.D.1. Level IV Authority**

Level IV Contracting Officers, when assigned responsibility for a specific contract or task order, have the following authority:

**2.D.1.a. Contracts and BOAs (JUL 2003)**

To execute contracts including task orders, delivery orders, and purchase orders with total estimated value (including options) not to exceed \$10,000,000; to execute administrative changes and modifications thereunder where the change or modification results in value of the modified contract or task order not exceeding \$10,000,000; and to execute BOAs where the approved expenditure authority does not exceed \$10,000,000;

**2.D.1.b. Terminations (JUL 2003)**

To execute contract terminations with total value not to exceed \$10,000,000; and

**2.D.1.c. Claims (JUL 2003)**

To decide and execute contract claim settlements with payments not to exceed \$10,000,000.

**2.D.2. Documentation**

The specific level shall be documented in the individual's Certificate of Appointment.

**2.D.3. Minimum Standards**

The following minimum standards shall be met prior to certification as a Level IV Contracting Officer:

**2.D.3.a. Business Experience**

A minimum of seven (7) years of business experience is required. Business experience must include four (4) years of progressively complex and responsible contracting experience;

**2.D.3.b. Training (JUL 2003)**

Successful completion of ASB-developed or sponsored courses; and

**2.D.3.c. Assignment**

Full-time assignment to operational contracting duties.

**2.D.4. Knowledge, Skills, and Abilities**

Candidates for certification as Level IV Contracting Officers must demonstrate functional knowledge of the policies, procedures, and methods pertaining to FDIC contracts, including:

**2.D.4.a. Policies and Procedures**

Working knowledge of, and demonstrated compliance with, FDIC contract policies and procedures;

**2.D.4.b. Contract Types**

Knowledge of a variety of basic types of contracts, and the particular terms that are associated with contract performance and price;

**2.D.4.c. Performance**

Ability to carry out contracting actions with a satisfactory level of quality and within a reasonable time;

**2.D.4.d. Analytical Skills**

Ability to make appropriate determinations regarding contract type, contract price disallowance, equitable adjustment, termination, and claims;

**2.D.4.e. Business Judgment**

Ability to communicate appropriately with private sector and public officials, and with contractors, and to consistently exercise sound business judgment;

**2.D.4.f. Ethics**

Ethical conduct in business dealings;

**2.D.4.g. Complex Requirements**

Knowledge of complex contract requirements, advance contract planning, and budgets; and

**2.D.4.h. Advanced Contract Administration**

Knowledge and demonstrated skills in contract administration areas including complaints, claims, disputes, appeals, contract modifications, equitable contract adjustments, subcontracting relationships, and reporting requirements.

**SECTION 2.E. LEVEL III CONTRACTING OFFICER****2.E.1. Level III Authority**

Level III Contracting Officers, when assigned responsibility for a specific contract or task order, have the following authority:

**2.E.1.a. Contracts and BOAs (JUL 2003)**

To execute contracts including task orders, delivery orders, and purchase orders with total estimated value (including options) not to exceed \$5,000,000; execute administrative changes and modifications thereunder where the change or modification results in total fees for the modified contract or task order not exceeding \$5,000,000; and to execute BOAs where the approved expenditure authority does not exceed \$5,000,000;

**2.E.1.b. Terminations (JUL 2003)**

To execute contract terminations with total value not to exceed \$5,000,000; and

**2.E.1.c. Claims (JUL 2003)**

To decide and execute contract claim settlements with payments not to exceed \$5,000,000.

**2.E.2. Documentation**

The specific level shall be documented in the individual's Certificate of Appointment.

**2.E.3. Minimum Standards**

The following minimum standards shall be met prior to certification as a Level III Contracting Officer.

**2.E.3.a. Experience**

A minimum of six (6) years of business experience is required. Business experience must include three (3) years of progressively complex and responsible contracting experience;

**2.E.3.b. Training (JUL 2003)**

Successful completion of ASB-developed or sponsored courses; and

**2.E.3.c. Assignment**

Full-time assignment to operational contracting duties.

**2.E.4. Knowledge, Skills, and Abilities**

Candidates for certification as Level III Contracting Officers must demonstrate functional knowledge of the policies, procedures, and methods pertaining to FDIC contracts, including:

**2.E.4.a. Policies and Procedures**

Working knowledge of, and demonstrated compliance with, FDIC contract policies and procedures;

**2.E.4.b. Contract Types**

Knowledge of a variety of basic types of contracts, and the particular terms associated with contract performance and price;

**2.E.4.c. Performance**

Ability to carry out contracting actions with a satisfactory level of quality and within a reasonable time;

**2.E.4.d. Analytical Skills**

Ability to make appropriate determinations regarding contract type, contract price disallowance, equitable adjustment, termination, and claims;

**2.E.4.e. Business Judgment**

Ability to communicate appropriately with private sector and public officials and with contractors, and to consistently exercise sound business judgment;

**2.E.4.f. Ethics**

Ethical conduct in business dealings;

**2.E.4.g. Complex Requirements**

Knowledge of complex contract requirements, advance contract planning, and budgets; and

**2.E.4.h. Advanced Contract Administration**

Knowledge and demonstrated skills in contract administration areas including complaints, claims, disputes, appeals, contract modifications, equitable contract adjustments, subcontracting relationships, and reporting requirements.

**SECTION 2.F. LEVEL II CONTRACTING OFFICER****2.F.1. Level II Authority**

Level II Contracting Officers, when assigned responsibility for a specific contract or task order, have the following authority:

**2.F.1.a. Contracts and BOAs (JUL 2003)**

To execute contracts including task orders, delivery orders, and purchase orders with total estimated value (including options) not to exceed \$1,000,000; execute administrative changes and modifications thereunder where the change or modification results in total fees for the modified contract or task order not exceeding \$1,000,000; and to execute BOAs where the approved expenditure authority does not exceed \$1,000,000;

**2.F.1.b. Terminations (JUL 2003)**

To execute contract terminations with total value not to exceed \$1,000,000; and

**2.F.1.c. Claims (JUL 2003)**

To decide and execute contract claim settlements with payments not to exceed \$1,000,000.

**2.F.2. Documentation**

The specific level shall be documented in the individual's Certificate of Appointment.

**2.F.3. Minimum Standards**

The following minimum standards shall be met prior to certification as a Level II Contracting Officer.

**2.F.3.a. Experience**

A minimum of five (5) years of business experience is required. Business experience must include three (3) years of progressively complex and responsible contracting experience;

**2.F.3.b. Training (JUL 2003)**

Successful completion of the ASB-developed or sponsored courses; and

**2.F.3.c. Assignment**

Full-time assignment to operational contracting duties.

**2.F.4. Knowledge, Skills, and Abilities**

Candidates for certification as Level II Contracting Officers must demonstrate functional knowledge of the policies, procedures, and methods pertaining to FDIC contracts, including:

**2.F.4.a. Policies and Procedures**

Working knowledge of, and demonstrated compliance with, FDIC contract policies and procedures;

**2.F.4.b. Contract Types**

Knowledge of a variety of basic types of contracts, and the effects that the uses of particular terms are likely to have on contract performance and price;

**2.F.4.c. Performance**

Ability to carry out contracting actions with a satisfactory level of quality and within a reasonable time;

**2.F.4.d. Analytical Skills**

Ability to make appropriate determinations regarding contract type, contract price disallowance, equitable adjustment, and termination claims;

**2.F.4.e. Business Judgment**

Ability to communicate appropriately with private sector and public officials and with contractors, and to consistently exercise sound business judgment;

**2.F.4.f. Ethics**

Ethical conduct in business dealings;

**2.F.4.g. Complex Requirements**

Knowledge of complex contract requirements, advance contract planning, and budgets; and

**2.F.4.h. Advanced Contract Administration**

Knowledge and demonstrated skills in contract administration areas including complaints, claims, disputes, appeals, contract modifications, equitable contract adjustments, subcontracting relationships, and reporting requirements.

**SECTION 2.G. LEVEL I CONTRACTING OFFICER****2.G.1. Level I Authority (MAR 2000) (JUL 2003)**

Level I Contracting Officers have the authority to execute contracts including task orders, schedule orders, delivery orders, and purchase orders with total estimated value (including options) not to exceed \$100,000; to execute administrative changes and modifications thereunder where the change or modification results in total fees for the modified contract or task order not exceeding \$100,000; and to execute BOAs where the approved expenditure authority does not exceed \$100,000.

**2.G.2. Documentation**

The level of authority shall be documented in the individual's Certificate of Appointment.

**2.G.3. Minimum Standards**

The following minimum standards shall be met prior to certification as a Level I Contracting Officer:

**2.G.3.a. Experience**

Four (4) years of general business experience of which at least two (2) must demonstrate satisfactory performance in a contracts office with duties requiring contracts related knowledge, skills, and abilities;

**2.G.3.b. Training (JUL 2003)**

Successful completion of the ASB-developed or sponsored courses; and

**2.G.3.c. Assignment**

Full-time assignment to operational contracting duties.

**2.G.4. Knowledge, Skills, and Abilities**

Candidates for certification as a Level I Contracting Officer must demonstrate:

**2.G.4.a. Market**

Knowledge of the goods or services to be purchased;

**2.G.4.b. Authorities**

Knowledge of applicable dollar limitations on expenditure and contracting authority;

**2.G.4.c. Policies and Procedures**

Knowledge of and demonstrated compliance with Federal, state, and local laws and FDIC contracting policies and procedures;

- 2.G.4.d. Contracting**  
Knowledge of commercial contracting practices, market conditions, and methods of achieving competition;
- 2.G.4.e. Business Judgment**  
Ability to select appropriate methods and procedures for purchasing goods or services, and to consistently exercise sound business judgment;
- 2.G.4.f. Communications**  
Ability to communicate appropriately with FDIC contractors and to complete contracting actions within a reasonable time;
- 2.G.4.g. Ethics**  
Ethical conduct in business dealings;
- 2.G.4.h. Price Analysis**  
Ability to conduct comparative price analysis on contractor quotes and to determine whether offered prices are fair and reasonable;
- 2.G.4.i. Noncompetitive Situations**  
Knowledge of circumstances that permit contracting without competition, and the ability to perform sound analyses and to reach reasonable decisions with regard to such contracts; and
- 2.G.4.j. Market Research**  
Ability to conduct market research and analysis so as to obtain adequate competition and meet FDIC needs in a timely, price-effective manner.



## SECTION 2.H. TRAINING PLAN DEVELOPMENT AND COURSE MATERIAL (JUL 2003)

### 2.H.1. Training Plans (JUL 2003)

The contracts related training needs of each Contracting Officer must be determined jointly by the supervisor and the employee. The supervisor shall provide opportunities for the employees to receive all contracting training courses required to support their individual warrant requirements.

### 2.H.2. Course Approval (MAR 2000) (JUL 2003)

#### 2.H.2.a. Policy (MAR 2000) (JUL 2003)

The following policies shall govern the acceptability of training courses for the purpose of meeting training requirements for the Contracting Officer Warrant Program.

- (1) Training must be directly related to the knowledge required for success in a position of contracts responsibility.
- (2) Training may be provided by FDIC or by FDIC-approved external organizations.
- (3) Correspondence courses, if approved in advance, by the Assistant Director, Policy and Compliance Section, ASB, shall be acceptable for credit. The number of credit hours applicable to correspondence courses will be determined on a case-by-case basis.
- (4) A course that addresses contract subject areas, in addition to those prescribed in this chapter shall be acceptable in part, provided that the number of hours for applicable credit is readily identifiable.
- (5) Required training hours must represent actual classroom hours unless correspondence courses are authorized in advance. Training credit hours for courses sponsored by FDIC shall be on the basis of seven (7) hours per day for each class day of training or one (1) to three (3) hours for each web-based training course, as appropriate.
- (6) Courses satisfying the requirements of this chapter and completed prior to the effective date of the Contracting Officer Warrant Program shall be acceptable.

### 2.H.3. ASB-Sponsored Training (MAR 2000) (JUL 2003)

Contracting Officers shall be required to successfully complete the in-house web-based training as follows:

- 2.H.3.a. Oversight Management Instruction**
- 2.H.3.b. Preparing Statements of Work (under development)**
- 2.H.3.c. Preparing Performance-Based Statements of Work (under development)**
- 2.H.3.d. Statement of Work (SOW) Workshops (under development)**

In addition, Contracting Officers are encouraged to take the specialty oversight management course when related to new assignments of a different contract type.

**2.H.4. Timing (MAR 2000) (JUL 2003)**

These courses shall be taken prior to appointment.

**2.H.5. Training Requirements to Maintain Warrant (MAR 2000) (JUL 2003)**

In order to maintain a Contracting Officer Warrant, Contracting Officers shall complete an annual minimum of twenty (20) hours of classroom training. The training must enable the individual to acquire and demonstrate an in-depth functional knowledge of the laws, policies, procedures, and methods applicable to commercial, Federal, and FDIC contracts, and to effectively manage complex contracting actions. Such training may address the following topics:

- 2.H.5.a. Negotiation Techniques**
- 2.H.5.b. Price Analysis**
- 2.H.5.c. Price Evaluation**
- 2.H.5.d. Performance Evaluation**
- 2.H.5.e. Contract Terminations**
- 2.H.5.f. Contract Administration**
- 2.H.5.g. Commercial and Government Contract Law**
- 2.H.5.h. Best Value Contracting**
- 2.H.5.i. Contract Claims**
- 2.H.5.j. Incentive Contracting**
- 2.H.5.k. Other Training as Approved on a Case-By-Case Basis**

Completion of any web-based oversight management specialty course offered by FDIC will count towards satisfying the annual twenty (20) hours of training necessary to maintain a warrant. Additional hours may be provided for ASB workshops and meetings involving acquisition policies and procedures.

**2.H.6. Training Course Approval (MAR 2000) (JUL 2003)**

Non-FDIC contracting courses must be approved by the Policy and Compliance Section, ASB. Recommendations for course approval must be submitted, in writing, by the senior contract official including a statement as to why the course(s) should be approved. The senior contract official must supply the course syllabus and informational materials along with the request for approval. Requests shall be submitted through the Chief, Policy Development Unit.

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## SECTION 2.I. ISSUANCE, DOCUMENTATION, AND DISPLAY OF WARRANTS

### 2.I.1. Issuance (JUL 2003)

#### 2.I.1.a. Appointing Official (JUL 2003)

Level I, II, III, and IV warrants shall be issued by the Associate Director, ASB. The Level V Contracting Officer Warrant shall be issued only by the Director, Division of Administration (DOA).

#### 2.I.1.b. Application and Evaluation (JUL 2003)

Each request for a warrant shall be supported by a qualification statement from the Assistant Director, Headquarters Operations Section, or the Head of the Regional contracting function (see Exhibit V, *Application for Contracting Officer Warrant*). These officials shall evaluate the application. Upon determination that the warrant is needed and that the nominee possesses the minimum qualifications, the official shall forward the application through the Assistant Director, Policy and Compliance Section to the Associate Director, ASB, for warrant approval.

#### 2.I.1.c. Warrants (JUL 2003)

Upon approval of the candidate's qualifications, the appointing official shall issue a Certificate of Appointment. Certificates shall be provided by ASB in Washington, D.C. Any limitations on the individual's authority shall be prominently identified on the face of the certificate. Certificates shall cite the authority for the appointment and identify the appointing authority. They shall be serially numbered, within each calendar year.

### 2.I.2. Documentation Record

Each Contracting Officer is responsible for maintaining and updating, on an ongoing basis, the qualifications statement on his/her respective warrant.

### 2.I.3. Display

Each Contracting Officer shall prominently display his or her warrant.

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**SECTION 2.J. EXCEPTIONS****2.J.1. Interim Warrants (JUL 2003)****2.J.1.a. Certification (JUL 2003)**

Generally, only persons fully meeting the requirements of this Contracting Officer Warrant Program shall be warranted. However, an interim warrant may be granted at Contracting Officer Level I, II, III, or IV in those circumstances in which it is necessary to designate an individual as a Contracting Officer who has not completed the required training or who does not possess the required level of experience. Only the Associate Director, ASB, shall have the authority to grant interim warrants.

**2.J.1.b. Interim Period (JUL 2003)**

The total period that a person may serve as a Contracting Officer under an interim warrant shall be kept to a minimum and shall not exceed six (6) months under normal circumstances. Failure to successfully complete required training within the interim warrant period shall normally result in the loss of the warrant. Circumstances beyond the control of the individual may allow the Associate Director, ASB, to extend the interim warrant period.

**2.J.1.c. Requests (JUL 2003)**

The Assistant Director, Headquarters Operations Section, or the Heads of the Regional contracting function shall request interim warrants by writing to the Associate Director, ASB, at a minimum, the following:

- (1) The Application for Contracting Officer Warrant (Exhibit V);
- (2) The reasons for the request;
- (3) The recommended expiration date of the interim warrant;
- (4) The extent to which minimum training and experience standards have not been met; and
- (5) A time phased plan for meeting the minimum standards.

**2.J.2. Waivers from Warrant Program Requirements****2.J.2.a. Issuance (JUL 2003)**

Waivers from the requirements of the Contracting Officer Warrant Program shall be restricted to the minimum number consistent with the accomplishment of FDIC's contracting mission. Only the Associate Director, ASB, shall waive the requirements of the program and issue the resultant Contracting Officer warrant.

**2.J.2.b. Request**

Each request for waiver shall contain an acceptable, written justification as well as a narrative that certifies the individual as capable of performing as a Contracting Officer, as demonstrated by on-the-job performance over a reasonable period of time to be determined by the requesting FDIC official.

**2.J.3. Revocation of Warrant (JUL 2003)**

**2.J.3.a. Reasons (JUL 2003)**

A Contracting Officer warrant may be revoked for cause or poor performance, such as:

- (1) Failure to comply with applicable legislation;
- (2) Failure to comply with FDIC regulations, policies, and procedures;
- (3) Failure to comply with limitations of delegated authority;
- (4) Failure to use good business judgment; or
- (5) Failure to maintain training standards after appointment.

**2.J.3.b. Authority (JUL 2003)**

The Associate Director, ASB has the authority to revoke a warrant.

**2.J.3.c. Approval in Advance (JUL 2003)**

The Assistant Director, Headquarters Operations Section, or Heads of the Regional contracting function shall submit a recommendation for revocation of a warrant for cause or poor performance in writing to the Associate Director, ASB, including appropriate documentation of the reasons for the proposed revocation. The Associate Director, ASB, shall evaluate the recommendation and either approve or reject the recommendation. If approved, the recommendation will be sent to the Director, Division of Administration (DOA), for issuance of the Letter of Revocation.

**2.J.4. Termination of Warrant (JUL 2003)**

**2.J.4.a. Reasons (JUL 2003)**

A Contracting Officer warrant may be terminated for reasons such as a change of jobs within FDIC or resignation.

**2.J.4.b. Authority (JUL 2003)**

The Associate Director, ASB, or the Assistant Director, Policy and Compliance Section, may terminate a warrant.



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# CHAPTER 3

## OVERALL POLICY

### SECTION 3.A. OVERVIEW

#### 3.A.1. Use of Private Sector Firms

It is FDIC policy to utilize private sector firms for the acquisition of a wide range of goods or services when practicable and efficient and where such firms meet FDIC's Contractor Conflicts of Interest Regulation.

#### 3.A.2. Use of Commercial Goods

The majority of FDIC procurements for goods involve commercial products that have established catalog or market prices and are sold in substantial quantities to the general public. Whenever possible, FDIC acquires commercial products because the product descriptions and availability have already been established and the existence of competitive market forces ensures reasonable prices. A definition of commercial products is stated in APM, 5.A.4.c., *Commercial Goods*.

#### 3.A.3. Contractor Application Process and National Contractor System (NCS)

##### 3.A.3.a. Application Forms (JUL 2003)

FDIC identifies prospective offerors desiring to do business with FDIC through the Contractor Application Process and National Contractor System (NCS). Firms interested in doing business with FDIC are required to complete a Contractor Application Form (3700/13) and submit it to the System Support Section, ASB.

##### 3.A.3.b. National Contractor System (NCS) (MAR 2000) (JUL 2003)

The System Support Section, ASB, enters all pertinent application information into the NCS, Contractor Database Subsystem. Once the application is entered in the NCS, Contracting Officers may access NCS to assist in developing solicitation lists. This affords private sector firms the opportunity to be considered for future FDIC contracts in their area of expertise. FDIC does not require vendors to be registered prior to their receiving a solicitation, but when they are selected to receive a FDIC contract of \$25,000 or greater, they must submit a Contractor Application to the Contracting Officer or the Systems Support Section, ASB, prior to award. If the contract is for less than \$25,000, the Contracting Officer will use best efforts to obtain and review the Contractor Application prior to award. However, this review and the entry into NCS shall not be required prior to award.

##### 3.A.3.c. Contractor Eligibility Information (MAR 2000) (JUL 2003)

- (1) Obtaining Information. Information in the NCS is obtained from Contractor Applications and includes contractor eligibility information. NCS also provides a Contractor Performance Management System

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(CPMS) indicator when past performance information is available in the CPMS. Therefore, the NCS is accessed by ASB personnel not only for prospective sources for solicitation purposes, but also to determine if a contractor is eligible to do business with FDIC, and if FDIC has a past performance record on a contractor.

- (2) Information Requested by Government Agencies. If past performance information on a contractor is requested by another government agency, such inquiry should be addressed to a Contracting Office having experience with that contractor. The Contracting Officer should then consult the NCS and the CPMS to determine if past performance information is available. If so, the Contracting Officer should furnish only such information as is contained in the NCS and the CPMS to the government agency.
- (3) Information Requested by Non-Government Sources. If past performance information on a contractor is requested by a party other than a government agency, such inquiry should be forwarded to the Program Compliance Unit (PCU), Acquisition Services Branch, 1730 Pennsylvania Avenue, N.W., Washington, D.C. 20006. In order to ensure that information on past performance of a contractor provided to parties that are not government agencies is consistent and dependable, the PCU will interface with such other divisions and offices as appropriate, and will respond to all such inquiries on behalf of FDIC.

#### **3.A.4. Minority and Women-Owned Business (MWOB) Program (MAR 2000)**

The Office of Diversity and Economic Opportunity (ODEO) has the corporate wide responsibility for oversight and monitoring of the FDIC Minority and Women Outreach Program. In addition, ODEO participates in the contracting process for all contracting actions over \$100,000. The procedures relating to their participation are specified throughout the APM as appropriate. FDIC encourages engaging MWOB firms in Joint Ventures or as subcontractors. MWOB firms are defined as follows:

##### **3.A.4.a. Minority-Owned Business (MAR 2000)**

Firm(s) in which at least 51% of the ownership and control is directly and unconditionally held by one (1) or more minorities. A firm, which is principally owned by another business entity or by a trust (including employee stock ownership trusts) that is in turn owned and controlled by one (1) or more minorities, does not meet this definition. In the case of a firm that is a corporation, at least 51% of each class of voting stock outstanding, and 51% of the aggregate of all stock outstanding, must be unconditionally owned by one (1) or more minorities. Additionally, the management and daily business operations of the firm(s) must be conducted by one

(1) or more minorities. The minority individuals must have managerial experience of the extent and complexity needed to run the firm. A minority owner's unexercised right to cause a change in the control or management of the firm does not constitute minority control and management, regardless of how quickly or easily the right could be exercised.

**3.A.4.b. Women-Owned Business (MAR 2000)**

Firm(s) in which at least 51% of the ownership and control is directly and unconditionally held by one (1) or more women. A firm, which is principally owned by another business entity or by a trust (including employee stock ownership trusts) that is in turn owned and controlled by one (1) or more women, does not meet this definition. In the case of a firm that is a corporation, at least 51% of each class of voting stock outstanding, and 51% of the aggregate of all stock outstanding, must be unconditionally owned by one (1) or more women. Additionally, the management and daily business operations of the firm(s) must be conducted by one (1) or more women. The women must have managerial experience of the extent and complexity needed to run the firm. A woman owner's unexercised right to cause a change in the control or management of the firm does not constitute minority control and management, regardless of how quickly or easily the right could be exercised.

**3.A.5. Small Disadvantaged Business (SDB) Program (MAR 2000)**

**3.A.5.a. Definition (MAR 2000) (JUL 2003)**

In the *Adarand Contractors, Inc. vs. Pena* case, the Supreme Court extended strict judicial scrutiny to Federal affirmative action programs that use racial or ethnic criteria as a basis for decision making. Under strict scrutiny, any Federal program that makes race a basis for contract decision-making must be narrowly tailored to serve a compelling Government interest. As a result, the Small Business Administration (SBA) has implemented the Small Disadvantaged Business (SDB) Program. The purpose of the program is to provide equity in contracting with small business concerns owned and controlled by individual(s) determined to be socially and economically disadvantaged. The program certifies that small business concerns that meet specific social, economic, ownership, and control eligibility criteria as Small Disadvantaged Businesses. The Department of Commerce will identify those industries by North American Industry Classification System (NAICS) code in which Small Disadvantaged Businesses will receive price or technical credits or evaluation adjustments. Credits will only be available in industries that show the ongoing effects of discrimination.

**3.A.5.b. Scope (MAR 2000) (JUL 2003)**

Certified SDB firms will be eligible for preferences in the proposal evaluation process. The preferences include a price evaluation adjustment and a technical

evaluation adjustment. No SDB shall be permitted to receive both a price and a technical evaluation adjustment. The preferences include a one-time applicable price evaluation adjustment or a technical evaluation adjustment for each solicitation.

**3.A.5.c. Participation (MAR 2000)**

SDB participation may be achieved through participation of SDB firms either as a prime contractor, joint venture partner, subcontractor, or member of a teaming arrangement.

**3.A.5.d. NAICS Codes (MAR 2000) (JUL 2003)**

Preferences will apply only to those industries under NAICS codes and geographical areas authorized by the Department of Commerce to receive SDB preferences.

**3.A.5.e. Preferences (MAR 2000)**

Only SDB firms as prime contractors shall be eligible for the price evaluation adjustment. Both SDB firms and non-SDB firms as prime contractors may be eligible for the technical evaluation adjustment by qualifying under a subcontracting, Joint Venture, or teaming arrangement.

**3.A.6. Contractor Conflicts of Interest and Suspension or Exclusion (JUL 2003)**

The Contractor Conflicts of Interest Regulation, 12 CFR Part 366, effective April 10, 1996, establishes guidance applicable to contractors and subcontractors on conflicts of interest, ethical responsibilities, and the use of confidential information. The regulation also establishes procedures for ensuring that contractors meet minimum contractor integrity and fitness standards of competence, experience, integrity, and fitness. The Suspension and Exclusion of Contractors and Termination of Contracts Regulation, 12 CFR Part 367, was effective July 5, 1996, as an interim final regulation, and sets forth procedures that permit the suspension and/or exclusion of contractors that violate the Contractor Conflicts of Interest Regulation. Policies and procedures associated with both regulations are stated in APM, 8.F., *Contractor Conflicts of Interest, Eligibility, and Waiver Procedures*, and APM, 8.G., *Suspension and Exclusion of Contractors*.

**3.A.7. Advance Payments to FDIC Contractors**

Advance payments to contractors require special approval and procedures to ensure that (1) the advance is necessary for the performance of the contract and (2) the contract administration procedures are in place to ensure that the advances are properly monitored and deducted from the contractor's regular invoices for successful performance. Policies and procedures on advance payments to contractors are stated in APM, 8.I., *Advance Payments to FDIC Contractors*, and will be implemented in accordance with the other contracting procedures stated in this manual.



**3.A.8. Competition Advocate Program (JUL 2003)**

The Competition Advocate Program is administered by the Policy and Compliance Section of ASB. The overall goal of the program is to monitor noncompetitive awards on a Corporate-wide basis in relation to overall competitive awards. This function relies on data collection and trend analysis generated from the Purchase Order System (POS) and other sources as appropriate.

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## SECTION 3.B. TYPES OF CONTRACTS AND CONTRACTUAL DOCUMENTS

### 3.B.1. Standard Contract Types

#### 3.B.1.a. Responsibility

The Contracting Officer is responsible for selecting the type of contract and contractual documents that represents the most suitable business arrangement for procuring goods or services on behalf of FDIC.

#### 3.B.1.b. Risk Assessment

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

#### 3.B.1.c. Elements of a Contract

The elements of a contract are: offer and acceptance, consideration, competency of parties, legality of purpose, and clarity of terms and conditions.

#### 3.B.1.d. Types

There are two (2) basic types of pricing arrangements used in FDIC contracts: fixed price and level of effort. These are more fully described in APM, 3.B.6., *Fixed Price Contracts*, and APM, 3.B.7., *Level of Effort Contracts*.

- (1) Fixed Price Contract. A fixed price contract can be expressed as either a firm fixed price or fixed unit price contract.
  - (a) Firm Fixed Price. Under a firm fixed price (FFP) contract, the contractor is paid a predetermined price for successfully performing the work.
  - (b) Fixed Unit Price. Under a fixed unit price contract, a type of unit price is established in the contract and is subsequently used to determine the ultimate price to be paid to the contractor for successful performance (i.e., unit price multiplied by the quantities delivered).
- (2) Level of Effort Contract. A level of effort contract can either be expressed as a time and materials or labor hour contract.

- (a) Time and Materials. Under a time and materials (T&M) contract, the work is described in terms of the level of services to be provided. The contractor receives compensation as detailed in the contract upon expenditure of the required level of effort or expenditure for materials.
- (b) Labor Hour. A labor hour (LH) contract is similar to a T&M contract except that the contractor is not required to provide any material during performance.

### **3.B.2. Purchase Order (JUL 2003)**

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

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

### **3.B.3. Multiple-Order Contracts, Agreements, and Orders**

#### **3.B.3.a. Definition**

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

#### **3.B.3.b. Basic Ordering Agreement (BOA)**

- (1) Used mainly for the procurement of services, a basic ordering agreement (BOA) is a written agreement between FDIC and a contractor. The BOA contains terms and conditions that will apply to FDIC-issued task orders during its term, a description of the services to be provided, and the method(s) for the pricing and issuing of task orders under the agreement.
- (2) A BOA is not a contract, because it does not contain consideration or require that FDIC place any task orders against it.

- (3) Any task order issued against a BOA, in accordance with the terms and conditions contained in that BOA, becomes a contractual instrument against which funds are obligated as consideration in exchange for the goods or services specified in the task order.
- (4) Agreements are established with one (1) or more firms that have the qualifications and capability to meet anticipated future FDIC needs. The procedures for awarding task orders shall be at the discretion of the Contracting Officer in consultation with the Program Office, and shall be specified in all RFPs resulting in the award of BOAs. The procedures may include but are not limited to full or limited competition with all BOA contractors or a form of rotation in a specified sequence among the BOA contractors. Whichever method is chosen shall be fair and consistently applied in all task order solicitations and awards. Once established, task orders may be competed among the contractors on the BOA list or the contractors may be rotated in sequence.

**3.B.3.c. Multiple-Order Requirements Contract and Delivery Orders (MAR 2000) (JUL 2003)**

- (1) A multiple-order requirements contract is a contract that provides for filling purchase requirements during a specified contract period, with deliveries to be scheduled as delivery orders are placed. Ordering procedures shall be defined in the RFP.
- (2) A maximum dollar value shall be stated in the contract.
- (3) Delivery orders are placed if and when individual requirements are defined.
- (4) Funds are obligated by each delivery order and not by the contract itself.
- (5) All delivery orders shall be issued by the Contracting Officer unless the Assistant Director, Headquarters Operations Section, approves an alternative procedure for a specific contract.
- (6) Ordering procedures should be flexible enough to allow timely delivery of goods and services, while maintaining sufficient internal controls.
- (7) Ordering procedures shall provide in detail the manner in which delivery orders will be placed, including ordering agreements with multiple vendors (i.e., by competition or rotation).
- (8) A delivery order form shall be used that, at a minimum, includes:
  - (a) A delivery order number with a related contract or purchase order number;

- (b) A synopsis of the specific requirement to be fulfilled through the delivery order;
- (c) Required schedule and location for delivery;
- (d) Signature of authorized contractor representative;
- (e) Contracting Officer approval (with date) of the delivery order prior to start of work or delivery of goods;
- (f) Language emphasizing that the contractor will not be paid for work or goods in excess of the approved cost of the delivery order, such as:

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

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

**3.B.3.d. Blanket Purchase Agreement (BPA) and Call Orders**

- (1) A blanket purchase agreement (BPA) is a simplified method of procurement for filling anticipated, repetitive needs for goods or services.
- (2) A BPA is not a contract, because it does not obligate funds nor does it state that FDIC will place any call orders under it.
- (3) A BPA is designed to reduce administrative costs in accomplishing the procurement of reasonably known needs by eliminating what could be the costly issuance of individual purchase orders or contracts. The use of BPAs can result in ordering economies, reduced procurement lead-time, and improved inventory levels.
- (4) Whenever practicable, BPAs should be placed competitively and concurrently with more than one (1) firm. All prospective firms should be afforded an opportunity to provide goods or services under BPAs.

- (5) A BPA may be limited to the furnishing of individual items, commodity groups, or classes of goods, or it may be unlimited for all items that a firm is capable of furnishing and include established unit prices.
- (6) A BPA contains a statement that a contractor is obligated to furnish goods, described in general terms, if and when requested by authorized representatives of FDIC during a specified period of time and within a stipulated aggregate amount. A BPA shall specify whether call orders must be in writing or if telephone calls may be used. A BPA specifies that prices to FDIC shall be as low or lower than those charged to the contractor's most favored customer for comparable quantities under similar terms and conditions, in addition to any available discounts.
- (7) Once the BPA is established, call orders may be placed by the Contracting Officer or by an Oversight Manager with ordering authority delegated by the Contracting Officer. Ordering procedures shall be specified in the solicitation.
- (8) A BPA is considered to be complete when call orders issued under it equal its total dollar limitation, or when it has reached its expiration date as specified in the agreement. Upon expiration, a BPA is automatically completed, whether or not its total dollar limitation has been reached.

**3.B.4. Federal Supply Schedules**

Contracts awarded by the General Services Administration (GSA) known as Federal Supply Schedules (FSS) are used to facilitate the timely acquisition of goods or services by any Federal agency or other qualifying organization. FSS terms and conditions, rather than those normally used by FDIC, apply to these contracts. Orders are placed directly with FSS private sector contractors in accordance with the specific ordering instructions contained in the applicable schedule. GSA solicits private firms annually to ensure that the goods or services listed on their schedules are offered to the government at the best prices available at the time of award. Awards made under Federal Supply Schedules are deemed to be competitive procurements.

**3.B.5. Interagency Agreements**

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

**3.B.6. Fixed Price Contracts**

**3.B.6.a. Primary Use**

The majority of FDIC procurements fall within the firm fixed price (FFP) or fixed unit price category.

**3.B.6.b. Description**

- (1) Under the FFP type contract, a contractor is required to deliver the required goods or perform the services at a specified fixed price. The contractor will be paid the contract price only for successful performance. A set price is established for delivery of a defined product or service. This arrangement represents the least risk for FDIC in that the total price is predetermined at the time of contract award, and is not subject to adjustment during contract performance. Accordingly, this places the maximum risk upon the contractor to manage costs. Payment is normally made upon delivery and acceptance of the goods or services. Successful use of this arrangement requires a clear definition of requirements in the statement of work, and realistic estimates of work to be performed.
- (2) Under a fixed unit price contract, a unit price is proposed and established in the contract and is subsequently used to determine the ultimate price to be paid the contractor for successful performance. Products or services are defined in terms of units, and fixed prices are established for each defined unit to be purchased through the contract. During contract performance, any adjustments to price are limited to those defined through contract terms as allowable at predetermined times, such as adjustments in accordance with inflation indices. A not-to-exceed contract-ceiling price is established, and represents the maximum amount the contractor may receive. This type of contract is advantageous when the total amount of the requirement can be reasonably estimated, but the exact quantity for each individual item is not known in advance. Variances may occur in the amount of each unit actually delivered, as long as the cost of total delivery does not exceed the established ceiling price.

**3.B.6.c. Consequences**

If the fixed price is exceeded, then the contractor will not be reimbursed for any additional amounts required to complete the performance of the contract. Further, if the work is not satisfactorily completed on time, the contractor will be liable to FDIC for a breach of the contract.



**3.B.6.d. Desirability**

Fixed price contracts generally provide for the least risk to FDIC, are the easiest type of contract to administer, and therefore, generally require the least oversight. Concerns are normally schedule, performance, and quality rather than price.

**3.B.7. Level of Effort Contracts****3.B.7.a. Description**

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

- (1) Time and Materials. Time and materials (T&M) contracts provide primarily for the procurement of labor services on the basis of direct labor hours at specified fixed hourly labor rates and necessary materials. T&M contracts are used when it is difficult to provide a detailed statement of work or to estimate the price or duration of time required for performance.
- (2) Labor Hour. A labor hour (LH) contract is similar to a T&M contract except that the contractor will not be required to provide materials during performance.

**3.B.7.b. Caution**

T&M and LH contracts should be used with caution since they provide no positive profit incentive to the contractor for price control or labor efficiency. A T&M or LH contract should only be used when the Contracting Officer determines that an FFP contract is not suitable for the procurement. Price schedules included in the RFP must express estimated quantities.

**3.B.7.c. Ceiling Price**

T&M and LH contracts shall always contain a not-to-exceed ceiling dollar amount that represents the maximum amount a contractor may receive.

**3.B.7.d. Oversight**

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

**3.B.7.e. Classes of Labor**

All T&M and LH contracts shall include the classes or types of labor required to perform and a fully loaded labor rate (e.g., base rate, all overhead, and profit) for each category of labor. The labor categories shall be described in sufficient detail (i.e., experience, education requirements, qualifications, etc.) to allow for competitive pricing of the labor categories. Variances may be allowed in the number

of hours delivered for each labor category as long as the actual price does not exceed the contract ceiling. In addition, the Contracting Officer shall investigate all situations where a contractor is incurring labor hours during performance that are materially different from the proposed labor mix.

**3.B.7.f. Materials**

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

**3.B.8. Contracts with Options**

**3.B.8.a. Definition**

An option is a unilateral right in a contract by which, for a specified time, FDIC may elect to purchase additional goods or services called for and priced by the contract, or may elect to extend the term of the contract.

**3.B.8.b. Use of Options**

The Contracting Officer may include options in contracts when it is in FDIC's interest to do so.

**3.B.9. System Development Life Cycle (SDLC) Contracts with Task Assignments (MAR 2000)**

**3.B.9.a. Definition (MAR 2000) (JUL 2003)**

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

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

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

**3.B.9.b. Statement of Work (MAR 2000)**

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

**3.B.9.c. Responsibility (MAR 2000)**

It is the responsibility of the Program Office to develop the task assignments for each SDLC contract. The task assignments must be specific on their face in order that the contractor's performance can be measured. The task assignment should refer to the SDLC in order to attain the specificity necessary and the SDLC must be accurately and properly identified in the contract. In addition, there must be documentation in the Program Office file that a copy of the SDLC has been received by the contractor.

It is also the responsibility of the Program Office to ensure that the total dollar value of the various task assignments issued pursuant to a contract does not exceed the original expenditure amount of the contract, including any modification of the contract or other contract expenditure.

In addition, the Program Office shall ensure that the work detailed in the task assignments does not go beyond the scope of work set forth in the SOW of the contract.

**3.B.9.d. Issuance (MAR 2000) (JUL 2003)**

The Program Office is authorized to issue the task assignments as they are needed on SDLC contracts. They should be in a form that was defined in the solicitation and incorporated in the contractual document. They shall be signed by the Oversight Manager, and a copy shall be sent immediately to the Contracting Officer who has responsibility for that contractual document for retention in the official contract file.

**3.B.10. Payment Authorization Vouchers (PAVs)**

It is FDIC's policy to procure goods or services on a competitive basis to the fullest extent practicable to ensure that the Corporation obtains goods or services of the requisite quality at fair and reasonable prices. All contracting activities shall be conducted in accordance with the APM by ASB. Payment Authorization Vouchers (PAVs) shall not be used to circumvent the contracting policies and procedures. Only under limited circumstances may PAVs be used to pay for goods or services without the existence of a contract issued by ASB. The policies and procedures for using PAVs are stated in APM, 9.B., *Use of Payment Authorization Vouchers*.

**3.B.11. Standard Documents**

**3.B.11.a. List of Documents (MAR 2000) (JUL 2003)**

ASB has the responsibility for issuing standard documents for use in the FDIC contracting process, which include the following:

- (1) Request for Proposal (RFP);
- (2) Request for Quotation (RFQ) for Federal Supply Schedule (FSS) Orders that **do not exceed** maximum amount;
- (3) RFQ for FSS Orders that **do exceed** maximum amount;
- (4) Oral Presentation RFP – One Step;
- (5) Oral Presentation RFP – Two Step;
- (6) RFQ – Goods – Price Only (Open Market);
- (7) Contract – Short Form (For requirements less than \$100,000);
- (8) Contract;
- (9) Construction Contract;
- (10) Basic Ordering Agreement (BOA);
- (11) Construction BOA;
- (12) Auction BOA;
- (13) FSS Delivery Order;
- (14) Environmental Services Contract;
- (15) Purchase Order Checklist (*APM, Exhibit XXIII*);
- (16) Simplified Contracting File Checklist (*APM, Exhibit XXIII*);
- (17) Formal Contracting File Checklist (*APM, Exhibit XXIII*);
- (18) FDIC Contractor Representations and Certifications (*APM, Exhibit XXXII*);
- (19) FDIC Integrity and Fitness Representations and Certifications (*APM, Exhibit XXXIII*);
- (20) Contractor Past Performance RFP Reference Check Questionnaire (*APM, Exhibit XXX*);
- (21) Background Investigation Questionnaire for Contractors (*APM, Exhibit XIV*);
- (22) Background Investigation Questionnaire for Contractor Personnel and Subcontractors (*APM, Exhibit XIV*);

- (23) Fair Credit Reporting Act Notice and Authorization (*APM, Exhibit XIV*);
- (24) Contractor Travel Reimbursement Guidelines (*APM Exhibit XXII*);
- (25) FDIC General Provisions; and
- (26) Additional General Provisions – Construction.

**3.B.11.b. Use of Documents**

These standard documents are mandatory and shall be used by all offices in accordance with APM, 1.C.2.a.(3), *Standard Contracting Documents*.

**3.B.11.c. Additional Standard Documents (MAR 2000)**

Additional standard documents shall be issued by ASB as needed for use in the FDIC contracting process.

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**SECTION 3.C. CONTRACTING METHODS****3.C.1. Overview**

A variety of contracting methods is available to FDIC for acquiring goods or services for Program Office requirements. Contracting Officers shall choose the appropriate contracting method to acquire the required goods or services, using sound business judgment.

**3.C.2. Procurement Credit Card (MAR 2000)**

FDIC has established a simplified method of procuring low dollar value goods or services using Procurement Credit Cards. The Program is administered by the Agency Program Coordinator (APC) in ASB. The Procurement Credit Card generally has a single purchase limit of \$5,000 and a monthly limit of \$50,000. These levels may be adjusted by the APC. The policies, procedures, and restrictions for using the credit card are set forth in APM, 9.E., *FDIC Procurement Credit Card Program*.

**3.C.3. Simplified Procurement Procedures**

Simplified procurement procedures apply to contracting requirements which are not complex, are less than \$100,000 in aggregate value, or for goods or services justified to be commercial goods less than \$5,000,000 (APM, 5.A.4.c., *Commercial Goods*) on the basis of documented market research. In most cases, a simplified procurement can be accomplished by issuing a competitive Request for Quotation (RFQ) to prospective offerors, evaluating price, and awarding a purchase order for the requirement. Simplified procurement procedures are set forth in APM, Chapter 5, *Simplified Procurement Procedures*.

**3.C.4. Formal Contracting Procedures**

Formal contracting procedures generally apply to contracting requirements which are complex in nature or have fees estimated at \$100,000 or greater or commercial goods \$5,000,000 and greater. Formal procurement generally involves issuing a Request for Proposal (RFP) to prospective offerors, evaluating both technical and price proposals, and awarding a contract based on a best value determination for the requirement. Formal procurement procedures are set forth in APM, Chapter 6, *Formal Contracting*.

**3.C.5. Ordering Methods (MAR 2000)**

Task orders may be placed under existing basic ordering agreements (BOAs); delivery orders may be placed under multiple-order requirements contracts; call orders may be made under blanket purchase agreements (BPAs), when such mechanisms are already in place; or task assignments may also be issued under delivery orders placed under FSS contracts or under other contracts as specified therein.

### 3.C.6. Noncompetitive Procurement Procedures (JUL 2003)

Noncompetitive contracts for procurement of goods or services apply when only one (1) source is solicited. While it is FDIC's policy to procure goods or services on a competitive basis, unique situations may arise in which competitive procurement is impracticable. In these cases, the Program Office may recommend that the procurement be made noncompetitively. Expenditure authority for noncompetitive procurements shall be obtained in accordance with the expenditure delegations. In addition, the noncompetitive contract shall be justified and approved by the Contracting Officer in accordance with the procedures set forth in APM, 3.G.12., *Noncompetitive Awards*.

### 3.C.7. Federal Supply Schedules (FSS)

Federal Supply Schedules (FSS) allow Federal agencies to place orders against contracts awarded by GSA to facilitate the timely acquisition of goods or services. The FDIC purchase order form may be used to place the order and must reference the GSA Schedule Contract. The FSS procedures are set forth in APM, 9.C., *Using Federal Supply Schedules and Other Contracts*.

### 3.C.8. Other Government Agencies

Under the Economy Act, 31 USC 1555, a government agency needing goods or services may place orders for goods or services with any other agency when that agency may be better able to supply or obtain by contract, if it is determined to be in the agency's interest to do so. FDIC may acquire goods or services from other government agencies under new or succeeding Interagency Agreements (IAAs). The procedures for requesting the procurement of goods or services from other government agencies are given in APM, 9.D., *Procedures for Requesting the Procurement of Goods or Services from Other Government Agencies*.



**SECTION 3.D. OVERVIEW OF CONTRACTING PROCESS**

**3.D.1. Acquisition Procedures (JUL 2003)**

FDIC's acquisition management process is based on the "cradle to grave" approach where a Contracting Officer maintains control and responsibility for a procurement action from the receipt of the Requirements Package through contract administration and contract closeout. The Contracting Officer works cooperatively with other members of the acquisition team, including the Program Office, Contracting Law Unit, Office of Diversity and Economic Opportunity, the Legal Division, and Security Management Section, seeking advice, guidance, and assistance whenever applicable.

**3.D.2. Phases (JUL 2003)**

The FDIC contracting process generally involves the following phases.

Activity	Phase
Requirement identified Article 17, "Contracting Out" documentation Expenditure authority approved Statement of work prepared Price Estimate Requirements Packages to ASB Evaluation criteria developed Source Selection Plan Source list prepared	Presolicitation
Identification of prospective offerors Solicitation distribution list prepared Solicitation issued Proposal receipt	Solicitation

- continued on next page -

<b>Activity</b>	<b>Phase</b>
Technical Evaluation Price Evaluation Competitive range decisions Call for BAFOs Contractor Eligibility reviews	Evaluation
Contract Award	Award
Performance Processing and paying invoices Tracking invoices against expenditure ceilings Executing modifications Audit resolution Closeout	Contract Administration

**3.D.2.a. Presolicitation Phase**

The presolicitation phase consists of activities involving requirements planning and the development and completion of a Requirements Package. The Requirements Package should include the statement of work with detailed price estimate and all other documents necessary for ASB to develop the necessary solicitation package including evaluation criteria. Expenditure authority is also obtained during this phase, and shall be obtained prior to issuance of the solicitation package.

**3.D.2.b. Solicitation Phase**

The solicitation phase involves the identification of prospective offerors, preparation of the solicitation distribution list, the distribution of the solicitation package, and proposal receipt.

**3.D.2.c. Proposal Evaluation Phase**

The proposal evaluation phase involves the evaluation of proposals that are responsive to the solicitation package. It includes but is not limited to evaluating proposals, conducting technical discussions, making competitive range decisions, performing price evaluations, calling for best and final offers (BAFOs), and performing contractor eligibility reviews.

**3.D.2.d. Contract Award Phase**

The contract award phase involves making the best value decision for the award, reviewing certifications to ensure that the successful offeror is not in violation of the Contractor Conflicts of Interest Regulation, conducting a financial capability review, where applicable, ensuring expenditure authority is still appropriate, obtaining a signed contract from the successful offeror, and executing that contract by a warranted Contracting Officer on behalf of the Corporation. This phase also involves notifying unsuccessful offerors and conducting debriefings when requested.

**3.D.2.e. Contract Administration Phase (MAR 2000)**

The contract administration phase involves all activities necessary to ensure that the contractor adheres to the terms and conditions of the awarded contract. In addition, this phase includes but is not limited to processing and paying invoices, tracking invoices against expenditure ceilings, executing modifications, resolving contractor claims and disputes, and performing audit resolution. This phase also involves completion of the appropriate contract checklist (see Exhibit XXIII, *Contracting File Checklists*) and all required contract closeout activities.

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**SECTION 3.E. OVERSIGHT MANAGEMENT****3.E.1. Scope**

Oversight management is a critical function performed by Program Office personnel during contract administration and involves monitoring contractor performance. This responsibility is performed by the Oversight Manager, who is a representative of the Program Office responsible for planning and monitoring a contractor's technical performance under a contract.

**3.E.2. Responsibility**

It is the Oversight Manager's responsibility to ensure that the Corporation receives the required goods or services on schedule and of the requisite quality and price specified in the contract.

**3.E.3. Policy and Procedures**

The policy and procedures for Oversight Managers and the oversight management process are set forth in APM, Chapter 7, *Contract Administration*.

**3.E.4. Training (MAR 2000)**

For training requirements, refer to APM 7.B.1.f., *Training Requirements*.

**3.E.5. Past Performance Information****3.E.5.a. General**

Information on a contractor's past performance may be critical to subsequent procurements. Contractor performance evaluation is considered an essential element of the contracting process and is required for awards \$50,000 and greater. Such information is used in evaluation of offers for awarding subsequent contracts and helps to ensure that FDIC obtains quality goods or services from contractors.

**3.E.5.b. Performance Tracking (MAR 2000)**

ASB in Washington tracks contractor performance through the NCS. A CPMS "Y" indicator identifies that a past performance record exists. Performance data is provided by the Oversight Manager using the Contractor Performance Evaluation and Reporting Form (FDIC 3700/24) and is subsequently entered in the CPMS. This information is available and should be used as one of the technical evaluation criterion in a solicitation as a basis for contract award. The policies and procedures for using contractor performance information are set forth in APM, Chapter 6, *Formal Contracting*.

**3.E.6. Overtime for Contractors (MAR 2000)**

If overtime is permitted under the contract, the only person who can approve the overtime is the Contracting Officer unless specifically delegated in writing by the Contracting Officer to another person. As an example, such delegation may be to the Oversight Manager and must be included in the Letter of Oversight Manager Confirmation or other written document. If overtime is not permitted by the contract, no overtime shall be approved without a written modification to the contract executed by both parties to the contract.

**3.E.7. Pre-Exit Clearance Procedures for Contractors (MAR 2000)**

Under the terms of a contract with FDIC, contractors may periodically be provided with FDIC-owned property, equipment, and other items to assist them in performing their work assignments. To ensure that all property and equipment is accounted for and returned in good working condition, the pre-exit clearance procedures for contractors, set forth in APM 7.L., *Pre-Exit Clearance Procedures for Contractors*, will be followed by all Oversight Managers upon completion of FDIC contracts during the contract closeout process, or at such time that contractors are no longer providing services under the contract.

## **SECTION 3.F. PERFORMANCE STANDARDS FOR CONTRACTING REQUIREMENTS**

### **3.F.1. Standards**

To promote timely award of contracts ASB has established performance standards for Contracting Officers in awarding contracts. These standards are important goals for providing customer services and planning for future contracting requirements.

### **3.F.2. Measurements**

Performance standards are based on the total number of calendar days typically necessary to award contracts (including purchase orders, task orders under BOAs, delivery orders under multiple-order requirements contracts, and modifications under contracts).

### **3.F.3. Interpretation**

Standards should not be interpreted as allowances, but rather as reasonable timeframes reflecting normal workloads and contracting policies and procedures.

### **3.F.4. Performance Standards (MAR 2000) (JUL 2003)**

Under Revision.

### **3.F.5. Start of Period (MAR 2000) (JUL 2003)**

Under Revision.

### **3.F.6. Planning**

ASB staff shall employ planning as an integral part of the overall process of acquiring goods or services.

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**SECTION 3.G. ADDITIONAL PROCEDURES****3.G.1. Ratification of Unauthorized Contractual Commitments**

Only warranted Contracting Officers with delegated contracting authority shall enter into, modify, or terminate contracts on behalf of the Corporation. An unauthorized commitment occurs when a person without delegated contracting authority makes a representation that results in a contractual action. This type of action is not binding solely because the person lacked the authority to take the action. The contractor shall not be paid for the work until the unauthorized commitment is approved under the ratification process set forth in APM, 8.B., *Ratification of Unauthorized Contractual Commitments*. FDIC shall take positive action to preclude, to the maximum extent possible, the need for ratification of contracting actions. Disciplinary action may be taken against those individuals acting outside the scope of their authorization.

**3.G.2. Bid Protest Procedures**

All prospective offerors seeking to do business with FDIC shall be treated fairly, and the process for awarding contracts shall comply with applicable policies and procedures. Bid protests are complaints regarding the process of awarding contracts and shall be resolved in an expeditious and impartial manner. Only interested parties can submit a protest to FDIC regarding the solicitation package or contract award process. An interested party is anyone who received a solicitation package from FDIC and who submitted a proposal in response to the solicitation package. Bid protests shall be resolved in accordance with policies and procedures set forth in APM, 6.G., *Bid Protest Procedures*.

**3.G.3. Claims and Disputes****3.G.3.a. Claims**

A claim is a written demand or assertion for some additional consideration, such as payment of a certain sum of money, the adjustment or interpretation of contract terms, or other relief under or relating to a contract. It is FDIC policy that contractor claims shall be resolved by mutual agreement at the Contracting Officer level, to the maximum extent possible. Effective contract administration presents a continuing opportunity to minimize or eliminate the potential for claims. Successful implementation of this policy depends upon both parties maintaining an objective perspective with regard to the claim and upon the adequacy of the information related to the claim that is being provided by both FDIC and the contractor. The Contracting Officer is responsible for evaluating claims involving the interpretation or definition of contract terms and conditions.

**3.G.3.b. Disputes (MAR 2000) (JUL 2003)**

A claim becomes a dispute if it is unresolved after a decision has been rendered. If the contractor wants to appeal a claim decision, the contractor is required to submit a written request for review to the Associate Director, ASB. The contractor shall state the basis for the request but may not introduce information that was different from that which was considered in the original claim. A decision is then made on the request for review. The Associate Director's decision is final on decisions less than \$100,000.

**3.G.3.c. Appeals**

If the contractor is still in disagreement with the review decision, and the dispute is \$100,000 or greater, it may file an appeal. The appeal may be filed to the Director, DOA, or filed as a lawsuit in the Federal District Court having jurisdiction over the matter. The appeal process within FDIC is the final level of review for disputes, and decisions on appeals are final Corporation decisions.

**3.G.3.d. Policies and Procedures**

Policies and procedures for handling claims and disputes are set forth in APM, 8.D., *Claim Decision Review and Appeal Process*.

**3.G.4. Terminations**

Under certain conditions, FDIC may decide to terminate a contract. FDIC may terminate or cancel delivery or performance of work under a contract in whole, or in part, if the Contracting Officer determines that "termination for convenience" is in FDIC's best interest. FDIC also has the right to terminate a contract because of the contractor's failure to perform its contractual obligations under the "termination for default" provision. Procedures for terminating contracts are set forth in APM, 8.E., *Termination Procedures*.

**3.G.5. Contractor Eligibility and Waiver Policies**

**3.G.5.a. Regulation (MAR 2000)**

On April 10, 1996, 12 CFR Part 366, *Contractor Conflicts of Interests* became effective. This regulation requires contractors to submit information that has an impact on their ethical fitness to do work for FDIC. The information must be submitted with their proposal and later as may be necessary. **The regulation applies to both FDIC contractors and subcontractors that submit offers to provide services to the FDIC or which enter into contracts for services with the FDIC.** For purposes of policy, the FDIC's contractor is responsible for ensuring that first tier subcontractors are in compliance with the regulation.

**3.G.5.b. Rescission**

The regulation permits FDIC to rescind contracts if a contractor fails to disclose a material fact to FDIC, no longer meets FDIC's ethical standards, is subject to a final enforcement action by a Federal banking agency, or fails to take corrective action which FDIC has mandated in order to resolve a conflict.

**3.G.5.c. Roles and Responsibilities (JUL 2003)**

The Contracting Law Unit, implements the contractor eligibility and waiver process.

**3.G.5.d. Policies and Procedures (JUL 2003)**

The policies and procedures for contractor eligibility and waivers are set forth in APM, 8.F., *Contractor Conflicts of Interest, Eligibility, and Waiver Procedures*.

**3.G.6. Suspension and Exclusion Regulation (JUL 2003)**

On July 5, 1996, 12 CFR Part 367, *Suspension and Exclusion of Contractors and Termination of Contracts Regulation* became effective. This regulation provides for two (2) levels of action against contractors that are in violation of the *Contractor Conflicts of Interest Regulation*. FDIC may suspend and/or exclude a contractor from participating in the FDIC contracting program. Suspensions are immediate, but temporary in duration. Exclusions are generally for a defined period. Suspended and excluded contractors are prohibited from entering into any new contracts for the duration of the suspension or exclusion period. FDIC shall not solicit offers from, award contracts to, extend or modify existing contracts, award task orders under existing contracts, or consent to subcontracts with such contractors. The policies and procedures for suspending and excluding contractors are set forth APM, 8.G., *Suspension and Exclusion of Contractors*.

**3.G.7. Contracting With Firms Having Unresolved Audit Issues (MAR 2000)**

FDIC may refrain from soliciting firms that have unresolved audit issues. In support of this policy, FDIC has determined that it is a prudent business practice to selectively refrain from soliciting new business or approving subcontracts with firms that fail to cooperate with FDIC in resolving audit issues. Procedures implementing this policy are stated in APM, 8.H., *Contracting With Firms Having Unresolved Audit Issues*.

**3.G.8. Multiple Solicitations for Identical Services**

When identical services are required concurrently by more than one (1) office, national solicitations shall be the preferred method to acquire the services. The contracting process shall generally be coordinated by ASB in Washington, D.C.

### **3.G.9. Preparing Expenditure Authority Requests for the Deputies to the Chairman, Chairman, and Board of Directors**

Expenditures requiring approval by the Deputies to the Chairman, Chairman, and Board of Directors are to be submitted early in the acquisition planning process, prior to issuing the solicitation, and shall include detailed cost estimates (base plus option years), as stated in APM, 4.F., *Developing Cost Estimates*. Procedures and content for these requests for expenditure approval are stated in APM, 4.I., *Preparation of Expenditure Authority Requests for the Deputies to the Chairman, Chairman, and Board of Directors*.

### **3.G.10. Multiple Capacities as Offeror (MAR 2000)**

An offeror may participate in solicitations issued by FDIC in the same or different capacities in different proposals under the same solicitation. For example, an offeror may be a Joint Venture partner in one (1) proposal and a subcontractor to another prime contractor in another proposal. In addition, the same personnel (including key personnel) may be included in different proposals under the same solicitation. However, no offeror or offerors may participate in different capacities in different proposals or propose the same personnel (including key personnel) under a solicitation for a BOA or a solicitation for which multiple awards may be made.

### **3.G.11. Tax Exempt Status (JUL 2003)**

As a general rule when a contractor provides goods or services to FDIC, FDIC is not obligated to pay tax charged by the contractor for such goods or services by virtue of 12 U.S.C.A. 1825(d)(1). Contractors should ask suppliers for exemption of state and local taxes based on FDIC's tax exemption. Exhibit XXXVII may be used for this purpose.

If tax is charged by the contractor and appears on the invoice, the amount should be disallowed by the Contracting Officer. Notwithstanding this general rule, sales tax may be allowable when invoiced by a subcontractor selling goods and services to an FDIC contractor.

Tax is also treated differently under firm fixed price contracts. The award of a firm fixed price contract is based on a price analysis and a best value decision and does not include an analysis of the individual costs that make up the firm fixed price. Therefore, it is not necessary to identify taxes in a contractor's proposal, or on its subsequent invoice submissions before paying the firm fixed price amount.

### **3.G.12. Noncompetitive Awards (JUL 2003)**

FDIC relies on competition among private sector firms to ensure it procures goods and services at fair and reasonable prices. A noncompetitive contract is defined as a contract that is awarded only after one (1) source is solicited. There are instances when noncompetitive awards makes sound business sense. Authority to award a noncompetitive contract requires a Justification for Noncompetitive Procurement (JNCP). Procedures for processing JNCPs and actions requiring noncompetitive approval are stated in APM, 4.G., *Justification for Noncompetitive Procurement (JNCP)*. In addition, expenditure authority for noncompetitive contracts shall be obtained in accordance with APM, 1.B.2., *Expenditure Authority*.

**SECTION 3.H. INSURANCE**

**3.H.1. Policy**

It is FDIC's policy that contractors doing business with FDIC in providing goods or services must have and maintain acceptable insurance coverage. If the goods or services are being procured through a FDIC purchase order, the supplier must carry the minimum insurance coverage that is typical for the industry. If the goods or services are being procured through use of a FDIC contract with special terms and conditions, the supplier must comply with the dollar amounts stipulated therein unless otherwise defined in the contract.

**3.H.2. Definitions**

The following are some of the more common insurance terms:

**3.H.2.a. Binder**

A binder is a document signed by an insurance underwriter, agent, or broker with authority to bind the carrier, which provides the specified coverage until a policy can be delivered. It is a temporary agreement proving that coverage is in effect. This document shall include language that it shall be in effect until the policy is issued.

**3.H.2.b. Certificate of Insurance**

A Certificate of Insurance is a document signed by the insurance broker who verifies that a policy has been written and states the nature of the coverage in general terms. It is a summary statement of the coverage and general provisions of the insurance contract. It is an informational document that is not legally equivalent to a binder or an insurance policy.

**3.H.2.c. Additional Insured**

The party named as additional insured has the same rights as the principal party insured and is entitled to a defense should it be named in a lawsuit covered by the policy.

**3.H.2.d. Loss Payee**

Under property insurance, which includes fidelity bond coverage, the parties named as the Loss Payees are entitled to all or part of the insurance proceeds in connection with the covered property in which they have an interest.

**3.H.3. General Requirements**

The types of insurance and amount of coverage required shall be specified by the Program Office, which must weigh the potential risks versus the indirect cost to FDIC.

**3.H.3.a. Payment of Insurance Costs**

Insurance shall be obtained and maintained at the sole cost and expense of the contractor (i.e., the contractor will not be separately reimbursed).

**3.H.3.b. Qualification of Insurance Carriers**

The carrier or bonding company shall maintain a financial rating of B+/VI from A.M. Best or equivalent.

**3.H.3.c. Letters of Credit**

A contractor may, in lieu of any of the insurance coverage required, obtain and deliver to FDIC an unconditional, irrevocable letter of credit issued to FDIC's favor by a financial institution acceptable to FDIC for the dollar amounts required for each type of insurance.

**3.H.3.d. Multiple Contracts**

The contractor may have other contracts with FDIC or other customers. Whether the policy must cover the aggregate insurance coverage amount required by each individual contract is a function of the potential risk to FDIC and shall be determined by the Program Office on a case-by-case basis. The Contracting Officer shall concur in this decision.

**3.H.4. Types of Insurance**

FDIC will require a contractor to maintain the following types of insurance: general liability, automobile liability, workers' compensation, and employer's liability. In addition, there may be a requirement for fidelity bonds, errors and omissions, and other insurance on a case-by-case basis to protect the interests of FDIC or when required by state and local laws.

**3.H.4.a. Standard Insurance Requirements**

- (1) Workers Compensation and Employer's Liability Insurance. The minimum amount of coverage for employer's liability insurance is \$100,000.
- (2) Commercial General Liability Insurance. This coverage is providing for bodily injury and property damage with a suggested amount of \$5,000,000, unless otherwise stipulated in the contract.
- (3) Business Automobile Liability Insurance. This coverage is for a required amount of \$1,000,000, unless otherwise stipulated in the contract.

**3.H.4.b. Fidelity Bond**

Fidelity Bond is referred to as "crime coverage" in the insurance industry. Crime coverage, particularly employee dishonesty, is generally required when the contractor will have access to cash, negotiable instruments (e.g., securities or bonds),

or other tangible property of value. Coverage should be obtained in an amount sufficient to cover the estimated value to be handled by the contractor at one time. Coverage does not need to cover the total amount to be handled by the contractor for the entire engagement, but for the most for which FDIC is at risk at any one time, transaction, or event. The actual amount of insurance shall be recommended by the Program Office with concurrence by the Contracting Officer. The policy shall cover all of the contractor's employees, partners, directors, trustees, brokers, subcontractors, agents, affiliates, or other representatives that are involved in the day-to-day operation of the firm to protect the insured employer and FDIC against losses arising from theft, embezzlement, fraud, or misplacement of funds, money, or documents. **The "Federal Deposit Insurance Corporation" shall be named as "Loss Payee" and as an "Additional Insured" under the contractor's policy.**

#### **3.H.4.c. Errors and Omissions Coverage**

Errors and Omissions coverage is generally required when the contractor will be rendering professional or semi-professional services (e.g., financial advisory services) where the contractor's advice or guidance could unintentionally deviate from what is right, true, or correct and result in a loss to FDIC. The actual amount of insurance shall be recommended by the Program Office with concurrence by the Contracting Officer. Higher limits may be imposed depending upon the risks to which FDIC is exposed. The "Federal Deposit Insurance Corporation" shall be named as an "Additional Insured" under the contractor's policy.

#### **3.H.5. Evidence of Insurance Coverage**

Within ten (10) calendar days after contract award, the contractor shall provide written evidence that the minimum insurance coverage specified by the contract is in force. Evidence of insurance may be a binder followed by the original policy before the expiration date of the binder, or the original policy. At a minimum, the evidence must identify the insurer and summarize policy terms and exclusions, limits, and deductibles. A copy of the evidence of insurance shall be retained in the official contract file.

##### **3.H.5.a. Use of FDIC Address/Contract Number**

It is not a requirement that an FDIC address or contract number be specified in the policy or binder, but the mailing address on certificates of insurance issued to FDIC shall reflect that ASB issued the contract and reference the applicable contract/task order number.

##### **3.H.5.b. Waiver of Requirement of Evidence**

Evidence of insurance may be waived for contracts with estimated dollar amounts less than \$100,000 unless determined by the Contracting Officer that such evidence would be in the best interest of FDIC.

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**SECTION 3.I. ETHICS REFERRAL PROCEDURES (MAR 2000)****3.I.1. Contractor Eligibility Review Request (MAR 2000)****3.I.1.a. Submission (MAR 2000) (JUL 2003)**

When an issue arises during the contracting process that involves contractor and/or contractor employee conflicts of interest issues, including without limitation, issues relating to persons previously employed by FDIC, FDIC Form 3700/26, *Contractor Eligibility Review Request*, Exhibit VII, should be completed and submitted to the Assistant Director, Policy and Compliance Section, ASB.

**3.I.1.b. Information Required (MAR 2000)**

The form should be filled out as completely as possible (even if the referral does not pertain to a specific contracting action) with particular attention paid to SECTION V – COMMENTS, SPECIAL INSTRUCTIONS, NATURE OF CONFLICT. The information should include a summary of events, the identification of all pertinent facts, and any applicable supporting documentation.

**3.I.1.c. Forms (MAR 2000)**

The Contractor Eligibility Review Request form (*FDIC Form 3700/26*) can be obtained by accessing FDICnet (Resources, FDIC Standardized Forms).

**3.I.2. FDIC Employee Conflicts of Interest (MAR 2000) (JUL 2003)****3.I.2.a. Memorandum (MAR 2000) (JUL 2003)**

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

**3.I.2.b. Submission (MAR 2000)**

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

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# CHAPTER 4

## **PREPARATION OF THE REQUIREMENTS PACKAGE**

### **SECTION 4.A. OVERVIEW**

#### **4.A.1. Purpose**

The purpose of this chapter is to provide policies and procedures and the respective roles and responsibilities for preparing, initiating, and processing Requirements Packages.

#### **4.A.2. Communication**

Whenever a requirement is identified, the Program Office (requesting office) shall provide ASB with specific information necessary to initiate the procurement process. This information is stated formally in a Requirements Package. More information will be required for complex requirements. ASB shall work with the Program Office as needed to further develop and complete the required information and to discuss the steps and timeframes necessary to award the contractual action.

#### **4.A.3. Requirements Packages**

The extent and level of detail required for ASB to process a procurement requirement varies depending on the nature and general characteristics of the requirement. If the requirement is noncomplex, fairly routine, less than \$100,000, or is for a commercial item less than \$5,000,000, the requirement can be documented simply using a properly completed Procurement Requisition, and at the Contracting Officer's discretion, processed under the simplified procurement procedures stated in APM, Chapter 5, *Simplified Procurement Procedures*. If the requirement is complex or \$100,000 or greater, or commercial goods \$5,000,000 or greater, a Procurement Requisition and other supporting documentation is required to process the requirement under the formal procurement procedures stated in APM, Chapter 6, *Formal Contracting*. If the Program Office has a question as to whether a Procurement Requisition or a more detailed Requirements Package is necessary, the matter should be discussed with the Contracting Officer. All Requirements Packages must contain a cost estimate. Contents of Requirements Packages are discussed in APM, 4.D., *Preparing Requirements Packages*.

#### **4.A.4. Procurement Requisitions (JUL 2003)**

##### **4.A.4.a. Procurement Requisition Execution (JUL 2003)**

A Procurement Requisition must be properly executed by a person having the requisite expenditure authority within the Program Office requesting the procurement.

##### **4.A.4.b. Winning Proposal Exceeds the Expenditure Authority (JUL 2003)**

If the amount of the winning proposal exceeds the expenditure authority of the original Procurement Requisition, then either an amended Procurement Requisition or, as an alternative, a new Procurement Requisition for the new amount shall be signed by a person with the requisite expenditure authority for that amount.

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#### **4.A.5. Roles and Responsibilities**

Planning and initiating procurement actions requires team effort. The Program Office and ASB shall be actively involved in all phases of the contracting process. Although other FDIC offices play a role in the contracting process, overall responsibility for the contracting process lies with the Contracting Officer in ASB. The specific roles and responsibilities of the Program Office, ASB, and other FDIC organizational units are presented below.

##### **4.A.5.a. Program Office Responsibilities (JUL 2003)**

The Program Office's responsibility is to identify procurement requirements and to prepare Requirements Packages in accordance with APM, 4.D., *Preparing Requirements Packages*, to support those requirements. Representatives of the Program Office are responsible for:

- (1) Providing a complete Procurement Requisition with the properly approved expenditure authority according to the requirements of APM, 4.A.4.;
- (2) Identifying potential contract requirements and initiating discussions with representatives of ASB;
- (3) Providing a clear and specific description of the goods or services required, a schedule for delivery or performance, a list of deliverable data or reports, including media in which they will be furnished, and their frequency, due date, and recipients;
- (4) Describing the minimum qualifications a firm must have in order to be considered for award;
- (5) Providing a price estimate for the goods or services being requested, including the base period and all option periods;
- (6) Suggesting potential sources;
- (7) Preparing a justification for noncompetitive procurement (JNCP), if necessary;
- (8) Specifying any additional information to be incorporated into the solicitation package, including payment terms, license prerequisites, the need for an indemnity, insurance requirements, limitations on subcontracting, and other special contractual provisions;
- (9) Determining the need for an offerors conference;
- (10) Providing technical evaluation criteria to be used in evaluating proposals, if appropriate;
- (11) Developing Article 17 documentation as defined in APM, 4.D.7. *NTEU Considerations*; and

- (12) Ensuring that a Requirements Packages for on-line services has been reviewed and authorized by the Library and Public Information Center Unit.

**4.A.5.b. Acquisition Services Branch Responsibilities (MAR 2000) (JUL 2003)**

Acquisition Services Branch (ASB) shall assist the Program Office in preparing the Requirements Packages, as needed. Contracting Officers are responsible for:

- (1) Working with the Program Office in identifying upcoming requirements and planning how to meet them;
- (2) Ensuring that ASB resources will be readily available once the Program Office has established its requirements;
- (3) Maintaining effective working relationships with Program Office representatives and other organizations that participate in the contracting process;
- (4) Reviewing Requirements Packages for completeness and clarity, ensuring that all firms to be solicited are given a fair and equitable opportunity to provide the most effective and economical goods or services;
- (5) Working directly with Program Office representatives to finalize the statements of work and to correct any deficiencies;
- (6) Forwarding the Requirements Package and draft solicitations to ODEO for all contracting actions greater than \$100,000;
- (7) Ensuring that MWOB and SDB sources are adequately represented on all solicitation lists and that MWOB and SDB firms recommended by ODEO are included to the maximum extent practicable;
- (8) Forwarding all RFPs \$100,000 or greater to the Legal Division for review;
- (9) Providing ODEO with a copy of the final solicitation package;
- (10) Working with representatives of other organizational units as necessary;
- (11) Adhering to the contract milestone schedule to ensure timely award;
- (12) Issuing the solicitation package (RFQ/RFP);
- (13) Acting as the primary point of contact with offerors; and
- (14) Reviewing all Requirements Packages for on-line services to ensure that they have been reviewed and authorized by the Library and Public Information Center Unit. If not, the Package should be returned to the Program Office to obtain authorization from the Library and Public Information Center.



**4.A.5.c. Legal Division Responsibilities**

Representatives of the Legal Division are responsible for working with ASB, as needed, on any legal issues identified and reviewing all solicitation packages and contracts \$100,000 or greater.

**4.A.5.d. ODEO Responsibilities (MAR 2000)**

ODEO MWOB Specialists are responsible for the following activities for all contracting actions greater than \$100,000:

- (1) Reviewing all Requirements Packages, including statements of work;
- (2) Reviewing all draft solicitations;
- (3) Providing the Contracting Officer with comments on all draft solicitations, if any, for consideration; and
- (4) Providing names of MWOB and SDB firms to the Contracting Officer for inclusion on the solicitation list after completing their review of the draft solicitation package.

**SECTION 4.B. PLANNING****4.B.1. General**

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

**4.B.2. Benefits of Communication**

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

**4.B.2.a. Availability of Resources**

Schedule its workload in a way that ensures that contracting resources are available to support Program Office requests as they are received;

**4.B.2.b. Efficiency**

Take the most efficient contracting action (e.g., consolidation of requirements);

**4.B.2.c. Schedules**

Establish realistic lead times and timely award schedules;

**4.B.2.d. Avoiding Delays**

Prevent contracting delays by identifying and resolving potential conflicts of interest and other problems before the solicitation process begins;

**4.B.2.e. Completeness**

Solicit proposals and award contracts and purchase orders on the basis of complete and adequate statements of work; and

**4.B.2.f. Competition**

Award contracts and purchase orders on a competitive basis whenever possible.

**4.B.3. Procurement Lead times**

ASB is committed to obtaining required goods or services as quickly as possible. The lead times required to satisfy any individual requirement will depend on its complexity and the availability of an existing contract that may cover the scope of the requirements. The Program Office should consider the time for the procurement process and submit the Requirements Package as soon as possible after the requirement is identified. Performance standards are listed in APM, 3.F., *Performance Standards for Contracting Requirements*.

#### **4.B.4. Recurring and Nonrecurring Requirements**

Recurring requirements are those that occur on a regular basis in a routine business process (e.g., appraisals). Nonrecurring requirements are those that occur only to meet a specific need (e.g., a financial management system). Recurring requirements should be specifically noted by the Program Office so that ASB can determine whether a multiple-order requirements contract, basic ordering agreement (BOA), or blanket purchase agreement (BPA) would be in the best interest of FDIC. These types of contracts enable FDIC to negotiate better prices and to satisfy subsequent recurring needs in a shorter timeframe by either placing calls under a BPA or orders under an existing BOA or multiple-order requirements contract, as appropriate.

#### **4.B.5. Proposal Evaluation Methodology**

Proposal evaluation methodology will be based on two (2) approaches: lowest total price, technically acceptable proposal or best value. Program Offices should discuss these approaches with the Contracting Officer to determine which would be the most appropriate for a given solicitation.

##### **4.B.5.a. Lowest Price, Technically Acceptable**

Under the lowest total price, technically acceptable approach, FDIC will state its minimum requirements in the solicitation, use a pass/fail evaluation of the technical proposals, and award to the offeror having the lowest total price, acceptable proposal.

##### **4.B.5.b. Best Value**

In certain situations, using total price as the determining factor would not adequately ensure the most advantageous alternative. In these instances, FDIC may get a better solution by considering the varying value (i.e., technical, price, etc.), across the range of solutions offered. The goal of this approach is to select the solution that offers the best value.

#### **4.B.6. Contracting Out Program (MAR 2000) (JUL 2003)**

A Contracting Out Program has been established to determine whether it is more cost effective to use contractor services in lieu of in-house bargaining unit personnel to carry out corporate activities that have been identified by FDIC management for possible outside contracting. For contracting-out decisions, Article 17 of the “National Agreement Between Federal Deposit Insurance Corporation (FDIC) and the National Treasury Employees Union (NTEU)” shall apply.

**SECTION 4.C. MARKET RESEARCH (MAR 2000)****4.C.1. Overview (MAR 2000) (JUL 2003)**

Market research involves obtaining information and knowledge about the availability and the different types of goods or services in the commercial marketplace. This may be done to keep abreast of marketplace changes and trends when there is no procurement planned or to identify firms that may offer the goods and/or services required by FDIC for a future procurement action. Also, market research plays an important role in obtaining the approvals for capital investment projects by supporting the development of a cost benefit analysis (CBA). **However, if the market research identifies one firm that the Program Office wants to contract with, noncompetitive contracting procedures defined in APM 4.G. must be used to approve the expenditure.**

**4.C.2. Market Research Procedures (MAR 2000) (JUL 2003)**

There are five (5) primary applications of market research that are used by the Corporation. Two (2) applications are used when there is no planned procurement involved (APM, 4.C.2.a.). Two (2) applications are used when there is a planned procurement involved (APM, 4.C.2.b.) The last application is used prior to exercising an option on an awarded contract (APM, 4.C.2.c.). Each application is discussed in this section.

**4.C.2.a. Market Research Procedures – No Planned Procurement Involved (JUL 2003)**

- (1) Market Surveillance (no planned procurement action). Market surveillance is a method of market research used by a Program Office to stay abreast of marketplace trends, products, and services. It is typically conducted as part of routine business when there is no planned or future procurement action. Market research under these circumstances may be performed by the Program Office without notification or assistance of the Contracting Officer. It is an ongoing process of reviewing information about market trends, new developments, products and services, and technical features.
- (2) Vendor Meetings and Product Demonstrations (no planned procurement action). This application of market research involves conducting face-to-face meetings with contractors to discuss specific products and services currently available in the commercial marketplace. This may include having contractors provide product demonstrations.

In instances where the vendor provides the FDIC with equipment, hardware, or software for testing and/or evaluation purposes, the vendor and FDIC will be required to sign a Memorandum of Understanding (MOU) and Confidentiality Agreement. Both documents should be fully executed prior to commencement of the testing or evaluation. The Contracting Officer will sign both documents on behalf of

FDIC. The MOU and Confidentiality Agreement are included as Exhibit XXXV or can be found on the ASB website under sample documents or at the URL -- <http://fdic01/division/doa/buying/sampleddocuments/sampdocs.html>.

**4.C.2.b. Market Research Procedures - Pre-Procurement Activities and Requests for Information (RFI) (JUL 2003)**

This application of market research involves data and information gathering to plan for a specific or future procurement. The purpose is to develop sources for solicitation purposes. The process must be kept fair and ensure that the same general information is made available to all participating vendors. The Program Office must first contact the Contracting Officer who will provide appropriate guidance in accordance with the APM. Program Offices are not authorized to begin pre-procurement market research without a Contracting Officer or other representative from ASB involved and/or present at meetings with vendors. Market research under these circumstances may involve market surveillance techniques, vendor meetings, product demonstrations or a combination of each or the use of a Request for Information (RFI) notice as discussed in the following paragraphs.

- (1) **General Request for Information Notices.** Market research may also involve issuing a general RFI notice. The RFI is a research method whereby the Contracting Officer issues a notice to the marketplace providing information regarding the future procurement and seeking sources interested in the requirement. The notice should be sufficiently detailed so that prospective offerors may understand the requirement and provide information to document their qualifications and interest. The RFI should list the screening criteria to be used to identify the most qualified respondents. For general RFI notices, the responses should be reviewed using the criteria/judgmental factors on a pass-fail basis (e.g., does the system have the prescribed modules FDIC needs or have an itemized list of applications or functions).
- (2) **RFI Notices for Capital Investment Projects.** For capital investment projects, the scope of the RFI needs to be broad enough to obtain detailed technical and pricing information from the marketplace. For these requirements, it is recommended that the Contracting Officer use an "RFI pre-qualification notice" to fully describe the requirement; obtain corresponding technical and pricing information; identify qualified and interested sources or firms; and evaluate (point score) the responses to determine which firms are the most qualified. FDIC will then send the solicitation to the firms determined to be the most qualified based on the RFI pre-qualification process.

**4.C.2.c. Market Research for Exercising Contract Options (JUL 2003)**

This application of market research is used to confirm that existing pricing for contract options represents current competitive pricing prior to exercising the option. It is important to determine if FDIC is receiving the most favored price from the contractor and to validate that the option price is competitive. It is a combination of the general market research and the pre-procurement application, but with no product demonstrations. The market research used to determine the acceptability of exercising an option must be completed 60 days before the Contracting Officer's required notification to the contractor on FDIC's intent to exercise the option. This type of market research is to be conducted by the Contracting Officer and Oversight Manager. However, the Contracting Officer shall make all contacts with prospective suppliers necessary to determine the acceptability of exercising an option and shall document the file accordingly. If the option price is not considered competitive, the Contracting Officer shall not exercise the option. The Contracting Officer may enter into negotiations with the contractor to reduce the option price or establish a contract modification to extend the schedule of the exiting contract. This provides an opportunity to issue a new competitive solicitation.

**4.C.3. RFI Content, Preparation and Distribution (MAR 2000) (JUL 2003)****4.C.3.a. Content for Non-Scored RFIs (JUL 2003)**

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

**4.C.3.b. RFI for Capital Investment Procurements (JUL 2003)**

- (1) **Technical Information.** Even though FDIC is not seeking formal proposals, the technical responses to the RFI must address FDIC's requirements in sufficient detail to allow them to be reviewed for responsiveness, evaluated for technical merit, and point scored. The purpose of this evaluation and scoring is to review the responses at a higher level of scrutiny, document the results, and eliminate those firms from further consideration that are deemed not acceptably qualified. It is FDIC's sole discretion to determine which firms are deemed qualified. Therefore, the technical portion of the RFI should include, but is not limited to, a background statement describing the project, its purpose and scope, a listing of the project's requirements and functionality, and operating environment if appropriate. The technical portion of the RFI should also include technical questions or project requirements to be

addressed by interested firms in their responses. These questions and requirements must address the respondents' levels of experience, capability and qualifications for a complete review to establish the most qualified list of firms.

- (2) Pricing Information. In addition to the technical responses, the RFI pre-qualification notice should also include a request for pricing information. Firms will review the technical requirements and provide an estimated price for their proposed methodology for fulfilling the requirement. It is critical that the project be described in sufficient terms to facilitate obtaining realistic, marketplace prices by all responding firms. The pricing will not be as exact as under an RFP because there is no statement of work or detailed specification whereby the firms would be proposing on the same requirement. For software, the pricing may be on a single package offered by different resellers and implementers or on different packages altogether. The pricing may be based on commercial market price lists, catalog pricing, commercial or Federal Supply Schedule (FSS) labor rates, or Rough Order of Magnitude estimates. Respondents should be instructed that they will not be bound by the pricing provided, but should provide the basis of their projected price.

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

**4.C.3.c. RFI Preparation and Distribution (JUL 2003)**

The RFI notice is prepared jointly by the Program Office and the Contracting Officer. An internal decision is necessary to identify whether the notice will be broadly advertised on FedBizOpps or sent to a select group of firms based on a preliminary search of the marketplace. The FedBizOpps method ensures the widest distribution but may inundate the FDIC with responses that will require significant time to review and evaluate. The latter method is more manageable administratively but there is no guarantee that an adequate number of responses will be provided. This decision must be made based on the nature of the project and the product's or services' availability and relative standing in the commercial marketplace. Either way, the selected approach should be substantiated as part of the acquisition strategy. Notwithstanding, the APM requires a minimum of five (5) firms be solicited for contracts greater than \$100,000.

**4.C.4. Techniques for Market Research (MAR 2000) (JUL 2003)**

Possible techniques for conducting market research include contacting specific potential suppliers and market experts; formal RFIs published in various publications (including technical, scientific, business, and industry journals or publications, as well as the Commerce Business Daily [CBD]); internet searches; searching available databases (including government and private sources); on-line communication; defining source lists from other contracting activities or government agencies; reviewing catalogs; contacting trade associations (including publications and trade shows); reviewing contractor literature or product research sources; and conducting information meetings and product evaluations or demonstrations.

**4.C.5. Caution (MAR 2000) (JUL 2003)**

Program Offices and Contracting Officers shall use extreme caution when conducting either market surveillance or market research for pre-procurement planning (i.e., for a new requirement). There are a number of situations that could cause prejudice to FDIC or the firm being researched, resulting in adverse consequences to either or both parties. Examples of situations that must be avoided by all parties involved include the following.

**4.C.5.a. Disclosing Future or Current Procurement Plans (MAR 2000)**

Disclosing future or current procurement plans or other procurement-sensitive information. Such disclosure may cause one (1) firm to gain an unfair competitive advantage over another and result in poor technical/price competition or bid protests.

In a competitive marketplace, as the one FDIC operates in, offerors will try to gain as much information as possible from Program Offices to gain an advantage over the competition.

**4.C.5.b. Authority (MAR 2000)**

Giving the impression that an employee has the authority to obligate FDIC.

**4.C.5.c. Obligating FDIC (MAR 2000)**

Inadvertently obligating FDIC by an employee without the authority to do so.

**4.C.5.d. Proprietary or Source Selection Information (MAR 2000)**

Improper disclosure of proprietary or source selection sensitive information.

**4.C.5.e. Influence FDIC Requirements (MAR 2000)**

Allowing contractors to use communications to sell their products or services in order to influence the definition of FDIC requirements to favor them.

**4.C.5.f. Firm's Technology or Proprietary Information (MAR 2000)**

Discussion of one firm's technology or proprietary information with another firm.



**4.C.6. Prohibited Acts (MAR 2000)**

Market research shall not include any of the following:

**4.C.6.a. Purchase Commitments (MAR 2000)**

Making purchase commitments;

**4.C.6.b. Price Negotiations (MAR 2000)**

Conducting price negotiations; and

**4.C.6.c. Sharing Procurement Sensitive or Other Information (MAR 2000)**

Sharing procurement-sensitive or other information that would place one (1) vendor in a more favorable position than other vendors regarding the requirement.

**SECTION 4.D. PREPARING REQUIREMENTS PACKAGES****4.D.1. Overview (MAR 2000) (JUL 2003)**

The Program Office shall submit its requirements, in writing, to ASB so that ASB can initiate the contracting process. The Program Office is responsible for determining what is needed, when the need must be met, for documenting the requirement for goods or services, and for seeing that the Procurement Requisition is approved by the official with the proper level of expenditure authority. The Program Office is also responsible for determining if the proposed contract is subject to Article 17, see APM, 4.D.7., *NTEU Considerations*.

**4.D.2. Procurement Requisitions Under Simplified Procurement****4.D.2.a. Use**

Simplified procurement procedures are generally used when acquiring low dollar or noncomplex goods or services under \$100,000, or commercial goods (see APM, 5.A.4.c., *Commercial Goods*) less than \$5,000,000. Awards under simplified procedures are normally made using purchase orders. The types of goods or services that are categorized as simplified procurements include but are not limited to: furniture, equipment, housekeeping services, carpet repair, computers, printers, courier service, and systems furniture installation.

**4.D.2.b. Procurement Requisition (MAR 2000) (JUL 2003)**

For all contracting actions processed under simplified procurement procedures, the Requirements Package may consist solely of an approved Procurement Requisition, Form FDIC 3700/01 according to the requirements of APM, 4.A.4. It is the Program Office's responsibility to ensure that a Procurement Requisition is complete before it is provided to ASB. This includes providing sufficient information as required on the Procurement Requisition form, a price estimate, and authorization of the expenditure by an individual having proper delegated authority. The Contracting Officer may require additional supporting documentation, when necessary, to initiate the contracting process.

**4.D.2.c. Numbering Scheme**

Each Program Office is responsible for ensuring that the Procurement Requisition numbers are correct and conform to the fourteen (14) character numbering system as follows:

- (1) The first four (4) digits are the Program Office's Financial Information System (FIS) Accounting Code Key (ACK) organization code;
- (2) The next three (3) digits are the Program Office's FIS ACK location code;

- (3) The next five (5) digits are the Program Office's unique numbering system for the Procurement Requisition form; and
- (4) The last two (2) digits designate the current calendar year.

#### **4.D.3. Requirement Packages Under Formal Procurement Procedures**

##### **4.D.3.a. Use**

Formal contracting procedures are used to acquire high dollar (over \$100,000) or complex goods or services, or commercial goods \$5,000,000 or greater. Formal contracting is characterized as requiring detailed terms and conditions, having multiple deliverables and longer periods of performance, requiring monthly and recurring invoices, and requiring extensive contract administration.

##### **4.D.3.b. Requirements Package (MAR 2000) (JUL 2003)**

For all contracting actions processed under formal procurement procedures, the request for the procurement action shall consist of a Requirements Package that provides sufficient information to enable ASB to process the request in compliance with FDIC policy. It is the Program Office's responsibility to ensure that the Requirements Package is complete before providing it to ASB. This includes providing sufficient information under a transmittal memorandum, as follows:

- (1) Completed Procurement Requisition Form (3700/01) including a price estimate and expenditure authorization from appropriate delegated official(s) or Board of Directors as set forth in APM, 4.A.4.;
- (2) A complete statement of work (SOW);
- (3) Technical proposal evaluation criteria (relating to SOW requirements), relative weighting for the criteria, points for each criterion, and designation of members of the Technical Evaluation Panel (TEP);
- (4) A price structure for the RFP/RFQ;
- (5) Technical information to be addressed by offerors, if necessary;
- (6) Detailed cost estimate in accordance with Exhibit VI, *Guidelines for Development of Cost Estimates for Contractual Goods or Services*;
- (7) A list of suggested sources (always optional; ASB may solicit these sources as well as other sourcing alternatives);
- (8) A justification for noncompetitive procurement (JNCP) memorandum, if the estimated price of the required goods or services is greater than \$5,000 and the Program Office is suggesting that the procurement be made noncompetitively;

- (9) When the requirement is for contract services which could result in depriving current FDIC employees of work, the Program Office decision must be in accordance with APM, 4.B.6., *Contracting Out Program*; and
- (10) Identification of any confidential information that will be provided to either the offerors during the solicitation phase or the contractor on a post-award basis, for any contractors who will or may work on-site at an FDIC facility, or will or may have access to any FDIC systems. This will require the offerors or contractor to sign the *Contractor Confidentiality Agreement* (APM Exhibit II) prior to receiving the information, or entering the FDIC site or facility.

#### **4.D.4. Expenditure Authority**

Expenditure authority shall be obtained in the total amount of the contract and establishes the expenditure ceiling. The ceiling, as stated in the delegations, includes the total dollar amount of a single contract award, a contract with all options, or all orders placed under a BOA or multiple-order requirements contract.

#### **4.D.5. Assistance from ASB**

Program Office personnel should consult with ASB if they need assistance in determining which documents should be included in a Requirements Package.

#### **4.D.6. Prohibition on Splitting Requirements**

Program Office personnel shall not split a known requirement into two (2) or more separate requirements in order to bypass or circumvent the delegation of expenditure authority.

#### **4.D.7. NTEU Considerations (MAR 2000) (JUL 2003)**

As a result of FDIC's collective bargaining contract with the National Treasury Employees Union (NTEU), NTEU shall be provided with certain information and an opportunity to comment, before FDIC contracts out any current or future bargaining unit work. The procedures for reviewing work to be contracted out will be based on Article 17 of the FDIC/NTEU bargaining unit Agreement.

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**SECTION 4.E. STATEMENTS OF WORK****4.E.1. General**

All contracting actions require a clear and concise description of the goods or services to be procured. For requirements processed under simplified procurement procedures, the description will be less detailed than would be necessary for complex requirements processed under formal contracting procedures.

**4.E.1.a. Simplified Procurement (JUL 2003)**

Under simplified procurements, a short, concise description of what is required may be sufficient. For example, the description for a computer can be defined by minimal system requirements (e.g., hard drive capacity, processor speed) or by a brand name or equal basis. In this example, the Program Office would complete the Procurement Requisition form prepared according to the requirements of APM, 4.A.4., with the price estimate, and no other documentation may be necessary. If an appraisal is required, the Program Office may use the Procurement Requisition but attach a description of the appraisal requirements.

**4.E.1.b. Formal Contracting (JUL 2003)**

Detailed descriptions of requirements are necessary when the requirements are complex. For example, a contracting requirement for the development of a new computer system would require a detailed and complete statement of work (SOW) to convey all aspects of the requirement to prospective offerors. In this example, the SOW would include system development parameters, benchmark testing and acceptance criteria, documentation requirements, etc. A completed Procurement Requisition form shall also be provided that complies with the requirements of APM, 4.A.4.

**4.E.2. Purpose**

The SOW establishes the goods or scope of services that are to be provided by the contractor. As part of the solicitation, the SOW provides a basis for the offeror's preparation of technical and price proposals. The SOW also becomes the standard for measuring the contractor's performance. As the contract progresses, the SOW is one of the major contractual elements used by both the contractor and FDIC in determining the contractual rights and obligations of the parties with respect to contract performance. Consequently, a clear, concise, well thought out SOW is the key to successful results.

**4.E.3. Responsibility**

The Program Office is responsible for preparing the SOW. An SOW must clearly delineate what is to be procured. While Program Offices are encouraged to work closely with ASB in developing

Requirements Packages, final responsibility for defining a requirement and providing associated documentation for its procurement remains with the Program Office.

#### **4.E.4. Guidelines for Development**

Suggested guidelines for the development of a sound statement of work follow.

##### **4.E.4.a. Understand What is Required**

In developing the SOW, a thorough understanding of the required goods or services and expected results is critical. Key items to be considered and conveyed through the SOW include:

- (1) The nature of the services and the minimum standards that must be met;
- (2) Qualifications necessary to perform the work;
- (3) The deliverables and the scheduled milestones for their delivery; and
- (4) Standards by which the contractor's performance will be measured.

##### **4.E.4.b. Importance of the SOW Language**

The success or failure of a contract often hinges upon the way in which the SOW is written. Each SOW should be clear, concise, accurate, and complete. It should be written in a manner that permits FDIC to measure the contractor's achievement of the contract requirements. Further, because the SOW will be read and interpreted by people of varied backgrounds, it must be worded as clearly as possible to reduce the potential for misinterpretation or misunderstanding.

#### **4.E.5. Task Assignments (MAR 2000) (JUL 2003)**

In a System Development Life Cycle (SDLC) contract or any other contract where the use of task assignments is intended, the SOW of the task assignment should be as comprehensive as possible to enable FDIC to determine the contractor's adherence to the terms of the SOW. In SDLC contracts, the SOW should refer directly to the SDLC to make the SOW as specific as possible. In any case, the task assignments must be sufficiently specific to allow FDIC to assess the contractor's performance.

For a full discussion of task assignment contracts, see APM, 3.B.9., *System Development Life Cycle (SDLC) Contracts with Task Assignments*.

**SECTION 4.F. DEVELOPING COST ESTIMATES****4.F.1. Cost Estimates**

All requirements packages shall contain a cost estimate supporting the proposed procurement.

**4.F.2. Simplified Procurement**

The cost estimate is required by APM, 4.D.2.b., *Procurement Requisition*, and may simply be a comparison to a catalog price or price paid on a previous procurement for a similar item. At the discretion of the Contracting Officer, the cost estimate may be required under the guidelines set forth in Exhibit VI, *Guidelines for Development of Cost Estimates for Contractual Goods or Services*.

**4.F.3. Formal Contracting**

The cost estimate is required by APM 4.D.3.b., *Requirements Package*, and depending on the nature of the complexity of the requirement, may require a higher level of supporting documentation. These price estimates shall be prepared in accordance with the guidelines in Exhibit VI, *Guidelines for Development of Cost Estimates for Contractual Goods or Services*.

**4.F.4. Expenditure Authority Cases**

The price estimate for cases requiring approval by the Deputies to the Chairman, Chairman, and Board of Directors, shall be proposed in accordance with APM 4.I.2.b.(6), *Case Content*, and Exhibit VI, *Guidelines for Development of Cost Estimates for Contractual Goods or Services*.



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## SECTION 4.G. JUSTIFICATION FOR NONCOMPETITIVE PROCUREMENT (JNCP)

### 4.G.1. Scope

This section provides procedures for the preparation and approval of a justification for noncompetitive procurement (JNCP). All requests for noncompetitive contracting shall comply with the procedures stated in this Section.

### 4.G.2. Policy (MAR 2000)

Though it is FDIC's policy to procure goods or services through a competitive process to the maximum extent possible, instances arise when a noncompetitive procurement is justified. In these instances, and when the value of the procurement is greater than \$5,000, the Program Office may recommend a noncompetitive procurement by including a JNCP with the Requirements Package.

### 4.G.3. Exceptions to Competitive Contracting

All JNCPs shall be required to cite the rationale supporting why the contract cannot be competitively awarded. The rationale must include one (1) or more of the following circumstances:

- (1) When the need for the goods or services is of such an unusual and compelling urgency that the Corporation would be adversely affected if additional time were taken to solicit additional sources;
- (2) When, after adequate investigation, only one (1) firm is identified that can meet the specific FDIC needs, such as when the services are so specialized that they demand the expertise of an individual or firm with unusual capabilities;
- (3) When there is only one (1) firm that provides the required goods or services that meets specific FDIC requirements; and
- (4) When an existing contractor offers FDIC the benefits of historical expertise or systems compatibility and, therefore, other contractors would not be able to perform as cost-effectively or as timely as the current contractor.

### 4.G.4. Procedure

#### 4.G.4.a. Market Research

Before preparing the JNCP, the Program Office with the Contracting Officer shall conduct market research in order to identify possible sources for the goods or services required. Market research is discussed in APM, 4.C., *Market Research*.

The results of the market research should be documented and submitted with the JNCP.

**4.G.4.b. JNCP Preparation**

All JNCPs shall be provided with the Requirements Package and include the following information:

- (1) Description of the goods or services required to meet FDIC's needs (including estimated value);
- (2) Rationale for the use of noncompetitive procurement, as stated in APM, 4.G.3., *Exceptions to Competitive Contracting*.
- (3) Demonstration that the proposed contractor meets FDIC's needs;
- (4) Any patent rights, copyrights, or other proprietary information which may preclude competition in this instance;
- (5) Results of any market research; and
- (6) A determination that the anticipated price to FDIC will be fair and reasonable.

**4.G.5. Contracting Officer Assistance**

Upon request, the Contracting Officer shall assist the Program Office in reviewing the rationale and appropriateness of the JNCP's exception to competitive contracting stated in APM, 4.G.4., *Procedure*.

**4.G.6. Noncompetitive Expenditure Approval**

All requests for noncompetitive contracts shall require noncompetitive expenditure approval prior to soliciting the selected offeror. Program Offices shall obtain the necessary expenditure approval in accordance with APM, 1.B., *Expenditure Delegations of Authority*, and submit it to the Contracting Officer with the Requirements Package and the JNCP.

**4.G.7. Prohibition on Splitting Requirements**

In no case shall Program Offices break up requirements in order to circumvent the approval thresholds for noncompetitive procurements.

**4.G.8. Contracting Officer Approval**

**4.G.8.a. Contracting Officer Review**

The Contracting Officer shall review JNCPs upon receipt of the Requirements Package with approved noncompetitive expenditure authority. If the Contracting Officer believes that the request is not adequately justified or supported, the Program

Office will be notified and requested to provide additional justification or supporting information. If additional justification or support cannot be provided, the request will be denied by the Contracting Officer and will be returned to the Program Office with a memorandum documenting the reasons for denial.

**4.G.8.b. Contracting Officer Approval**

If the Contracting Officer determines that all Program Office documentation is complete and accurate and that the JNCP is appropriate, the Contracting Officer shall approve the use of noncompetitive procedures for the contract award. However, if the Contracting Officer believes that the JNCP is not appropriate or properly supported, the JNCP shall be rejected and returned to the Program Office. In addition, a request for a noncompetitive procurement may also be rejected if the Contracting Officer believes a competitive procurement can be awarded within the required time frame. If the JNCP is not approved, the Program Office will be instructed to prepare and submit a new competitive Requirements Package for the requirement.

**4.G.9. Actions Not Requiring Noncompetitive Approval**

The following actions do not require noncompetitive approval:

**4.G.9.a. Equal to or Less Than \$5,000 (MAR 2000)**

Procurements of \$5,000 or less;

**4.G.9.b. Non-Procurement Related Expenses**

Procurements of utility services, postage, and similar types of non-procurement goods or services and related expenses (as delineated in Exhibit I, *Expenditure Delegations for Contracts, Leases, Legal Services, and Non-Procurement Related Expenses*);

**4.G.9.c. Interagency Agreements**

Procurements of goods or services under Interagency Agreements from other government agencies.

**4.G.9.d. Certain Newspaper Advertisements (JUL 2003)**

Newspaper advertisements shall not require noncompetitive approval. However, competition may be used if, in the opinion of the Contracting Officer and the Program Office, the use of a competitive procedure would most likely yield the best value for, and be in the best interests of, the FDIC. The procurement of the advertisements must be authorized by one who has the requisite expenditure authority

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**SECTION 4.H. PROCESSING REQUIREMENTS PACKAGES****4.H.1. Receipt of Requirements Package**

The Requirements Package shall be prepared in accordance with procedures and formats described in this chapter. ASB shall record the date that the Requirements Package is first received, and assign it a solicitation or purchase order number.

**4.H.2. Contracting Officer Review**

The Contracting Officer shall review the Requirements Package for completeness and clarity, and shall determine and advise the Program Office of the contracting method to be used under simplified procurement, formal contracting, or under an existing contract.

**4.H.3. Procurement Action Log (PAL) (MAR 2000)**

Upon receipt of a Requirements Package, the Contracting Officer is responsible for ensuring that the Procurement Requisition number is entered into the Procurement Action Log (PAL). PAL records the Procurement Requisition Number, Program Office point of contact, date received in ASB, and the Contracting Officer. After the resulting award, PAL shall be updated by the Contracting Officer with the award date.

**4.H.4. Contracting Milestone Schedule**

For contracts of \$100,000 or greater (formal contracting), the Contracting Officer shall develop a Contracting Milestone Schedule (Exhibit X, *Contract Milestone Schedule*). Milestone schedules may also be used for simplified contracting actions. The Contracting Officer, jointly with the Program Office, shall establish all milestone dates, including the proposal preparation period, giving adequate time for potential offerors to respond.

**4.H.5. Changes**

Changes to existing Requirements Packages shall be in memorandum format unless the change requires additional funding, in which case the change (i.e., dollar increase) shall be approved on a Procurement Requisition pursuant to the delegation of authority based on the aggregate amount of the base requirement and change. Changes to existing Requirements Packages should not be submitted with a new number but be provided as a revision to the original (i.e., rev. no. 1, etc.).

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## SECTION 4.I. PREPARATION OF EXPENDITURE AUTHORITY REQUESTS FOR THE DEPUTIES TO THE CHAIRMAN, CHAIRMAN, AND BOARD OF DIRECTORS

### 4.I.1. Policy

Expenditures requiring approval by the Deputies to the Chairman, Chairman, and Board of Directors are to be submitted early in the acquisition planning process, prior to issuing the solicitation, and shall include detailed cost estimates, base plus option years, for the requested expenditures as stated in APM, 4.F., *Developing Cost Estimates*.

### 4.I.2. Procedures

#### 4.I.2.a. Timing of Submission (MAR 2000) (JUL 2003)

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

#### 4.I.2.b. Case Content (MAR 2000) (JUL 2003)

Expenditure authority cases shall include the following information:

- (1) Description of Requirement. Provide detail regarding the program requirement, and the contractual support needed. Include the total time period for which the contract will be needed, base period and all option periods.
- (2) Justification. Describe the need in terms of mission-related objectives. If appropriate, state relevance to the Corporate Strategic and Operating Plans. Include information on advantages to the Corporation, cost savings to be achieved through the proposed approach, and any potential adverse consequences if the objective is not fulfilled.
- (3) Prior Contracts. If the requirement has historically been accomplished through use of contracts, provide the status of the prior contract, expiration date, and historical cost.
- (4) Other Alternatives Considered. Outline other alternatives considered for accomplishing the objective, if appropriate. Briefly discuss analysis of alternatives, advantages and disadvantages of each, and reasons other alternatives were not selected in favor of the recommended approach.



- (5) Other Supporting Information. If appropriate, include supporting information gained through research regarding standard practices within industry, the financial regulatory community, or other government agencies. Include discussion of any technical innovation realized through the requirement.
- (6) Cost Estimate. Explain the total funding needed to achieve the objective. State the estimated amount to be spent over the entire contract period, including options. Include a structured cost estimate showing how dollar amounts are formulated. State assumptions used in developing the estimate. Exhibit VI, *Guidelines for Development of Cost Estimates for Contractual Goods or Services*, contains guidelines for development of cost estimates. Contracting Officers within ASB are available to assist Program Office representatives in this effort.
- (7) Budget Authority. Division Directors are responsible for ensuring that funds to be spent in the current year are available within budget, and that funds required for future years will be incorporated into budget planning. Each case shall contain the following statement:

*“Funding required for the current calendar year is available within the current budget. Funds required for future years will be included in respective budget plans.”*
- (8) Policy Compliance. Division and Office Directors are responsible for ensuring compliance with corporate policy and NTEU bargaining unit requirements.

**4.I.2.c. Concurrences (JUL 2003)**

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

- (1) Division Director;
- (2) Assistant Director, ASB;
- (3) Appropriate Deputy to the Chairman; and
- (4) Board of Directors.

**4.I.2.d. Disposition after Approval**

The Office of Executive Secretary is responsible for case distribution after approval by the Board. Cases requiring approval only at the level of Deputy to the Chairman will be distributed through normal correspondence distribution procedures. Upon receipt of the approved case, Contracting Officers within ASB are responsible for ensuring that a copy of the case is retained in the official contract file.

**4.I.2.e. Variances at Contract Award**

Notification will be required if the contract award amount will result in a variance from the original approved amount of expenditure authority, if greater than allowed variances established in the tables below. Notification should occur immediately upon determining that a variance will occur and will be in the form of a memorandum from the Division or Office Director responsible for the program. This memorandum shall be forwarded to the appropriate Deputy to the Chairman, and subsequently to the Board, if the case originally required Board approval.

- (1) Explanation is required if the contract award amount will result in a funding increase over the approved amount that exceeds the following variances:

<i>Approved Expenditure</i>	<i>Allowed Variance</i>
<i>Up to \$5 million</i>	<i>\$250,000</i>
<i>Over \$5 million</i>	<i>5% of Total</i>

- (2) Explanation is required if the contract award amount will result in a decrease from the approved amount that is greater than the following variances:

<i>Approved Expenditure</i>	<i>Allowed Variance</i>
<i>Up to \$10 million</i>	<i>\$1,000,000</i>
<i>Over \$10 million</i>	<i>10% of Total</i>

**4.I.3. Case Format**

All cases requiring approval by the Deputies to the Chairman, Chairman, or Board of Directors shall be prepared in accordance with the following format:

**4.I.3.a. Paper Size**

Use letter size paper for the entire document. Other size paper may not be used for attachments or exhibits. Attachments and exhibits that originate on other size paper must be conformed to letter size.

**4.I.3.b. Presentation of Case**

The Board case must contain, in addition to a clear statement of the proposal and a summary of analysis, a separate section entitled "recommendation" which clearly states the position that the Board is being asked to adopt. Each Board case write-up should consist of a balanced presentation. Whenever a case is potentially controversial or likely to engender questions, a portion of the case should outline the pros and cons of the proposal.

**4.I.3.c. Case Summary**

Board cases exceeding five (5) pages in length must be summarized in a short paragraph at the beginning of the memorandum.

**4.I.3.d. Case Organization**

All pages of each case, including attachments, must be sequentially numbered in the lower right corner and the numbers are not to be handwritten.

**4.I.3.e. Signatures**

The Board case must be signed by the appropriate Division or Office Director, or designee, with signed concurrence by the Legal Division, as necessary.

**4.I.3.f. Resolutions**

Board cases requiring resolutions must have those resolutions attached to the case for the case to go forward to the Board. If there are questions about whether a particular case requires a resolution, the Office of the Executive Secretary should be contacted.

**4.I.3.g. Points of Contact**

The case should contain the name(s) and telephone number(s) of any staff members who may be contacted by Board members and representatives for additional information. The staff member(s) who will present the case or will be available for questions at the Board meeting shall be clearly identified. Finally, the case should state the name(s) of other divisions or offices within FDIC with which the case has been coordinated, to facilitate coordination with other divisions and office.

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# CHAPTER 5

## **SIMPLIFIED PROCUREMENT PROCEDURES**

### **SECTION 5.A. OVERVIEW**

#### **5.A.1. Purpose**

The purpose of simplified procurement procedures is as follows:

##### **5.A.1.a. Streamline**

To streamline the procurement process, make timely awards, and avoid unnecessary administrative burdens;

##### **5.A.1.b. Reduce Costs**

To reduce administrative costs; and

##### **5.A.1.c. Efficiency**

To promote efficiency and economy in contracting.

#### **5.A.2. Scope**

##### **5.A.2.a. When To Use**

The procedures set forth in this chapter shall generally be used when soliciting for:

- (1) Goods or services with estimated (aggregate) expenditures less than \$100,000 or for the acquisition of commercial goods less than \$5,000,000; and
- (2) Goods or services that are classified by the Contracting Officer as having a noncomplex, simplified nature as categorized in APM, 5.A.3., *Attributes of Simplified Procurement*.

##### **5.A.2.b. Formal Contracting**

APM, Chapter 6, *Formal Contracting*, sets forth procedures generally used when contracting for goods or services with expenditures of \$100,000 or greater or when requirements are of a complex nature. It also covers contracts of \$5,000,000 or greater for commercial goods.

##### **5.A.2.c. Contracting Procedures**

The Contracting Officer shall have the discretion to determine whether a given requirement should be processed under simplified procurement or formal contracting procedures.

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**5.A.2.d. ASB Responsibility**

ASB is responsible for the solicitation, proposal evaluation, award, and execution of contracts under simplified procedures. ASB shall prepare a complete official contract file that documents the entire selection, evaluation, and award process.

**5.A.3. Attributes of Simplified Procurement**

Simplified procurement is accomplished by using abbreviated contracting procedures and documents. For some requirements, it is not cost effective, expedient, or necessary to use detailed solicitation procedures and lengthy solicitation and contractual documents. Instead, the requirement shall be competitively solicited using a Request for Quotation (RFQ) and the successful offeror shall receive a purchase order to begin performance.

**5.A.4. Determining Whether to Use Simplified Procedures**

While the \$100,000 threshold is generally the determinative factor, the Contracting Officer must consider the specific characteristics and nature of the requirement before deciding to use simplified procedures. Characteristics to be considered include:

**5.A.4.a. Dollar Value and Complexity**

- (1) The aggregate price, including options, is less than \$100,000 or the goods are commercial goods and less than \$5,000,000; and
- (2) The requirement is not complex in nature (e.g., single deliverable like a report or off-the-shelf item).

**5.A.4.b. Characteristics of Noncomplex Items**

Characteristics that will factor into the determination to use simplified procurements will include whether:

- (1) The award will require minimal administration (e.g., inspecting a single deliverable and approving payment, like furniture);
- (2) The period of performance is short;
- (3) The award decision will be made on a price only or limited technical evaluation basis;
- (4) Payment is based upon a single delivery; or
- (5) Routine or recurring requirements are being purchased.

**5.A.4.c. Commercial Goods**

Commercial goods are those goods that are determined to be in the commercial market place, as documented by market research (e.g., office equipment and supplies). These types of goods are sold in substantial quantities to the general



public in the course of normal business operations at prices based upon established catalog or market prices.

**5.A.4.d. Other Factors**

Other factors not stated above may be considered by the Contracting Officer.

**5.A.4.e. Decision**

After considering the characteristics of the requirement, the Contracting Officer shall have the full discretion to decide which procurement procedure is appropriate for the requirement.

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**SECTION 5.B. GENERAL PRINCIPLES****5.B.1. Objectives****5.B.1.a. Compliance (MAR 2000)**

The procedures set forth in this chapter allow for smaller and simpler procurements to be awarded quickly while complying with FDIC's mandates for adequate competition, fair and consistent treatment of offerors, increased opportunities for Minority- or Women-Owned Business (MWOB) and Small Disadvantaged Business (SDB) firms, and use of only those firms that comply with FDIC's contractor eligibility regulations.

**5.B.1.b. Responsibility**

ASB shall only award contracts to firms that demonstrate the ability to perform in accordance with the particular requirement, and will consider available past performance information.

**5.B.2. Competition Requirements****5.B.2.a. Adequate Competition**

Adequate competition is defined as the solicitation of three (3) or more firms having the potential to provide the goods or services requested.

**5.B.2.b. Objective**

The objective of the procedures set forth in this chapter is to promote competition whenever practical, while still ensuring that the process can be performed quickly. To do this effectively, ASB must understand the FDIC marketplace and be familiar with the capabilities of qualified private sector firms that can potentially meet FDIC's business needs.

**5.B.2.c. Responsibility**

Contracting Officers shall make awards using the procedures in this chapter when simplified procurement is the most suitable, efficient, and economical method based upon the circumstances of the procurement. Contracting Officers shall solicit a reasonable number of sources to promote competition to the maximum extent practicable, and to ensure that the procurement is advantageous to FDIC based on either price alone or price and other factors (e.g., past performance and quality).

**5.B.2.d. Elements Necessary for Competition**

The Contracting Officer must ensure that the following elements, which are necessary for competition, are present:

- (1) Sufficient number of interested and capable firms;
- (2) Clear and accurate specifications; and
- (3) Sufficient time for selection, evaluation and award.

**5.B.2.e. Selecting Sources**

The selection of sources for any individual solicitation is the responsibility of the Contracting Officer with input from the Program Office and the ODEO.

**5.B.2.f. Participation of MWOB and SDB Firms (MAR 2000)**

It is FDIC policy to encourage the inclusion of Minority- or Women-Owned Business (MWOB) and Small Disadvantaged Business (SDB) firms in the purchase of goods or services.

**5.B.3. Proposals from Solicited Firms Only**

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

**5.B.4. Solicitation and Contractual Documents**

**5.B.4.a. Solicitation Document**

A Request for Quotation (RFQ) is the preferred document to be used for solicitation purposes under simplified procedures. The RFQ may be oral or written as described in this chapter.

**5.B.4.b. Award Document (JUL 2003)**

A purchase order or blanket purchase agreement (BPA) is the preferred document to be used when making awards under simplified procurement procedures. For purchase orders, the successful offeror is not required to counter-sign the document because acceptance of its terms will be evidenced by commencement of performance or delivery. All solicitations resulting in the award of contracts must include language instructing the contractor to submit invoices to the Contracting Officer. A short form contract may also be used.

**5.B.5. Technical Evaluation Official (TEO)**

Under simplified procurements, the technical evaluation is performed by a single individual from the Program Office, termed the Technical Evaluation Official (TEO). A Technical Evaluation Panel (TEP), however, may be convened at the discretion of the Contracting Officer when limited

technical evaluations are required. The role of the TEO is solely to determine that each offeror has the capacity and capability to perform the work. APM, 5.E., *Evaluation Phase*, establishes procedures for the technical evaluation of proposals in an impartial and consistent manner.

#### **5.B.6. Awards Using Purchase Orders**

The purchase order is an offer to buy goods or services upon specified terms and conditions. The binding nature of the purchase order takes place when the Contractor either accepts the order or begins performance. The Contracting Officer may cancel, withdraw, or amend the purchase order at any time prior to the commencement of performance or notice of acceptance without penalty.

#### **5.B.7. Noncompetitive Awards (MAR 2000)**

Noncompetitive awards must be approved in writing in accordance with a Justification for Noncompetitive Procurement (JNCP) on a case-by-case basis. The Program Office is responsible for obtaining noncompetitive expenditure authority from authorized officials. Awards \$5,000 or less are not required to be competed, do not require an approved JNCP, but shall be authorized in accordance with the Delegations of Authority. Procedures for processing JNCPs are stated in APM, 4.G., *Justification for Noncompetitive Procurements (JNCP)*.

#### **5.B.8. Contractor Eligibility Reviews (JUL 2003)**

The Contracting Officer shall review the National Contractor System (NCS) prior to any award, regardless of dollar value, to ensure that the apparent awardee is not excluded or suspended from doing business with FDIC. In addition, the Contracting Officer shall require prospective offerors to submit *FDIC Integrity and Fitness Representations and Certifications* for purchase orders and contracts of \$25,000 or greater (see Exhibit XXXIII).

#### **5.B.9. Background Investigation Reviews (MAR 2000) (JUL 2003)**

Background investigation reviews for a selected contractor and key personnel are not required for contracts for goods at any dollar amount or for contracts for services less than \$100,000. However, these reviews are required and shall be conducted in compliance with APM, 5.F.1.d. *Background Investigations*.

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**SECTION 5.C. PRESOLICITATION PHASE****5.C.1. Receipt of the Requirements Package (MAR 2000) (JUL 2003)**

The presolicitation process begins when the Contracting Officer receives a complete Requirements Package. The Requirements Package format is discussed in APM, Chapter 4, *Preparation of the Requirements Package*. Generally, under most simplified contracting requirements, the Requirements Package will consist of a Procurement Requisition prepared according to the requirements of APM, 4.A.4. with a description of the goods and services. Requirements Packages that are not complete (i.e., deficient so as to preclude processing) shall be promptly returned to the Program Office. The Contracting Officer shall either document in writing or discuss verbally with the Program Office all necessary corrections. In addition, the Contracting Officer shall review the Requirements Package to determine whether the requirement is appropriate for simplified procurement procedures. Upon receipt of this package, the Contracting Officer should begin completing the appropriate contracting file checklist. In Exhibit XXIII, there are checklists for purchase orders (\$5,000 or less), simplified contracting, and formal contracting.

**5.C.2. Procurement Action Log System (MAR 2000)**

After the Contracting Officer has determined that the Requirements Package is complete, the requirement shall be entered in the Procurement Action Log (PAL). The Contracting Officer shall ensure that all information contained in PAL for the requirement stays current, complete, and accurate.

**5.C.3. Developing the Solicitation List****5.C.3.a. Objectives**

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

**5.C.3.b. Sources**

The Contracting Officer may obtain potential sources from the National Contractor System (NCS), Program Offices, ODEO Outreach, publications, and elsewhere at their sole discretion.

**5.C.3.c. National Contractor System (NCS) Review**

When firms are recommended in the Requirements Package, ASB shall verify that these firms are on the NCS. If not, the firm should be provided with a Contractor Application (form 3700/13) such that the application may be processed prior to award.

**5.C.3.d. Preparing the Solicitation List**

ASB shall prepare a solicitation list, which identifies the firms to be solicited and documents how the list was generated. The list shall be filed in the official contract file.

**5.C.3.e. Unbiased Selection**

ASB shall ensure that selection of sources for a particular requirement is unbiased and has provided opportunity for a reasonable number of qualified firms to participate. Generally, the same firms should not repeatedly compete against only one another.

**5.C.4. ODEO (MAR 2000)**

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

**5.C.5. Documentation (MAR 2000)**

The official contract file for all awards \$5,000 or greater shall contain documentation that reflects that MWOB and SDB firms were on the solicitation list as applicable.

**5.C.6. Technical Evaluation Factors (MAR 2000)**

A technical evaluation may not always be necessary, particularly if the goods and services required are commercially available. Under these circumstances, award may be based on the lowest evaluated price. However, if the Contracting Officer determines that the award should not be made on a price only basis, technical information may be required and technical requirements and price considerations may be used to determine the awardee. The technical information may be reviewed on a pass/fail basis or evaluated (scored) by the TEO. If technical requirements are to be used in the evaluation process, the Program Office, in consultation with the Contracting Officer, shall develop the technical evaluation criteria. Technical requirements shall be evaluated, and offerors' proposals shall be scored in accordance with the procedures set forth in APM, 5.E.3.a. (4)(b). The technical evaluation criteria, in accordance with the requirements of APM, 6.D.2.e., shall be finalized before the solicitation package is released, and the offerors shall be informed in the solicitation that the proposals shall be evaluated based upon technical and price considerations.

**5.C.7. NCS Eligibility Reviews**

After a solicitation list is developed, the Contracting Officer shall review NCS and exclude any firms from the list that are excluded or ineligible from doing business with FDIC. This review is applicable for all awards regardless of whether the solicitation is made orally or in writing. Requirements for obtaining contractor eligibility certifications under simplified procedures are stated in APM, 5.D., *Solicitation Phase*.



**5.C.8. Background Investigations (MAR 2000) (JUL 2003)**

The Contracting Officer shall include the applicable background investigation forms in all RFPs when the procurement complies with the requirements of APM, 5.F.1.d., *Background Investigations*.

When background investigations are required, the Contracting Officer shall require contractors to complete the Background Investigation Questionnaire for Contractors, FDIC Form 1600/07; the Background Investigation Questionnaire for Contractor Personnel and Subcontractors, FDIC Form 1600/04; and the Fair Credit Reporting Act Notice and Authorization Form, FDIC Form 1600/10 (see APM, Exhibit XIV)

**5.C.9. Contractor Confidentiality Agreements (MAR 2000) (JUL 2003)**

Some contracts require the rendering of services to FDIC that are of such a nature that the offerors or contractor(s) will be provided with or have access to confidential information, or require the contractor to work on-site or have access to any FDIC systems. When this occurs, the Contracting Officer shall require the offerors or contractor(s) to sign and return a Contractor Confidentiality Agreement prior to receiving the information or prior to commencing work on-site. For example, if the confidential information is provided during the solicitation phase, the Contracting Officer shall require all offerors to sign the Agreement before receipt of the information in, or associated with, an RFQ. All signed Agreements shall be maintained in the official contract file. This Agreement is provided as Exhibit II or can be found at <http://www.fdic.gov/buying/goods/index.html>. The Program Office should identify any confidential information required for a given procurement action, or any contractor that is required to work on-site, in the Requirements Package.

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**SECTION 5.D. SOLICITATION PHASE****5.D.1. Competition and Number of Sources (MAR 2000)****5.D.1.a. Number of Sources (MAR 2000)**

For awards under these procedures, at least three (3) sources should receive either an oral or written RFQ to promote competition. Exceptions to this rule are stated below in APM, 5.D.1.b., *Single Source For \$5,000 or Less*, and 5.D.1.c., *Single Source For Greater than \$5,000*. The Contracting Officer shall have the discretion to establish the maximum number of quotations required in connection with a particular procurement. In making this decision, the Contracting Officer should consider the following factors:

- (1) Nature of the goods or services and whether the business is highly competitive and the goods or services are readily available;
- (2) Information obtained in making recent purchases of the same or similar item;
- (3) The dollar value and/or urgency of the proposed procurement; and
- (4) Past experience concerning prices.

**5.D.1.b. Single Source For \$5,000 or Less (MAR 2000)**

For awards of \$5,000 or less, the Contracting Officer may solicit one (1) or more firms. If one (1) firm is solicited and prices are less than \$5,000, a Justification for Noncompetitive Procurement (JNCP) is not required and the expenditure can be approved under basic delegations.

**5.D.1.c. Single Source For Greater than \$5,000 (MAR 2000)**

For awards greater than \$5,000, the Contracting Officer may solicit a requirement from only one (1) source based upon an approved Justification for Noncompetitive Procurement (JNCP) and proper expenditure authority.

**5.D.2. Methods of Solicitation**

Contracting Officers shall solicit firms by one (1) of the following methods:

**5.D.2.a. Oral Solicitations**

Firms on the solicitation list may be contacted orally to obtain a verbal quotation under the following circumstances:

- (1) When the award is less than \$25,000; and
- (2) When evaluation is based solely on the lowest priced offer.

**5.D.2.b. Written RFQs**

Written RFQs shall be used, as specified in APM, 5.D.4., *Written RFQ Process*, under the following circumstances:

- (1) When the estimated value of the award is \$25,000 or greater; or
- (2) When technical requirements are specified and evaluated in addition to price.

**5.D.3. Oral Solicitation Process**

**5.D.3.a. Method**

Quotations may be solicited orally for contract actions less than \$25,000. Written RFQs for contract actions less than \$25,000 shall be issued when obtaining oral quotations is not considered practical.

**5.D.3.b. Documentation (MAR 2000) (JUL 2003)**

The Contracting Officer shall establish and maintain written records of oral price quotations to clearly reflect the propriety of awarding the purchase order at the price proposed by the contractor in the official contract file. At a minimum, this will consist of showing the names of the offerors contacted, MWOB classification, SDB status, the date solicited, and the prices and other terms and conditions quoted by each. An Oral RFQ Log is provided as Exhibit VIII, *Oral RFQ Log*. **Confirmation of Proposal**

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

**5.D.4. Written RFQ Process**

**5.D.4.a. RFQ Package**

ASB shall transmit an RFQ package to each offeror on the solicitation list. The format of the solicitation should be designed to facilitate the timely processing of the requirement and should contain the following items:

- (1) RFQ form or letter detailing the overall proposal submission requirements, the due date and time;
- (2) Scope of work, including the specifications or statement of work performance schedule, and associated material;
- (3) Proposal submission requirements, as determined by the Contracting Officer, which may include the following:
  - (a) Statement of firm's relevant experience (with up to three (3) references), including past FDIC experience;

- (b) Statement of firm's ability to meet the schedule requirements;
  - (c) Proposed staffing with supplemental information such as resumes, professional qualifications, and certificates, if required; and
  - (d) Price proposal information, including compliance with insurance requirements, if any, appropriate business financial reference requirements, and appropriate licensing prerequisites;
- (4) Notice of the basis upon which the award will be made;
  - (5) All required certification and release forms (see APM, 5.B.8., *Contractor Eligibility Reviews*, and APM, 5.B.9., *Background Investigation Reviews*); and
  - (6) Proposed purchase order, at the discretion of the Contracting Officer.

**5.D.4.b. Limiting Proposal Size**

When evaluating on other than price basis only, a limitation may be placed on the size of the proposal (such as five (5) pages, exclusive of resumes and certifications) to permit timely review and evaluation of proposals.

**5.D.4.c. Use of Technical Literature**

Contracting Officers are encouraged to request technical literature, rather than specific proposals, when acquiring commercial goods.

**5.D.4.d. Solicitation Distribution**

The solicitation package shall be distributed to each firm on the solicitation list. The solicitations may be sent by U.S. mail, facsimile, courier or overnight delivery as determined by the urgency of the requirement.

**5.D.4.e. Proposal Preparation Time and Receipt of Proposals**

Firms shall be given sufficient time to prepare a response (usually between five (5) and ten (10) working days). More detailed requirements may require longer proposal preparation times. Simple requirements may dictate shorter times. Firms submitting proposals or modification to a proposal after the due date and time shall be considered to have submitted a nonresponsive proposal, unless acceptance is authorized by the Contracting Officer.

**5.D.4.f. Receipt of Written RFQ**

Quotations shall be received strictly in accordance with the terms of the RFQ (such as due date, time, and format). If a quotation is received from a firm that was not solicited, the quotation shall be rejected and returned to the offeror. ASB shall ensure that each quotation is date and time stamped as soon as it is received and that it is secured immediately. ASB shall retain the original of each quotation received.

**5.D.4.g. Record of Quotation Received (JUL 2003)**

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

**5.D.4.h. Safeguarding Quotations (JUL 2003)**

ASB staff, technical evaluators, and other involved FDIC personnel shall safeguard all quotations to prevent unauthorized disclosure. The Contracting Officer is responsible for all quotations in the possession of ASB. During the evaluation process, the TEO is responsible for safeguarding the quotations in his or her possession. Quotations shall be kept in a secured location.

**5.D.4.i. Technical Evaluation Factors (JUL 2003)**

All evaluation criteria will be clearly stated in the solicitation in enough detail to provide offerors a reasonable opportunity to understand the evaluation structure. Past performance shall be one of the evaluation criteria and shall be weighted equal to or higher than the other criteria.

**5.D.5. Requesting Contractor Integrity and Fitness Representations and Certifications (JUL 2003)**

For awards of contracts for services only of \$25,000 or greater, the Contracting Officer shall include written integrity and fitness certifications in the solicitation package. The Contracting Officer is not required to request or obtain contractor integrity and fitness certifications from contractors for awards less than \$25,000 in total price. However, if the award is less than \$25,000, the Contracting Officer shall review NCS prior to soliciting a firm, either orally or in writing, and shall not solicit a firm that is ineligible from doing business with FDIC (see Exhibit XXXIII, *FDIC Integrity and Fitness Representations and Certifications*).

**5.D.6. Background Investigation Reviews (MAR 2000) (JUL 2003)**

Background investigation forms shall be included in RFQ packages by the Contracting Officer pursuant to APM, 5.F.1.d., *Background Investigations*

**5.D.7. Only One Offer Received**

The receipt of only one (1) quotation in response to a written RFQ that was sent to more than one (1) source may be accepted by the Contracting Officer as satisfying competitive requirements if it is determined that the price is fair and reasonable (e.g., through comparison to historical pricing).

**SECTION 5.E. EVALUATION PHASE****5.E.1. General****5.E.1.a. Price Competition**

The determination that a proposed price is reasonable should be based on competitive quotations. If only one (1) response is received, or the price variance between multiple responses reflects lack of adequate competition, a statement shall be included in the official contract file giving the basis for the determination that the price is fair and reasonable.

**5.E.1.b. Price Reasonableness**

A price reasonableness determination is extremely important to ensure that FDIC does not pay prices for its goods or services that are exorbitant or not in line with the general marketplace. There are two (2) parts to a price reasonableness determination. One is handled by the Contracting Officer and involves comparing the successful price to market, prior awards, or catalog prices and the other is handled by the Program Office and involves comparing the successful price to the offeror's technical proposal. Procedures for determining price reasonableness are specified in APM, 5.E.3.b., *Price Reasonableness Determination*.

**5.E.1.c. Other Than Price**

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

**5.E.1.d. Published Price Quotations**

Published price quotations (e.g., a catalog price) may be used in lieu of obtaining individual quotations each time a procurement is contemplated. In such cases, the Contracting Officer shall ensure that the price information is current and that FDIC obtains the benefit of maximum discounts before the award is made.

**5.E.1.e. Shipping Charges**

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

**5.E.1.f. Contractor Past Performance Information (MAR 2000)**

The Contracting Officer and the Program Office shall use a contractor's past performance information in the evaluation process for all procurements of \$50,000 or greater, and for any other procurement at the discretion of the Contracting Officer, provided this information is available in the Contractor Performance Management

System (CPMS), is provided by the offeror with its proposal, or is obtained from the references using the *Contractor Past Performance RFP Reference Check Questionnaire* (see APM, Exhibit XXX). To perform such review, the Contracting Officer has two options. The first option is to use the review and print capability of the CPMS online services. The second option is to obtain the information by sending an email request to the mailbox address "CPMS."

**5.E.2. Oral Solicitation Evaluation Procedures**

**5.E.2.a. Determining Award (MAR 2000)**

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

**5.E.2.b. Documentation of Oral Quotations Evaluation**

Formal evaluation plans, conduct of discussions, and scoring of quotes are not required for oral quotations. The Contracting Officer shall document and maintain written records of oral price quotations that clearly reflect the propriety of awarding the purchase order at the price paid to the offeror. At a minimum, this will consist of showing the names of the offerors, the individuals contacted, the date solicited, and the prices and other terms and conditions quoted by each.

**5.E.3. Written RFQ Evaluation Procedures (MAR 2000)**

**5.E.3.a. Proposal Evaluation (MAR 2000) (JUL 2003)**

- (1) Evaluation Criteria. Written quotations shall normally be evaluated on the basis of price alone. Other factors, such as past performance, capacity, quality, and technical capability may be considered, if these factors are specified in the RFQ. Evaluation of these factors shall normally be done on a pass/fail basis and do not require point scoring. However, when the Contracting Officer has determined that a limited technical evaluation shall be conducted, the additional procedures set forth below shall be utilized.
- (2) Technical Evaluation Official. The Program Office shall designate a Technical Evaluation Official (TEO) who will evaluate the written quotations for compliance with the technical requirements and the evaluation criteria established in the RFQ. The TEO should be a knowledgeable Program Office representative and, in most cases, should be the person who prepared the Requirements Package and assisted in the preparation of the RFQ. The selection of the TEO is subject to the approval of the Contracting Officer. Before reviewing the contractors' proposals, the Contracting Officer shall instruct the TEO on the conduct of the evaluation and the need to preserve the confidentiality of the



contractors' proposals. The Contracting Officer shall have the TEO read and execute a Confidentiality Agreement and Conflicts of Interest Certification (see Exhibit XII, Documentation for Technical Evaluation Panel).

- (3) Distribution. If the proposal contains material other than price information, the Contracting Officer will distribute the technical portion of each of the proposals to the TEO for evaluation.
- (4) Technical Evaluation.
  - (a) Standard Technical Evaluation (Pass/Fail). The TEO shall evaluate the technical proposals or technical literature in a timely and impartial manner on a pass/fail basis, and document the results in writing. The supporting documentation shall be based on the extent of the evaluation to be performed. At a minimum, it must include the basis for the evaluation and the rationale for deeming any quotation to be technically unacceptable.
  - (b) Limited Technical Evaluation (Scored). In solicitations where a limited technical evaluation is required, the TEO shall review and score each proposal, in accordance with the technical evaluation criteria, and the scoring procedures set forth in APM, 6.D.2.h. However, a Technical Evaluation Panel is not required.
  - (c) Documentation. The TEO shall submit a memorandum that details the results of the applicable technical evaluation in (a) or (b) above. Each page of the report shall include the following protective marking: "Confidential Contracting Information – Not for Public Disclosure." The report shall be returned to the Contracting Officer with the technical portions of the proposals. When a limited technical evaluation has been conducted, the TEO should ensure that the results of the technical evaluation are properly documented and provided to the Contracting Officer. The TEO may use the Technical Evaluation Panel Rating Form, in APM, Exhibit XII, *Documentation for Technical Evaluation Panel*.
- (5) Price Evaluation/Contracting Officer Duties. When a price or a price with pass/fail technical evaluation is used, the proposed prices shall be ranked from lowest to highest. The lowest priced responsive offer shall be considered for award after determining the price to be reasonable and conducting the other pre-award reviews required by APM, 5.F.1. When a limited technical evaluation is being conducted, the Contracting Officer shall evaluate and score the price quotation in accordance with APM, 6.D.5.d. The standard 60% technical/40% price weight ratio shall be utilized and a *Proposal Weighting and Ranking Analysis Form* (Exhibit

XI) shall be prepared. The Contracting Officer shall combine the technical and cost scores and make a best value decision in accordance with APM, 6.A.7.

**5.E.3.b. Price Reasonableness Determination (MAR 2000)**

Price reasonableness determinations shall be performed for all contracts prior to award. The level of detail for the determination will depend on the dollar amount and complexity/nature of the procurement. A price reasonableness determination for a routine, commercial item may only need to involve a comparison to prices for previous procurements of the same item, whereas higher dollar, non-routine items may require further support. The procedure for price reasonableness determinations requires the input from the Contracting Officer and the TEO as follows:

- (1) **Contracting Officer Duties.** The Contracting Officer is responsible for determining that the price to FDIC for goods or services acquired under simplified procedures is fair and reasonable. Generally, when fair and adequate competition is obtained (three (3) or more offerors), a comparison of the proposed prices is sufficient to determine that the successful price is fair and reasonable. The determination may also be based upon a comparison of the proposed price with current market prices, previous procurements, or the price of actual purchases made from published lists, catalogues, advertisements, or any other reasonable basis.
- (2) **TEO Duties.** The TEO, as the technical expert, must determine that the successful price is realistic for the goods or services being acquired. This step requires that the TEO be able to conclude that the offeror clearly understands the requirements and can successfully perform the requirements at the proposed price. For example, a price that is too high or too low for the offered goods or services may indicate a potential lack of understanding of the requirement on the part of the contractor. To accomplish this determination, the Contracting Officer shall provide the TEO with the price proposals after the technical ranking or pass/fail evaluation is completed.
- (3) **Documentation.** The Contracting Officer and TEO individual determinations must be in writing and completed prior to award. If an offeror's proposal is determined to be unacceptable in accordance with (1) and (2) above, this matter shall also be documented in writing by either the Contracting Officer or the TEO, as appropriate, and the Contracting Officer shall eliminate the offeror from further consideration.

**5.E.3.c. Evaluation Summary (MAR 2000)**

When other than price related factors are considered in selecting the contractor, and whenever a limited technical evaluation has been conducted, the Contracting Officer

shall document the file to support the final contract award decision. Documentation for limited technical evaluation procurements shall include the TEO's signed TEP Member Confidentiality Agreement, TEP Member Conflict of Interest Statement, and completed TEP Rating Form found in Exhibit XII, *Documentation for Technical Evaluation Panel*, and the Contracting Officer's *Proposal Weighting and Ranking Analysis* (Exhibit XI).

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**SECTION 5.F. AWARD PHASE****5.F.1. Pre-Award Reviews/Compliance****5.F.1.a. National Contractor System Review (MAR 2000) (JUL 2003)**

The Contracting Officer shall review the National Contractor System (NCS) prior to any purchase order or contract award, regardless of dollar value, to ensure that the apparent awardee is not ineligible from doing business with FDIC under 12 CFR Part 366. If the apparent awardee has disqualifying conditions listed in NCS, the Contracting Officer shall not award a contract to that contractor. If the apparent awardee/contractor is not in NCS, the contractor application process shall be handled as follows:

- (1) Awards of \$5,000 or Less. For awards \$5,000 or less, the Contracting Officer shall send the Contractor Application to the awardee with the executed purchase order. Under this scenario, the Contracting Officer shall instruct the contractor to complete the Application and submit it as soon as possible to the Systems Support Section, ASB.
- (2) Awards Greater Than \$5,000 and Less than \$25,000. For awards greater than \$5,000 but less than \$25,000, the Contracting Officer will provide the NCS application to the contractor and use best efforts to obtain and review it prior to award to ensure the contractor does not have any disqualifying conditions. If the completed Application cannot be obtained prior to award, the Contracting Officer shall instruct the contractor to complete the Application and submit it as soon as possible to the Systems Support Section, ASB.
- (3) Awards of \$25,000 and Greater. For awards \$25,000 or greater, the Contracting Officer shall require prospective offerors to submit a completed Contractor Application prior to award. The Contracting Officer shall review the Contractor Application prior to award to ensure that no disqualifying conditions exist. Completed Contractor Applications shall be forwarded to the Systems Support Section in ASB, as soon as possible after award.

**5.F.1.b. Contractor Integrity and Fitness Verification (MAR 2000) (JUL 2003)**

The Contracting Officer shall not require prospective offerors to submit contractor integrity and fitness certifications for purchase orders and contracts for performing services that are less than \$25,000 or for supplying goods regardless of value. Therefore, if no disqualifying conditions existed when the NCS inquiry was performed, as required in 5.F.1.a., *National Contractor System Review*, then the award should be made without further investigation.

The Contracting Officer shall require prospective offerors performing services to submit contractor integrity and fitness certifications for purchase orders or contracts of \$25,000 or greater. The Contracting Officer shall review the contractor certifications for the successful offeror prior to award. If any of the certifications indicate a potential ethics problem, the Contracting Officer shall refer the matter to the Policy and Compliance Section, ASB, for review and provide all supporting necessary documentation to complete the review (see Exhibit VII, *Contractor Eligibility Review Request*). Contract award shall not be made until the certification issue is resolved.

**5.F.1.c. Business Reference Check**

If deemed necessary, the Contracting Officer shall conduct a business reference check of the potential contractor before award. This check shall provide information concerning the ability of the offeror. If the offeror is not selected based on the check, the file shall be so documented.

**5.F.1.d. Background Investigations (MAR 2000) (JUL 2003)**

The Contracting Officer is responsible for requesting a background investigation on the contractor, subcontractors and key personnel for (1) contracts for services of \$100,000 or greater; (2) awards where the contractor's employees will be required to work on-site at an FDIC office regardless of dollar amount; and (3) any other award at the discretion of the Contracting Officer. Contracts for goods do not require background investigations.

Written Requests for Quotations (RFQs) for services and Request for Proposals (RFPs) for services shall include the Background Investigation Questionnaire for Contractors (FDIC Form No. 1600/07), Background Investigation Questionnaire for Contractor Personnel and Subcontractors (FDIC Form No. 1600/04), and the Notice and Authorization Pertaining to Consumer Reports Pursuant to the Fair Credit Reporting Act of 1970 (FDIC Form No. 1600/10). The latter form is necessary to obtain credit reports, financial data, and other information from offerors and subcontractors. Exhibit XIV provides the forms to be used in support of background investigations.

If background investigations are required, then the Contracting Officer shall provide the completed background forms for the successful contractor to E/CSU, SMS, for review prior to award. [Note: Headquarters reviews shall be routed through the Policy and Compliance Section before going to SMS]. The investigations will generally be completed within ten (10) calendar days. However, if an investigation takes longer, the award may be made contingent upon the outcome of the investigation as specified in APM, 6.E.9.c., *Award Prior to Completion of Reviews and Verifications*.

In addition, fingerprinting will be performed as part of the background investigation of all contractor personnel who will be working on-site in any FDIC office, or is working off-site and obtains a log-on identification for access to the FDIC network, regardless of dollar value. Fingerprinting will be performed typically at the site where the contract was awarded. The fingerprinting will be performed by, or under the direction of, Security Management Section who will send the fingerprints to the Federal Bureau of Investigations (FBI) in Washington, D.C., for analysis. The award and performance of the contract shall not be delayed while the fingerprint analysis is in process, unless the Program Office and Contracting Officer believe the security considerations related to on-site work are critical. Fingerprinting shall not be required for contractors that conduct business, or make deliveries or repairs, on an intermittent or an as required basis at FDIC offices. No background investigations or fingerprinting shall be required for receiverships except when a receivership is of a long-term nature, when both are required.

**5.F.1.e. Verification of Insurance Coverage**

The Contracting Officer shall verify that the selected firm is in full compliance with all necessary insurance requirements as required under the items of the RFQ.

**5.F.1.f. Award Decision**

An award decision is made by the Contracting Officer after consultation with the TEO.

**5.F.1.g. Acceptance of One Offer**

If only one (1) quotation is received and it is considered to be technically acceptable, the Contracting Officer may issue a purchase order under competitive procedures after determining the quotation price to be fair and reasonable, based on comparisons to historical pricing. The Contracting Officer shall determine if past performance has been acceptable.

**5.F.1.h. Contractor Confidentiality Agreements (MAR 2000) (JUL 2003)**

Where a contract requires the rendering of goods or services to FDIC that are of such a nature that the contractor will receive or might have access to information of a confidential nature, or where the contractor is required to work on-site at an FDIC facility, or has access to information of a sensitive nature relating to FDIC whether by access to any FDIC systems or in any other manner, the contractor and each individual having access shall be required to sign a Contractor Confidentiality Agreement prior to being provided the information, working on-site, or obtaining access. For example, if the confidential information is provided during the solicitation phase or any time thereafter, the Contracting Officer shall require all offerors to sign the Agreement before receipt of the information in, or associated with, an RFP or RFQ. All signed Agreements shall be maintained in the official

contract file. This Agreement is provided as Exhibit II or can be found at <http://www.fdic.gov/buying/goods/index.html>. Generally, the determination of whether information is confidential should be made by the Program Office representative in the procurement action.

If the contractor has subcontractors, the contractor shall obtain from each subcontractor and their personnel working on-site at an FDIC facility or having access to any FDIC network or system a confidentiality agreement that is substantially the same as the Contractor Confidentiality Agreement required of FDIC's contractor and contractor's personnel. The contractor shall ensure that all subcontractors adhere to the terms of such agreement.

**5.F.1.i. Completion of Official Contract File (MAR 2000)**

Prior to award (contract execution), the Contracting Officer shall ensure that all contract documents relating to the contract are in the file according to the applicable file checklist. Documentation shall include without limitation that which is required under the APM relating to presolicitation, solicitation, evaluation, selection, pre-award reviews, and the award decision.

**5.F.2. Preparing/Executing the Contract (MAR 2000)**

The Contracting Officer shall prepare and assemble all purchase orders or contractual documents using the Standard Contract Documents issued by ASB, as referenced in APM, 3.B.11., *Standard Documents*. Where labor categories are used, the purchase order shall also contain definitions of the minimum qualifications needed for performing tasks in the specific labor categories. **Prior to executing the contract**, the Contracting Officer shall ensure that the contract file is complete and in compliance with APM, 5.F.1.i.,

**5.F.3. Effective Date of Contract (JUL 2003)**

It is good business practice to have fully executed contractual documents in place before a contractor commences work. However, on an as needed basis, and only with the prior approval of the Assistant Director, Headquarters Operations Section, or Head of the Regional contracting function, the effective date of a contract may be prior to the execution date. This provision shall be utilized when the Contracting Officer intends to verbally authorize a contractor to begin work prior to having in place a fully executed contractual document. Verbal authorization shall be followed up in writing (see Exhibit XIII, *Sample Letter Authorizing Contractors to Commence Work*). Before a verbal authorization may be given, the Contracting Officer shall ensure that expenditure authority in the total amount of the contract has been approved.

**5.F.4. Award**

For purchase orders, the document shall be executed by the Contracting Officer with the proper warrant authority, and the original sent to the contractor. One (1) copy shall be sent to the Program



Office and another retained in the official contract file. For awards using the Short Form Contract, the Contractor shall sign first, and the Contracting Officer will provide the final signature. Copies will be provided to the Program Office and placed in the contract file.

#### **5.F.5. Notification to Unsuccessful Offerors and Debriefings**

##### **5.F.5.a. Notification**

Notification to unsuccessful offerors is not required when an award is made on a price only evaluation basis. However, when an award is made based upon a technical and price evaluation, it is required to notify all unsuccessful offerors in accordance with the procedures stated in APM, 6.F.1., *Notification*.

##### **5.F.5.b. Debriefings**

Debriefings will not be offered to unsuccessful offerors when the award is made on a price only evaluation basis. However, when an award is based upon a technical and price evaluation, unsuccessful offerors shall be offered debriefings in accordance with APM, 6.F.2., *Debriefings*.

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**SECTION 5.G. ADMINISTRATIVE REQUIREMENTS****5.G.1. Documentation of Award****5.G.1.a. General Requirements**

The use of the contracting procedures set forth in this chapter places a burden on Contracting Officers to provide comprehensive documentation in the contract files. Documentation must clearly describe the process that was used to prepare, solicit, evaluate, and award the purchase order or contract. The contract file shall contain the documentation specified in Exhibit XXIII, *Contracting File Checklists*.

**5.G.1.b. Filing Guidelines for Contract Action**

Originals of all documents shall be included in the official contract file, wherever practical.

**5.G.1.c. Timeliness (MAR 2000)**

All documentation must be prepared and included in the official contract file prior to contract execution, in accordance with APM, 5.F.1.i., *Completion of Official Contract File*.

**5.G.2. POS Reporting**

Within five (5) business days after award, the Contracting Officer shall enter all required data directly in the Purchase Order System (POS). Major POS data fields include: Vendor Identification Number, Purchase Order Number, dollar amount, accounting information, and payment terms. Other data will be entered as required by the POS.

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# CHAPTER 6

## FORMAL CONTRACTING

### SECTION 6.A. OVERVIEW

#### 6.A.1. Scope

This chapter addresses the phases of the competitive contracting process to be generally used for the acquisition of complex goods or services, goods or services with a total estimated dollar amount of \$100,000 or greater where technical evaluation procedures are required, or for commercial goods of \$5,000,000 or greater. The procedures in this chapter also apply to task orders meeting the thresholds/criteria stated herein.

#### 6.A.2. Method of Solicitation (MAR 2000)

Although the policies and procedures in APM, Chapter 6, *Formal Contracting*, are defined primarily for written solicitations, an alternative process is presented in APM, 9.F., *Oral Presentations*. The policies and procedures defined in APM, Chapter 6, shall likewise apply to oral presentations unless explicitly provided for in APM, 9.F.

#### 6.A.3. Overview of Contracting Process

##### 6.A.3.a. Planning

Planning includes activities performed before the Requirements Package is received to ensure that the correct resources are available within ASB to support the procurement.

##### 6.A.3.b. Presolicitation

Presolicitation includes those activities which are performed when a Requirements Package is initially received by ASB and includes, but is not limited to, developing the solicitation list and the selection criteria.

##### 6.A.3.c. Solicitation Preparation and Distribution

Solicitation preparation and distribution includes those activities associated with identification of firms which offer the required goods or services; preparation of a solicitation package tailored to the market; and distribution of the package to the identified firms.

##### 6.A.3.d. Proposal Evaluation

Proposal evaluation includes those activities that support the fair and equitable evaluation of all offers including technical evaluation against pre-defined criteria, price evaluation, and discussions/negotiations.

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**6.A.3.e. Contract Award**

Contract award includes those activities that are needed to verify the credentials of the apparent successful offeror and to obtain the necessary approvals to make the award. The Contracting Officer prepares the contract and obtains the signature of the contractor prior to execution of the contract by FDIC.

**6.A.3.f. Notification to Unsuccessful Offerors and Debriefings**

Notification and debriefings include those activities associated with the notification of the unsuccessful offerors and the conducting of the debriefings with the firms, if requested.

**6.A.4. Documentation**

ASB is responsible for the solicitation, proposal evaluation, award, and execution of contracts under formal procedures. ASB shall prepare an official contract file covering the entire selection, evaluation, and award process.

**6.A.5. Contract Administration Procedures**

Contract administration activities are performed for all contracts awarded under these procedures and include, but are not limited to, contractor oversight, reviewing and approving invoices, monitoring expenditure ceilings, and contract closeout. Procedures for administration of contracts awarded under the procedures set forth in this chapter are discussed in APM, Chapter 7, *Contract Administration*.

**6.A.6. Applicability**

**6.A.6.a. General**

The procedures set forth in this chapter are generally required for contracting actions that involve total dollar values estimated of \$100,000 or greater and for commercial goods \$5,000,000 and greater. With the exception of commercial goods, these procedures may also be used for competitive contracting actions estimated at less than \$100,000, as an alternative to the procedures set forth in APM, Chapter 5, *Simplified Procurement Procedures*, when complex evaluation procedures are considered essential.

**6.A.6.b. Noncompetitive Awards**

Under specific circumstances, FDIC may award contracts on a noncompetitive basis. Procedures set forth in this chapter generally apply to awards of contracts on a noncompetitive basis, except where otherwise noted.

**6.A.6.c. Task Orders**

Procedures for awarding task orders under an existing basic ordering agreement (BOA) are discussed in APM, 6.I., *Procedures for Awarding Task Orders*.

**6.A.6.d. Appraisal Services (MAR 2000)**

APM, 10.B., *Appraisal Contracts*, provides additional guidance when contracting for appraisal services.

**6.A.7. Best Value Determination****6.A.7.a. Importance**

The procedures set forth in this chapter are aimed at ensuring that FDIC obtains the best value for the goods or services it acquires.

**6.A.7.b. Objective**

Achieving best value begins in the presolicitation stage and continues throughout the contracting process to contract award. This process involves selecting the goods or services that best satisfy FDIC's requirements. In seeking the best value, FDIC aims to obtain the most favorable combination of technical, price, delivery, and other factors.

**6.A.7.c. Evaluation**

Evaluating best value is a two-step process. The first step involves determining the need (statement of work) and establishing an evaluation structure (evaluation criteria) for technical, price, and other factors that identify the firm that offers the best value for the requirement. The second step involves comparing the competing proposals with the evaluation criteria to determine how well or how poorly each compares to the requirements as described in the RFP.

**6.A.7.d. Selecting Factors**

Factors to be considered in evaluating proposals should be tailored to each procurement and include only those factors that will impact the source selection decision. However, price shall be included as an evaluation factor in all procurements. Quality shall also be addressed in every source selection. Quality may be expressed in terms of technical excellence, management capability, personnel qualifications, prior experience, past performance, and schedule compliance. Any other relevant factors, such as price reasonableness, may also be included.

**6.A.7.e. Price vs. Technical Considerations**

Appropriate technical vs. cost weighting will result in contracts providing maximum value (see APM, 6.B.1.c., *Review of Evaluation Factors*, and 6.D.2.b., *Concept of Technical vs. Price Weights*).

- (1) Price Consideration. When a quality level consistent with standard practice for the industry or service is acceptable, price should be the controlling factor. In these situations, the solicitations and Source

Selection Plan should state that award shall be made to the technically acceptable offeror having the lowest price.

- (2) Technical Consideration. However, when technical requirements will be better satisfied by improved quality of service or product performance, price should be given less weight than technical considerations. The lower the weight for price, the higher the weight for quality considerations that will influence the decision. The mix of these weights will reflect what FDIC considers to be the most important factors in determining the best value buy for the particular goods or services.

**6.A.7.f. Best Value Determinations (MAR 2000)**

The foundation for a best value determination is established during the presolicitation stage. It involves designing specific technical evaluation criteria tailored precisely to the Program Office requirement and using the 60% technical and 40% price weights.

Deviations from the 60/40 standard weighting may be necessary to support a best value decision (procedures for using nonstandard weights are stated in APM, 6.B.1.c., *Review of Evaluation Factors*). When both of these elements of the solicitation are established, the proposal that earns the highest combined technical and price score, including SDB price or technical evaluation adjustments, should generally result in selection of the firm that offers the best value to FDIC.

**6.A.7.g. Award to Firm With Other Than Highest Score (JUL 2003)**

There may be situations when it is in the best interest of FDIC to award a contract to a firm whose proposal receives less than the highest overall combined technical and price score. Procedures for these decisions are described below:

- (1) Award to a Firm with a Technically Acceptable, Lower Cost Proposal. The Contracting Officer may award the contract to a technically acceptable, lower priced offeror. If the Contracting Officer makes this decision, it shall be documented in the Final Selection Recommendation Report, including complete supporting rationale, and shall be approved by the Assistant Director, Headquarters Operations Section, or the Head of the Regional contracting function. The approval shall consider:
  - (a) Relative rankings of all technically acceptable offerors;
  - (b) Differences in technical scores for each proposal; and
  - (c) Potential for significant price savings under the resultant contract.
- (2) Award to a Firm with a Higher Technical and Higher Cost Proposal. Under unique circumstances, the Contracting Officer may award a contract to a technically superior offeror at a higher price. If the Contracting Officer makes this decision, it shall be documented in the Final Selection Recommendation Report, including complete supporting

rationale, and shall be approved by the Assistant Director, Headquarters Operations Section. The approval shall consider:

- (a) Relative rankings of all technically acceptable offerors;
- (b) Differences in technical scores and proposed prices for the technically acceptable offeror; and
- (c) Complexity of the requirement and the need for increased technical capability.

#### **6.A.8. Type of Award Document**

Award under formal procedures will be made using a standard contract document with FDIC General Provisions. Standard documents are described in APM, 3.B.11., *Standard Documents*. The Legal Division will provide advice and counsel as requested.

#### **6.A.9. Use of a Source Selection Official (MAR 2000)**

When a contract requirement involves a complex, business sensitive, unusual or one-time purchase involving a significant expenditure of funds, the Contracting Officer shall consider the use of a Source Selection Official (SSO) in the evaluation process. If required, a Program Office shall appoint its Division/Office Director, or designee, as the SSO. When an SSO is designated, he or she will participate in each step of the selection and engagement process. He or she will be a senior advisor to the team that develops the solicitation package, reviews the proposal evaluations, and confirms the award decision. Generally, the SSO will get involved in all aspects of the solicitation, evaluation, and award of a contract. This includes generally all of the following activities:

##### **6.A.9.a. Acquisition Strategy (MAR 2000)**

Review and concur with the acquisition strategy;

##### **6.A.9.b. Pricing Structure (MAR 2000)**

Review and approve the pricing structure;

##### **6.A.9.c. Requirements Package (MAR 2000)**

Review the Requirements Package, as necessary;

##### **6.A.9.d. Evaluation Factors (MAR 2000)**

Participate in the determination of evaluation factors, including the technical/price ratio as well as the technical evaluation factors;

##### **6.A.9.e. Solicitation (MAR 2000)**

Ensure that the solicitation is internally consistent and that there are no conflicts within the different parts of the solicitation;

**6.A.9.f. Proposal Preparation Instructions (MAR 2000)**

Ensure that the proposal preparation instructions are complete and clear;

**6.A.9.g. Technical Evaluation Panel Evaluations (MAR 2000)**

Review the evaluations of the Technical Evaluation Panel (TEP) members to ensure that the proposals were properly scored against the evaluation factors;

**6.A.9.h. Competitive Range (MAR 2000)**

Review any competitive range determination;

**6.A.9.i. Discussions (MAR 2000)**

Participate in any discussions with offerors to ensure that they are meaningful and fair; and

**6.A.9.j. TEP Memorandum and Selection Recommendation Report (MAR 2000)**

Review the TEP memorandum and approve the Selection Recommendation Report.

He or she will also follow the procedures specified in APM, 6.E.5., *Source Selection Official Review*.

**6.A.10. Background Investigation Reviews (MAR 2000) (JUL 2003)**

Background investigation reviews for a selected contractor and key personnel are not required for contracts for goods at any dollar amount. However, these reviews are required and shall be conducted for all contracts for services in compliance with APM, 6.E.2.e., *Background Investigations*.

**SECTION 6.B. PRESOLICITATION PHASE****6.B.1. Requirements Package****6.B.1.a. Receipt (MAR 2000)**

The presolicitation process begins with the receipt of a complete Requirements Package. Contents of the Requirements Package are fully described in APM, 4.D.3.b., *Requirements Package*. Upon receipt of this package, the Contracting Officer should begin completing the appropriate contracting file checklist, APM, Exhibit XXIII.

**6.B.1.b. Confirming Applicability (MAR 2000) (JUL 2003)**

The Contracting Officer shall review the Requirements Package to determine the appropriate method of procurement, (i.e., formal contracting or other methods stated in this manual).

- (1) If an applicable BOA, BPA, or multiple-order requirements contract exists, an order should be issued.
- (2) If the estimated value is less than \$100,000, and formal technical evaluation procedures are not required, the procedures described in APM, Chapter 5, *Simplified Procurement Procedures*, should be followed.
- (3) If the procurement is for a commercial item with an estimated value less than \$5,000,000, the procedures described in APM, Chapter 5, *Simplified Procurement Procedures*, should be used.
- (4) If a noncompetitive award is contemplated, ASB shall ensure compliance with the requirements for awarding noncompetitive contracts (see APM, 4.G., *Justification for Noncompetitive Procurement (JNCP)*).
- (5) In a contract where the use of task assignments is intended, the Contracting Officer shall ensure that the SOW is sufficiently specific and includes standard task assignment language, that the intended form of the task assignment is included, or that the task assignment form refers specifically to the SDLC, when applicable. This allows for specificity of the services to be performed or goods to be delivered, including milestone schedules and expenditure ceilings.

**6.B.1.c. Review of Evaluation Factors (MAR 2000) (JUL 2003)**

The Contracting Officer shall review the evaluation factors and proposed technical versus price weightings, once the total technical points have been determined by the Program Office, and establish the total price points. The standard technical/price weighting ratio shall be 60/40. If the technical weight is higher than 60%, prior



approval by the Assistant Director, Headquarters Operations Section, or the Head of the Regional contracting function is required.

**6.B.1.d. ODEO Review of Requirements Package**

The Contracting Officer shall provide a copy of the Requirements Package to ODEO for review.

**6.B.2. Expenditure Approval Verification (JUL 2003)**

Solicitations shall not be issued until expenditure authority has been obtained, unless prior approval has been granted by the Associate Director, ASB. Provided, however, that no contract shall be awarded without prior written expenditure authority pursuant to the Expenditure Delegations. Expenditure authority related to contract actions requiring approval by the Deputies to the Chairman, Chairman, or Board of Directors shall be prepared in accordance with the procedures stated in APM, 4.I., *Preparation of Expenditure Authority Requests for the Deputies to the Chairman, Chairman, and Board of Directors*.

**6.B.3. Developing the Solicitation List**

**6.B.3.a. Content (MAR 2000)**

The Contracting Officer shall prepare a solicitation list identifying the firms to be solicited, MWOB classification and SDB certification, if any, and the rationale for selection. The list shall include firms provided by the Program Office, ODEO, eligible firms from NCS, and other sources, at the discretion of the Contracting Officer. The Contracting Officer shall ensure that a reasonable number of MWOB and SDB firms, submitted by ODEO, by the Program Office or obtained from the NCS, are included on the solicitation list.

**6.B.3.b. Suspended and Excluded Contractors**

Before including any firm on a solicitation list, the Contracting Officer shall consult the NCS for the most recent identification of suspended or excluded contractors to ensure that none of the firms being solicited are either suspended or excluded from FDIC contracting.

**6.B.3.c. Suggested Sources**

If a firm is recommended for solicitation in the Requirements Package and is not in the NCS, ASB will send a Contractor Application Form to the firm to allow it to register prior to any resulting award (see APM, 3.A.3., *Contractor Application Process and National Contractor System (NCS)*).

**6.B.3.d. Sources for Solicitation (MAR 2000)**

The Contracting Officer shall select an appropriate number of sources to ensure adequate competition (i.e., five (5) or more). The basis for the selection and a firm's

MWOB and SDB status shall be documented by the Contracting Officer in the official contract file.

#### **6.B.4. Source Selection Plan**

##### **6.B.4.a. When Required**

A Source Selection Plan (SSP) shall be prepared for any projected contract award of \$100,000 or greater and for commercial goods \$5,000,000 or greater. Contract awards less than \$100,000, and commercial goods less than \$5,000,000 do not require a formal Source Selection Plan. Furthermore, Source Selection Plans are not required for contracts processed under simplified procedures greater than \$100,000. Copies of the SSP will be provided to all TEP voting and non-voting members.

##### **6.B.4.b. Participants**

The Contracting Officer will jointly develop the Source Selection Plan with the Program Office.

##### **6.B.4.c. Confidentiality**

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

##### **6.B.4.d. Plan Contents**

The Source Selection Plan provides guidelines and a control mechanism for the proposal evaluation and selection process. Contents of the plan are specified in Exhibit IX, *Source Selection Plan Organization*, and will generally:

- (1) Describe the goods or services to be contracted for in a statement of work (SOW) that includes a performance or delivery schedule;
- (2) Identify whether a Source Selection Official will be used;
- (3) Identify those individuals, if known, who will participate in the Technical Evaluation Panel (TEP) and their respective responsibilities;
- (4) Describe the technical proposal evaluation criteria and the standards for evaluating proposals against the criteria;
- (5) State the weight to be given to the technical criteria relative to the price criteria in terms of weighted percentages;
- (6) State the technical points assigned each criterion;
- (7) Describe the key personnel qualification requirements; and
- (8) Describe any other elements of the selection procedures to be used by the TEP, such as site visits.

### 6.B.5. Contract Milestone Schedule

ASB and the Program Office shall jointly prepare a written schedule of events and projected completion dates to monitor the progress of the contracting process. This schedule shall consider the performance measurement standards discussed in APM, 3.F., *Performance Standards for Contracting Requirements*. The schedule is provided as Exhibit X, *Contract Milestone Schedule*.

### 6.B.6. Technical Evaluation Panel (TEP)

#### 6.B.6.a. Reasons for Establishing the Panel

A Technical Evaluation Panel (TEP) shall be selected by the Program Office to provide technical expertise for developing and implementing the Source Selection Plan and evaluating proposals in accordance with the Source Selection Plan. For contracts of \$5,000,000 or greater, a Source Selection Official may also be used as stated in APM, 6.A.9., *Use of a Source Selection Official*.

#### 6.B.6.b. Prerequisites

Each voting member of the TEP shall read and sign a Confidentiality Agreement and a Conflict of Interest Certification and submit them to the Contracting Officer before assuming any of the responsibilities of TEP membership. If any circumstances exist that may cast doubt on a member's ability to evaluate proposals objectively, that member shall alert the Contracting Officer to the need for resolution.

#### 6.B.6.c. Size and Membership

The size and membership of the TEP will depend upon the magnitude and complexity of the requirement. The TEP shall consist of at least three (3) voting members, one (1) of whom shall be designated as Chairperson. The panel shall also include non-voting members from the Legal Division and ODEO. The representative of the Legal Division shall be assigned to each TEP and shall provide legal advice to the TEP as required by the TEP Chairperson or Contracting Officer.

#### 6.B.6.d. Restrictions

Voting members of the TEP, including the Chairperson, shall not be immediate supervisors of any other voting member. The number of panel members shall be an odd number, (i.e., 3, 5, 7).

#### 6.B.6.e. Additional Expertise

When a specific technical expertise is required, individuals inside or outside FDIC may be named TEP advisors. Each TEP advisor shall execute a Confidentiality Agreement and Conflict of Interest Statement.

**6.B.6.f. Primary Function**

The primary function of the TEP shall be to evaluate, score, and rank the technical proposals against the stated evaluation criteria in a timely manner and provide the written evaluation results to the Contracting Officer. In addition, the TEP shall receive a copy of price proposals from the Contracting Officer only after completing its technical evaluation and submitting its written evaluation report to the Contracting Officer. The panel's objective in reviewing price proposals is to determine whether the technical proposal is credible and realistic in light of the proposed prices. TEP evaluation procedures are stated in APM, 6.D., *Proposal Evaluation Phase*. The TEP accomplishes its objectives by evaluating proposals against the technical criteria set forth in the Requirements Package.

**6.B.7. Contractor Confidentiality Agreements (MAR 2000) (JUL 2003)**

Some contracts require the rendering of services to FDIC that are of such a nature that the offerors or contractor(s) will be provided with or have access to confidential information, or require the contractor to work on-site or have access to any FDIC systems. When this occurs, the Contracting Officer shall require the offerors or contractor(s) to sign and return a Contractor Confidentiality Agreement prior to receiving the information or prior to commencing work on-site. For example, if the confidential information is provided during the solicitation phase, the Contracting Officer shall require all offerors to sign the Agreement before receipt of the information in, or associated with, an RFP. All signed Agreements shall be maintained in the official contract file. This Agreement is provided as Exhibit II or can be found at <http://www.fdic.gov/buying/goods/index.html>. The Program Office should identify any confidential information required for a given procurement action, or any contractor that is required to work on-site, in the Requirements Package.

**6.B.8. Background Investigations (MAR 2000) (JUL 2003)**

The Contracting Officer shall include the applicable background investigation forms in all RFPs when the requirement complies with APM, 6.E.2.e., *Background Investigations*. Investigations are not required for contracts for goods for any dollar amount. When background investigations are required, the Contracting Officer shall require contractors to complete the Background Investigation Questionnaire for Contractors, FDIC Form 1600/07; the Background Investigation Questionnaire for Contractor Personnel Subcontractors, FDIC Form 1600/04; and the Fair Credit Reporting Act Notice and Authorization Form, FDIC Form 1600/10 (see APM Exhibit XIV).

For BOAs, the only form required to be included in the RFP is the Background Investigation Questionnaire for Contractors, FDIC Form 1600/07. When there is a solicitation for a proposal for a task order, the forms that should be included are the Background Investigation Questionnaire for Contractor Personnel and Subcontractors, FDIC Form 1600/04; and the Fair Credit Reporting Act Notice and Authorization Form, FDIC Form 1600/10.

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**SECTION 6.C. SOLICITATION PHASE****6.C.1. Standard Document Format (JUL 2003)**

To ensure consistency, the ASB in Washington D.C. has created standard solicitation and contract documents for use by all FDIC contracting functions (see APM, 3.B.11., *Standard Documents*). These documents require the Contracting Officer to select from various standard alternatives to meet the requirements of a given contracting action. Individual solicitations may be further tailored, but any substantive changes to these documents and the General Provisions shall be pre-approved by the Associate Director, ASB. FDIC General Provisions shall be provided as part of the solicitation at time of issuance.

**6.C.2. Legal Review**

All solicitations with an estimated total value of \$100,000 or greater (\$5,000,000 or greater for commercial goods), including base term and all options, are to be submitted to the Legal Division for review. Legal review shall be completed within three (3) business days. Contracts processed under simplified procedures do not require legal review.

**6.C.3. ODEO Review (MAR 2000)**

For awards \$100,000 and greater, ODEO shall review all draft RFPs prior to issuance. A copy of the final RFP shall be provided by the Contracting Officer to ODEO.

**6.C.4. Supervisory Review**

Supervisors within ASB are required to review all solicitations prepared by their staff members prior to issuance to firms for response. These reviews are critical to ensuring quality control and compliance with FDIC acquisition policies.

**6.C.5. SSO Review**

If a Source Selection Official (SSO) is designated, the SSO shall review and approve the solicitation prior to issuance.

**6.C.6. Proposal Submission Instructions and Evaluation Structure (JUL 2003)**

The solicitation shall contain detailed proposal submission instructions. Solicitations shall indicate the technical points or weights associated with each criterion and the overall weights ratio of the technical proposal to the price proposal so that offerors may prepare proposals responsive to FDIC needs. All evaluation criteria will be clearly stated in the solicitation in enough detail to provide offerors a reasonable opportunity to understand the evaluation structure. Past performance shall be one of the evaluation criteria and shall be weighted equal to or higher than the other criteria.

### 6.C.7. Pricing

Estimated quantities must be provided to firms for use in developing pricing proposals. Solicitations must require pricing to be submitted for the base term and each option period. Contracts shall not be awarded without pricing for each contract period.

### 6.C.8. Invoice Submission

All solicitations resulting in the award of contracts must include language instructing the contractor to submit invoices to the Contracting Officer.

### 6.C.9. Background Investigation Reviews (MAR 2000) (JUL 2003)

Background investigation forms shall be included in RFP packages by the Contracting Officer in compliance with APM, 6.E.2.e., *Background Investigations*.

### 6.C.10. Response Time (MAR 2000)

The Contracting Officer will determine the amount of time that offerors for a particular solicitation need to respond to that solicitation. This determination should be on a case-by-case basis. In making that determination, the Contracting Officer shall take the following factors into consideration:

#### 6.C.10.a. Unique Characteristics (MAR 2000)

The unique characteristics that might dictate a longer or shorter time;

#### 6.C.10.b. Complexity (MAR 2000)

The complexity and/or dollar value of the contract;

#### 6.C.10.c. Type of Contract (MAR 2000)

Whether the contract is open market or GSA/FSS; and

#### 6.C.10.d. Type of Solicitation (MAR 2000)

The type of solicitation (whether RFQ or RFP, written or oral).

### 6.C.11. Offerors Conference

#### 6.C.11.a. Reason

It may be necessary to hold an offerors conference, prior to proposal submission, to provide clarification on matters of interest.

**6.C.11.b. Timing**

Such a conference shall be held as early as feasible in the solicitation process and sufficiently in advance of the due date for the submission of proposals to allow offerors to consider the information prior to proposal submission.

**6.C.11.c. Determination**

The Contracting Officer and the Program Office will jointly determine whether an offerors conference is required and the Contracting Officer will inform all firms on the solicitation list of the conference place, date, and time.

**6.C.11.d. Attendees**

The Contracting Officer will schedule the appropriate FDIC personnel to attend, ensuring the presence of any participants needed to give potential offerors the clearest possible understanding of FDIC's requirement, including, but not limited to, an explanation of the proposal submission instructions, representations and certifications, and contractor eligibility requirements.

**6.C.11.e. Questions**

The RFP shall instruct offerors to submit questions in writing prior to the conference to allow FDIC to provide complete answers. The questions and answers shall be sent to all firms on the solicitation list. If questions are allowed during the conference, they shall be reduced to writing and distributed to all firms on the solicitation list.

**6.C.12. Offerors Questions**

Whether or not an offerors conference is required, interested firms shall be instructed to submit all questions in writing in accordance with the solicitation. The Contracting Officer will respond to such questions in a timely manner, using information obtained from the Program Office, ODEO, the Legal Division, or other offices as appropriate. Responses shall be sent to all firms on the solicitation list.

**6.C.13. Amendments****6.C.13.a. Changes**

The Contracting Officer shall issue an amendment to a solicitation when necessary to make changes in the solicitation. Amendments may include, but are not limited to, items such as the following:

- (1) Statement of work (SOW) or specifications;
- (2) Known ambiguities or omissions requiring clarification or correction;
- (3) Quantity;



- (4) Technical evaluation criteria;
- (5) Performance or delivery schedule;
- (6) Proposal due date and time; or
- (7) Questions and responses.

**6.C.13.b. Distribution**

The Contracting Officer shall send amendments to all firms on the solicitation list. In addition, amendments will be provided to all voting and non-voting members of the TEP.

**6.C.13.c. Timing**

FDIC will allow sufficient time to permit offerors to consider a solicitation amendment in submitting or modifying their proposals. When it is necessary to give notification of a change by telephone or facsimile, confirmation shall be promptly furnished to offerors by written amendment. The proposal due date shall be extended if necessary to give offerors sufficient time to respond to the solicitation as changed.

**6.C.14. Cancellation**

When it is necessary to cancel a solicitation, notice in writing shall be sent to every firm on the solicitation list.

**6.C.15. Solicitation List (MAR 2000) (JUL 2003)**

The Contracting Officer shall prepare the solicitation list in accordance with APM, 6.B.3., *Developing the Solicitation List*, and only provide solicitations to firms that are on the solicitation list. FDIC solicitations are not transferable unless approved in advance by the Contracting Officer. At the discretion of the Contracting Officer, a firm may be added to the solicitation list at any time prior to the proposal due date. The proposal due date need not be extended to accommodate a request received late in the proposal preparation process. All solicitation lists will clearly identify how the list was created (i.e., from what source, and the firms' MWOB and SDB status).

Solicitation lists for all solicitations having an estimated price greater than \$100,000 may be released only to those firms who received a specific solicitation and who request a copy of the Solicitation List for that solicitation. Otherwise, solicitation lists shall not be released. The requests shall be made to the Contracting Officer by telephone or email, and the Contracting Officer shall notify ODEO by email of each request for the solicitation list prior to its release.

**6.C.16. Proposal Receipt and Disposition****6.C.16.a. Receipt (MAR 2000)**

- (1) General Practice. ASB shall receive proposals strictly in accordance with the terms of the solicitation. ASB staff shall ensure that each proposal is stamped with the date and time as soon as it is received and then secured immediately. The Contracting Officer shall prepare and maintain a listing of the proposals received, and include the list in the official contract file.
- (2) Proposal Receipt. A proposal from an offeror that was not on the solicitation list or that was not approved by the Contracting Officer prior to the proposal due date, shall be rejected and returned to the offeror. The Contracting Officer may accept proposals from firms not on the original solicitation list if the potential offeror calls or writes and requests to receive the solicitation prior to the due date. There shall not be any extension to the proposal date except at the sole discretion of the Contracting Officer that, if granted, shall be applied to all offerors.

**6.C.16.b. Distribution of Proposals**

The Contracting Officer shall retain the original proposals for the official contract file, and distribute copies of the proposals to the TEP members.

**6.C.16.c. Safeguarding Proposals**

ASB staff, technical evaluators, and other involved FDIC personnel shall safeguard all proposals to prevent unauthorized disclosure. The Contracting Officer is responsible for all proposals in the possession of ASB. During the evaluation process, the TEP Chairperson is responsible for safeguarding all copies of proposals in the possession of the TEP. Proposals shall be kept in a secured location.

**6.C.16.d. Withdrawal**

Offerors may withdraw a proposal through written notice. A proposal withdrawal notice must be received by the Contracting Officer prior to award.

**6.C.16.e. Proposal Acceptance Period**

Unless withdrawn, FDIC shall have an acceptance period of ninety (90) days after the proposal due date. By submitting a proposal, an offeror agrees to and is obligated to perform according to the terms of the proposal if FDIC accepts the offer during the acceptance period.

**6.C.16.f. Late Proposals and Modifications (JUL 2003)**

- (1) Identification/Notification. Proposals and modifications (as requested by the Contracting Officer) are considered late if received after the date and

time established in the solicitation or amendments. When a proposal or modification is late, the Contracting Officer shall return the proposal or modification promptly to the offeror, giving written notice that the proposal or modification was received late and was not considered.

- (2) Exceptions. Under highly unusual circumstances, proposals or modifications to proposals received after the proposal due date and time may be accepted at the Contracting Officer's discretion, if acceptance is determined to be in FDIC's best interest and if acceptance is approved by the Assistant Director, Headquarters Operations Section, or by the Head of the Regional contracting function. Circumstances when it would be in the best interest of FDIC to accept a late proposal or modification to a proposal include, but are not limited to, when it would improve competition, offer significant price or technical advantages, or the receipt of the proposal was mishandled by FDIC. All exceptions shall be documented and maintained in the official contract file.

**SECTION 6.D. PROPOSAL EVALUATION PHASE****6.D.1. Scope**

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

**6.D.2. Evaluation Criteria****6.D.2.a. General**

All proposal evaluations shall be based upon written evaluation criteria that are communicated to offerors in the RFP. Once the RFP is issued, additional or changed criteria shall not be introduced unless the RFP is amended with the new criteria. The Program Office, in consultation with the Contracting Officer, takes primary responsibility for developing evaluation criteria derived from the statement of work (SOW) requirements.

**6.D.2.b. Concept of Technical vs. Price Weights**

In determining which firm offers the best value, FDIC must balance the quality of work (as measured by the technical evaluation) against the relative price (as measured by the price evaluation). Weights are given to the evaluation of technical and price proposals individually, to reflect the Program Office's need for quality work at a fair and reasonable price. As stated in APM, 6.B.1.c., *Review of Evaluation Factors*, the standard technical vs. price weighting ratio is 60/40 unless a higher weight on technical is approved as stated therein.

**6.D.2.c. Relative Importance of Technical vs. Price**

Price points shall be established in accordance with the technical/price weighting ratio and reflect the relative importance of price versus technical criteria. Price points shall be weighted less than technical points when price is not the overriding consideration. Exhibit XI, *Proposal Weighting and Ranking Analysis*, provides instructions for calculating points for price proposals.

**6.D.2.d. Eligibility**

Contractors must comply with FDIC's contractor eligibility requirements as stated in APM, 6.E., *Contract Award Phase*. This is a pass or fail criterion.

**6.D.2.e. Technical Evaluation Criteria**

- (1) Number. Use of too many criteria is undesirable and should be avoided because it can lead to an unintentional leveling of evaluation scores. The criteria that relate to the most critical aspects of the statement of work should be predominant in the evaluation.
- (2) Specificity. Evaluation criteria shall be developed for the specific requirements of each contract. The objective of the technical evaluation is to determine which of the offerors is most qualified to perform under the contract. The criteria are the means to accomplishing that objective. Therefore, criteria should be chosen that will require the offeror to provide evidence of ability to perform. For example, an offeror's experience tells more about its ability to do the work than does a description of a "new and innovative" approach that it will develop in response to the solicitation. Generally, criteria should address the following topics:
  - (a) Understanding of the requirement and approach towards accomplishing work;
  - (b) Management ability;
  - (c) Commitment to quality;
  - (d) Qualification requirements;
  - (e) Resources and facilities;
  - (f) Similar or prior experience; and
  - (g) Past performance.

**6.D.2.f. Price Evaluation**

- (1) Inclusion. Price proposal information shall be segregated from the technical proposal information. Price evaluation is performed by the Contracting Officer and price scores are allocated based upon the ranking of lowest proposed prices to the highest proposed prices (see Exhibit XI, *Proposal Weighting and Ranking Analysis*).
- (2) Price Reasonableness - Contracting Officer Duties. A price reasonableness determination under formal contracting may follow the same procedures used under simplified procurement stated in APM, 5.E.3.b., *Price Reasonableness Determination*. For example, the Contracting Officer may determine the price to be reasonable based on a comparison of all prices submitted by the offerors. In addition, the determination may be based on a comparison of the proposed price with prices determined to be reasonable with respect to current market prices, previous procurements, current price lists, internal cost estimates, catalogs, advertisements for similar items in related industry, the

Contracting Officer's personal knowledge of the item being procured, or any other reasonable basis. It will be at the discretion of the Contracting Officer to determine the method and the level of detail required for the determination.

- (3) **Price Reasonableness - TEP Duties.** Similar to the price reasonableness analysis under simplified procurement, the TEP or TEP Chairman shall be required to support the price reasonableness determination by reviewing the technical proposals to ensure that the proposed prices are realistic for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the offeror's technical proposal. For example, the elements of a price proposal can provide insight into the evaluation of an offeror's "understanding of the requirement." If an offeror's total proposed price falls far short of the government estimate for the FDIC requirement, the offeror's understanding of what is required must be questioned. The TEP review and determination shall include:
- (a) The number and qualifications of personnel to be assigned to the various aspects of the proposed work;
  - (b) Proposed labor rates or proposed material fees;
  - (c) Necessity and price of proposed resources for the requirement; and
  - (d) The price, amount and necessity of travel.

**6.D.2.g. Past Performance (MAR 2000) (JUL 2003)**

- (1) **Evaluation Criterion.** Past performance shall always be one of the evaluation criteria used for evaluating technical proposals. The amount of points assigned to this criterion shall be at least equal to the highest rated evaluation criterion. This criterion will be scored similarly to all other criteria on the quality of their previous performance.
- (2) **Incentive to Perform.** It is FDIC policy to take into consideration a firm's past performance and to reward high quality past performance in the evaluation process. Rewarding outstanding performance provides an incentive for contractors to perform at higher levels when repeat business is a possibility.
- (3) **Fairness.** To provide fairness to firms with no prior FDIC experience, the solicitation shall require descriptions of prior work with other customers to be provided and evaluated on the same basis as prior work with FDIC. Firms with no past experience (e.g., new start-up firms) shall be given scores for past performance for evaluation purposes by adding together all of the scores of all evaluated proposals given scores on the criteria related to past performance and dividing by the number of evaluated proposals given scores on that criteria.

- (4) Contractor Performance Management System (CPMS). ASB in Washington D.C. is responsible for maintaining the Contractor Performance Management System, to assist in the proposal evaluation of FDIC contractors, and to provide past performance information that can be used in the evaluation process. The Contracting Officer shall review CPMS past performance information on all procurements processed under formal procedures. To perform such review, the Contracting Officer has two (2) options. The first option is to use the review and print capability of the CPMS online services. The second option is to obtain the information by sending an email request to the mailbox address "CPMS."

**6.D.2.h. The Scoring System**

- (1) Relative Importance of Technical Criteria. The relative importance of the individual technical evaluation criteria must be analyzed and each criterion shall be distinguished from other criteria by assigning differing point scores based upon importance.
- (2) Assigning Scores. During the evaluation process, each technical criterion should be assessed and assigned a score based on the following:
  - (a) Outstanding. Very comprehensive, in-depth, and clear. Uniformly outstanding in quality. Consistently high quality performance is probable. Numerical rating = 9 – 10.
  - (b) Very Good. Clear and understandable. Consistently high quality performance is possible. Numerical rating = 7 – 8.
  - (c) Satisfactory. Does not meet all minimum requirements. Is of marginal quality. Problem areas may not be correctable during discussions. Numerical rating = 5 – 6.
  - (d) Poor. Shows deficiencies that cannot reasonably be corrected during discussions. Vague indications of the required capability and experience. Satisfactory performance cannot be expected. Numerical rating = 3 – 4.
  - (e) Unsatisfactory. Weak and lacking in clarity. Very little indication of the required capability and experience. Cannot be expected to meet minimum requirements. Numerical rating = 1 – 2.
  - (f) Non-responsive. Fails to comply with basic solicitation instructions regarding submission of proposals. Numerical rating = 0.

**6.D.2.i. Applying SDB Evaluation Adjustments (MAR 2000) (JUL 2003)**

- (1) General. The Contracting Officer shall determine the applicable NAICS code for a procurement of goods and services by using the search engine of the Occupational Safety & Health Administration (OSHA)

(www.osha.gov/oshstats.sicser.html). The Contracting Officer then will check the SDB database known as PRO-Net on the SBA web site (www.sba.gov) to determine whether the applicable NAICS code is authorized to participate in the SDB program. Legal and ODEO will be provided the opportunity to review this determination. The Contracting Officer shall document this procedure and the results by putting a copy of the applicable pages of each web site in the official contract file.

- (2) Price Evaluation Adjustments. For procurements greater than \$100,000 in an industry eligible for SDB preference as determined by the appropriate NAICS codes, the price evaluation adjustment of 10% will be given to qualified SDB offerors. The adjustment will be used to reduce the SDB's price for evaluation purposes. No price evaluation adjustment shall be given to non-SDB offerors.
  - (a) SDB firms who perform at least 50% of the work/dollars for goods and services (15% for construction and 25% for special trade construction) shall be entitled to the price evaluation adjustment. If more than the applicable percentage of the work/dollars is subcontracted, the offeror shall not be entitled to a price evaluation adjustment.
- (3) Technical Evaluation Adjustments. For procurements for goods or services greater than \$500,000 (\$1 million for construction) in an industry eligible for SDB preference as indicated by the applicable NAICS codes, offerors may elect to waive the price evaluation adjustment and take a technical evaluation adjustment. An offeror cannot reconsider the election to retain or waive the price evaluation adjustment after submission of its proposal. Technical evaluation adjustments will be available as stated below. The total technical evaluation points will be determined by the Contracting Officer and the actual point score will be based on a range of not less than 50% and not more than 100% of the highest scored technical criterion.
  - (a) SDB offerors who perform at least 50% of the work/dollars (15% for construction and 25% for special trades construction) shall be eligible for the total available technical evaluation adjustment (points). If more than the applicable percentage of the work/dollars is subcontracted, the offeror shall not be entitled to a technical evaluation adjustment.
  - (b) Non-SDB offerors who commit to subcontracting, teaming or joint venturing with SDB firms will receive an amount of technical points proportional to the amount of SDB participation. The effective range of participation will be 10-50% in the aggregate. No points will be given for less than 10% aggregate participation and no



additional points will be given for participation above the 50% threshold.

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

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

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

### 6.D.3. Determining Final Scores

#### 6.D.3.a. Basis for Combining Results of Technical, Price, and SDB Evaluation Adjustments (MAR 2000)

The evaluation process should use a relative weight of technical considerations, in relation to price considerations, and allow SDB price and technical adjustments to be applied to qualifying and qualified offers (technical, price, and other factors considered).

#### 6.D.3.b. Combining Results from Individual TEP Members

The TEP Chairperson is responsible for convening a consensus meeting of the individual TEP members to determine one (1) composite (consensus) technical score for each technical criterion and each proposal submitted.

#### 6.D.3.c. Combining Price and Technical Scores (MAR 2000)

The Contracting Officer shall combine the technical and price scores for qualified proposals (including technical, price, and other factors). The Contracting Officer shall then apply the price or technical evaluation adjustments to establish the overall scoring.

### 6.D.4. Technical Evaluation Process

#### 6.D.4.a. General Responsibilities (MAR 2000)

Each technical proposal shall be reviewed by a TEP to determine if it meets the requirements of the solicitation. The Contracting Officer is responsible for ensuring that the TEP is convened and that it completes its work on a timely basis. The TEP members are responsible for evaluating proposals in accordance with the procedures established in the Source Selection Plan, the evaluation criteria specified in the solicitation, and the procedures established herein. The guidelines for technical

evaluation are further defined as presented in *Memorandum Establishing Technical Evaluation Guidelines* included in Exhibit XII.

**6.D.4.b. Confidentiality Agreements and Conflict of Interest Certifications (JUL 2003)**

The Contracting Officer shall have all voting and non-voting members of the TEP read and execute Confidentiality Agreements and Conflicts of Interest Certifications (see Exhibit XII, *Documentation for Technical Evaluation Panel*) prior to distributing and evaluating proposals. If a Source Selection Official has been established for a given solicitation, then the SSO shall also be required to sign the Confidentiality Agreement and a Conflicts of Interest Certification. Any issues raised on the Conflicts of Interest Certifications submitted by TEP members or the SSO shall be resolved by the Assistant Director, Headquarters Operations Section or the Head of the Regional contracting function prior to allowing that individual to evaluate any proposal. If necessary, the TEP member may be dismissed from the Panel. Conflicts of Interests with non-voting members will be similarly resolved before their participation in the proposal evaluation phase.

**6.D.4.c. TEP Procedures (MAR 2000) (JUL 2003)**

(1) Initial Briefing. After proposals are received, the Contracting Officer shall convene and conduct a briefing for all TEP evaluators on the proposal evaluation process. The Contracting Officer shall give each TEP member an opportunity to have individual questions answered in an open forum, so that all evaluators obtain consistent direction. The Contracting Officer shall provide detailed written and verbal instructions on the mechanics of scoring each proposal, and a copy of the Source Selection Plan (SSP). The actual methodology will depend on the SSP, but generally involves assigning a numeric score and documenting the rationale supporting that score with a detailed narrative. In addition, the briefing agenda shall cover:

- (a) Evaluators' responsibility for protecting contracting information;
- (b) The number of proposals received;
- (c) The schedule for completing the evaluation;
- (d) Key solicitation terms and conditions and significant statement of work contents;
- (e) Resumes of key personnel and how they will be reviewed;
- (f) Any proposal format requirements;
- (g) Evaluation criteria and their corresponding standards;

- (h) The need to obtain and consider past performance information (see APM, Exhibit XXX, *Contractor Past Performance RFP Reference Check Questionnaire*);
  - (i) Ranking procedures, including score and weight assignment;
  - (j) Confirmation that TEP members do not have conflicts of interest; and
  - (k) Documentation requirements, including the standard protective marking statement "Confidential Contracting Information - Not for Public Disclosure," shall be included on all proposal evaluation documentation and recommendation reports.
- (2) Guidelines for Individual Evaluations. Individual proposals shall be evaluated against the evaluation criteria, and *not* compared against each other. TEP documentation forms are provided as Exhibit XII, *Documentation for Technical Evaluation Panel*. Generally, evaluators should take the following steps:
- (a) Scan Each Proposal. Evaluators should get a sense of the organization, contents, and style.
  - (b) Read Each Proposal Carefully. Evaluators should analyze each proposal segment, using the evaluation criteria, corresponding standards, and any proposal instructions provided in the solicitation as a checklist.
  - (c) Document the Review of Each Proposal Segment. All numeric scores must be supported with written narratives. The documentation of deficiencies is the most important task of the reviewer because deficiencies represent the risk inherent in each proposal – that is, the likelihood that an offeror may not fulfill the terms of the proposed contract. Evaluators will document all deficiencies. They will also document all strong points, as well as all weak points, all mistakes and ambiguities, and point out where clarifications are needed. All review comments should be organized and referenced by proposal part (volume, chapter, section, page number, and so forth) and referenced by the evaluation criteria to which the comments pertain.
  - (d) Summarize Review Findings. After evaluating each segment of a proposal, evaluators shall summarize its strengths and weaknesses.
  - (e) Rate the Proposal. To complete the evaluation, evaluators will assign a score to each proposal and support the score with a brief written narrative. Since the goal of the evaluation process is to predict success and narrow the field of possibilities, it is imperative,

regardless of the scoring system used, that evaluators assign positive scores only if clearly justified in accordance with the evaluation criteria. It is inappropriate, for instance, to assign even a low number of points to any particular criterion, or to the proposal as a whole, in order to indicate an appreciation of effort on the part of the offeror. Evaluators shall complete the evaluation and scoring of each proposal before proceeding to the next proposal.

- (3) **Non-Responsive Proposals.** At the Contracting Officer's discretion, proposals that are nonconforming to the RFP shall be considered non-responsive and eliminated from further consideration. Non-responsive proposals generally lack significant information **required by the RFP** that renders any evaluation impossible. The Contracting Officer shall return all non-responsive proposals to the offeror with a brief synopsis explaining the determination.
- (4) **Clarification of Proposals.** If, during the evaluation process detailed in APM, item (2) under 6.D.4.c., *Guidelines for Individual Evaluations*, or in the consensus meeting detailed in APM, item (6) under 6.D.4.c., *TEP Consensus Meeting*, TEP members need clarification of any aspect of a proposal, the TEP Chairperson may request such clarification from the Contracting Officer. Only the Contracting Officer has the authority to request clarification from an offeror, and such request will be made in writing. Likewise, an offeror shall provide such clarification in writing but may not change any part of the proposal as a result of the clarification request. Contracting Officers shall instruct the offeror to provide supplemental information of a strictly explanatory nature. If the offeror provides information that does not merely supplement the proposal with an explanation but, in effect, changes its contents, TEP members and the Contracting Officer shall disregard that information.
- (5) **Past Performance.** Past performance shall be a scored criterion. The TEP will obtain available performance information on all offerors using the questionnaire provided by the Contracting Officer during the proposal evaluation kick-off meeting. TEP members are required to call an offeror's references and use the questionnaire to document past performance. Once documented, the TEP members will use the past performance information, along with any other past performance information (e.g., from the Contractor Performance Management System), to assign a numerical score to the corresponding technical evaluation criterion. All completed questionnaires shall be returned to the Contracting Officer with the TEP Memorandum and individual TEP member scoring sheets at the conclusion of the proposal evaluation process. The completed questionnaires are procurement sensitive

information: they must be kept confidential and retained in the official contract file.

- (6) TEP Consensus Meeting. After the individual TEP members have completed and documented their evaluations, the TEP will meet as a group to discuss the strengths and weaknesses of each proposal. The TEP shall achieve consensus using a rational, agreed upon method (e.g., thorough discussion).
  - (a) Goals. The goals of the consensus meeting are to:
    - [1] Reach a TEP consensus – a team position – on the merits and deficiencies of each proposal, relative to the evaluation criteria; and
    - [2] Agree on an overall score for each proposal.
  - (b) TEP Consensus Discussions. TEP members will recognize that reasonable compromises will have to be made. Unanimous agreement on all points under consideration is highly unlikely. If unresolved differences remain, the TEP Chairperson shall decide the final ranking of a proposal.
- (7) TEP Memorandum Procedure. Prior to receiving the price proposals from the Contracting Officer, the TEP Chairperson shall provide to the Contracting Officer a memorandum documenting the panel's position on each proposal. The memorandum shall reflect the consensus reached at the TEP consensus meeting or the basis upon which the TEP Chairperson made a decision if a consensus could not be reached. Each page of the memorandum shall include a protective marking statement. All TEP members must sign the memorandum.
- (8) TEP Memorandum Content. The TEP memorandum as shown in Exhibit XII shall include:
  - (a) An analysis, keyed to the specific evaluation criteria, of the technically acceptable and unacceptable proposals, including an assessment of each offeror's ability to accomplish the technical requirements;
  - (b) A narrative statement reflecting the strengths and weaknesses of each proposal;
  - (c) A summary of technical scores plus each evaluator's individual scores and supporting narrative; and
  - (d) The evaluators' score sheets.
- (9) Review of TEP Memorandum. The Contracting Officer shall review the TEP memorandum to ensure that all proposals were evaluated fairly,

impartially, and in accordance with the evaluation criteria listed in the solicitation. If a proposal is excluded from further consideration, the TEP memorandum shall document the basis for the exclusion. The Contracting Officer shall advise the TEP Chairperson of any deficiencies or changes considered necessary. The TEP memorandum shall provide sufficient written documentation of the technical evaluations, including but not limited to the strengths and weaknesses of each proposal. After the Contracting Officer's review is complete, the price proposals will be provided to the TEP for price reasonableness review.

### **6.D.5. Price Proposal Evaluation Process**

#### **6.D.5.a. Elements (JUL 2003)**

Price evaluation is conducted by the Contracting Officer, generally while the TEP is in process, and must include:

- (1) A consideration of predetermined weighting that reflects the importance of the total cost to FDIC versus technical merit;
- (2) An evaluation of the realism of a proposed price by correlating it to the technical proposal; and
- (3) A determination of whether the price is fair and reasonable by comparing the price to the other price proposals.

#### **6.D.5.b. When Required**

Price evaluation is always required to assure the validity and reasonableness of an offeror's price proposal. Price competition normally ensures reasonable prices, but there are instances when competitive pressures are not sufficient to do this.

#### **6.D.5.c. Responsibilities**

Contracting Officers are responsible for ensuring that contract prices are fair and reasonable and for evaluating the total price proposed. Program Office personnel are responsible, upon request, for providing advice and assistance to the Contracting Officer in determining the price realism. Contracting Officers shall:

- (1) Evaluate proposed prices using a method described below in APM, 6.D.5.e., *Price Reasonableness Techniques*.
- (2) Compare each price for reasonableness with the same or similar items or services acquired under previous or existing contracts, taking into account variations such as, but not limited to:
  - (a) Quantities ordered;
  - (b) Efficiency or capacity;

- (c) Variations in performance or delivery times; and
  - (d) Changes in the general level of business activity within the industry concerned.
- (3) Reflect in their best value determination any adjustment to the standing of the offerors as a result of price reasonableness analysis. Price proposals determined to be unreasonable will not be evaluated and shall not be used in the process to allocate price evaluation points to an offeror's proposal.

**6.D.5.d. Determining Point Scores in Price Proposal Evaluation**

When conducting technical and price proposal evaluations, a total number of evaluation points shall be allocated to the price proposal based on the total technical points available and the technical/price weighting ratio. The method to be used for (1) determining total points for the price proposal and (2) allocating a price score to each price proposal from technically acceptable offerors is stated in Exhibit XI, *Proposal Weighting and Ranking Analysis*.

**6.D.5.e. Price Reasonableness Techniques**

- (1) When fair and adequate price competition is obtained, comparison among proposed prices and FDIC price estimates is generally sufficient to meet price analysis requirements. However, Contracting Officers shall use other price analysis techniques when a single offer is received as a result of a request for competitive proposals and the price proposal does not appear to be fair and reasonable. Other techniques include:
- (a) Comparison of previously proposed prices and previous contract prices with currently proposed prices for the same or similar service or product in comparable quantities;
  - (b) Comparison of proposed prices with FDIC price estimates;
  - (c) Verification that prices are set by law or regulation when that claim is made;
  - (d) Application of rough yardsticks (such as dollars per pound, per specific type of data or paperwork processed, or other unit) to highlight significant inconsistencies that warrant additional inquiry; and
  - (e) Comparison of proposed prices with competitive published catalogs or lists, published market prices or commodities, similar indexes, and discount or rebate arrangements.
- (2) The Contracting Officer shall select and use the price analysis technique that is most appropriate for a particular solicitation. All price analysis techniques rely on data obtained from sources other than the offeror.

**6.D.5.f. Adequate Price Competition**

Competitive pressures normally exist when offerors believe that other firms may compete for a contract award. In such situations, the number of proposals received is not relevant. Adequate price competition is obtained when:

- (1) Competitive proposals are solicited; and
- (2) The solicitation has identified price as an evaluation criterion.

**6.D.5.g. Analysis of Profit and Other Price Elements**

Analysis of specific elements of a firm's prices, such as a comparison against pre-established profit percentages or a limitation on profit or fee, is not appropriate for prices obtained through solicitation of competitive proposals.

**6.D.5.h. Elimination of Proposals Based on an Unrealistic Cost Proposal Determination**

If an offeror is eliminated from consideration on the basis of an unrealistic price proposal, the basis for eliminating the offeror shall be documented by the Contracting Officer and concurred with by the TEP Chairperson. Such documentation will include all supporting documentation as to why the offeror would not be able to perform the contract for the proposed price or why the price is considered unreasonably high.

**6.D.6. SDB Price and Technical Evaluation Adjustments (MAR 2000)**

SDB price and technical evaluation adjustments shall be determined and applied as set forth in APM, 6.D.2.i., *Applying SDB Evaluation Adjustments*.

**6.D.7. Selection Process**

Following evaluation of proposals, the Contracting Officer will determine the approach to be followed in selecting one (1) or more firms for contract award. One of two approaches shall be used.

**6.D.7.a. Award Based on Initial Submission of Proposals (MAR 2000) (JUL 2003)**

- (1) If it is determined to be in the best interest of FDIC, the Contracting Officer may award a contract based on the initial submission of proposals following the results from technical and price evaluations. There are no substantive discussions with the apparently successful offeror unless there is a need for minor, nonsubstantive administrative corrections or clarifications. The apparently successful offeror's proposal or resultant contract shall not be materially or substantively changed. Any such changes would compromise the integrity of the competitive process because the other offerors were not given the opportunity to respond to the same information.



- (2) The Contracting Officer shall ensure that a price reasonableness review is conducted pursuant to the terms of APM, 6.D.7.i., *Price Reasonableness – TEP Duties*.

**6.D.7.b. Award Based on Competitive Range Determination (MAR 2000)**

Following the initial evaluation, if there is no one successful offeror and if there is a need to hold technical and/or cost discussions with offerors, the Contracting Officer may establish a competitive range with those firms that have a reasonable chance of being selected for award. The competitive range will be determined as stated herein.

- (1) **Basis for Determination.** The Contracting Officer determines the competitive range after reviewing the final TEP memorandum and after completing the price evaluation. The determination is made on the basis of technical, price, and other factors as stated in the solicitation. Generally, the competitive range will include all proposals that have a reasonable chance of being selected for award. However, at the discretion of the Contracting Officer, the competitive range may be limited to no fewer than the top three (3) firms with the highest combined technical/price score. SDB price and technical evaluation adjustments are applied to firms determined to be technically qualified.
- (2) **Decisions on Offeror Inclusion.** If the Contracting Officer determines that a proposal no longer has a reasonable chance of being selected for contract award, it may no longer be considered for selection. The Contracting Officer shall provide to the TEP a list of offerors in the competitive range.

**6.D.7.c. Discussions/Negotiations**

Technical discussions/negotiations shall be conducted with all firms in the competitive range. The Contracting Officer will conduct the discussions, with the assistance and participation of the TEP. Discussions/negotiations may be face-to-face, telephonic, or in writing and may include technical, cost, or other issues.

- (1) **Scope.** Discussions afford offerors the opportunity to improve and receive, in effect, a second chance. The Contracting Officer shall control all discussions and negotiations to ensure they are conducted fairly. After discussions are completed under the competitive range approach, offerors shall be given the opportunity to improve their proposal through a best and final offer (BAFO) phase as required by APM, 6.D.7.h., *Best and Final Offers*.
- (2) **Purpose.** The Contracting Officer shall:
  - (a) Advise the offeror of deficiencies in its proposal based upon the TEP's evaluations;

- (b) Attempt to resolve any uncertainties concerning the offeror's proposal; and
  - (c) Resolve any suspected mistakes by calling them to the offeror's attention as specifically as possible without disclosing information on other offerors' proposals or the evaluation process.
- (3) Constraints. The Contracting Officer shall ensure that FDIC personnel do not:
- (a) Help an offeror bring its proposal up to the level of other proposals through successive discussion opportunities;
  - (b) Disclose technical information pertaining to one (1) proposal that results in improvement of a competing proposal;
  - (c) Indicate to an offeror a price that it must meet to obtain further consideration; or
  - (d) Furnish information about other offerors' proposed prices.

#### **6.D.7.d. Clarifications vs. Discussions**

APM, 6.D.7.c., *Discussions/Negotiations*, states that technical discussions shall be conducted with all firms in the competitive range. However, a distinction needs to be drawn between discussions and clarifications. Clarifications, as described herein, are not considered to fall under the procedures for technical discussions. Clarifications involve obtaining information from the offeror in order to resolve minor irregularities or obvious errors in their proposal. This additional information shall be requested by the Contracting Officer on a case-by-case basis. The Contracting Officer will instruct the offeror to provide only the supplemented information of a strictly explanatory nature. If the offeror provides information that does not merely supplement the proposal with explanation, but, in effect, changes its contents, the Contracting Officer shall disregard the changes, the proposal may be eliminated from further consideration, or the matter waived as a minor informality, at the discretion of the Contracting Officer.

#### **6.D.7.e. Financial Capability Evaluation (MAR 2000) (JUL 2003)**

The Contracting Officer shall perform a financial capability evaluation for the firm(s) for contracts for **services** having an expenditure of \$500,000 or greater. The evaluation shall consist of an analysis of financial data submitted by the offerors and such other relevant information supporting the financial condition of the offerors to determine with reasonable assurance that the apparently successful offerors can fully meet all contractual obligations for the entire term of the contract. Offerors will be required to identify any pending proposals submitted to FDIC, any previous or existing contracts with FDIC, and other pending commitments and contractual obligations. At the discretion of the Contracting Officer, a financial capability

evaluation may be conducted on any contract for goods or services when it is deemed necessary or advisable.

**6.D.7.f. Extent of Discussions**

The extent of discussions is determined on a case-by-case basis but shall provide all parties with an equal opportunity to improve their proposals. Each offeror in the competitive range with whom discussions are held shall be given a reasonable opportunity to support, clarify, correct, improve, or revise its proposal through a best and final offer.

**6.D.7.g. Planning**

Prior to holding discussions, the Contracting Officer normally meets with members of the TEP to review its findings and determine what information will be provided to and requested from each offeror concerning its proposal. This process is an important step because it provides a plan for the conduct of the discussions. The discussions are not intended to be a general question-and-answer period for each offeror. Rather, they usually should be one-sided with the FDIC stating its position on the proposal or asking whatever questions are necessary to clear up uncertainties.

**6.D.7.h. Best and Final Offers (BAFOs) (JUL 2003)**

A best and final offer is necessary so that offerors can, if they so desire, incorporate changes and revisions in their proposals that resulted from the previously held technical discussions. Without this opportunity to revise their proposals, discussions cannot be construed to be binding because they were not officially proposed by the offerors as part of their proposals to FDIC. If an award were to be made following the discussions without the BAFO, the evaluation would not be fair to the other firms nor would the contractor necessarily be bound by the changes. Therefore, a BAFO is a revision to the original price and/or technical proposal that reflects the firm's best offer to FDIC. After written or oral discussions with all offerors in the competitive range have concluded, the Contracting Officer shall solicit BAFOs from all offerors in the competitive range.

- (1) Request. The request will include:
  - (a) Notice that discussions are concluded;
  - (b) Notice of the opportunity to submit BAFOs by revising price proposals, technical proposals, or other terms and conditions of the original proposals; and
  - (c) A common cut-off date and time that allows a reasonable opportunity for submission of written BAFOs.
- (2) BAFO Evaluation. After the close of discussions and the receipt of BAFOs, the TEP reconvenes to evaluate them. The same process used to evaluate the original offers is repeated. However, it is not necessary for

the TEP to conduct another complete proposal re-evaluation. The TEP will only consider the changes resulting from the BAFOs. For any changes that affect the technical scoring, the TEP Chairperson will request a re-evaluation sheet from each of the TEP members who quantitatively and qualitatively addresses any changes made by the BAFOs, and adjust the assigned points accordingly.

- (3) Second BAFO. After receipt of BAFOs, the Contracting Officer will not reopen discussions unless it is in FDIC's best interest to do so, or when available information is not adequate for contractor selection and award. Request for a second BAFO requires the prior approval of the Assistant Director, Headquarters Operations Section, or the Head of the Regional contracting function.

#### **6.D.7.i. Price Reasonableness - TEP Duties**

When all technical discussions are concluded, and the technical scores have been provided to the Contracting Officer, the TEP Chairperson will obtain price proposals from the Contracting Officer and provide them to the TEP evaluators as the final phase of the technical evaluation process. The evaluators examine evidence of whether the proposed price: is realistic for the work to be performed; reflects a clear understanding of the requirements; and is consistent with the offeror's technical proposal. If the TEP has been disbanded and it is not cost-effective to reconvene, the TEP Chairperson shall perform this function. The TEP Chairperson is required to address price realism in the addendum to the TEP memorandum. Additionally, the Contracting Officer may request a technical analysis of other specific issues that may affect price consideration. For example, the Contracting Officer may ask the TEP to address the reasonableness of the quality and quantity of proposed resources, and the adequacy and reasonableness of proposed materials and subcontracts, including labor categories and hours.

#### **6.D.8. Addendum to the TEP Memorandum**

The TEP Chairperson will be required to issue an addendum to the TEP memorandum addressing the review of the price proposals and the results of a best and final offer (BAFO) evaluation.

#### **6.D.9. Selection Decision**

The Contracting Officer will make the final selection decision that reflects the best value to FDIC (in accordance with APM, 6.A.7., *Best-Value Determination*) based on the stated technical evaluation criteria and the offeror's price. The Contracting Officer will consider any rankings, ratings, or other information by the TEP in making such selections. Decisions will be supportable, reasonable, based on the evaluation, and documented in the Selection Recommendation Report (see APM, 6.E.4., *Selection Recommendation Report*). Exhibit XI, *Proposal Weighting and Ranking Analysis*, provides worksheets to facilitate proposal weighting and ranking analysis.

**6.D.10. Release of Information**

FDIC employees are prohibited from releasing any information on proposals, except as set forth in this paragraph. Information concerning the contents of proposals, the number or identity of offerors, or marked "Confidential Procurement Information – Not for Public Disclosure" may be released only to:

**6.D.10.a. Program Office**

Individuals involved in the proposal evaluation process;

**6.D.10.b. Acquisition Services Branch**

Contracts staff, but only to the extent those staff members require this information in order to fulfill professional or clerical functions; and

**6.D.10.c. Other FDIC Employees**

Other FDIC employees officially charged by this manual with review and approval of proposal and award documents, but only to the extent that they have a need to know the information to fulfill their official review or approval functions.

**6.D.11. Breaches of Confidentiality**

All potential or real breaches of confidentiality shall be brought to the attention of the Contracting Officer.

**SECTION 6.E. CONTRACT AWARD PHASE****6.E.1. Contracting Authority**

Contracting authority is stated in APM, 1.B., *Expenditure Delegations of Authority*. These delegations place specific limitations on individuals executing contracts on behalf of FDIC. Only warranted Contracting Officers have authority to execute, modify, or terminate contracts or orders. The authority to execute contracts pertains to the administrative function of soliciting proposals and executing contracts, and is implemented in accordance with the procedures stated in APM, Chapter 2, *Contracting Officer Warrant Program*. When Contracting Officers execute a contract, they are certifying that the contract has been obtained in a manner consistent with FDIC's contracting policies and procedures, and within established expenditure authority. They are not certifying the need for the goods or services.

**6.E.2. Pre-Award Actions**

The following activities shall be performed as described below prior to contract award:

**6.E.2.a. Business Reference Check**

If deemed necessary, the Contracting Officer shall conduct a business reference check of the potential contractor before award. The checks shall provide information concerning the ability of the offeror. If the offeror is not selected, based on the check, the official contract file shall be so documented.

**6.E.2.b. Contractor Integrity and Fitness Verification (MAR 2000) (JUL 2003)**

The Contracting Officer shall review the Integrity and Fitness Certification for the successful offeror prior to award. If the certification indicates potential ethics problems, the Contracting Officer shall refer the matter to the Policy and Compliance Section, ASB, for review and provide all supporting documentation necessary to complete the review. (See Exhibit VII.) Contract award shall not be made until the certification issue is resolved.

**6.E.2.c. Proposal Verification**

For contracts with estimated total dollar amounts of \$100,000 or greater, FDIC may verify the accuracy of representations made by the firm to differentiate between proposal resources and actual resources. Contracting Officers are encouraged to use site visits and other forms of verification (e.g., discussions with firm's clients or interviews with key personnel) for the successful offeror.

**6.E.2.d. Site Visit**

If a site visit is desired as a means of verification, the Contracting Officer may ask appropriate FDIC offices to participate in such a visit. The participation request will depend on the nature of the information to be verified. Site visits are conducted at the successful offeror's location. The FDIC personnel who conduct the site visit will

provide a brief, written report of their findings and recommendations to the Contracting Officer.

**6.E.2.e. Background Investigations (MAR 2000) (JUL 2003)**

The Contracting Officer is responsible for requesting a background investigation on the contractor, subcontractors and key personnel for (1) contracts for services of \$100,000 or greater; (2) awards where the contractor's employees will be required to work on-site at an FDIC office regardless of dollar amount; and (3) any other award at the discretion of the Contracting Officer. Contracts for goods do not require background investigations.

Request for Proposals (RFPs) for services shall include the Background Investigation Questionnaire for Contractors (FDIC Form No. 1600/07), Background Investigation Questionnaire for Contractor Personnel and Subcontractors (FDIC Form No. 1600/04), and the Notice and Authorization Pertaining to Consumer Reports Pursuant to the Fair Credit Reporting Act of 1970 (FDIC Form No. 1600/10). The latter form is necessary to obtain credit reports, financial data, and other information from offerors and subcontractors. APM Exhibit XIV provides the forms to be used in support of background investigations.

The Contracting Officer shall provide the completed background investigation forms for the successful contractor to the Program Compliance Unit (PCU) prior to award, following the procedures required hereunder and the internal operating procedures established by ASB for Headquarters and Regional Offices. The investigations will generally be completed within ten (10) calendar days. However, if an investigation takes longer, the award may be made contingent upon the outcome of the investigation as specified in APM, 6.E.9.c., *Award Prior to Completion of Reviews and Verifications*.

In addition, fingerprinting will be performed as part of the background investigation of all contractor personnel who will be working on-site in any FDIC office, or is working off-site and obtains a log-on identification for access to the FDIC network, regardless of dollar value. Fingerprinting will be performed typically at the site where the contract was awarded. The fingerprinting will be performed by, or under the direction of, Security Management Section who will send the fingerprints to the FBI in Washington, D.C., for analysis. The award and performance of the contract shall not be delayed while the fingerprint analysis is in process, unless the Program Office and Contracting Officer believe the security considerations related to on-site work are critical. Fingerprinting shall not be required for contractors that conduct business, or make deliveries or repairs, on an intermittent or an as required basis at FDIC offices. No background investigations or fingerprinting shall be required for receiverships except when a receivership is of a long-term nature, when both are required.

All contractor and subcontractor employees being granted access to FDIC's network/systems shall review the FDIC Security Awareness Website and provide

electronic certification of their review within five (5) business days of receiving a network ID, and annually thereafter to retain access.

**6.E.2.f. Completion of Official Contract File (MAR 2000)**

Prior to award (contract execution), the Contracting Officer shall ensure that all contract documents relating to the contract are in the official contract file according to the applicable file checklist. Documentation shall include that which is required under the APM relating to presolicitation, solicitation, evaluation, selection, pre-award reviews, and the award decision.

**6.E.2.g. Contractor Confidentiality Agreements (MAR 2000) (JUL 2003)**

Where a contract requires the rendering of goods or services to FDIC that are of such a nature that the contractor will receive or might have access to information of a confidential nature, or where the contractor is required to work on-site at an FDIC facility, or has access to information of a sensitive nature relating to FDIC whether by access to any FDIC systems or in any other manner, the contractor and each individual having access shall be required to sign a Contractor Confidentiality Agreement prior to being provided the information, working on-site, or obtaining access. For example, if the confidential information is provided during the solicitation phase or any time thereafter, the Contracting Officer shall require all offerors to sign the Agreement before receipt of the information in, or associated with, an RFP or RFQ. All signed Agreements shall be maintained in the official contract file. This Agreement is provided as Exhibit II or can be found at <http://www.fdic.gov/buying/goods/index.html>. Generally, the determination of whether information is confidential should be made by the Program Office representative in the procurement action.

If the contractor has subcontractors, the contractor shall obtain from each subcontractor and their personnel working on-site at an FDIC facility or having access to any FDIC network or system a confidentiality agreement that is substantially the same as the Contractor Confidentiality Agreement required of FDIC's contractor and contractor's personnel. The contractor shall ensure that all subcontractors adhere to the terms of such agreement.

**6.E.3. Contractor Representations and Certifications Review (JUL 2003)**

The Contracting Officer will:

**6.E.3.a. Review (JUL 2003)**

Review all representations and certifications for completeness to ensure the contractor has identified its related entities, answered all questions, signed the form, and included any attachments that are referenced in the offeror's answers to specific questions.



**6.E.3.b. Issues (MAR 2000) (JUL 2003)**

Forward the complete Eligibility Representations and Certifications package to the Policy and Compliance Section, ASB, for review when contractor eligibility issues are identified. The Contracting Officer shall not award a contract until clearance is obtained.

**6.E.4. Selection Recommendation Report**

A Selection Recommendation Report shall be prepared by the Contracting Officer, based on the final signed TEP memorandum, cost analysis, and all other relevant decision-making factors. The report shall be signed by the Contracting Officer and TEP Chairperson, and approved by the Source Selection Official, if appropriate. Each page of the report shall include the protective marking statement: "Confidential Procurement Information - Not for Public Disclosure." The Selection Recommendation Report will include, at a minimum, the following:

**6.E.4.a. Chronology**

A chronology of events in the evaluation and award process;

**6.E.4.b. Rank**

A competitive ranking of the proposals and a brief description of the significant strengths and weaknesses of each proposal among those selected to compete as final candidates or in the competitive range;

**6.E.4.c. Scores (MAR 2000)**

The final technical and price scores for each offeror or joint venture including SDB evaluation adjustments;

**6.E.4.d. Prices**

The offeror's proposed price;

**6.E.4.e. SDB (MAR 2000)**

SDB certification;

**6.E.4.f. Background Investigations**

Background investigations certification provided by SMS, if requested;

**6.E.4.g. Financial Responsibility (MAR 2000) (JUL 2003)**

The results of the financial responsibility determination;

**6.E.4.h. Eligibility Reviews (MAR 2000)**

Documented results (including copies of pertinent screens) of the National Contractor System (NCS) status for all firms on the solicitation list and all contractor

eligibility representations and certifications for all firms that provide a responsive offer to a solicitation; and

**6.E.4.i. Other Information**

All other pertinent information that may influence the selection.

**6.E.5. Source Selection Official Review (MAR 2000)**

The Contracting Officer shall forward the Selection Recommendation Report to the SSO for review. The SSO shall review all the documentation relating to the source selection, including the Selection Recommendation Report, and document his or her approval for the official contract file. The SSO shall ensure that the source selection decision is:

**6.E.5.a. Comparative Analysis (MAR 2000)**

Based on a comparative analysis of the proposals;

**6.E.5.b. Evaluation Factors (MAR 2000)**

Consistent with the evaluation factors as stated in the solicitation;

**6.E.5.c. Best Value (MAR 2000)**

The best value available; and

**6.E.5.d. Rational Decision (MAR 2000)**

A rational decision based on reasonable standards.

After the review, the Contracting Officer's award decision shall be implemented unless the SSO determines that the basis for the award is not supported. If this occurs, the matter shall be resolved by the Associate Director, ASB.

**6.E.6. Final Review**

Any remaining deficiencies or uncertainties in the apparent successful proposal shall be addressed, resolved, and corrected with the apparent successful offeror by the Contracting Officer.

**6.E.7. Approval of Contractor**

The final decision regarding the selection of the successful offeror remains with the Contracting Officer with concurrence from the TEP Chairperson and concurrence of the SSO for contracts over \$5,000,000, when applicable.

**6.E.8. Preparing/Executing the Contract (MAR 2000)**

The Contracting Officer shall prepare and assemble the appropriate contractual documents using the Standard Contract Documents issued by ASB, as referenced in APM, 3.B.11., *Standard Documents*.

Where labor categories are used, the contract will also contain definitions of the qualifications needed for performing tasks in specific labor categories.

**6.E.9. Award**

**6.E.9.a. Notification**

The Contracting Officer shall notify the successful offeror in writing that an award decision has been made.

**6.E.9.b. Contract Document**

- (1) The Contracting Officer shall make all revisions necessary to finalize the contract prior to award and ensure that the contract contains a ceiling price.
- (2) The names of all key personnel, identified during the proposal review process, shall be included in the final contract.
- (3) The Contracting Officer shall send two (2) originals of the contract to the contractor, who must sign both of them, without modification, and return the signed copies to FDIC.
- (4) The Contracting Officer shall execute both copies of the contract on behalf of FDIC and return one (1) of the originals to the contractor.
- (5) A second copy of the original contract shall be retained in the official contract file in accordance with FDIC record management policy.
- (6) A copy of the contract shall be provided to the designated Oversight Manager.

**6.E.9.c. Award Prior to Completion of Reviews and Verifications (JUL 2003)**

If the background investigation has not been completed, the award may be made; however, the Contracting Officer will prepare a letter to the contractor explaining that award is contingent on the outcome of the background investigation. Notwithstanding, access to FDIC network or systems shall not be granted until a favorable criminal records check is received from the FBI.

**6.E.10. Effective Date of Contract (JUL 2003)**

It is good business practice to have fully executed contractual documents in place before a contractor commences work. However, on an as needed basis, and only with the prior approval of the Assistant Director, Headquarters Operations Section, or Head of the Regional contracting function, the effective date of a contract may be prior to the execution date. This provision shall be utilized when the Contracting Officer intends to verbally authorize a contractor to begin work prior to having in place a fully executed contractual document. Verbal authorization shall be followed up in writing (see Exhibit XIII, *Sample Letter Authorizing Contractors to Commence Work*). Before a verbal authorization may be given, the Contracting Officer shall ensure that expenditure authority in the total amount of the contract has been approved.

## SECTION 6.F. NOTIFICATION TO UNSUCCESSFUL OFFERORS/DEBRIEFINGS

### 6.F.1. Notification (MAR 2000)

Within ten (10) calendar days of contract award, the Contracting Officer shall send a written notice of the award to all unsuccessful offerors. The notice shall contain the identity of the successful offeror and procedures for requesting a debriefing (Exhibit XV, *Notification to Unsuccessful Offeror Letter*).

### 6.F.2. Debriefings

#### 6.F.2.a. When Required (MAR 2000) (JUL 2003)

Debriefings shall be offered to unsuccessful offerors when technical proposal evaluations are conducted as part of the proposal evaluation and award process for contracts, basic ordering agreements, task orders, and purchase orders. Unsuccessful offerors are required to request a debriefing in writing, and the request must be made within ten (10) calendar days after the offeror is notified of the contract award.

#### 6.F.2.b. Format and Timing

Debriefings shall be scheduled and held by telephone or in person, within fifteen (15) calendar days after a request by the offeror.

#### 6.F.2.c. Purpose

The purpose of a debriefing is to inform the offeror why its proposal was not selected, emphasize areas in which improvement may enhance its chances of receiving future contract awards, and provide the offeror with an understanding that the process was conducted fairly.

#### 6.F.2.d. Responsibilities (MAR 2000)

The Contracting Officer is responsible for assembling information and coordinating the debriefing with both the unsuccessful offeror and the TEP Chairperson or other TEP members. The Contracting Officer does have the discretion, however, to allow other participants, such as an offeror's subcontractor and counsel to attend. Program Office personnel will attend debriefing consultations. The Contracting Officer will document debriefing conferences and retain a record of them in the official contract file. It is important that FDIC personnel directly responsible for the award of the contract debrief the unsuccessful offeror. A Legal Division representative, when requested by the Contracting Officer, will participate in the debriefing. The ODEO will be given an opportunity to participate when debriefings are given to MWOB and/or SDB firms.

**6.F.2.e. Conduct**

All FDIC participants will be introduced, and their respective roles in the selection and award process explained by the Contracting Officer.

**6.F.2.f. Content (MAR 2000)**

(1) Required Discussion Items. If the unsuccessful offeror requests a general debriefing rather than answers to specific questions, the Contracting Officer will provide a review of the evaluation process in a manner helpful to the offeror.

(a) Overall Evaluation Structure. An overview of the evaluation structure/process including the procedural aspects of the technical and price weights, the technical evaluation criteria/points, and price proposal points.

(b) Unsuccessful Offeror's Specific Rating. The specific rating shall be reviewed in general terms such as within "the top third" or "bottom half" of the offerors. It is important to concentrate on the relative nature of FDIC's rating system. FDIC debriefers will emphasize that a low technical rating does not necessarily mean that an offeror is not qualified to perform the required services but, rather, that the contractor was not perceived to be as strong as the successful offeror, in terms of a particular criterion. It is not appropriate to discuss either the specific ratings or the price proposals of other offerors. However, the Contracting Officer may disclose the selected offeror's price.

(c) Future Improvement. It is essential that FDIC debriefers provide useful information in a manner that will help the offeror produce a more competitive proposal in response to future FDIC solicitations. For example, if an offeror's proposed prices were so much higher than most other offerors' prices that they precluded any real chance of selection, debriefers could stress a general need to trim unnecessary proposal prices—*without* stating any particular price that FDIC might consider "competitive" or "reasonable." On the other hand, if the unsuccessful offeror's proposal lacked technical superiority, debriefers can identify the general areas that resulted in a low score, but should refrain from making a point-by-point comparison of all elements considered.

(2) Optional Discussion Items. When the Contracting Officer considers it appropriate, other items such as, but not limited to, the following may also be discussed:

(a) FDIC's administrative process for selecting sources;

- (b) Number of sources solicited;
  - (c) Number of proposals received;
  - (d) Perceived strengths as well as weaknesses in the firm's proposal, based on the criteria set forth in the solicitation;
  - (e) If requested, procedures for requesting information under the Freedom of Information Act (FOIA); and
  - (f) If requested, procedures for filing an official protest.
- (3) Unauthorized Discussion Items. The following information shall not, under any circumstances, be discussed or disclosed to the firm being debriefed:
- (a) The number of offerors selected as final candidates or requested to submit BAFOs;
  - (b) The actual technical score of the firm being debriefed, or the firm's combined technical and price score or ranking;
  - (c) The winning contractor's or any other offeror's technical score or combined technical and price score or ranking;
  - (d) A copy of the winning technical proposal;
  - (e) Copies of any technical or price score sheets, reports, or any other written information produced by the TEP or the Contracting Officer during the evaluation process; and
  - (f) Information relating to the selected contractor or other offerors that could be considered proprietary information.

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**SECTION 6.G. BID PROTEST PROCEDURES****6.G.1. Policy (MAR 2000)****6.G.1.a. General (MAR 2000)**

Prospective offerors seeking to do business with FDIC will be treated fairly and the process for selecting and engaging contractors to provide goods or services will comply with all applicable FDIC statutes, regulations, policies, and procedures. Bid protests regarding the contract award process must be resolved in an expeditious and equitable manner.

**6.G.1.b. Required Mail Standard (MAR 2000) (JUL 2003)**

All bid protests, Contracting Officer's decisions, requests for review, and decisions by the Associate Director, ASB, as set forth in this section, shall be mailed by certified mail, return receipt requested, through the United States Postal Service (USPS).

**6.G.2. Interested Parties**

Only interested parties may submit a bid protest to FDIC regarding a solicitation or a proposed or actual contract award. An interested party is anyone who is included on the solicitation list and has submitted a proposal in response to the solicitation. To be eligible to file a bid protest, an interested party must meet FDIC's eligibility certification requirements to receive a contract award.

**6.G.3. Time for Filing with Contracting Officer**

An interested party may file a bid protest at any time before contract award. A bid protest can be filed after contract award only if the interested party (1) first acquired actual or constructive knowledge of the basis for the bid protest after the award date, and (2) notifies the Contracting Officer of the bid protest within ten (10) business days after the basis of the bid protest is known or should have been known.

**6.G.4. Protest Processing Procedures****6.G.4.a. Written Protest**

All protests shall be submitted in writing to the Contracting Officer responsible for the particular solicitation for a decision.

**6.G.4.b. Contracting Officer's Decision (JUL 2003)**

The Contracting Officer shall issue a decision to the interested party in writing within ten (10) business days of receipt of the protest and provide a copy of the response to the Associate Director, ASB.



### 6.G.5. Filing a Request for Review of Decision

#### 6.G.5.a. Request for Review (MAR 2000) (JUL 2003)

If the interested party desires a review of the decision rendered by the Contracting Officer on a protest **other than** under an OIG contract, the interested party must file such request with the Associate Director, ASB. In the case of an OIG contract, the request for review must be filed with the Counsel to the Inspector General or their designee. All such reviews are subject to the exceptions and limitations set forth below.

#### 6.G.5.b. Contents of Request

Requests shall be filed in writing and shall include the following information:

- (1) The interested party's name, address, telephone number, facsimile number, and taxpayer identification number;
- (2) Identification of the solicitation or contract at issue;
- (3) Identification of the ASB office responsible for the award of the contract;
- (4) Statement of the basis for the request, including supporting documentation;
- (5) Chronology of efforts made to resolve the complaint, naming the individuals at the ASB office who issued the solicitation or made the award;
- (6) Copies of all correspondence related to the complaint between the contractor and FDIC;
- (7) The written denial of the complaint by that office; and
- (8) Statement of the relief being requested.

#### 6.G.5.c. Time for Filing (MAR 2000) (JUL 2003)

A request for review of the decision of the Contracting Officer must be filed with the Associate Director, ASB, or the Assistant Inspector General for Management and Congressional Relations, as appropriate, within ten (10) business days from receipt of the decision of the Contracting Officer. (See APM, 6.G.5.a., *Request for Review*.)

#### 6.G.5.d. Additional Filing Requirements

The interested party shall base the request for review on the same issue or issues that were initially raised to the Contracting Officer.

**6.G.6. Review Processing Procedures****6.G.6.a. ASB Report (MAR 2000) (JUL 2003)**

Within ten (10) business days after receiving notice from the Associate Director, ASB, or the Assistant Inspector General for Management and Congressional Relations, as appropriate, that a request for review of decision has been filed, the Contracting Officer, with concurrence of the supporting Legal Division representative or Counsel to the Inspector General, as appropriate, shall submit a complete written report on the protest to the Associate Director, ASB, or the Assistant Inspector General for Management and Congressional Relations, as appropriate.

**6.G.6.b. Contents**

The report from the Contracting Officer shall include:

- (1) The Contracting Officer's statement of the circumstances relevant to the protest as well as any findings, determinations, or conclusions, and
- (2) Documents and other pertinent information, including:
  - (a) The complete solicitation package, including all amendments;
  - (b) The proposal submitted by the interested party and the proposal or proposals selected for award;
  - (c) The status of the award and, if an award has been made, whether performance has begun or shipment or delivery has been made;
  - (d) If award has not been made, a statement as to when award is anticipated and an explanation of any impact on FDIC operations likely to result from delaying award until review of the decision has been completed;
  - (e) A statement that the contracting process under the particular solicitation complied in all respects with the procedures set forth in this manual; or if such is not the case in any respect, the statement shall explain any deviations from the manual and the authority for such deviations;
  - (f) A legal review of the situation or file; and
  - (g) Any other documents, statements, or materials necessary to support the findings of the ASB office responsible for the award.

**6.G.6.c. Action by Associate Director, ASB, or the Assistant Inspector General for Management and Congressional Relations (MAR 2000) (JUL 2003)**

The Associate Director, ASB, or for OIG contracts, the Assistant Inspector General for Management and Congressional Relations, shall have ten (10) business days after

receipt of the report from the Contracting Officer to issue a decision on the protest. Decisions by the Associate Director or Assistant Inspector General shall be as follows:

- (1) **Decision Final on Contracts of Less than \$100,000.** Decisions by the Associate Director, ASB, or for OIG contracts the Assistant Inspector General for Management and Congressional Relations, are final and not subject to further review with respect to protests involving contracts valued less than \$100,000.
- (2) **Advice of Rights, Contracts of \$100,000 or Greater.** If the protest involves a contract valued at \$100,000 or greater, the decision by the Associate Director, ASB, or the Assistant Inspector General for Management and Congressional Relations, shall advise the interested party of its right to have the decision reviewed by the Director, Division of Administration or the Principal Deputy Inspector General, as appropriate.

#### **6.G.7. Remedies**

If FDIC determines that a contract award or proposed contract award is not made in accordance with applicable FDIC statutes, regulations, policies and procedures, FDIC may, at its sole discretion, grant any remedy it deems appropriate, including:

##### **6.G.7.a. Pre-Award**

If pre-award, issue a new solicitation or award the contract consistent with applicable statutes, regulations, policies, and procedures.

##### **6.G.7.b. Post-Award**

If post-award, refrain from extending the term of the contract or awarding task orders under an existing agreement.

##### **6.G.7.c. Other Action**

Any other action permitted by law to promote compliance.

##### **6.G.7.d. No Action**

At its sole discretion, take no further action.

**SECTION 6.H. SUBCONTRACTING****6.H.1. Scope (MAR 2000)**

Subcontracting permits FDIC contractors to engage other firms (subcontractors) to assist in meeting their contractual obligations. FDIC encourages its contractors to subcontract with Minority- or Women-Owned Businesses (MWOB firms) and Small Disadvantaged Businesses (SDB firms).

**6.H.2. Definitions****6.H.2.a. Subcontract**

A contract entered into by a contractor and a subcontractor for the purpose of obtaining goods or services in support of a contract.

**6.H.2.b. Contractor**

A firm or entity awarded a contract directly by FDIC.

**6.H.2.c. Contractor Personnel**

Any individual who is performing any part of the work or other requirement of the contract and who stands in an employer/employee relationship with the contractor is considered contractor personnel. An employer/employee relationship is established, for example, when the contractor may hire, fire, pay, instruct about when, where, and how to perform work, provide training, supervise, furnish equipment and materials to the individual, pay federal or state employer taxes, or withhold employee taxes.

**6.H.2.d. Subcontractor**

A firm or entity that furnishes goods or services to a contractor or another subcontractor. Individuals and entities that perform services or provide goods under a contract and are not included in the definition of contractor personnel above are considered subcontractors.

**6.H.2.e. Privity of Contract**

The legal relationship and responsibilities between parties to the same contract. FDIC has privity of contract with the contractor; the contractor has privity of contract with the first-tier subcontractor; the first-tier subcontractor has privity of contract with the second-tier subcontractor; and so on.

**6.H.2.f. Subcontracting Plan**

A plan prepared by a contractor to subcontract part of the contract work to other entities.

### 6.H.3. Policy

#### 6.H.3.a. Extent of Subcontracting

It will be at the Program Office's discretion, in consultation with the Contracting Officer, to determine when subcontracting should be allowed or not allowed. In either case, the RFP shall specify whether subcontracting is allowed or prohibited. When allowed, offerors shall be required to disclose salient information about the subcontractor's qualifications and technical expertise in their proposals as required by the RFP. This information shall be factored into the offeror's overall proposal evaluation.

#### 6.H.3.b. Subcontractor Markups (MAR 2000) (JUL 2003)

Prime contractors are prohibited from establishing and seeking reimbursement from FDIC for a markup of any kind on subcontractor invoices. However, on a case-by-case basis, the Associate Director, ASB, has the authority to allow subcontractor markups. Such requests shall be made in writing and sent directly to the Associate Director, ASB, for consideration prior to issuance of the solicitation. This markup prohibition does not apply for acquisitions under the GSA schedules.

#### 6.H.3.c. Relationship Between FDIC and Subcontractors (JUL 2003)

It is FDIC policy to maintain the privity relationship between contractors and their subcontractors. This means that the contractual relationship and associated responsibilities are strictly between the contractor and the subcontractor, not between FDIC and the subcontractor. The Oversight Manager and the Contracting Officer shall not interfere with the privity of contract between the contractor and its subcontractors. FDIC contracts require that the contractor be responsible and accountable for the activity of every subcontractor under the contract. The Contracting Officer should refer questions or issues on privity to the Legal Division.

#### 6.H.3.d. Competition

FDIC's policy of adequate competition and the fair and consistent treatment of offerors applies also to contractors in their selection and dealings with all subcontractors.

#### 6.H.3.e. Contractor Eligibility (JUL 2003)

FDIC requires all first-tier subcontractors to meet the provisions of its contractor eligibility representations and certifications. It is the contractor's responsibility to ensure that its subcontractors furnish the required certifications to the contractor stating that they meet these standards. Any conflicts revealed by the certifications or that arise during the course of performing work for FDIC shall be referred to the Contracting Law Unit for resolution.

**6.H.3.f. Pre-Award Surveys (MAR 2000)**

FDIC may perform a pre-award survey relating to subcontracting at a potential contractor's facility. As part of this survey, FDIC contracts staff may review the firm's history in selecting, awarding, and monitoring subcontracts, the firm's history of MWOB and SDB subcontracting, as well as the degree of competition obtained in previous subcontracting activities.

**6.H.3.g. Guidelines for Determining the Level of Subcontracting (MAR 2000)**

- (1) Once the decision to allow subcontracting has been made (see APM 6.E.3.a., *Review*), the Contracting Officer, in consultation with the Program Office, must determine the allowable level of subcontracting (i.e., how much of the work may be subcontracted). **The primary concern involves the level of control necessary for the contractor to thoroughly monitor subcontractor performance.** This will vary from contract to contract and must be examined during proposal evaluation through review of the prime contractor's subcontracting plan, and during performance when new subcontractors are proposed.
- (2) In order to determine the allowable level of subcontracting under FDIC contracts, the Contracting Officer and Program Office should jointly consider the following guidelines:
  - (a) The proposed level of subcontracting should be appropriate for the requirements of the contract (i.e., logically balanced on a technical basis);
  - (b) The subcontractor's qualifications, resources, and capabilities must be appropriate for the complexity of the work;
  - (c) The proposed level of subcontracting must be commensurate with industry practices for similar requirements;
  - (d) The complexity or critical nature of the subcontracting must be balanced with the appropriate level of on-going supervision by the contractor;
  - (e) The contractor must demonstrate experience in supervising and performing control and quality assurance of the subcontractor's work;
  - (f) The contractor should propose a detailed and complete subcontract plan, clearly indicating oversight and control throughout the contract;
  - (g) The contractor must clearly have full responsibility for the inspection and acceptance of all subcontractors' work;

- (h) The contract type must clearly place risk of performance with the contractor; and
  - (i) The work required of the subcontractor involves the provision of commercial goods and/or services.
- (3) If the majority of these guidelines are fully addressed, then this may indicate reduced subcontracting risks and a higher percentage of subcontracting may be allowable under these circumstances. However, if most of these guidelines cannot be fully addressed, significant subcontracting risks may exist and a lower level of subcontracting may be appropriate.

**6.H.3.h. Subcontracting Level Threshold (MAR 2000) (JUL 2003)**

- (1) Pre-Award Approval. Except for construction contracts, prime contractors shall not be allowed to subcontract more than 50% of the work under a contract without prior approval from the Associate Director, ASB. For purposes of this pre-award approval, the Contracting Officer shall use the subcontracting percentage stated in the contractor's subcontracting plan.
- (2) Approval of New/Existing Subcontracts. The 50% threshold stated in paragraph (1) above, as well as the other procedures stated herein, shall apply to new subcontracts proposed for Contracting Officer approval during contract performance. Contractors shall be required to revise their existing Subcontracting Plans accordingly. (See APM 6.H.3.i., *Subcontracting Level Approval*, below.) Note: Associate Director approval is also required if, following award, a new subcontract increases the total subcontracting percentage above the 50% threshold. Furthermore, if Associate Director approval has previously been obtained on the contract, further subcontracting following the award will also require Associate Director approval.

**6.H.3.i. Subcontracting Level Approval (MAR 2000)**

The Contracting Officer's execution of a contract will constitute written approval of the proposed level of subcontracting (as represented in the contractor's subcontracting plan). The decision to approve new subcontracting during contract performance shall be made in writing by the Contracting Officer in accordance with the procedures stated in APM 6.H.3.h., *Subcontracting Level Threshold*. The Contracting Officer shall provide written approval to the contractor and the subcontractor shall not be allowed to begin work until such approval is granted.

**6.H.3.j. Documentation (MAR 2000) (JUL 2003)**

For awards exceeding the 50% subcontracting level threshold stated in APM 6.H.3.h., *Subcontracting Level Threshold*, the Contracting Officer shall document the

decision regarding the approved level of subcontracting in the Selection Recommendation Report. The documentation shall address the nine (9) factors set forth in APM 6.H.3.g.(2). In addition, the Contracting Officer's decision to approve any new subcontracts during contract performance that exceed the 50% threshold shall also require Associate Director approval. This decision must also be documented based on the factors in APM 6.H.3.g.(2).

#### **6.H.4. Certification Process**

Every contractor shall use the same certification process for its subcontractors as is used by FDIC for its contractors.

##### **6.H.4.a. Certification**

Potential subcontractors shall certify in writing that they are in compliance with all applicable FDIC regulations and program requirements. These certifications are subject to review and verification by FDIC.

##### **6.H.4.b. Responsibility**

Contractors shall ensure that their subcontractors' certifications are valid.

##### **6.H.4.c. Documentation**

Contract files maintained by the contractor shall contain certifications for its subcontractors and any associated documentation.

#### **6.H.5. Approval of Subcontracts**

Unless otherwise provided in the contract, FDIC has the right to approve proposed subcontractors before a contractor can award a subcontract. These provisions are detailed in specific solicitations and contracts.



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**SECTION 6.I. PROCEDURES FOR AWARDING TASK ORDERS****6.I.1. Request for Task Order Proposals****6.I.1.a. Written Request of Work (JUL 2003)**

The Program Office shall provide the Contracting Officer with written requests for all task orders under a basic ordering agreement (BOA). A full Requirements Package is not required. The request, in the form of a memorandum or letter, shall be accompanied by a written statement of work, specific to the assignment being requested. The minimum requirements are:

- (1) Statement of work;
- (2) Detailed cost estimate;
- (3) Technical evaluation criteria (e.g., understanding the requirement, management plan, schedule, key personnel, similar experience), if award is to be based on other than price;
- (4) Weighting of technical and price proposals, if award is to be based on other than price; and
- (5) Procurement Requisition prepared according to the requirements of APM, 4.A.4.

**6.I.1.b. Approvals**

All requests for task orders shall come from the Division/Office Director, or designee, to the Contracting Officer prior to execution of the task order.

**6.I.1.c. Task Order Restrictions**

Contracting Officers shall not issue task orders that:

- (1) Modify terms or conditions of the BOA;
- (2) Require services that are beyond the scope of the statement of work in the BOA; or
- (3) Exceed the overall expenditure ceiling obtained for the BOA.

**6.I.1.d. ODEO Review (MAR 2000)**

The Contracting Officer shall provide ODEO with a copy of all Program Office requests for new task orders of greater than \$100,000 and will consider any comments provided.

## 6.I.2. Solicitation and Evaluation of Task Order Proposals (JUL 2003)

### 6.I.2.a. General

Task orders shall be solicited in accordance with the procedures stated in the RFP, the BOA, and this manual.

### 6.I.2.b. Competition Requirements

FDIC shall ensure that task orders are equitably competed among contractors that are under the BOA and can perform the work or follow the stipulated ordering procedures prescribed in the BOA (e.g., rotation or other fair and consistent approaches). If a competitive method of issuing task orders is defined, and it is subsequently decided not to follow that method and solicit only one (1) BOA contractor for a task order, a Justification for Noncompetitive Procurement (JNCP) shall be required with appropriate expenditure authority. BOAs shall not be used to circumvent FDIC's requirement for adequate competition. All BOA contractors should normally be solicited for each task order unless otherwise prescribed by the terms of the BOA or the terms of the task order solicitation.

### 6.I.2.c. Request for Task Order Proposals

The Request for a Task Order Proposal will describe the task order requirement, include the statement of work, and describe the type of proposal required from the contractor and the time frame for its submission. The form of the proposal requested will depend on the complexity of the task order requirements. Elements of a task order proposal will normally include:

- (1) Management plan, outlining the contractor's technical approach, if appropriate;
- (2) Schedule of performance for completing the task;
- (3) List of key personnel who will be assigned to the task, with resumes if required; and
- (4) A price proposal that will either be a fixed priced offer (firm fixed price or fixed unit price) or a level of effort offer (time and materials or labor hours) with a ceiling amount.

### 6.I.2.d. Background Investigations (MAR 2000) (JUL 2003)

The solicitation for a task order proposal should include the Background Investigation Questionnaire for Contractor Personnel and Subcontractors, FDIC Form 1600/04; and the Notice and Authorizations Pertaining to Consumer Reports Pursuant to the Fair Credit Reporting Act of 1970, FDIC Form 1600/10 (see APM Exhibit XIV).

**6.I.2.e. Task Order Proposals**

Contractors shall normally be required to provide a written task order proposal within five (5) business days from receipt of the request. The submission of a task order proposal to FDIC constitutes the contractor's representation and warranty that it is able to provide the goods or services specified in the Request for Task Order Proposals on a competent and timely basis.

**6.I.2.f. Technical Evaluation**

When technical evaluation is required, task order technical proposals are evaluated by the Program Office when technical proposals are solicited. For task orders with estimated total dollar amounts of \$100,000 or greater, a team of at least three (3) Program Office personnel form the evaluation team, including the Legal Division and ODEO, if appropriate.

**6.I.2.g. SDB Price and Technical Evaluation Adjustments (MAR 2000)**

SDB price and technical evaluation adjustments shall be determined and applied as set forth in APM, 6.D.2.i., *Applying SDB Evaluation Adjustments*.

**6.I.2.h. Time for Evaluation**

The evaluation process shall normally be completed within five (5) business days.

**6.I.2.i. BAFOs**

Requests for submission of best and final offers (BAFOs) prior to award of task orders, although not encouraged, are permitted, if in the best interest of FDIC.

**6.I.3. Award of Task Orders****6.I.3.a. Award Based on Price Proposals Only**

If only price proposals are solicited, award shall be based on the lowest proposed price, subject to confirmation of the firm's capacity or ability to handle the work required under the task order, and subject to a price reasonableness check by the Contracting Officer and the Program Office.

**6.I.3.b. Award Based on Technical Proposals (JUL 2003)**

If both technical and price proposals are solicited, award shall be made based upon the policies and procedures set forth in APM, 6.D., *Proposal Evaluation Phase* and 6.E., *Contract Award Phase*.

**6.I.4. Task Order Contents****6.I.4.a. Contents**

All task orders, at a minimum, shall:

- (1) Incorporate terms and conditions of the BOA;
- (2) Contain or incorporate a statement of work for the specific task to be performed;
- (3) Specify milestones with a schedule of deliverables;
- (4) State a period of performance; and
- (5) Contain pricing information including ceiling prices for labor and travel.

**6.I.4.b. Notice of Expenditure**

When the price of the task order is specified as a ceiling amount, the task order shall require the contractor to notify the Contracting Officer, in writing, when the amounts invoiced under the order reach 75% of the ceiling amount.

**6.I.5. POS Reporting**

Contracting Officers shall enter information into POS on the solicitation and award of task orders in the same manner as for other contracts.

**6.I.6. Effective Date of Contract (JUL 2003)**

It is good business practice to have fully executed contractual documents in place before a contractor commences work. However, on an as needed basis, and only with the prior approval of the Assistant Director, Headquarters Operations Section, or Head of the Regional contracting function, the effective date of a contract may be prior to the execution date. This provision shall be utilized when the Contracting Officer intends to verbally authorize a contractor to begin work prior to having in place a fully executed contractual document. Verbal authorization shall be followed up in writing (see Exhibit XIII, *Sample Letter Authorizing Contractors to Commence Work*). Before verbal authorization may be given, the Contracting Officer shall ensure that expenditure authority in the total amount of the contract has been approved.

**SECTION 6.J. ADMINISTRATIVE REQUIREMENTS****6.J.1. Documentation of Contract Award****6.J.1.a. General Requirements**

The use of the contracting procedures set forth in this chapter place a burden on Contracting Officers to provide comprehensive documentation in the contract files. Documentation must clearly describe the process used to prepare, solicit, evaluate, and award the purchase order or contract. The contract file shall contain the documentation specified in Exhibit XXIII, *Contracting File Checklists*.

**6.J.1.b. Filing Guidelines for Contract Action**

Original documents will be filed for each contract action whenever practical.

**6.J.1.c. Timeliness (MAR 2000)**

All documentation shall be prepared and included in the official contract file prior to award in accordance with APM, 6.E.2.f., *Completion of Official Contract File*.

**6.J.2. POS Reporting**

Within five (5) business days after award, the Contracting Officer shall enter all required data directly into the Purchase Order System (POS). Major POS data fields include: Vendor Identification Number, Purchase Order Number, dollar amount, accounting information, and payment terms. Other data will be entered as required by the POS.

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# CHAPTER 7

## CONTRACT ADMINISTRATION

### SECTION 7.A. OVERVIEW

#### 7.A.1. Introduction

##### 7.A.1.a. General

After contract award, the Contracting Officer is responsible for administering the contract, including maintaining the official contract file, for each contract until the time of contract closeout. The Oversight Manager will ensure that the goods or services are delivered by performing oversight of the contractor's performance of the technical requirements of the contract.

##### 7.A.1.b. Scope (MAR 2000)

Contract administration encompasses oversight of all relationships between FDIC and the contractor relating to contractor performance. This includes the interactions between both parties from the time of contract award until the work has been completed and accepted, monitoring contractor performance and subcontracting plans/Joint Venture agreements, final payment, resolution of any disputes or adjustments, and contract closeout.

##### 7.A.1.c. Oversight Management

Oversight management is a Program Office responsibility performed by the Oversight Manager and involves all activities and steps necessary to monitor contractor performance. The responsibilities of the Oversight Manager are specified in APM, 7.B.1.c., *Oversight Manager's Responsibilities*, and the procedures for managing contractor performance are specified in APM, 7.G., *Monitoring Contractor Performance*.

##### 7.A.1.d. Team Concept (JUL 2003)

- (1) Contract administration is performed primarily by the Oversight Manager and Contracting Officer, who function as a team. Other organizations play a role in administration, including the Legal Division, Office of Diversity and Economic Opportunity (ODEO), Security Management Section, CSB, and the Accounts Payable Processing Unit of the Division of Finance.
- (2) Members of the contract administration team may not delegate their responsibility but can assign certain specific duties as set forth in this manual. Therefore, when the terms Oversight Manager and Contracting Officer are used in contract administration, they are used in an organizational context. Duties may be performed by other assigned personnel within their respective departments when authorized by the Contracting Officer.

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- (3) The Oversight Manager is responsible for managing and monitoring contractor performance (i.e., accomplishing an FDIC mission). The term **Oversight Manager** shall mean the person responsible for contractor oversight from the Program Office. The Contracting Officer is ultimately responsible for all contract functions including monitoring and enforcing the terms and conditions of a contract. Working as a team enhances the success of each team member in carrying out assigned responsibilities.
- (4) The Contracting Officer is the focal point between FDIC and the contractor regarding **contract administration**. The Oversight Manager is the focal point between FDIC and the contractor regarding **contractor oversight**. These responsibilities must be closely coordinated to avoid apparent contradictions and to present a single FDIC position to the contractor. The Contracting Officer has overall responsibility for the contract.

#### 7.A.1.e. Definitions

- (1) Scope. By definition, contract administration includes both contractor and contract oversight.
- (2) Contractor Oversight. Contractor oversight, which is primarily the responsibility of the assigned Oversight Manager, is defined as ensuring that the contractor delivers the goods or performs the work as required under the contract to fulfill the responsibilities and mission of the Program Office. Because a contract is a legal agreement between two (2) parties, FDIC and the contractor, both parties have obligations and responsibilities to perform.
- (3) Contract Administration. Contract administration, which is primarily the responsibility of the Contracting Officer, is defined as ensuring that the contract is performed as written by both the contractor and FDIC. Contract administration begins after the contract has been awarded and ends at the closeout of the contract, after the goods or services have been accepted and the contractor has received final payment. FDIC personnel shall monitor a contractor's progress closely to identify potential problems that threaten performance so that remedial measures can be taken.
- (4) Contract Administration Planning. Contract administration planning, however, begins soon after the need for a contract is identified. The Oversight Manager is responsible for ensuring that adequate FDIC resources are available for monitoring contractor performance.

#### 7.A.1.f. Goal of Contract Administration

- (1) The goal of contract administration is to ensure that the contract is performed and the responsibilities of both parties are properly discharged.

In achieving this, the primary responsibility of FDIC staff is to oversee, monitor, and provide technical guidance to contractors performing under a contract.

- (2) It is the contractor's responsibility to perform and meet the requirements of the contract. To do so, contractors often need technical direction and approval in certain instances from FDIC personnel. FDIC personnel need to provide this technical direction and approval in a timely and effective manner. All technical direction to a contractor must be within the scope of the contract. When questions or differences in interpretation develop in this regard, the Contracting Officer shall be consulted.
- (3) FDIC personnel must also be careful that they do not impose additional requirements upon the contractor or manage its operation to the extent that they relieve the contractor of its responsibility to manage. Admittedly, this is a difficult determination, but the difficulty does not relieve FDIC personnel of the requirement to exercise good judgment in dealing with the contractor. The Contracting Officer supports the Program Office in contractor oversight. The Program Office and ASB shall continually monitor contractor performance to ensure continued progress toward satisfactory completion of the specified contractual requirements.

## **7.A.2. Routine Contract Administration Functions**

Routine contract administration functions, which involve all members of the contract administration team, are defined as the management of all facets of awarded contracts to ensure successful contractor performance.

### **7.A.2.a. Oversight (MAR 2000)**

Providing technical oversight and direction, as required, including monitoring the contractor's handling of confidential information, when provided, in accordance with APM, 1.E.1.c., *Ensuring Confidentiality of Information with Contractors*;

### **7.A.2.b. Review of Work**

Confirming that work has been or is being performed by the contractor in accordance with the specifications and provisions of the contract;

### **7.A.2.c. Preservation of Legal Rights**

Preserving FDIC's legal rights and responsibilities in relation to the contract;

### **7.A.2.d. Progress Monitoring**

Providing the appropriate levels of monitoring, inspection, and acceptance as prescribed in the contract;

**7.A.2.e. Invoice Processing**

Reviewing and approving contractor invoices, monitoring invoice payment for timeliness and accuracy, and verifying the accuracy of the contractor's payment of subcontractor costs;

**7.A.2.f. Expenditure Monitoring**

Monitoring the expenditure ceiling under each contract, including basic ordering agreements (BOAs);

**7.A.2.g. Change Management**

Managing changes to the contract, including modifications, terminations, and claims disposition;

**7.A.2.h. Documentation and Filing (MAR 2000) (JUL 2003)**

Documenting all actions taken with regard to the contract and ensuring that original documentation is in the official contract file, which shall be organized in accordance with the appropriate official contract file checklist in Exhibit XXIII.;

**7.A.2.i. Quality Evaluation**

Evaluating and documenting the quality of a contractor's performance;

**7.A.2.j. Report Handling**

Obtaining and processing the data necessary to fulfill FDIC's reporting requirements and to satisfy all contracting activity reporting requirements;

**7.A.2.k. Eligibility Compliance**

Ensuring the contractor's compliance with contractor eligibility requirements and other requirements regarding conflicts of interest that may arise with regard to a contract;

**7.A.2.l. Performance Reviews**

Reviewing contractor performance and addressing performance deficiencies; and

**7.A.2.m. Contract Closeout (MAR 2000)**

Completing the appropriate file checklist used to administer the contract, located in Exhibit XXIII, closing out the contract file, and completing the appropriate contract closeout checklist, located in Exhibit XXXIV.

**7.A.3. Extent of Contract Administration**

The extent of contract administration will not be the same for all FDIC contracts. The level of contract administration necessary shall be consistent with the complexity of the contract, its period

of performance, the dollar value, and subcontracting requirements. APM, 7.C., *Simplified Contract Administration*, applies to the administration of contracts awarded under simplified procedures, contracts valued less than \$100,000, and the administration of purchase orders. Contracting Officers and Oversight Managers must determine which contract administration functions and requirements (e.g., site visits, reviews, invoice submissions, etc.) apply.



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**SECTION 7.B. ROLES AND RESPONSIBILITIES****7.B.1. Oversight Manager**

Oversight Managers are designated by the Program Office and have the responsibility for monitoring contractor performance on contracts awarded by ASB for goods and services in support of FDIC corporate and receivership activities. All FDIC procurement actions require some level of performance monitoring and management by the Program Office. The extent varies based upon many factors including, but not limited to, the contract type, complexity of the requirement, and the dollar amount of the contractual action. For example, purchase orders are used for simplified procurement and generally do not require the level of detailed oversight management as more complex procurements. However, procurement actions resulting in awarded contracts generally are more complex in nature and require detailed oversight management and contract administration to ensure performance.

**7.B.1.a. Designation of Oversight Manager**

The Program Office that requested and initiated the contract shall appoint the Oversight Manager.

**7.B.1.b. Letter of Confirmation (JUL 2003)**

The Contracting Officer shall provide the appointed Oversight Manager and the contractor with a Letter of Oversight Manager Confirmation (Exhibit XVI, *Letter of Oversight Manager Confirmation*) describing the Oversight Manager's authority and responsibilities in performing designated functions on behalf of FDIC. The contractor must acknowledge receipt of the letter by signing and returning a copy to the Contracting Officer.

**7.B.1.c. Oversight Manager's Responsibilities**

The Oversight Manager is solely responsible for carrying out all duties and responsibilities set forth in the Letter of Confirmation. The Oversight Manager's responsibility is not redelegable; however, the Oversight Manager may utilize other Program Office personnel as necessary to fulfill these responsibilities. In the event the Oversight Manager will be absent from the office for an extended period or will no longer be serving in the Oversight Management capacity, the Program Office shall appoint a replacement Oversight Manager and advise the Contracting Officer of this appointment in writing. The Contracting Officer shall then issue a new confirmation letter and notify the contractor of the replacement. In the event of a short-term absence (e.g., two (2) week vacation), the Program Office shall assign the Oversight Manager's administrative duties (e.g., invoice approval) to another qualified member of the Program Office for the duration of the Oversight Manager's absence. The Program Office shall inform the Contracting Officer of this assignment in writing; however, a new Letter of Confirmation is not necessary.

**7.B.1.d. Technical Monitors (JUL 2003)**

It may be appropriate in very complex areas of performance to appoint one (1) or more Technical Monitors for a contract. The duties of the Technical Monitor are a subset of the duties of the Oversight Manager, but the responsibility for contractor oversight remains with the Oversight Manager. Technical Monitors are designated by the Oversight Manager and appointed in a Letter of Technical Monitor Confirmation issued by the Contracting Officer. This letter is provided as Exhibit XVII, *Letter of Technical Monitor Confirmation*. Copies of the Letter of Technical Monitor Confirmation are sent to the contractor and the Oversight Manager. The contractor must acknowledge receipt of the letter by signing and returning a copy to the Contracting Officer.

**7.B.1.e. Oversight Manager File Checklist (MAR 2000)**

Oversight Managers shall organize and maintain their contract files in accordance with the Oversight Manager File Checklist, provided as APM, Exhibit XXVIII.

**7.B.1.f. Training Requirements (MAR 2000) (JUL 2003)**

Training for Oversight Managers and Technical Monitors includes having successfully completed the previously available instructor-led Oversight Management Training or the existing web-based Oversight Management Instruction. This is a one-time requirement, but must be taken prior to the granting of the Letter of Oversight Manager (or Technical Monitor) Confirmation.

An Oversight Manager or Technical Monitor must take the additional web-based training that is specific to each new type of contract that he or she will be administering. The Letter of Oversight Manager Confirmation, or the Letter of Technical Monitor Confirmation, will not be issued to the Oversight Manager or the Technical Monitor until he or she produces proof (copy from the Learning Management Server) that these courses have been taken. Proof of the instructor-led course is the certificate that was issued to the person. If the certificate for the instructor-led Oversight Management Training is not available, the Policy Development Unit can verify that the course was successfully completed by consulting the database it maintains.

A point of contact for a contract for goods is only required to take the goods specific training upon the initial assignment.

**7.B.1.g. Notifying the Contractor**

The Contracting Officer will notify the contractor of a change in Oversight Manager. This change shall be documented through a Letter of Confirmation for the new Oversight Manager and be included in the official contract file.

**7.B.1.h. Responsibilities**

The Oversight Manager is responsible for overseeing the performance requirements of the contract. This individual provides the business and technical liaison between FDIC and the contractor. The Oversight Manager ensures that FDIC resources are provided as required by the contract, so that the contract can be successfully completed. The Oversight Manager must notify the Contracting Officer of any need to modify the contract and refer all questions regarding contract provisions to the Contracting Officer.

**7.B.1.i. Functions (MAR 2000) (JUL 2003)**

The Oversight Manager shall perform the following functions:

- (1) Communicate directly with the contractor regarding technical aspects of the contractor's performance including:
  - (a) Holding conferences and meeting with the contractor, as necessary;
  - (b) Inspecting and accepting or rejecting work performed by the contractor;
  - (c) Certifying that goods or services have been received and are satisfactory for their intended purpose prior to invoice payment; and
  - (d) Approving or disapproving all deliverables submitted by the contractor.
- (2) Coordinate with the contractor all technical matters of performance that may arise in the performance of the contract.
- (3) Provide direction to the contractor, as necessary, in performance matters that:
  - (a) Are within the scope of the contract as written; and
  - (b) Will not affect fees paid to the contractor, period of performance, schedule, or other terms and conditions that might materially change the contract.
- (4) Give technical clarification as to the meaning of the statement of work including inspection, testing, and acceptance procedures.
- (5) Promptly notify the Contracting Officer in writing of any noncompliance, deviation in performance, or failure to make progress.
- (6) Review and approve documents and invoices promptly. Delays in processing invoices may cause late payment by FDIC and the incurring of interest charges. This will also include:
  - (a) Inspecting each unit of property upon its return from the contractor and notifying the Contracting Officer of such return; and

- (b) Recommending to the Contracting Officer adjustment or rejection of invoices, as appropriate.
- (7) Receive and accept deliverables (supplies, services, and/or reports) on behalf of FDIC.
- (8) Maintain constant cognizance with respect to technical compliance with contract terms on the part of the contractor, including compliance with approved subcontracting plans/activity or Joint Venture (JV) agreements and the approved participation levels of the JV partners.
- (9) Monitor and inspect the contractor's progress and performance to assure compliance with contract terms and conditions, including:
  - (a) Visiting the contractor's worksite periodically, if appropriate, to monitor contractor performance and informing the Contracting Officer of subsequent findings through submission of a trip report prepared in accordance with internal office procedures;
  - (b) Verifying actual performance versus scheduled performance; and
  - (c) Taking action as needed, if any, to restore contract schedule.
- (10) Verify satisfactory delivery of contract items and/or performance and approve invoices for payment.
- (11) If the contract contains a warranty or maintenance clause, notify the Contracting Officer and contractor of any deficiencies in material or workmanship immediately and monitor response and repair times as stipulated in the contract.
- (12) Implement the FDIC-furnished property provisions of the contract, if applicable. The Oversight Manager responsibilities with respect to such property include:
  - (a) Preparing an itemized list of such property showing serial numbers, if any;
  - (b) Ensuring that delivery of the property to the contractor is in accordance with the contract; and
  - (c) Providing the Contracting Officer with the property list and a written contractor acknowledgement for receipt of such property.
- (13) Monitor contractor's assignment of key personnel in relation to qualifications as required by the contract and the contractor's proposal.
- (14) Initiate requests for performance changes to the Contracting Officer for formal action and approval.
- (15) Know and understand the terms and conditions of the contract.

- (16) Recommend modifications to the contract's terms or conditions, as necessary.
- (17) Analyze the contractor's technical and financial reports.
- (18) Advise the Contracting Officer of changes in contractor key personnel and potential disputes with the contractor.
- (19) Notify the Contracting Officer and the Office of the Inspector General (OIG) of suspected contractor fraud, waste, bribery, conflict of interest, or other improper conduct.
- (20) Recommend when contract termination may be necessary and provide supporting rationale.
- (21) Monitor the contractor's compliance with FDIC policies and procedures, including SDB subcontracting and Conflicts of Interest Certifications, as stated in the contract.
- (22) Report, as necessary, the contractor's subcontracting activities to other FDIC offices.
- (23) Provide the contractor with information, FDIC Directives, relevant FDIC policies, and other items necessary to successfully carry out its duties.
- (24) Complete the Contractor Performance Evaluation and Reporting Form (see Exhibit XVIII) for contracts and purchase orders \$50,000 or greater and submit it to the Contracting Officer [1] when there is a performance issue (interim report), [2] when an option is exercised, and [3] within thirty (30) days of contract completion.
- (25) Evaluate and document the quality of the contractor's performance.
- (26) Maintain an oversight management file documenting actions and containing copies of trip reports, other reports, correspondence, and deliverables received under the contract.
- (27) Provide timely notification to the Contracting Officer regarding option exercises.
- (28) Assist the Contracting Officer in performing contract closeout activities including accounting for FDIC provided property and FDIC identification badges.
- (29) Tracking invoice payments against approved expenditure authority.
- (30) Ensure that pre-exit clearance procedures for contractors set forth in APM, 7.L. are followed.
- (31) In a contract containing task assignments, ensure that:

- (a) A signed copy of the task assignment is sent to the Contracting Officer;
  - (b) The total dollar value of the task assignment does not exceed the expenditure amount of the contract; and
  - (c) The work assigned by the task assignment does not go beyond the scope of the SOW of the contract.
- (32) Perform market research related to exercise of an option period in accordance with APM, 4.C., *Market Research*.
- (33) Shall support the claims and appeals process.

**7.B.1.j. Prohibitions**

The Oversight Manager is prohibited from performing the following functions:

- (1) Soliciting proposals or approving changes to the contract;
- (2) Modifying the contract terms and conditions;
- (3) Approving changes in cost, schedule, delivery, quality, or other terms and conditions affecting the contract;
- (4) Rendering a decision on any contractual dispute or expressing an opinion to the contractor; and
- (5) Discussing future contract plans or other advance information that may provide preferential treatment of one (1) contractor over another.

**7.B.2. Contracting Officer (MAR 2000)**

**7.B.2.a. Responsibilities (MAR 2000) (JUL 2003)**

The Contracting Officer is responsible for administration of the contract. A warranted Contracting Officer is the only person who may enter into a contract or change a contractual commitment on behalf of FDIC (see APM, Chapter 2, *Contracting Officer Warrant Program*). Responsibility for ensuring compliance with the contract rests with the Contracting Officer, who may delegate certain authorities to other FDIC personnel. The Contracting Officer acting within his or her authority shall:

- (1) Monitor contract performance for compliance with its terms and conditions;
- (2) Enforce contract provisions;
- (3) Review and approve invoices for compliance with contract terms and conditions. Once assigned a specific contract, the Contracting Officer can assign the routine function of reviewing and approving contractor invoices

to a contract specialist, procurement analyst, and/or purchasing agent. However, the assignment of this function must be made to a contract specialist, a procurement analyst, or purchasing agent who has successfully completed *FDIC Fundamentals of Contracting Training*;

- (4) Execute modifications to the contract;
- (5) Assist the Oversight Manager or other Program Office representatives, as requested, in oversight of the technical business requirements of the contract;
- (6) Ensure that FDIC performs its responsibilities as stated in the contract;
- (7) Ensure that FDIC allows no unreasonable intrusion by FDIC personnel into the contract during performance;
- (8) Use good judgment and shall not be arbitrary or capricious in making decisions;
- (9) Ensure the contractor is in full compliance with all FDIC insurance requirements;
- (10) Promptly make and issue decisions on contractual questions and problems, in conjunction with Legal Division representatives when considered necessary;
- (11) Assist in resolving contractor performance issues, if requested and formally notify the contractor regarding performance deficiencies;
- (12) Participate in site visits;
- (13) Notify the Contracting Law Unit and the OIG of suspected fraud, waste, bribery, conflicts of interest, or other improper conduct;
- (14) Monitor the contractor's compliance with the contract and FDIC policies on SDB subcontracting and assess the inclusion of SDB firms;
- (15) Resolve claims, disputes, and audit findings in conjunction with the Legal Division;
- (16) Monitor the contractor's reporting and compliance with approved subcontracting plans/activity and JV agreements and the approved participation levels of the JV partners;
- (17) Jointly with the Oversight Manager, verify costs incurred and invoiced to FDIC under the contract and monitor expenditures against expenditure ceiling;
- (18) Review the Contractor Performance Evaluation and Reporting Form (see Exhibit XVIII) prepared by the Oversight Manager: [1] when there is a performance issue (interim); [2] when an option is exercised; and [3]



within 30 days of contract completion. The Contracting Officer shall send the completed Contractor Performance Evaluation and Reporting Form to the contractor for review and signature pursuant to APM, 7.G.4.a.(8); and

- (19) Close out the contract with the assistance of the Oversight Manager and complete of the appropriate closeout checklist, Exhibit XXXIV.
- (20) Notify the Oversight Manager that an option is coming due.

**7.B.2.b. Documentation (MAR 2000)**

The Contracting Officer shall be responsible for the completion of the appropriate contract file checklist (Exhibit XXIII) and retention of all pertinent documents in FDIC contract files.

**7.B.3. Referrals to the Office of the Inspector General**

The Inspector General Act of 1978, as amended, establishes the Office of the Inspector General (OIG) as the corporate entity responsible for developing and administering a nationwide program of audits and investigations that is designed to detect and prevent fraud, waste, abuse, and gross mismanagement. This program encompasses audits and investigations of all FDIC activities and entities doing business with FDIC. The OIG initiates audits and investigations at any time in areas of FDIC's and its contractors' operations when it suspects fraud, waste, abuse, or gross mismanagement. If visitations, performance reviews, or other monitoring activities suggest performance or operating problems with a contractor, the matter should be referred to the OIG for consideration for a broader scope audit of the contractor's activities. Any suspicions of criminal wrongdoing should immediately be referred to the OIG.

**7.B.4. Eligibility Issues and Contractor Conflicts of Interest (JUL 2003)**

All suspected changes to a contractor's eligibility representations and certifications or potential conflicts of interest shall be referred to the Policy and Compliance Section, ASB. The Policy and Compliance Section is responsible for coordination with the Contracting Law Unit for appropriate action and resolution.

**7.B.5. Contract Administration Plan (CAP) (MAR 2000)**

A Contract Administration Plan (CAP) is required for all contracts and task orders for services having a total estimated value of \$100,000 or greater. At the discretion of the Contracting Officer, the use of a CAP is optional for all other contracts that are complex in nature or have multiple deliveries, including those contracts that are primarily for goods. The objective of the CAP is to ensure that the Oversight Manager and Contracting Officer have a common understanding of both the contractor's and FDIC's obligations under the contract. The Contracting Officer prepares the CAP with the assistance of the Oversight Manager immediately following contract award, to the extent the document can be completed at that time. A copy is then provided to the Oversight

Manager. The CAP should be completed prior to the post-award conference, should be brief, and provide an overview of planned activity in the following areas (see Exhibit XXVII):

**7.B.5.a. General (MAR 2000) (JUL 2003)**

Provide information, such as contract ceiling price, approved expenditure, period of performance and options, etc.;

**7.B.5.b. Deliverables and Reports (MAR 2000) (JUL 2003)**

Identify deliverables and reports, and due dates required by contractor;

**7.B.5.c. Site Visits (JUL 2003)**

Identify the purpose and date of visit;

**7.B.5.d. Subcontracting Activity Reports (JUL 2003)**

Describe contents of report, due date, and date received;

**7.B.5.e. Invoices (JUL 2003)**

Include invoice number, amount, reason for rejection, if any, etc.;

**7.B.5.f. Modifications (MAR 2000)**

List all modifications issued under the contract and, for those that impact funding levels, identify the increase or decrease in contract funding and the cumulative funding ceiling;

**7.B.5.g. Options Exercised (MAR 2000) (JUL 2003)**

Identify all options exercised, the term, notice to contractor, and the cumulative ceiling total;

**7.B.5.h. Performance Evaluation (MAR 2000) (JUL 2003)**

Identify due date, date delivered, date sent to contractor, and date received from contractor for each reporting period under the contract;

**7.B.5.i. Claims (JUL 2003)**

For all claims, list date received, amount claimed, reason for claim, and result;

**7.B.5.j. Contract Closeout (JUL 2003)**

Ensure that all information for all categories is completed; and

**7.B.5.k. Oversight Manager Appointment (JUL 2003)**

List all Oversight Managers appointed, the date of appointment, the date of Letter of Confirmation, and when files were transferred.

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**SECTION 7.C. SIMPLIFIED CONTRACT ADMINISTRATION****7.C.1. Scope**

Generally, simplified administration includes ensuring:

**7.C.1.a. Quality**

The contractor provides satisfactory goods or services;

**7.C.1.b. Contract Requirements**

Delivery is in accordance with the specifications and the terms and conditions of the contract;

**7.C.1.c. Timeliness**

The contractor meets the schedule requirements;

**7.C.1.d. Payment**

The contractor is paid in accordance with the contract;

**7.C.1.e. Files and Documentation**

File documentation is complete and appropriate for the size and complexity of the contract involved and documents are filed in the official contract file;

**7.C.1.f. Expenditure Authority**

The contract's ceiling price does not exceed the expenditure authority and expenditures are within the ceiling price; and

**7.C.1.g. Closeout**

The contract is closed out upon completion.

**7.C.2. Procedures**

Simplified administration procedures apply to contracts for goods or services that contain specifications that are not complex and do not require complex testing or acceptance processes; or contracts that have a relatively low dollar value, less than \$100,000. However, formal administration procedures may be used at the discretion of the Contracting Officer.

**7.C.3. Program Office Responsibility (JUL 2003)**

The point of contact in the Program Office is responsible for acceptance upon delivery. The responsibilities as the point of contact include:

**7.C.3.a. Receiving**

Receiving and accepting the goods or services;

**7.C.3.b. Compliance**

Verifying compliance with specifications and contract terms; and

**7.C.3.c. Invoices (JUL 2003)**

Electronic verification and approval of invoice after acceptance of goods or services in accordance with APM, 7.I., *Contract Payments*.

**7.C.4. Acquisition Services Branch**

The Contracting Officer is responsible for:

**7.C.4.a. Documentation**

Providing the Program Office with contractual requirements needed for acceptance;

**7.C.4.b. Payment**

Verifying that payment is made for goods or services accepted; and

**7.C.4.c. Difficulties**

Resolving contractual issues arising when the contractor has not delivered or performed in accordance with the contract.

**7.C.5. Resolving Performance Deficiencies**

**7.C.5.a. Consultation**

Contracting Officers shall consult with the Program Office that defined the initial request to determine whether or not the contractor has delivered or performed in accordance with the contract. If not, they must assess the seriousness of the deficiency and its impact on FDIC. The Contracting Officer will identify whether consideration or other remedy from the contractor is required.

**7.C.5.b. Consideration**

If acceptable to the Program Office, consideration may include:

- (1) Contractor replacing the delivered item with an acceptable or better item or repeating the service provided; or
- (2) An equitable price reduction for the delivered goods or services if acceptable to the Program Office.

**7.C.5.c. Contracting Officer Action**

If delivery or performance issues are to be resolved by the Program Office in accordance with APM, 7.C.5.b., *Consideration*, the Contracting Officer shall be notified immediately and a contract modification shall be prepared to reflect the change(s).

**7.C.6. Problem Situations**

In administering a contract under these simplified contract administration procedures, problems can arise that require solutions beyond the scope of this section. In such cases, the Contracting Officer should refer to the specific guidance provided elsewhere in this chapter.

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**SECTION 7.D. FORMAL CONTRACT ADMINISTRATION****7.D.1. Scope**

Contract administration is the management stage of contract performance, the phase of the contracting process that follows the execution of initial contract documents and continues until the contract is officially closed out.

**7.D.2. Duties**

The specific functions of contract administration at FDIC are:

**7.D.2.a. Post-Award Conference**

Organizing and managing a post-award conference to start the contract.

**7.D.2.b. Technical Supervision**

Providing technical supervision and or direction to the contractor, as determined by FDIC or as requested by the contractor. FDIC personnel, however, should not interfere with the contractor's performance by interfering in the day-to-day operations of the contract.

**7.D.2.c. Confirmation of Work Performed**

Confirming that the work has been or is being performed by the contractor in accordance with the specifications and provisions of the contract. The focus should be on the statement of work contained in the contract, but other applicable provisions should not be neglected.

**7.D.2.d. Legal Rights**

Preserving FDIC's legal rights and interpreting the contractor's responsibilities as defined by the contract.

**7.D.2.e. Inspection and Acceptance (JUL 2003)**

Providing the appropriate inspection and acceptance activities as prescribed in the contract, the Contract Administration Plan (CAP), and the Oversight Management Monitoring Plan. The Contracting Officer must ensure that these activities conform to the rights and responsibilities contained in the contract.

**7.D.2.f. MWOB and SDB Compliance (MAR 2000)**

Monitoring compliance with the MWOB and SDB program, including the award of subcontracts, and mandatory compliance with SDB Joint Venture, subcontracting plans and requirements, in accordance with APM, 7.G.6.



**7.D.2.g. Payment**

Monitoring payment of contractor invoices for timeliness and accuracy. The contractor must provide appropriate financial information and accurate invoices to FDIC and the contractor must receive due compensation in a timely manner from FDIC as specified in the contract. Delayed payments by FDIC could have a negative impact on the contractor's financial ability to fulfill assigned responsibilities under the contract. Further, delayed payment could result in interest penalties under the Prompt Payment Act when FDIC contracts in its corporate capacity.

**7.D.2.h. Changes and Modifications**

Issuing modifications to the contract as needed. Requirements can, and do, change.

**7.D.2.i. Files and Documentation**

Ensuring completeness and maintenance of files and appropriate documentation for all contract actions occurring during the post-award period.

**7.D.2.j. Reporting**

Obtaining and processing data necessary to fulfill the reporting requirements of the organization. In addition, the data used for reports may provide valuable information for making local administrative decisions about a specific contract or group of contracts.

**7.D.2.k. Contractor Eligibility and Conflicts of Interest (JUL 2003)**

In conjunction with the Contracting Law Unit, monitoring compliance for the contractor eligibility representations and certifications and Conflicts of Interest Regulations, and monitoring for possible ethics violations by the contractor or its subcontractors.

**7.D.3. Preparing for Performance Management**

There are several steps that an Oversight Manager must take to prepare for contractor oversight:

**7.D.3.a. Reviewing a Contract**

The Oversight Manager shall review the entire contract, including the contractor's proposal, if incorporated by reference. From this review, the Oversight Manager will be able to determine the contract requirements, including identification of deliverables and the specific obligations of both the contractor and FDIC.

**7.D.3.b. Determining the Level of Oversight (JUL 2003)**

The Oversight Manager must determine what level of oversight is necessary to ensure the contractor makes satisfactory progress toward successfully completing the contract. To assist in performing oversight activities for complex contracts for services the Oversight Manager should complete and use the Oversight Management

Monitoring Plan. The Oversight Management Monitoring Plan is provided in the APM as Exhibit XXXVI. Oversight Managers may supplement the elements of the monitoring plan as needed. A copy of the plan should be provided to the Contracting Officer and any other members on the oversight team who might benefit. The plan should be updated and redistributed during performance to reflect any changes to the contract.

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**SECTION 7.E. POST-AWARD CONFERENCE****7.E.1. Background****7.E.1.a. Definition**

A post-award conference, when used, is a conference of the principals responsible for administering the contract. It is an orientation for contractor personnel to ensure there is a clear and mutual understanding of all contract terms and conditions, and to clarify any potential issues or misunderstandings. While both FDIC and the contractor should fully understand the requirements of the contract at the time of contract execution, the post-award conference ensures that those involved directly in the process of contract administration understand all requirements of contract performance.

**7.E.1.b. Applicability**

Not every contract requires a full-scale formal post-award conference, but generally every contract should receive some form of discussion after award to ensure that FDIC and the contractor agree on the performance requirements and the administrative procedures applicable under the terms of the contract. The post-award conference shall not be used as an avenue to change the terms of the contract.

**7.E.1.c. Determining the Necessity of a Post-Award Conference**

The Contracting Officer will coordinate with the Oversight Manager and make a joint decision as to whether a post-award conference is necessary. The need for a post-award conference shall be based on the:

- (1) Type of contract;
- (2) Contract value and complexity;
- (3) Length of the contract, period of performance, and/or the delivery requirements;
- (4) Services required and expertise of the contractor;
- (5) Urgency of delivery schedule;
- (6) Method of payment; and
- (7) FDIC's prior experience with the contractor.

**7.E.1.d. Attendance**

Post-award conference attendees include the contractor, Contracting Officer, Oversight Manager and Technical Monitors, members of the Legal Division, and other relevant personnel when requested by the Contracting Officer to provide specialized advice to the contractor. The Contracting Officer is responsible for

convening and chairing the post-award conference. However, the Oversight Manager generally leads the technical discussions.

**7.E.2. Setting Up the Post-Award Conference**

**7.E.2.a. Preparation**

Once a conference is determined to be appropriate, the Contracting Officer, in conjunction with the Oversight Manager, shall:

- (1) Establish the time and place of the conference;
- (2) Prepare the agenda;
- (3) Notify appropriate FDIC personnel;
- (4) Notify the contractor; and
- (5) Schedule and conduct a preliminary conference with FDIC personnel to properly plan for the post-award conference.

**7.E.2.b. Timing**

The conference should be held no later than one (1) week after award.

**7.E.3. Post-Award Conference Agenda**

The post-award conference should cover the following areas:

**7.E.3.a. Scope**

Scope of the contract;

**7.E.3.b. Terms**

Contract terms and conditions;

**7.E.3.c. Requirements**

Technical requirements of the contract;

**7.E.3.d. Subcontracting /Joint Ventures (MAR 2000)**

Contractor compliance with approved subcontracting plans or Joint Venture agreements;

**7.E.3.e. Administration**

Applicable contract administration procedures;

**7.E.3.f. Insurance**

Verification of coverage, if required;

**7.E.3.g. Rights (MAR 2000)**

Rights and obligations of both parties;

**7.E.3.h. Contractor Performance (MAR 2000)**

Oversight Manager description of contractor performance evaluation procedures, supplying a copy of the FDIC's Contractor Performance Evaluation and Reporting Form, FDIC Form 3700/24 (see APM, Exhibit XVIII), to the contractor;

**7.E.3.i. Roles and Responsibilities**

FDIC personnel roles in contract administration;

**7.E.3.j. Potential Problems**

Potential contract problem areas and their potential resolution;

**7.E.3.k. Eligibility**

FDIC contractor eligibility and conflicts of interest requirements;

**7.E.3.l. Invoicing**

Invoicing requirements and the FDIC invoice review, approval, and payment process; and

**7.E.3.m. Confidential Information (MAR 2000)**

Signing Contractor Confidentiality Agreements prior to receiving confidential information; or, if the contractor is required to work on-site, before any employees are allowed to commence work on-site; or, if the contractor has or may have access to any FDIC systems, before any employees are allowed any such access. Signed Agreements shall be maintained in the official contract file.

**7.E.4. Documenting the Post-Award Conference**

After the post-award conference, the Contracting Officer shall prepare a detailed report of the conference. The report shall cover all items discussed, including issues requiring resolution, controversial matters, participants, and, in particular, those individuals assigned responsibilities for further action and the due dates for those actions. Copies of the report shall become part of the official contract file and oversight file and should be distributed to all FDIC participants and the contractor.

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## SECTION 7.F. MAINTAINING INDEPENDENT STATUS OF CONTRACTORS

### 7.F.1. Overview

The purpose of this section is to establish guidelines for maintaining the independent status of contractor employees providing services under contracts with FDIC.

### 7.F.2. Applicability

The Contracting Officer and Oversight Manager must ensure that, during performance of any contract, the services being performed by the contractor do not involve or create an employer/employee relationship between FDIC and the contractor's employees. This type of situation arises when FDIC personnel provide day-to-day supervision to the contractor's employees during contract administration. Contracts that create an employer/employee relationship between FDIC and the contractor are prohibited. These situations are referred to as prohibited personal services contracts. Contracting Officers and the Oversight Manager will monitor the contractor's efforts and review deliverables to determine compliance with the terms and conditions of the contract, but under no circumstances shall an FDIC employee directly supervise the contractor's employees.

### 7.F.3. Determining Factors

In addition to the supervision factor, the following factors should be used to determine whether or not the administration of an existing contract has created a prohibited employer/employee relationship. As previously mentioned, the most important factor is the one pertaining to the supervision exercised by FDIC over the contractor personnel. The presence of this factor alone can result in a prohibited employer/employee relationship. The remaining factors generally carry relatively equal weight, and any final determination with respect to a prohibited employer/employee relationship must be assessed on a case-by-case basis.

#### 7.F.3.a. On-Site Work

Contractor employees work on site;

#### 7.F.3.b. FDIC-Furnished Equipment

Principal tools and equipment are furnished by FDIC;

#### 7.F.3.c. Inherently Government Functions

Work involves an inherently government function;

#### 7.F.3.d. Duration

Duration of the contract exceeds one (1) year; and



**7.F.3.e. Comparability with FDIC Work**

Comparable services that meet FDIC needs are performed by FDIC (e.g., the contractor's employees are performing the same or similar job(s) as FDIC employees).

**7.F.4. Notification**

If the Oversight Manager believes that a contract may involve prohibited personnel services (i.e., involving an employer/employee relationship between FDIC and the contractor's employees), the matter shall be immediately brought to the attention of the Contracting Officer. Legal review shall be sought as necessary.

**7.F.5. Contractor Employees Working On Site (MAR 2000)**

In order to preserve the independent status of contractor employees, the following precautions shall be observed:

**7.F.5.a. Workstations (MAR 2000)**

Workstations of contractor personnel should be separated from FDIC personnel to the maximum extent practicable;

**7.F.5.b. Identification (MAR 2000)**

Contractor personnel should be required to wear badges on site, display appropriate office signs, or take some other measure to clearly identify them as contractor employees;

**7.F.5.c. Staff Meetings (MAR 2000)**

Contractor employees should not be invited to attend regular staff meetings; and

**7.F.5.d. Recreational Activities (MAR 2000)**

Generally, contractor employees may not participate in services or employee recreational activities (including without limitation office picnics and holiday parties) that are provided for the benefit of FDIC employees.

**SECTION 7.G. MONITORING CONTRACTOR PERFORMANCE****7.G.1. Introduction****7.G.1.a. Performance Goals**

The primary purpose of contract administration is to ensure that the contractor performs in accordance with the terms and conditions of the contract. Satisfactory performance under a contract occurs when a contractor is providing timely delivery of the goods or services specified in the contract. The most critical factor in monitoring performance is understanding the statement of work to determine whether the contractor is performing in accordance with the contract requirements.

**7.G.1.b. Contract Administration Plan (MAR 2000) (JUL 2003)**

The Contracting Officer shall develop a Contract Administration Plan (CAP) for contracts and task orders for services having a total estimated value of \$100,000 or greater. The CAP should be prepared to the extent possible prior to the post-award conference as required by APM 7.B.5., *Contract Administration Plan* in the form set forth in Exhibit XXVII.

**7.G.1.c. Oversight Manager Responsibility (MAR 2000) (JUL 2003)**

In order to successfully monitor contractor performance, the Oversight Manager must fully understand the contractual requirements and perform the following functions:

- (1) Obtain and evaluate progress reports required by the contract to ensure performance is on schedule;
- (2) Ensure that incurred costs are in accordance with the contract rate schedule and within the contract ceiling price;
- (3) Ensure that resources are being applied at proposed levels;
- (4) Ensure that the quality of the deliverables is consistent with contract requirements and that they are submitted within the prescribed timeframe;
- (5) Review invoices to ensure accuracy and verify technical acceptance of goods or services delivered;
- (6) Monitor monthly contractor reports on subcontractor activity and Joint Venture (JV) partner participation and ensure compliance with the approved subcontracting plan and JV agreement participation levels; and
- (7) With respect to contractor personnel:
  - (a) Ensure that new contractor personnel are approved by the Contracting Officer as required by the contract;

- (b) Ensure that new contractor personnel possess the requisite experience for open market contracts by evaluation of resumes, and for FSS contracts by evaluating pursuant to GSA requirements;
- (c) Ensure that new contractor personnel are established and working under the appropriate contract labor categories by consistent monitoring and spot audits;
- (d) Ensure that key contractor personnel undergo background investigation and are fingerprinted for contracts \$100,000 or greater prior to commencing work and as a prerequisite for obtaining an identification badge to be used on-site;
- (e) Ensure that all contractor personnel working on-site or obtaining access to FDIC systems complete the proper background investigation forms and are fingerprinted prior to commencing work and as a prerequisite for obtaining an identification badge to be used on-site or obtaining a password for access to FDIC systems; and
- (f) Ensure, pursuant to APM, 7.B.1.i.(30) and 7.L.3.a. that all contractor personnel leaving prior to the expiration of the contract under which they are working complete the pre-exit clearance procedures set forth in APM, 7.L., by completing the Oversight Manager Memorandum verifying that the pre-exit clearance procedures have been completed and submitting the signed Pre-Exit Clearance Record for Contractors (FDIC Form 3700/25) and the Oversight Manager Memorandum to the Contracting Officer. It is the responsibility of both the Oversight Manager and Contracting Officer to ensure that all items on the Contract Closeout Checklist are completed, of which this requirement is one (see APM, 7.B.2.a.(19)).

## **7.G.2. Inspection/Acceptance**

### **7.G.2.a. General**

Inspection and acceptance is a process of determining whether the contractor has fulfilled its contractual obligations and may be paid for the goods or services provided. All contracts shall contain provision for inspecting and accepting goods or services. In summary, inspection and acceptance is performed by the Oversight Manager and includes:

- (1) Inspecting work to ensure that it is in full compliance with contract requirements;
- (2) Rejecting all work that does not comply with contract requirements by promptly notifying the Contracting Officer in writing; and

- (3) Notifying the Contracting Officer when the contractor fails to correct deficiencies or replace rejected work promptly.

**7.G.2.b. Inspection**

Inspection shall normally occur at the place and time of performance or delivery of goods. Inspection may be performed at another location or at a time other than the time of performance if so defined. Inspection shall be performed by the Oversight Manager or an authorized representative.

**7.G.2.c. Acceptance**

The Contracting Officer, in cooperation with the Oversight Manager, shall ensure that the work performed under the contract is in accordance with the contract requirements. If performance does not, or goods or services do not, meet contract requirements, the Oversight Manager shall identify deficiencies and advise the Contracting Officer in writing so that remedial action can be taken before any further payments are made or before contract closeout takes place. The Oversight Manager must ensure that all review actions and decisions on accepting deliverables are documented and contained in the Oversight Manager's files. This documentation will be used to support approval or disapproval of invoices.

**7.G.2.d. Nonconforming Goods or Services**

Goods or services not conforming to contract requirements shall be rejected by the Oversight Manager in a timely manner. However, the Oversight Manager has the authority to accept nonconforming goods or services, when in the best interest of FDIC, and only after there has been appropriate modification of the contract by the Contracting Officer with consideration to the Corporation.

- (1) Contractors shall be directed to correct nonconforming goods or services, and correction must be accomplished within a reasonable time at the contractor's expense. Direction for correction shall be in the form of a nonconforming performance letter drafted or reviewed by the Legal Division and issued by the Contracting Officer.
- (2) Ordinarily, the Oversight Manager shall reject goods or services if correction cannot be accomplished within the term and costs of the contract. The Oversight Manager shall notify the Contracting Officer of any such proposed rejection. Payment for the rejected goods or services shall be made only upon satisfactory correction of the problem.
- (3) Clear documentation of all nonconformance is critical in supporting the fact that proper contractual action was taken. Contractor performance must be well documented to provide a historical record that can be used in making future contract award decisions.

**7.G.3. Site Visits for Performance Verification**

**7.G.3.a. General**

A site visit, as discussed in this paragraph, does not include audits. Site visits may be conducted for large, complex contracts on a regular basis, but may not be necessary for small or noncomplex contracts.

**7.G.3.b. Purpose**

The purpose of the site visit is to verify the contractor's performance against scheduled and reported performance; determine the adequacy of contractor facilities and working conditions; and verify that the proper employees working on the contract are assigned to appropriate tasks. A site visit is an opportunity for FDIC to provide technical assistance to, and enhance communication with, the contractor. In addition, the site visit offers an opportunity for the Oversight Manager and the Contracting Officer to observe firsthand how the contractor is operating; to re-emphasize FDIC's goals and objectives; to ensure compliance with FDIC policies, procedures, and directives; and to follow up on previously noted problems.

**7.G.3.c. Coordination**

No site visit shall be performed by any FDIC personnel or FDIC contractors without coordination with the Contracting Officer and the Oversight Manager. Exceptions include: personnel from, or contracted by, the FDIC Office of the Inspector General (OIG) or the General Accounting Office (GAO) if they consider such advanced notification inappropriate.

**7.G.3.d. Review of Documentation**

To reduce or avoid duplication and uncoordinated visits, personnel planning to conduct site visits should first review documentation relating to previous site visits, reviews, and audits.

**7.G.3.e. Constructive or Material Changes to the Contract**

The Contracting Officer, Oversight Manager, and other FDIC representatives must not make changes to the contract during the site visit. If a contractor feels that the contract has been changed in any way, written notice of this position must be received by the Contracting Officer.

**7.G.4. Performance Evaluation**

**7.G.4.a. Contractor Performance Reporting Requirements (MAR 2000) (JUL 2003)**

Information on a contractor's performance may be critical to subsequent procurements. For contracts, purchase orders, task orders under basic ordering agreements, or delivery orders \$50,000 or greater, the Oversight Manager in the

Program Office shall evaluate the quality of the contractor's performance and complete the Contractor Performance Evaluation and Reporting Form at the end of the initial contract period and when a renewal option is exercised and submit it to the Contracting Officer. This report is provided as Exhibit XVIII, *Contractor Performance Evaluation and Reporting Form*. A performance evaluation report may also be appropriate for contracts with dollar values less than \$50,000. Several factors to consider when making this decision would be (1) the complexity of the contract, (2) the potential to use a contractor in the future, and (3) to document poor performance.

- (1) The Oversight Manager shall initiate and prepare the report (accessible through FDICnet [Resources, Standardized Forms]) and submit it to the Contracting Officer.
- (2) An evaluation report shall be prepared within thirty (30) days after the exercise of a renewal option and within thirty (30) days after the completion of a contract.
- (3) Additional evaluation reports (interim) shall be prepared at the discretion of the Oversight Manager/requesting office to reflect significant changes in a contractor's performance.
- (4) The evaluations shall contain information on: overall performance, compliance with the SOW, cost control, adherence to schedules, compliance with subcontracting plans and Joint Venture Agreements (including SDB and MWOB subcontractors and JV partners), timely and accurate reporting documents, responsiveness to requests/problems, general capabilities of contractor personnel, supporting narrative for all ratings, and whether the Oversight Manager would hire the contractor again.
- (5) If unacceptable or nonconforming performance results in a rating of "unsatisfactory" in any area, a supporting narrative shall be included, along with copies of any documentation of the problem(s) and attempted resolution.
- (6) In all cases where a deficiency results in formal correspondence sent by the Contracting Officer to the contractor, such as cure notices and letters of deficient performance or nonconformance, a copy of all such correspondence shall be provided as part of the evaluation report.
- (7) The Oversight Manager shall immediately notify the Contracting Officer of any issues associated with the contractor's compliance with the approved SDB subcontracting plan or any SDB Joint Venture agreement. The Contracting Officer will, in turn, solicit participation from ODEO as necessary.

- (8) Upon receipt of the evaluation report from the Oversight Manager, the Contracting Officer will review and initial the report indicating concurrence with the rating. The Contracting Officer will forward the form to the contractor for review and signature, and if applicable, rebuttal or comments, advising the contractor that they have thirty (30) days to appeal the evaluation (see APM, Exhibit XVIII, *Contractor Performance Evaluation Transmittal Letter*). If the Contracting Officer and the contractor are unable to agree on a rating, the matter is to be referred to an official one (1) level above the Contracting Officer. Upon receipt of the review official's decision, the Contracting Officer will attach a copy of the decision to the report, adjust the initial rating, if appropriate, sign the report and provide a copy to the Oversight Manager, the contractor and the Program Compliance Unit (PCU), ASB. The original fully executed evaluation report shall be included in the official contract file.

**7.G.4.b. Unacceptable Performance**

The Program Office and ASB, in conjunction with the Legal Division as needed, shall jointly determine what remedies are required as well as an acceptable time frame for problem resolution. Evaluation of the contractor's performance must be based on the specific requirements for quality of work, as defined in the contract or documents incorporated into the contract. The contractor shall be notified in writing of an unacceptable performance rating and any remedial action required to resolve the problem.

**7.G.5. Constructive Changes**

Monitoring a contractor's technical performance is difficult and requires skill and judgment to ensure that the contractor performs the exact tasks required under the contract. A contractor will sometimes perform work beyond that which is required in the contract. If the contractor perceived that the work was ordered by the Corporation or caused by Corporation fault, the contractor may claim that the contract was "constructively" changed. As a result, the contractor may be entitled to additional compensation for the changes. Because of the Oversight Manager's unique responsibility for overseeing contractor performance, care must be taken not to inadvertently cause constructive changes.

**7.G.5.a. Cause**

Claims for constructive changes are the primary means used by contractors to obtain additional compensation under fixed price contracts. Constructive changes can arise from written or oral communication or as a result of action, inaction, or omission by Corporation officials. These types of communications and actions/omissions are then typically misconstrued by the contractor as having the same effect as a written change order. Constructive changes may occur when an Oversight Manager or other Corporation officials:

- (1) Provide "suggestions" to a contractor;
- (2) Provide definitions to general contract terms;
- (3) Accelerate the delivery schedule;
- (4) Direct work to be performed differently;
- (5) Change the sequencing of work;
- (6) Delay of rejecting or accepting deliverables;
- (7) Delay reviewing invoices and approving payment;
- (8) Fail to warn the contractor of an event/change; or
- (9) Interfere with, or hinder performance.

**7.G.5.b. Action**

The Oversight Manager should notify the Contracting Officer immediately if it is believed the contractor is performing work that is not required under the contract which may result in a claim against the Corporation.

**7.G.6. Monitoring Compliance with SDB Joint Venture, Subcontracting and Teaming Requirements (MAR 2000)**

Contractors shall comply with Contracting Officer approved subcontracting plans and Joint Venture (JV) agreements upon which award was based, and any revisions subsequently approved by the Contracting Officer. This includes subcontracts to SDB firms, SDB JV partners, and SDB team members. The Contracting Officer and the Oversight Manager are jointly responsible for monitoring compliance during contract administration by reviewing invoices and the monthly subcontracting/JV activity reports required by the contract. Such monitoring shall be applicable only for awards where formal contracting procedures are used. Contractors that are found not to be performing in accordance with the terms of their contract regarding the distribution of work and dollar amounts paid to subcontractors or JV partners and are therefore, not complying with an approved subcontracting plan or JV agreement, may be considered in material breach of their contract and shall be handled in accordance with the provisions stated therein.



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**SECTION 7.H. CHANGES/MODIFICATIONS TO CONTRACTS****7.H.1. General****7.H.1.a. Background**

During the performance period, contract terms and conditions may require modification. This may result from planned actions, such as an extension option, as well as from unforeseen changes requiring the Contracting Officer to issue a change order pursuant to the "changes" clause stated in the contract.

- (1) The Oversight Manager is in the best position to identify when a change or modification is necessary or has occurred. The Oversight Manager needs to be fully cognizant of the original scope of the contract to recognize any differing conditions.
- (2) In addition to recognizing when a contract requires modification to accommodate a change, the Oversight Manager needs to identify new contract requirements so that the Contracting Officer can initiate the modification process. During the modifications process, the Oversight Manager documents the recommended change for the Contracting Officer. The Contracting Officer uses this documentation to substantiate FDIC's negotiation position, if necessary, and execution of the modification. The Oversight Manager should also expect to participate in any negotiations that take place between the contractor and FDIC.

**7.H.1.b. Types**

A change to an FDIC contract will fall under one (1) of the following:

- (1) Administrative Changes. Administrative changes are changes within the scope of the contract and do not affect or alter the rights of the parties; or
- (2) Substantive Changes. Substantive changes **do** alter the rights and obligations of the parties.

**7.H.1.c. Authority and Procedure (JUL 2003)**

Warranted Contracting Officers are the only officials with delegated authority to modify/change a contract; so it is a critical Oversight Manager responsibility to coordinate closely with the Contracting Officer on all proposed modifications and changes. Late notice can negatively affect schedule and delivery and may result in claims against the Corporation. To begin the modification process, the Oversight Manager shall forward a written request to the Contracting Officer, along with a completed Procurement Requisition form (with approved expenditure authority as required in APM, 1.B., *Expenditure Delegations of Authority* and prepared according to the requirements of APM, 4.A.4.), a description of the proposed change and

rationale, and justification supporting the change. All contract modification documents shall be issued by the Contracting Officer.

## **7.H.2. Administrative Changes**

### **7.H.2.a. Applicability**

Administrative changes occur when the Oversight Manager or Contracting Officer identifies a change to the contract that does not affect the rights of the parties under the contract. These types of changes are executed on a unilateral basis. Examples of administrative changes include:

- (1) Appointment of a new Oversight Manager;
- (2) Changes as permitted by specific contract clauses or provisions;
- (3) Corrections of typographical errors not affecting the substance of the contract;
- (4) Change in either the FDIC Contracting Officer or the contract specialist;  
or
- (5) Changes in billing instructions or address.

### **7.H.2.b. Responsibilities of FDIC Personnel**

- (1) The Oversight Manager shall:
  - (a) Identify the necessary administrative change; and
  - (b) Submit a written request to the Contracting Officer for the necessary administrative change.
- (2) The Contracting Officer shall:
  - (a) Upon receipt of the request for an administrative change, verify that the change does not affect the rights of the parties;
  - (b) If the Contracting Officer determines that it is an administrative change, ensure that the change is documented in a contract modification and provide copies to the contractor and the Oversight Manager;
  - (c) If applicable, notify other affected FDIC organizational units, such as Division of Finance (Accounts Payable).
- (3) Some types of administrative changes can be initiated by the Contracting Officer with a memo to the file.

**7.H.3. Substantive Changes****7.H.3.a. Applicability**

After a contract is signed by FDIC, a contractual change that affects the rights of the parties may be necessary. Such a change will generally require a written bilateral modification to the original contract. Examples of contract modifications that affect the rights of the parties include:

- (1) The addition of assets to an existing asset management agreement if an existing clause does not provide for such;
- (2) A change in the amount of fees to be paid to the contractor;
- (3) A change in the delivery schedule;
- (4) A change in the quantity and nature of deliverables;
- (5) An extension of the contract not contemplated by the contract;
- (6) Other performance requirements deemed necessary that are not within the contract's scope; or
- (7) Changes to key personnel.

**7.H.3.b. Scope (MAR 2000)**

The Contracting Officer shall determine whether a proposed modification is within the scope of the contract and should consult as necessary with the Legal Division in making the determination when necessary. In making such determination, the Contracting Officer shall consider the following:

- (1) What was reasonably anticipated by the parties to be within the scope of the contract when it was first entered into (for example, if the contract was for the modification of one (1) system, was it contemplated that any other system could also be modified);
- (2) The extent to which the proposed modification increases the overall cost of the contract (for example, if the original contract was for \$50,000, is an increase of \$10,000 too much, or is \$40,000);
- (3) Whether there is a change in the delivery schedule (for example, does FDIC want the goods delivered a month earlier than the original contract called for);
- (4) Whether an extension of the contract is required; and
- (5) Whether the proposed modification to the contract might be construed as being in restraint of competition.

**7.H.3.c. Justification for Noncompetitive Procurement (JNCP)**

If the Contracting Officer determines that a request for modification is not within the scope of work, the Oversight Manager shall provide the Contracting Officer a complete and approved Justification for Noncompetitive Procurement (JNCP). Procedures for approving noncompetitive requirements are stated in APM, 4.G., *Justification for Noncompetitive Procurement (JNCP)*. The Contracting Officer shall not proceed with the requested modification on a noncompetitive basis until such documentation is received. If the modification results in additional costs, a cost reasonableness analysis shall also be provided by the Oversight Manager.

**7.H.3.d. Changes in Key Personnel or Affiliated Entities Requiring Background Investigations (MAR 2000) (JUL 2003)**

A background investigation shall be required on any change to key personnel, affiliated entities, or additional on-site contractor personnel. For any such changes, the Contracting Officer shall require the following two (2) forms to be completed by the contractor: the Background Investigation Questionnaire for Contractor Personnel and Subcontractors, FDIC Form 1600/04; and Notice and Authorization Pertaining to Consumer Reports Pursuant to the Fair Credit Reporting Act of 1970, FDIC Form 1600/10. Such personnel or affiliated entities changes shall be made conditional pending the results of the background investigation. If FDIC network or systems access is required, contractor employees must be fingerprinted in compliance with APM, 6.E.2.e., *Background Investigations*.

**7.H.3.e. Responsibilities of FDIC Personnel**

- (1) Prior to the change being executed with the contractor, the Oversight Manager shall:
  - (a) Identify the requirement for a modification;
  - (b) Determine whether the cost to FDIC caused by the modification will exceed the expenditure ceiling;
  - (c) If the cost to FDIC for the modification will exceed the expenditure ceiling, the Program Office shall ensure that additional expenditure authority has been obtained;
  - (d) Prepare a detailed, written explanation of the reason for and nature of the change or modification;
  - (e) Jointly with the Contracting Officer, participate in any contractor negotiation pursuant to the need for the modification; and
  - (f) Provide a JNCP, if applicable.
- (2) The Contracting Officer shall:

- (a) Determine whether the requested modification is within the scope of the contract;
  - (b) With the support of the Oversight Manager, negotiate changes required by the modification;
  - (c) Execute the modification with the contractor;
  - (d) Provide executed originals of the modification to the contractor and the official contract file; and
  - (e) Provide a copy of the modification to the Oversight Manager.
- (3) At the discretion of the Contracting Officer, the Legal Division may review the proposed modification to confirm it is within the scope of the original contract.

**7.H.3.f. Price Reasonableness for Change Orders and Modifications (JUL 2003)**

- (1) Modifications or change orders generally do not allow for fair and adequate price competition, since the activity is already under contract. Contracting Officers shall use price analysis techniques to help determine the reasonableness of the price proposed by using the techniques set forth in APM 6.D.5.e., or any other reasonable basis.
- (2) Similar responsibilities exist for the Oversight Manager to ensure that the proposed prices are realistic for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the offeror's change proposal.
- (3) The Contracting Officer shall place documentation of the pricing analysis in the official contract file.

**7.H.3.g. Change Order or Modification Accounting (JUL 2003)**

Whenever there is a change order or other modification for \$100,000 or more to a contract that requires special accounting procedures to be performed by the contractor, the Contracting Officer may require certain change order accounting when contractor's accounting system can accommodate such changes. The contractor, for each change or series of related changes, shall maintain separate accounts by change order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change.

If the contractor is unable to accomplish the necessary accounting procedures, the change order or modification shall be priced in such a way as to accommodate both the contractor's accounting system and an appropriate pricing scheme.

**7.H.3.h. Change Order or Modification Accounting Contract Provision (JUL 2003)**

Before adding a change order or modification accounting requirement as a special provision to the contract, the Contracting Officer shall ensure that the contractor's accounting system has the ability to segregate cost by change order.

**7.H.4. Contract Assignment (Change in Contractor)**

**7.H.4.a. Overview**

This discussion applies to changes whereby a new contractor is proposed for substitution for the original contractor after FDIC and the original contractor have signed the contract. Examples of when such changes occur are: a change in the contractor's form of doing business (proprietorship to corporation, etc.), a proposed transfer of the contract from the original contractor to another contractor, or the addition of another contractor to a joint venture.

**7.H.4.b. Approval**

Contractors cannot assign contracts without FDIC's prior acceptance and approval.

**7.H.4.c. Responsibilities of FDIC Personnel (JUL 2003)**

- (1) The Oversight Manager shall:
  - (a) Upon receipt of a request for assignment from the Contracting Officer, determine whether the technical expertise of the proposed contractor meets, at a minimum, the technical expertise required of the original contractor when the original contract was signed;
  - (b) Provide a written recommendation to the Contracting Officer as to whether the assignment should occur; and
  - (c) Provide a recommendation to the Contracting Officer as to whether the original contractor should be released from liability under the contract.
- (2) The Contracting Officer shall:
  - (a) Determine whether the financial capability of the proposed contractor meets the financial capability required to successfully complete the remaining contract requirements;
  - (b) Jointly with the Oversight Manager and the Legal Division determine whether the assignment should be approved and whether the original contractor should be released from liability;
  - (c) Prior to execution of the Consent to Assignment, obtain contractor Integrity and Fitness Representations and Certifications and obtain background checks in the same manner as for new contracts;

- (d) Request that the Legal Division draft the Consent to Assignment (see Exhibit XIX, *Consent to Assignment Forms*) and other necessary documents if the assignment is approved;
- (e) Execute the documents with the contractor(s); and
- (f) Provide copies of the documents to the contractor(s), the Oversight Manager, and the official contract file.



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**SECTION 7.I. CONTRACT PAYMENTS****7.I.1. Introduction (MAR 2000)**

FDIC's contractual obligations include payment for goods or services provided by the contractor. Payment is due after completion and acceptance of the goods or services and submission of a proper invoice, unless the contract provides otherwise. It is FDIC policy to pay only contractor costs that are allowable by the terms of the contract and are reasonable in nature and amount.

In this regard, FDIC shall compensate the contractor for actual productive work hours exclusive of travel time, vacation, holiday, sick leave, or other absences. In addition, FDIC shall compensate the contractor only for other contract costs, including, but not limited to, materials and travel, that are delivered in accordance with the terms and conditions of the contract and have been determined to be fair, reasonable, and necessary.

**7.I.2. Prompt Payment Act and Timely Payment of Invoices****7.I.2.a. Timely Payment**

It is generally FDIC's policy to pay invoices within thirty (30) calendar days of receipt, unless the invoice is determined to be unacceptable. However, the thirty (30) day clock does not start if the goods or services being billed have not yet been received and accepted by FDIC, there is a disagreement with the contractor over compliance with a contract requirement, or billing errors are identified on the invoice.

**7.I.2.b. Prompt Payment Act**

The Prompt Payment Act (PPA) requires FDIC, in its corporate capacity, to pay complete and correct invoices either on the date specified in the contract, or if there is no such date, within thirty (30) calendar days after receipt of an acceptable invoice.

In the event that FDIC fails to pay such invoices in the allotted time, interest shall begin to accrue at a rate set by the Department of Treasury. FDIC is obligated to pay such interest until the invoice is paid.

**7.I.2.c. Exemption from PPA**

Invoices (costs) related to contracts written in the receivership capacity or contracts with costs billed back to receiverships, are exempt from the Prompt Payment Act.

**7.I.3. Prompt Payment Terms**

The Contracting Officer is responsible for ensuring that the applicable prompt payment terms are entered into the appropriate fields of the Purchase Order System (POS). This determination should be coordinated with the Oversight Manager and be based on the contract terms and conditions, and the capacity under which the contract was awarded. Generally, contracts awarded in the Corporation's corporate capacity will be subject to PPA while those awarded in the Corporation's

receivership or conservatorship capacities will not be subject to PPA. If the contract is awarded in the Corporation's corporate capacity and does not specify the payment terms, POS should reflect payment terms of net thirty (30), a Source Code of USD, and a vendor industry type of PPA.

**7.1.4. Invoice Review (JUL 2003)**

Invoices for all contracts and purchase orders will be reviewed by the Contracting Officer and Oversight Manager simultaneously along with any other designated approvers on Electronic Procurement Routing Invoice Solution (EPRIS). The Contracting Officer is responsible for ensuring that all charges contained on each invoice are within the contract terms and conditions. The Contracting Officer is also responsible for ensuring that contractors are paid in a timely manner and that total payments to the contractor do not exceed the contract ceiling amount. The Oversight Manager is responsible for ensuring that the goods or services were delivered to FDIC in an acceptable manner and comply with the statement of work and other technical requirements of the contract. The Oversight Manager is also responsible for monitoring total payments to the contractor to ensure that they do not exceed contract ceiling amount.

**7.1.5. Taxes (JUL 2003)**

FDIC is exempt from the payment of Federal, state, and local taxes, except for real property, see APM, 3.G.11., *Tax Exempt Status*. FDIC contractors are not normally exempt from these taxes, except when acting as agents for FDIC or when particular jurisdictions have an exemption available based on the nature of the transaction.

**7.1.6. Processing Invoices (MAR 2000)**

**7.1.6.a. Invoice Requirements (MAR 2000)**

Invoice requirements shall be specified in all contracts. FDIC shall ordinarily accept an invoice for processing only if the contractor submits an original invoice and two (2) copies on contractor letterhead, and if the invoice contains, at the minimum:

- (1) Contractor name, address, and telephone number (if not on letterhead);
- (2) Contractor Federal Tax Identification Number;
- (3) Invoice date and number
- (4) Purchase order, contract number, or release/task order number;
- (5) Total invoice amount;
- (6) Discount terms if applicable;
- (7) Invoice description;
- (8) Remittance address;
- (9) Contractor contact person: name, title, phone and fax number, and mailing address;

- (10) Certification of contractor;
- (11) Line items as identified in the purchase order or contract (e.g., item number, description, invoiced amount; and
- (12) Invoice supporting documentation as required and applicable for specific purchase order or contract:
  - (a) Certified copies of time sheets;
  - (b) Travel expenses including supporting documentation;
  - (c) Subcontractor expenses; and
  - (d) Other direct costs (ODCs).

**7.I.6.b. Invoice Review and Approval (MAR 2000) (JUL 2003)**

This paragraph describes the minimum requirements for the review and approval of invoices submitted by contractors. Local procedures established by a specific FDIC office may contain additional requirements.

- (1) All invoice reviews shall be conducted in accordance with this section and other guidelines issued regarding invoice processing. FDIC shall not pay an invoice prior to completion and acceptance of the contractor's performance by the Oversight Manager, unless otherwise provided in the contract.
- (2) All invoices shall be sent by the contractor to the Contracting Officer at the address specified in the contract. The Contracting Officer will be responsible for monitoring the status of the invoice through the review, approval, and payment process. ASB will be responsible for the initial receipt, date stamping, initial input of information into EPRIS, and distribution of the invoice and invoice copies to the appropriate FDIC personnel.
- (3) At a minimum, each FDIC office will ensure that contractor invoices are reviewed in accordance with established ASB requirements and, if appropriate, may establish additional requirements to meet their specific needs. Contractor invoices will be reviewed by ASB and the appropriate Oversight Manager prior to payment. All invoices reviewed by ASB must be approved by a Contracting Officer or his delegated designee.
- (4) The Contracting Officer is primarily responsible for reviewing the invoice to ensure that it is correct, complies with the terms and conditions of the contract and total contractor payments, and payments in process do not exceed the specified contract, purchase order or task order contract ceiling amount. Exhibit XX, *Invoice Review Checklist*, provides the Contracting Officer with guidelines for reviewing contractor invoices. Exhibit XXI,

*Travel Invoice Review Checklist* provides the Contracting Officer with guidelines for reviewing contractor travel invoices.

- (a) The Contracting Officer indicates his or her review by approving the invoice in EPRIS. For invoices that must be processed manually, outside of EPRIS, the Contracting Officer indicates his or her review by signing and dating the original invoice prior to forwarding the invoice to the Oversight Manager.
  - (b) If portions of the invoiced amounts are not approved by the Contracting Officer, the appropriate amounts will be deducted from the invoiced amounts. The Contracting Officer will also be responsible for promptly notifying the contractor of the reasons for partial payment of an invoice.
  - (c) If the entire invoice is rejected, the Contracting Officer shall be responsible for promptly notifying the contractor, in writing, of the reasons the invoiced amounts will not be paid and what actions the contractor must take to remedy the situation. The Contracting Officer will provide a copy of the rejection letter to the Oversight Manager.
- (5) The Oversight Manager will review the contractor invoice to ensure that the invoice properly reflects the goods and services received; all goods and services billed have been inspected and accepted; the total payments and payments in process do not exceed the contract ceiling amount; and the invoice does not contain any errors or discrepancies. In conjunction with this review, the Oversight Manager will be responsible for promptly conducting the appropriate inspections of goods or services delivered by the contractor to determine compliance with the technical specifications of the statement of work and other appropriate contract terms and conditions. Exhibit XX, *Invoice Review Checklist*, includes a checklist to be used by the Oversight Manager as a guideline when reviewing contractor invoices.
- (a) The Oversight Manager will indicate his or her review by approving the invoice in EPRIS. For invoices that must be processed manually, outside of EPRIS, the Contracting Officer will approve and forward the original invoice to the Oversight Manager. The Oversight Manager will approve the invoice by signing and dating the original invoice and forward it to Accounts Payable for payment.
  - (b) During the approval process in EPRIS, if an invoice is deemed unacceptable, the Contracting Officer, the Oversight Manager, or any approver, after discussing the rejection issues with other approvers, authorizes system rejection by providing details of rejection for non-payment, and using the standard rejection comments in the EPRIS handbook as a guide to documentation of

the rejection. In the case of a partial rejection of an electronic invoice, the same procedure is followed. DOF will make the correction to the original invoice and re-route the invoice on EPRIS.

When DOF makes any corrections and re-routes an invoice, they will type the letters "RR" in the beginning of the invoice description field to identify it as a re-routed invoice. For partially rejected invoices, the unapproved amounts should not typically exceed 10% of the total invoiced amount. This process allows contractors to maintain their cash flow while addressing the unapproved portions of the invoice.

- (6) Invoice Review Based Upon Sampling
- (a) Approval to Use Sampling. The Contracting Officer, after consultation with the Oversight Manager, shall approve or disapprove the use of sampling as the selected method for invoice review. The determination shall consider the sampling criteria stated in paragraph (b) below.
- (b) Sampling Criteria. In appropriate circumstances, and when approved by the Contracting Officer, the Oversight Manager and Contracting Officer are authorized to examine a sample of line items on an invoice as part of their respective invoice review and approval responsibilities. The following factors should be considered in determining if sampling is appropriate:
- [1] The line items on an invoice are considered to be voluminous and repetitious;
  - [2] The dollar value of the line items on an invoice are for small dollar amounts;
  - [3] A 100% review of all line items on an invoice would not be cost effective and would detract necessary resources from daily contract administration responsibilities;
  - [4] An adequate sample has been selected to enable the Contracting Officer and Oversight Manager to make an informed judgment as to the accuracy of the entire invoice;
  - [5] The nature of the goods or services provided (e.g. commercial items);
  - [6] The integrity and reliability of the contractor;
  - [7] The accuracy and consistency of the contractor's previous invoices; and
  - [8] The potential loss to FDIC in event of payment of inaccurate invoices.

- (c) **Sampling Methodology.** Because the types and formats of contractor invoices vary, judgment must be used to determine the size and scope of the sample to be taken for any particular contract. The invoice sample size should generally be between 25 and 50% of the line items for each invoice. However, sampling below the 25%, or above the 50%, threshold may be conducted at the discretion of the Contracting Officer. The sampling size/rationale shall be documented by the Contracting Officer in the official contract file. If the use of sampling is approved in accordance with paragraph (a) above, the following factors should be applied to develop the sample size and conduct invoice review:
- [1] The total number of line items on an invoice that have been submitted by the contractor during the billing period should be fully identified;
  - [2] The number of line items reviewed as part of the sample has been determined to be an adequate and representative sample of the contractor's entire invoice(s);
  - [3] Irregularities or errors, if any, are documented in the contractor's invoice(s) and if overall accuracy is questioned, sampling will not be utilized and a 100% review of the invoice(s) will be conducted; and
  - [4] The size and scope of the sampling review has been documented as part of the official contract file.
- (d) **Sampling Size Reviews.** When approved under paragraph (a) above, the Oversight Manager and Contracting Officer should, as a general rule, use the same sample of invoice line items for each of their respective reviews. However, this is not required as long as each selected an adequate sample size (see (c) above) to enable them to make an informed judgment as to the accuracy/acceptability of the entire invoice. This judgment shall be based upon their respective reviews, as required in APM, 7.I.6.b.(4) and (5).

### **7.I.7. Withholding Payments**

#### **7.I.7.a. Scope**

The Contracting Officer has a responsibility to protect the interests of FDIC, but at the same time, not to act in an arbitrary or improper manner in violation of the contractor's rights. Under the appropriate circumstances, it may be necessary to withhold payment to contractors.

**7.I.7.b. Withholding Requiring Legal Concurrence**

Legal concurrence is required prior to withholding payments to the contractor, in part or in full, under the following circumstances:

- (1) A material breach of the contract by the contractor;
- (2) To collect an amount owed the FDIC by the contractor under the same or any other contract; or
- (3) The Contracting Officer or Oversight Manager has been notified in writing by the OIG or has reason to suspect contractor or subcontractor of fraud under the contract.

**7.I.7.c. Withholding Not Requiring Legal Concurrence**

Legal concurrence is not required for rejection or partial payments of invoices under the following circumstances:

- (1) Errors;
- (2) Contractually authorized payment withholding provisions;
- (3) Unsupported / undocumented costs;
- (4) Overpayments; and
- (5) The contractor's performance is nonconforming or not acceptable.

**7.I.8. Contractor Travel****7.I.8.a. Responsibility**

The Oversight Manager and the Contracting Officer shall ensure that travel is legitimate and authorized under the contract.

**7.I.8.b. Availability of Regulations (MAR 2000)**

Contracting Officers shall ensure that all contractors have a current copy of the Contractor Travel Reimbursement Guidelines (see Exhibit XXII).

**7.I.8.c. Contractor Use of Government Discounts**

- (1) The availability of air, rail, rental car, and hotel contract rates negotiated by the General Services Administration (GSA) is at the option of the air or rail carriers, car rental agencies, and hotels ("providers"). FDIC is under no obligation to ensure that such rates are available.
- (2) FDIC contractors performing a contract under which travel costs are reimbursed by FDIC should request government contract rates or discounts from providers. Since the carriers are not required to provide the GSA rates to contractors, FDIC cannot mandate that the contractor obtain the GSA rates or refuse to reimburse the contractor for use of



standard commercial rates. In this regard, FDIC assumes no liability to contractors or travel agents where the provider subsequently refuses to provide the contractor use of the GSA rates.

- (3) Contractors may only participate if they are currently performing under an FDIC contract in which the travel costs are directly reimbursed by FDIC since those travel costs are essentially an expense of FDIC. The travel must be solely for performance of that FDIC contract.
- (4) The potential for abuse of government discounts by unauthorized personnel exists, and therefore, both contractor and FDIC employees should be alert for any indications of fraud or abuse of the program and should report any such instances to the Office of the Inspector General (OIG).

**7.1.9. Subcontractor Invoices**

Contractors are prohibited from adding additional fees to subcontractor invoices (see APM, 6.H.3.b., *Subcontractor Markups*) except as agreed in the contract. The Contracting Officer shall carefully review invoices for compliance with this policy.

**SECTION 7.J. CLOSEOUT****7.J.1. Introduction****7.J.1.a. General**

The contract closeout process is usually a simple but detailed administrative procedure. The purpose is to verify that both parties to the contract have fulfilled their contractual obligations and there are no open issues or responsibilities remaining. To successfully wind up the activities on a contract requires close coordination and teamwork between the Oversight Manager and the Contracting Officer. A contract is completed when all goods or services have been received and accepted; all reports have been delivered and accepted; all administrative actions have been accomplished; all FDIC-furnished equipment and materials have been returned and accounted for by the Program Office; and final payment has been made to the contractor. After completion, the contract must then be closed out.

**7.J.1.b. Applicability**

This section applies to all types of contractual engagements.

**7.J.2. The Closeout Process****7.J.2.a. Background**

To begin the closeout process, the Contracting Officer must first determine that the contractor has satisfactorily performed all required contractual obligations. A contract is ready for closeout action when:

- (1) All deliverables, including reports, have been delivered and accepted by FDIC;
- (2) Final payment has been made;
- (3) All collections of funds due FDIC have been completed;
- (4) All financial documents are in the official contract file;
- (5) All FDIC property has been returned and accounted for;
- (6) All FDIC files and documents have been returned;
- (7) Approval from the Program Office has been received; and
- (8) All claims and audit issues have been resolved.

**7.J.2.b. Conditions of Payment**

FDIC contracts usually contain a provision that payments under the contract are subject to adjustment based on an audit by FDIC. The audit clauses require the

contractor to make all books and records available for audit for a period of three (3) years after completion of the contract. The Contracting Officer shall review each contract to document FDIC's audit rights.

**7.J.2.c. Releases**

FDIC does not require obtaining a contractor release for contract closeout. Additionally, the Contracting Officer shall not sign a release for the contractor.

**7.J.2.d. Responsibilities**

The Contracting Officer is primarily responsible for contract closeout. Other members of the contract administration team also have responsibilities during closeout.

- (1) The Contracting Officer shall:
  - (a) Ensure that approval from the Oversight Manager has been received;
  - (b) Determine whether all payments to the contractor have been made;
  - (c) Determine whether all administrative actions have been completed, including claims, settlement of disputes, and litigation, if known;
  - (d) Collect all funds or fees due from the contractor to FDIC including set-offs or demands for payments initiated by FDIC;
  - (e) Ensure that the official contract file contains all necessary documentation; and
  - (f) Ensure all issues are resolved.
- (2) The Oversight Manager shall:
  - (a) Determine whether all deliverables including reports have been delivered and accepted by FDIC;
  - (b) Determine whether all funds due FDIC have been collected;
  - (c) Determine whether all FDIC property has been returned;
  - (d) Determine whether all FDIC files have been returned;
  - (e) Ensure that a performance evaluation report is filed with the Contracting Officer, if required;
  - (f) Provide the Contracting Officer with appropriate documentation from the Oversight Manager's file for inclusion in the official contract file; and
  - (g) Provide the Contracting Officer with written approval to close out the file.

**7.J.3. Documentation**

The official contract file shall include all applicable items listed on the *Contract File Checklist* (see Exhibit XXIII) and the *Contract Closeout Checklist* (see Exhibit XXXIV).

**7.J.4. Official Oversight File (MAR 2000)**

Throughout the term of the contract, the Oversight Manager shall be responsible for maintaining a complete record of the status and results of the oversight of the contract. The Oversight Manager file shall be organized and maintained in accordance with the *Oversight Manager File Checklist*, provided as APM, Exhibit XXVIII. On closeout, this Oversight Manager file will be included in the official contract file.

**7.J.5. File Disposition**

File documentation shall be retained in accordance with APM, 7.K., *Contract Files Record Retention*. Once contracts are formally closed, the files should be prepared for transfer to off-site storage in accordance with established FDIC records management procedures.

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**SECTION 7.K. CONTRACT FILES RECORD RETENTION****7.K.1. Records Management****7.K.1.a. Responsibility**

The Oversight Manager and Contracting Officer shall jointly ensure that all records are securely maintained and all contract administration actions are documented. These records must provide a complete history of any contract action and therefore shall include:

- (1) Background on the basis for decisions; and
- (2) Information for reviews and investigations.

**7.K.1.b. Contract Closeout File Checklist (MAR 2000)**

The contract closeout checklist (Exhibit XXXIV) shall be signed and dated by the Contracting Officer at time of contract closeout to certify that all appropriate documents are filed.

**7.K.2. Records Retention Guidelines for Contract Files****7.K.2.a. Solicitation and Contract Files**

The solicitation and contract files shall contain all applicable records and documents required under Exhibit XXIII, *Contracting File Checklists*. Files shall be handled as follows:

- (1) Contracts of \$100,000 or less and construction contracts under \$2,000 may be destroyed three (3) years after final payment; and
- (2) Contracts over \$100,000 and construction contracts \$2,000 and over may be destroyed six (6) years and three (3) months after final payment.

**7.K.2.b. Purchase Order Files (MAR 2000)**

Purchase order files shall contain all applicable records and documents as required in the appropriate contracting file checklist, Exhibit XXIII, and shall include, but are not limited to, the Procurement Requisition; official copy of the purchase order; statement of work, if applicable; related correspondence; and invoices. Purchase order files shall be dispositioned as follows:

- (1) Purchase orders of \$100,000 or greater, may be destroyed six (6) years and three (3) months after date of final payment; and
- (2) Purchase orders of less than \$100,000 may be destroyed three (3) years after date of final payment.

**7.K.2.c. Solicitation Unsuccessful Bids Files**

The offerors' unsuccessful proposal package submitted in response to the solicitation shall be destroyed as follows:

- (1) Awards greater than \$25,000 may be destroyed one (1) year after the date of award or final payment, whichever is later; or
- (2) Awards \$25,000 or less may be destroyed when the contract is completed.

**7.K.2.d. Oversight Manager's Files (JUL 2003)**

An Oversight Manager's files contain material on all contractor activities after contract award that includes those items identified on the Oversight Manager's File Checklist, APM Exhibit XXVIII. These files should be transferred to ASB for incorporation into the contract file upon contract completion or termination.

**7.K.2.e. Technical Monitor's Working Files**

A Technical Monitor's files contain materials related to a contract or purchase order which include, but are not limited to, the following: requests for contracts or contract proposals; correspondence accepting or rejecting deliverables and contractors' site review reports; reports for desired changes in the basic order or contract; notes on proposed contract or contract modifications; invoices; contractor reports and deliverables; and other reports and correspondence. A Technical Monitor's working files should be transferred to the Oversight Manager upon contract completion or termination for incorporation into the Oversight Manager's File. The Oversight Manager will subsequently transfer the Oversight Manager's file to ASB for incorporation into the official contract file.

## SECTION 7.L. PRE-EXIT CLEARANCE PROCEDURES FOR CONTRACTORS (MAR 2000)

### 7.L.1. General (MAR 2000) (JUL 2003)

Under the terms of a contract with FDIC, contractors may periodically be provided with FDIC-owned property, equipment, access to FDIC systems, and other items to assist them in performing their work assignments. To ensure that all property and equipment is accounted for and returned in good condition, and to ensure that access to FDIC's systems and telephone services has been revoked, pre-exit clearance procedures will be followed by all Oversight Managers upon completion of FDIC contracts during the contract closeout process or for contractors or contractor employees who are no longer providing services under the contract prior to departure.

### 7.L.2. Definition (MAR 2000)

For purposes of this section, "contractor" means an individual, corporation, partnership, joint-venture, or other entity obligated under an FDIC contract to provide goods or services to FDIC pursuant to a contract.

### 7.L.3. Responsibilities (MAR 2000)

#### 7.L.3.a. Oversight Managers (MAR 2000)

Oversight Managers are responsible for the following:

- (1) Ensuring that form FDIC 3700/25, Pre-Exit Clearance Record for Contractors (APM, Exhibit XXXI) is initiated for departing contractors one (1) week prior to the last day the contract is in effect, and completed at the time of departure of the contractor;
- (2) Ensuring the return and proper accounting for Corporation property, equipment, records, and documents by signature of the designated security official or their designee as defined in APM Exhibit XXXI; and
- (3) Coordinating with ASB in the event that FDIC-issued property has been damaged or lost and reimbursement is deemed appropriate.

#### 7.L.3.b. Oversight Managers and Contractors (MAR 2000) (JUL 2003)

Oversight Managers are responsible for ensuring that contractors return all FDIC property, equipment, records, documents and access to FDIC systems at the time of the contractor's departure or the departure of contractor employees before contract completion. Contractors failing to properly account for or return FDIC property shall be referred to the Contracting Officer and the Security Management Section of CSB.



**7.L.4. Procedures (MAR 2000) (JUL 2003)**

**7.L.4.a. General Property (MAR 2000) (JUL 2003)**

The Oversight Manager shall obtain all general FDIC property from departing contractor personnel and ensure that access to FDIC's systems and telephone services for such personnel has been revoked either at the time contractor employees depart from working during contractor performance or at contract completion. General FDIC property includes but is not limited to such items as calculators, typewriters, dictating equipment, diskettes, manuals, publications, and records.

**7.L.4.b. Information Resources Equipment (MAR 2000) (JUL 2003)**

The Oversight Manager shall confirm with the Division of Information Resources Management (DIRM) that the following have occurred at the completion of the contract or at the time any contractor employees depart from working on FDIC contracts during contract performance:

- (1) All software, hardware, equipment, and manuals, including but not limited to personal computers, lap top computers, software, diskettes, pagers, cellular phones, portable fax machines, and telephone calling cards, have been returned;
- (2) User IDs (system access/administration privileges) for all systems including but not limited to software, mainframe, email, and remote access, have been revoked; and
- (3) Telephone service connections have been terminated.

**7.L.4.c. Security Property and Devices (MAR 2000)**

The Oversight Manager shall confirm with the Security Management Section that all FDIC parking permits, kastle keys, identification badges, building passes, office keys, property passes, and special access cards have been returned to the appropriate officials.

**7.L.4.d. Sign Off (MAR 2000)**

Upon confirmation that all of the foregoing property has been returned and accounted for, all user IDs have been revoked, and all telephone connections have been terminated, the Oversight Manager shall sign off on the Pre-Exit Clearance Record for Contractors, form FDIC 3700/25, which shall be placed in the Oversight Manager's file. A signed copy shall be sent to the Contracting Officer to be placed in the official contract file.

**7.L.5. Effects on Obligations Under Contract (MAR 2000)**

Nothing contained in this section, or any forms used in implementing this section, shall be construed to waive any obligation owed to the FDIC by a contractor pursuant to a contract. This includes, without limitation, any obligation to supervise its agents, employees, and subcontractors utilized in connection with the contract with the FDIC, and any obligation to protect the property, information, and confidences of the FDIC from misappropriation by the contracting firm, its agents, employees, or subcontractors.

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# CHAPTER 8

## **SPECIAL CONTRACT ADMINISTRATION PROCEDURES**

### **SECTION 8.A. OVERVIEW**

#### **8.A.1. Scope**

This chapter prescribes policies and procedures that involve unique situations that may arise during any phase of the FDIC contract administration process.

##### **8.A.1.a. Ratification Procedures**

Apply to circumstances where an unauthorized contractual commitment has occurred, see APM, 8.B., *Ratification of Unauthorized Contractual Commitments*.

##### **8.A.1.b. Claims and Disputes Procedures**

Apply to issues resulting from contract performance, where the complaint may be initiated by FDIC or the contractor, see APM, 8.C., *Claims Process*, and 8.D., *Claim Decision Review and Appeal Process*.

##### **8.A.1.c. Termination Procedures**

Apply to contracts that are to be terminated by FDIC for convenience or for default, see APM, 8.E., *Termination Procedures*.

##### **8.A.1.d. Contractor Conflicts of Interest, Eligibility and Waiver Procedures**

Apply to contracts where the contractor has eligibility issues, APM, 8.F., *Contractor Conflict of Interest, Eligibility, and Waiver Procedures*.

##### **8.A.1.e. Suspension and Exclusion Procedures**

Apply to the disqualification of firms, before or after award, see APM, 8.G., *Suspension and Exclusion of Contractors*.

##### **8.A.1.f. Unresolved Audit Issues**

Apply to the disposition of offerors who have unresolved audit issues, see APM, 8.H., *Contracting With Firms Having Unresolved Audit Issues*.

##### **8.A.1.g. Advance Payment Procedures**

Apply to contracts where advance payment is deemed in FDIC's interests, see APM, 8.I., *Advance Payments to FDIC Contractors*.

##### **8.A.1.h. Checks Received (JUL 2003)**

Apply to procedures for handling checks received by those not authorized to receive them, see APM, 8.J., *Checks Received*.

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**8.A.2. Applicability**

These procedures apply to all FDIC contracts except those exempted under APM, 1.A.1.e., *Exclusions*.

**8.A.3. Roles and Responsibilities**

The Contracting Officer plays an important role in each of these procedures, and is the initial point of contact for private firms when a complaint arises.



## SECTION 8.B. RATIFICATION OF UNAUTHORIZED CONTRACTUAL COMMITMENTS

### 8.B.1. Scope

This section sets forth the procedures for identifying and resolving unauthorized contractual commitments for the procurement of goods or services. Ratification of unauthorized commitments shall be accomplished through adherence to the procedures set forth in this section. It is not necessary to obtain separate approval to make an award or modification through noncompetitive procedures.

### 8.B.2. Definitions

#### 8.B.2.a. Unauthorized Commitment

An unauthorized commitment is an assurance that results in a contractual action, either an original contract or a modification that is not binding solely because the FDIC representative who made it lacked the authority to undertake the action on behalf of FDIC. In such cases, these commitments have been made in a manner that does not conform to FDIC's contracting procedures.

#### 8.B.2.b. Ratification

*Ratification* is defined as the act of approving an unauthorized commitment that was previously made by a representative of FDIC.

### 8.B.3. Applicability

Unauthorized contractual commitments occur:

#### 8.B.3.a. Lacking Appropriate Expenditure Authority

When work is authorized by an FDIC employee without or beyond their authorized expenditure authority;

#### 8.B.3.b. Beyond Warrant Limits

When a Contracting Officer authorizes work over his or her warrant limits; or

#### 8.B.3.c. Authorization Without Warrant

When a FDIC employee without a warrant authorizes work.

### 8.B.4. Exceptions

When a contractor conducts unauthorized work completely on its own, without instructions from any FDIC employee, the ratification procedures shall not be used to reimburse the contractor. Any

such claim shall be resolved through the FDIC claims or disputes resolution process set forth in APM, 8.C., *Claims Process*.

#### **8.B.5. Policy**

FDIC shall, to the maximum extent possible, avoid the need for ratification of contracting actions. Although procedures are provided in this section for use in those cases where the ratification of an unauthorized commitment is necessary, the procedures shall not be used in a manner that encourages such unauthorized commitments to be made by FDIC personnel.

#### **8.B.6. Commitments that Cannot Be Ratified**

Cases that are not ratifiable under the above may be subject to resolution as allowed by FDIC's claims procedures.

#### **8.B.7. Procedures**

The following procedures shall be followed by FDIC in determining whether to ratify unauthorized contractual commitments.

##### **8.B.7.a. Contractor Support for Invoices**

The contractor must support its invoices for unauthorized work performed outside the scope of a contract by providing the following written documentation:

- (1) **What** work was performed;
- (2) **Why** the work was performed;
- (3) **Where** the work was performed;
- (4) **When** the contractor was instructed to do the work; and
- (5) **Who** instructed the contractor to do the work and in what form the instruction was given (verbal or written), including a copy of any written authorization.

##### **8.B.7.b. Rejection**

If the contractor cannot name the FDIC individual(s) or representative(s) who authorized the work, the ratification request shall be rejected.

##### **8.B.7.c. Identification of FDIC Individual**

If the contractor is able to identify the FDIC individual(s), the contractor must produce evidence that the FDIC individual(s) did indeed make such authorization. Such evidence should include, but not be limited to, certified statements or letters from the FDIC employee to the contractor that provided authorization or approval to the contractor to perform the work in question. If it is apparent that a FDIC

employee gave direction to initiate the work, it does not mean that the contractor's claim is valid. It simply allows the process to continue.

#### **8.B.7.d. Program Office Activities and Documentation**

The Program Office which directed the work shall submit a written and signed statement prior to the execution of the ratification document and shall include:

- (1) Identification of the FDIC employee who directed the contractor to perform the work;
- (2) Statement of the facts including why the contracting process was not followed;
- (3) A statement that goods or services have been provided to and accepted by FDIC, or that FDIC has obtained or will obtain a benefit resulting from performance of the unauthorized commitment; and
- (4) Expenditure authorization in accordance with Expenditure Delegations.

#### **8.B.8. Ratification Approval (MAR 2000)**

##### **8.B.8.a. Contracting Officer Recommendation Report (MAR 2000)**

Based upon facts surrounding the unauthorized commitment (see APM 8.B.7., *Procedures*), the Contracting Officer shall prepare a written Recommendation Report documenting the findings and providing a recommendation for either approving or denying the ratification action. When the Contracting Officer recommends approval, the Recommendation Report must affirm the goods and services were/are acceptable to FDIC and the associated price fair and reasonable.

##### **8.B.8.b. Approval of the Recommendation Report (MAR 2000) (JUL 2003)**

The Contracting Officer's Recommendation Report shall be approved by the Assistant Director, Headquarters Operations Section, or the Regional Manager, DOA, as appropriate, for actions \$10,000 or less. Actions greater than \$10,000 shall only be approved by the Associate Director, ASB.

##### **8.B.8.c. Contracting Officer Action (MAR 2000)**

If the ratification action is denied, the Contracting Officer shall provide the contractor with a letter disclosing the decision with a brief rationale. If the ratification action is approved, the Contracting Officer shall prepare a contract modification or contract, as necessary, documenting the work performed and the associated price. A contract modification shall be used if the ratification occurs on a contract with a current (unexpired) period of performance. A new contract shall be used if the ratification occurs without a corresponding contract or when the contract has expired.

**8.B.8.d. Contracting Officer Warrant Authority/Expenditure Approval (MAR 2000)**

Ratification shall be permitted only within the Contracting Officer's warrant authority and after new expenditure authority has been obtained. **The specific dollar amount being ratified shall be used for determining the required Warrant level and proper expenditure authority.** Previously approved expenditure authority for the contract shall not be used for ratification.

**8.B.8.e. Documentation (MAR 2000) (JUL 2003)**

All documentation supporting the approval or denial of a ratification action, including expenditure authority and resulting contract/contract modification, shall be placed in the official contract file. Copies of all approved or denied Recommendation Reports shall be provided to the Assistant Director, Policy and Compliance Section, ASB.

**SECTION 8.C. CLAIMS PROCESS****8.C.1. Scope (MAR 2000)**

A claim is defined as a written demand or assertion for payment of money, a request for the adjustment or interpretation of contract terms, or for other relief arising under or relating to the contract. Claims may occur with either FDIC or the contractor as claimant. This section sets forth procedures for handling claims for all FDIC contracts covered by this manual, and all RTC-transitioned contracts. There are two (2) types of claims to FDIC:

**8.C.1.a. Corporate Claims (MAR 2000)**

These are claims and disputes filed by a contractor against FDIC in its corporate capacity, which also include claims on OIG contracts.

**8.C.1.b. Receivership Claims (MAR 2000)**

These are claims and disputes filed by a contractor against FDIC in its receivership capacity.

**8.C.2. Policy**

It is FDIC's policy that contractor claims shall be resolved by mutual agreement at the Contracting Officer level to the maximum extent possible. Successful implementation of this policy depends upon both parties maintaining an objective perspective with regard to the claim.

**8.C.3. Use of Discussions**

Prior to issuance of a Contracting Officer's final decision on a claim, every attempt should be made to equitably resolve the matter, and if necessary, should include discussions between the parties.

**8.C.4. Claim Procedures****8.C.4.a. Claims Prevention Philosophy**

Careful contract preparation and effective contract administration should minimize the potential for claims. Therefore, the Oversight Manager and the Contracting Officer shall jointly:

- (1) Employ clear, concise language in preparing any statement of work, solicitation, modification, contract, and other related documents;
- (2) Understand the role and the authority of FDIC personnel with respect to the award and administration of a contract;
- (3) Respond in a timely and responsive manner to all inquiries from the contractor and document the response;

- (4) Review the deliverables and performance from the contractor promptly and consistently for timeliness and adequacy to protect FDIC's rights, and to avoid waiving any remedies for noncompliant items;
- (5) Seek legal counsel as necessary to avoid claims and to protect and preserve FDIC's rights; and
- (6) Read and understand the contract's terms and conditions.

**8.C.4.b. Procedures for Filing Claims (MAR 2000)**

All contract claims filed by contractors must be in writing and must be mailed to the appropriate Contracting Officer by United States Postal Service (USPS) certified mail, return receipt requested. The claim must be related to a contractual relationship between the parties. Generally, subcontractors have no right to present a claim to FDIC, in that FDIC has no contractual privity with subcontractors. However, a contractor may file a claim for a subcontractor against FDIC.

**8.C.4.c. Timeliness for Filing Claims**

Claims must be filed within the time period required by the terms and conditions of the contract. If no term is referenced within the contract, then the time requirements for filing a claim will depend on whether the claim is related to FDIC's corporate or receivership capacity. Corporate claims must generally be filed according to the Statute of Limitations of the various states. Receivership claims by the contractor must be in compliance with the Federal Deposit Insurance Act, which requires all claims to be filed within ninety (90) days following notification of FDIC's intent to terminate a receivership.

**8.C.4.d. Obligation to Perform**

The contractor has an obligation to continue performance under the contract throughout the period that a claim or dispute is being processed.

**8.C.4.e. Elements of a Claim and Claim Certification**

All claims shall include the following information. A claim may be rejected with a written explanation provided to the contractor, but with an opportunity for resubmission, if the claim does not address each of the elements below:

- (1) The name, address, telephone and facsimile number of the claimant;
- (2) Contract, order, purchase order number;
- (3) The specific relief requested by the contractor, that is, its demand for payment of money, adjustment or interpretation of contract terms, or other relief arising under, or relating to, the contract;

- (4) A summary of the pertinent facts relative to the claim and discussion of the specific contract provision under which relief is sought, and a list of supporting documentation (correspondence, reports, invoices, deliverables, etc.);
- (5) A list of names, addresses, titles, and telephone number(s) of any person(s) who has any knowledge of any facts relevant to the claim (FDIC employees, contractor employees, or contractor's legal counsel); and
- (6) Certification by a senior official of the contractor that:
  - (a) The claim is made in good faith;
  - (b) Supporting data is accurate and complete to the best of the contractor's knowledge and belief; and
  - (c) The amount of relief requested accurately reflects the contract adjustment for which the contractor believes FDIC is liable.

**8.C.4.f. Supplemental Data**

The Contracting Officer may request the contractor to provide supplemental data in the course of considering the claim.

**8.C.4.g. Timeliness of Claims Resolution**

The Contracting Officer has defined warrant authority to settle claims either through a negotiated settlement reflected in a bilateral modification, or if a mutual agreement cannot be reached, then the Contracting Officer will provide a unilateral decision. The Contracting Officer will request that the Legal Division draft a settlement agreement for execution by the Contracting Officer with the appropriate warrant authority.

- (1) Corporate Claims. The Contracting Officer shall provide the contractor with a decision in a timely manner with a milestone date of sixty (60) days from receipt of the claim.
- (2) Receivership Claims. A Contracting Officer's decision must be provided to the contractor within one hundred eighty (180) days after receipt of the claim as required by the Federal Deposit Insurance Act.

**8.C.4.h. Responsibility of FDIC Personnel**

- (1) The Oversight Manager shall:
  - (a) Promptly notify the Contracting Officer of any indication that a contractor intends to file a claim;

- (b) Provide the Contracting Officer and the representative from the Legal Division with a response and detailed documentation relevant to the claim;
  - (c) Assist the Contracting Officer in resolving the claim;
  - (d) Ensure that proper expenditure authorization is obtained if settlement requires the expenditure of funds not already authorized; and
  - (e) Refrain from discussing any aspect of the submitted claim with the contractor without the advice and consent of the Contracting Officer and Legal Division.
- (2) The Contracting Officer shall:
- (a) Document receipt of any claim;
  - (b) Review the claim, and seek clarification, if necessary, including meeting with the contractor to discuss the claim;
  - (c) Coordinate all claims and disputes by working closely with the Oversight Manager and a representative of the Legal Division and ODEO for claims and disputes involving qualifying MWOB firms, MWOB Joint Venture's and non-MWOB firms with MWOB subcontracting;
  - (d) Initially evaluate the claim and confer with the representative of the Legal Division with respect to any proposed interpretation or definition of contract provisions and request a legal analysis;
  - (e) Prepare findings to assist in the claim settlement;
  - (f) Discuss settlement with the contractor where such is appropriate;
  - (g) Ensure that proper expenditure authorization has been obtained prior to settlement; and
  - (h) Issue a final decision denying the claim in full or in part, in the event settlement cannot be reached.
- (3) The Legal Division shall:
- (a) Provide advice and counsel regarding the claim;
  - (b) Prepare a legal analysis when requested;
  - (c) As requested, assist the Contracting Officer in preparing findings to assist in settling the claim;



- (d) Attend negotiations with the contractor as requested by the Contracting Officer or if contractor's counsel is present;
- (e) Evaluate potential settlement against the prospects for successful litigation;
- (f) Recommend alternatives to litigation as appropriate;
- (g) Provide for review of the settlement agreement; and
- (h) Prepare settlement and releases or other legal documents that may be required as a result of the claim.

### **8.C.5. Allegations of Fraud**

The Contracting Officer shall not settle, compromise, or pay any claim involving allegations of fraud. Such matters shall be referred to the Office of the Inspector General (OIG) for disposition at the earliest possible time after discovery.

### **8.C.6. Documentation of Claims**

#### **8.C.6.a. Memorandum**

The Contracting Officer shall document the negotiated settlement of his or her decision in a memorandum and place a copy of the memorandum in the official contract file. The Legal Division shall review the memorandum to ensure it conforms to the policies stated in this chapter and otherwise assist the Contracting Officer as requested.

#### **8.C.6.b. Documentation**

The file documentation shall include:

- (1) A description of the claim being made by the contractor;
- (2) The specific provisions of the contract that address or are related to the issues in the claim;
- (3) The Oversight Manager's evaluation of the claim and recommendations as to what action should be taken;
- (4) The Legal Division's review of the claim;
- (5) Statement of factual areas of agreement and disagreement;
- (6) The resolution and supporting rationale;
- (7) Any other information or documents related to the claim; and
- (8) A copy of any settlement agreement if one is made.

**8.C.7. Final Decisions**

**8.C.7.a. Contents**

The Contracting Officer's final decision must state the reason for the decision in sufficient detail for the contractor to understand the basis for the conclusion. A claim denied in part must be clearly explained. If a claim is partially allowed, for which a review or appeal is requested, the claim is subject to review in total with no guarantee that any portion of the claim will continue to be allowed.

**8.C.7.b. Final Decision (MAR 2000) (JUL 2003)**

The Contracting Officer's decision is final unless, within sixty (60) days from the date of receipt of the decision, the contractor submits a written request for review to the Associate Director, ASB, or designee, or for OIG contracts, the Assistant Inspector General for Management and Congressional Relations, to review the Contracting Officer's decision.

**8.C.8. Notification of Final Decision (MAR 2000)**

The Contracting Officer shall send written notification of the decision to the contractor by USPS certified mail, return receipt requested, and if requested, discuss with the contractor the decision and answer any related questions.

**8.C.9. Implementation**

If the Contracting Officer decides that the contractor's claim is valid, in whole or in part, the decision will be implemented promptly by the responsible Contracting Officer.

**8.C.10. Settlement**

If the Contracting Officer authorizes full or partial payment of a claim, the responsible FDIC Program Office will obtain proper expenditure authorization. ASB will request that the Legal Division draft a settlement agreement for execution by the Contracting Officer with the appropriate warrant authority.

**SECTION 8.D. CLAIM DECISION REVIEW AND APPEAL PROCESS****8.D.1. Purpose**

The FDIC review and appeal process provides contractors with an administrative recourse for resolving disputes.

**8.D.2. Definition of Dispute**

A dispute is a disagreement between a contractor and the Contracting Officer regarding the rights of the parties. A dispute originates when a claim is denied by the party against which it originated.

**8.D.3. Review Process****8.D.3.a. Review of Contracting Officer's Final Decision (MAR 2000) (JUL 2003)**

A contractor may file for review of the Contracting Officer's decision by the Associate Director, ASB, or designee, or for OIG contracts, the Assistant Inspector General for Management and Congressional Relations.

**8.D.3.b. Who May File**

Only those contractors who have properly filed a claim for which a final decision has been rendered by the Contracting Officer may file a request for review.

**8.D.3.c. Timeliness (MAR 2000) (JUL 2003)**

The contractor must request a review, in writing, of the Contracting Officer's decision within sixty (60) calendar days after its receipt of a final decision by the Contracting Officer. A request for review filed after that period is untimely and will not be considered. A request for review is considered filed when it is received, in writing, by the Associate Director, ASB, or designee, or for OIG contracts, the Assistant Inspector General for Management and Congressional Relations.

**8.D.3.d. Contents of Request for Review (MAR 2000) (JUL 2003)**

The contractor shall base the request for review on the same facts of the claim that were initially raised to the Contracting Officer. It should be an infrequent situation where all relevant documentation had not been provided to the FDIC Contracting Officer. Wherever the contractor has listed items that were not previously provided to the FDIC Contracting Officer, the contractor must explain why those items were not provided. Documentation which the contractor provides with the request for review which was not previously available to the Contracting Officer will not be considered unless the Associate Director, ASB, or designee, or for OIG contracts, the Assistant Inspector General for Management and Congressional Relations,

determines that the failure to provide such documentation was both justified and unavoidable and/or would result in a substantial injustice to the contractor.

**8.D.3.e. Where to File (MAR 2000) (JUL 2003)**

Contractors shall file a written request for review (original and one (1) copy) with:

- (1) FDIC  
Attn: Associate Director, ASB, Division of Administration  
550 17th Street, NW  
Washington, D.C. 20429

or, for OIG contracts:

- (2) Office of Inspector General  
Assistant Inspector General for Management and Congressional Relations  
801 17<sup>th</sup> Street, NW  
Washington, D.C. 20434

All requests shall be filed in writing and sent by USPS certified mail, return receipt requested.

**8.D.3.f. Processing the Review (MAR 2000) (JUL 2003)**

- (1) Documentation. Upon receipt of the request for review, the Associate Director, ASB, or designee, or for OIG contracts, the Assistant Inspector General for Management and Congressional Relations, shall request the responsible Contracting Officer to provide all information necessary to determine whether the Contracting Officer's decision was appropriate and supportable by the facts.
- (2) Meeting With Contractor. The Associate Director, ASB, or designee, or for OIG contracts, the Assistant Inspector General for Management and Congressional Relations, may provide an opportunity for the contractor to meet, and discuss the reasons it disagrees with the Contracting Officer's decision but only if, in the view of the Associate Director, ASB, or designee, or for OIG contracts, the Assistant Inspector General for Management and Congressional Relations, it is considered necessary.

**8.D.3.g. Notification to Contractor (MAR 2000) (JUL 2003)**

The Associate Director, ASB, or designee, or for OIG contracts, the Assistant Inspector General for Management and Congressional Relations, will notify the contractor in writing by USPS certified mail, return receipt requested, if additional time is needed to review the contractor's request for review of the Contracting Officer's decision. If the contractor requests a meeting to discuss the Contracting Officer's decision in accordance with APM 8.D.3.f.(2), and if the request for such

meeting is granted, the Associate Director, ASB, or designee, or for OIG contracts, the Assistant Inspector General for Management and Congressional Relations, will notify the contractor of the time and place of the meeting in writing by certified mail, return receipt requested. ODEO shall be notified of all instances where MWOB firms or SDB firms are involved.

**8.D.3.h. Notification of Decision (MAR 2000) (JUL 2003)**

For claims less than \$100,000, decisions of the Associate Director, ASB, or designee, or for OIG contracts, the Assistant Inspector General for Management and Congressional Relations are final FDIC actions and are not subject to further FDIC review or consideration. Notifications of all decisions will be made by USPS certified mail, return receipt requested.

**8.D.3.i. Implementation (MAR 2000) (JUL 2003)**

If the Associate Director, ASB, or designee, or for OIG contracts, the Assistant Inspector General for Management and Congressional Relations decides that the contractor's claim is valid, in whole or in part, the decision will be implemented promptly by the responsible Contracting Officer.

**8.D.3.j. Settlement (MAR 2000) (JUL 2003)**

If the Associate Director, ASB, or designee, or for OIG contracts, the Assistant Inspector General for Management and Congressional Relations authorizes full or partial payment of a claim, the responsible FDIC Program Office will ensure that proper expenditure authorization is promptly obtained. The Contracting Officer will request that the Legal Division, or for OIG contracts, the Counsel to the Inspector General, draft a settlement agreement for execution by the Contracting Official with the appropriate warrant authority.

**8.D.4. FDIC's Appeal Process**

**8.D.4.a. Appeal of Contracting Officer's Final Decision (MAR 2000) (JUL 2003)**

For claims of \$100,000 or greater, a contractor may file for an appeal of the Contracting Officer's decision after review by the Associate Director, ASB, or designee, or for OIG contracts, the Assistant Inspector General for Management and Congressional Relations, with the Director, Division of Administration (DOA), or for OIG contracts, the Inspector General or designee. As set forth below, the Director, DOA, or the Inspector General or designee, will accept an appeal of a claim decision and issue a final FDIC decision for appeals properly filed in writing. For purposes regarding claims, the Director, DOA, shall be considered the duly authorized representative of the Chairman of FDIC.

**8.D.4.b. Who May File (MAR 2000) (JUL 2003)**

Only those contractors who have properly filed a claim with an original value of \$100,000 or greater, for which a final decision has been rendered by the Contracting Officer, and that decision reviewed by the Associate Director, ASB or designee, or for OIG contracts, the Assistant Inspector General for Management and Congressional Relations, may file an appeal with the Director, DOA, or for OIG contracts, the Inspector General or designee.

**8.D.4.c. Timeliness (MAR 2000) (JUL 2003)**

A request for appeal is considered filed when it is received by the Director, DOA, or for OIG contracts, the Inspector General or designee. The contractor must request an appeal in writing within sixty (60) calendar days after its receipt of the decision of the Associate Director, ASB or designee, or for OIG contracts, the decision of the Assistant Inspector General for Management and Congressional Relations. A request for appeal filed after these time periods is untimely and may not be considered.

**8.D.4.d. Contents of Request for Appeal**

The request for appeal shall be based on the same facts and claim that were initially submitted to the Contracting Officer. If the contractor has listed items that were not previously provided, the contractor must provide the reasons why each item was not previously provided. This new information will not be considered unless the failure to provide such documentation was both justified and unavoidable, and/or a failure to consider such documentation would result in a substantial injustice to the contractor.

**8.D.4.e. Where to File (MAR 2000) (JUL 2003)**

Contractors shall file a request for an appeal (original and one (1) copy) with:

- (1) FDIC  
Attn: Director, Division of Administration  
550 17<sup>th</sup> Street, NW  
Washington, D.C. 20429

or, for OIG contracts:

- (2) Office of Inspector General  
801 17<sup>th</sup> Street, NW  
Washington, D.C. 20434

All requests shall be filed in writing and sent by USPS certified mail, return receipt requested.

**8.D.4.f. Final Decision on Disputes (MAR 2000) (JUL 2003)**

Decisions by the Director, DOA, or for OIG contracts, the Inspector General or designee, are the final FDIC decisions on a matter and are not subject to further FDIC review or consideration. When in the receivership capacity, and if the contractor is in disagreement, the contractor may file in Federal Court within sixty (60) days of receipt of the decision under dispute. When in the corporate capacity, and if the contractor is in disagreement, the contractor may file in an appropriate court of jurisdiction.

**8.D.4.g. Implementation (MAR 2000) (JUL 2003)**

If the Director, DOA, or for OIG contracts, the Inspector General or designee, makes a decision that the contractor's claim is valid, in whole or in part, the decision shall be implemented promptly by the responsible Contracting Officer.

**8.D.4.h. Settlement (MAR 2000) (JUL 2003)**

If the Director, DOA, or for OIG contracts, the Inspector General or designee, authorizes full or partial payment of a claim, the responsible Program Office shall ensure that proper expenditure authorization is promptly obtained. The Contracting Officer will request that the Legal Division, or for OIG contracts, the Counsel to the Inspector General, draw up a settlement agreement for execution by a Contracting Officer with the appropriate warrant authority.

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**SECTION 8.E. TERMINATION PROCEDURES****8.E.1. Termination**

When a contract is terminated by a Contracting Officer, all parties are relieved from further unperformed contractual obligations in accordance with the agreed terms and conditions of the contract. FDIC may terminate contracts under two (2) different procedures.

**8.E.1.a. Termination for Convenience**

Termination for convenience is an FDIC right to be exercised in its best interest. A contract may be terminated prior to its expiration for the convenience of FDIC, providing that the contract contains language permitting such termination.

**8.E.1.b. Termination for Default**

A contract may be terminated for default when FDIC concludes that the contractor has failed to perform, failed to make progress, has breached the contract, or there exists a conflict of interest or other ethics violations.

**8.E.2. Decision to Terminate**

The decision whether to terminate a contract will be made by the Contracting Officer based upon a review by the Legal Division.

**8.E.3. Procedures for Termination for Default**

The General Provisions in FDIC contracts contain a clause that allows FDIC to terminate any contract for default.

**8.E.3.a. Default**

A contract may be terminated for default by a Contracting Officer when a contractor:

- (1) Fails to deliver the goods or perform the services within the time specified in the contract or any extension;
- (2) Fails to make progress, so as to endanger performance of the contract;
- (3) Fails to perform any of the other provisions of the contract; or
- (4) Has a conflict of interest and/or other ethics violations.

**8.E.3.b. Coordination (MAR 2000)**

Any termination by the Contracting Officer based on a contractor's performance shall require the written concurrence of the Oversight Manager and the Legal Division. If the termination involves a qualifying MWOB or SDB firm, MWOB or SDB Joint

Venture, or non-MWOB or non-SDB contractor with MWOB or SDB subcontracting, the Contracting Officer will notify ODEO as soon as possible.

**8.E.3.c. Procedure (JUL 2003)**

- (1) The Oversight Manager shall notify the Contracting Officer in writing when a basis for termination arises and assist the Contracting Officer and the Legal Division in considering the necessity of the default termination. The Oversight Manager will monitor the status of all invoices submitted by the contractor, and shall inform the Contracting Officer with a full explanation of any adjustment or rejection of any invoices. During this process, the Oversight Manager shall maintain complete records to support the basis for termination.
- (2) The Contracting Officer shall determine whether FDIC is in possession of any unpaid invoices from the contractor; and maintain complete records to support the termination. The Contracting Officer shall determine if the contract requires a cure notice and, if so, shall prepare the appropriate letter and provide the contractor with a reasonable amount of time to correct the situation.
- (3) If termination is necessary, the Contracting Officer shall obtain written recommendations and concurrence from the Oversight Manager and obtain Legal Division advice on the propriety of the termination and the likely results of such action.
- (4) The Contracting Officer must also determine whether any unpaid contractor invoices should be paid, ensure that the contract file contains all documents relating to the termination, and determine whether the termination will affect other contracts with the contractor.
- (5) The Contracting Officer shall request that the Legal Division draft documents necessary to effect the termination, including a Notice of Termination to the contractor, and then execute the termination documents drafted by the Legal Division.
- (6) The Contracting Officer shall notify the Policy and Compliance Section, ASB, of any contractor terminated for default. The Policy and Compliance Section shall forward this information to the Contracting Law Unit for possible exclusion consideration.

**8.E.4. Procedures for Termination for Convenience**

**8.E.4.a. Authority**

The FDIC General Provisions include a *Termination for Convenience* clause that allows FDIC to terminate any contract, or order, in whole or in part, at any time in its

sole discretion, if the Contracting Officer determines that such termination is in the best interests of FDIC. The Contracting Officer shall obtain the written concurrence from the Oversight Manager and Legal Division representative before proceeding with a termination for convenience.

**8.E.4.b. Procedure**

FDIC shall terminate by delivering to the contractor a notice of termination for convenience of FDIC specifying the extent of termination and the effective date. The notice of termination shall be delivered to the contractor at least thirty (30) days before the effective date of the termination. After receipt of the notice, the 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. The contractor shall deliver to 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 FDIC. The contractor will generally be paid for allowable costs incurred up to the termination.

**8.E.4.c. Partial Termination**

If the termination is partial, the contractor may file a proposal with the Contracting Officer for an adjustment of the price(s) of the continued portion of the contract or order. The Contracting Officer shall make any adjustment agreed upon. Any proposal by the 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.

**8.E.4.d. Effect of Termination**

FDIC shall not be liable or responsible for payment to the contractor or to any subcontractors or vendors, of any fees, charges, penalties, or damages related to the terminated work, which are incurred after the effective date of the termination.

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## SECTION 8.F. CONTRACTOR CONFLICTS OF INTEREST, ELIGIBILITY, AND WAIVER PROCEDURES

### 8.F.1. Policy (MAR 2000)

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

#### 8.F.1.a. Citation

The policy stated in herein is based upon the Contractor Conflicts of Interest Regulations, 12 CFR Part 366. This Regulation is provided as Exhibit XXIV, *12 CFR Part 366*.

#### 8.F.1.b. Applicability

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

#### 8.F.1.c. Exclusions (MAR 2000)

- (1) These limits and requirements do not apply when the FDIC is acting as a conservator of a failed financial institution or when operating a bridge bank.
- (2) These limits and requirements do not apply to contracts for the acquisition of goods. The fact that a contract for the acquisition of goods may also include incidental services would not subject the contractor to these limits and requirements. Incidental services may include technical support, installation, and set-up services that are generally available to purchasers of similar goods.

#### 8.F.1.d. Disqualifying Conditions Under 12 CFR Part 366

- (1) No person shall perform services under an FDIC contract and no contractor shall enter into any contract with FDIC if that person or contractor:
  - (a) Has been convicted of any felony;
  - (b) Has been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by the Office of the Comptroller of the

Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation, or their successors;

- (c) Has demonstrated a pattern or practice of defalcation regarding obligations; or
  - (d) Has caused a substantial loss to any Federal deposit insurance funds.
- (2) Procedures. Contractors with disqualifying conditions that arise prior to or after award shall notify FDIC in writing within ten (10) calendar days and will be handled in accordance with 12 CFR Part 366. There are no waivers for disqualifying conditions.

**8.F.1.e. Conflict of Interest**

Conflict of interest means a situation in which:

- (1) A contractor; any management official or affiliated business entities of a contractor; or any employees, agents, or subcontractors of a contractor who will perform services under a proposed or existing contract with FDIC, has one (1) or more personal, business, or financial interests or relationships which would cause a reasonable individual with knowledge of the relevant facts to question the integrity or impartiality of those who are or will be acting under a proposed or existing FDIC contract; or
- (2) A contractor; any management official or affiliated business entities of a contractor; or any employees, agents, or subcontractors of a contractor who will perform services under a proposed or existing contract with FDIC and is an adverse party to the FDIC, RTC, FSLIC, or their successors, in a lawsuit; or
- (3) A contractor; any management official or affiliated business entities of a contractor; or any employees, agents, or subcontractors of a contractor who will perform services under a proposed or existing contract with FDIC, has ever been suspended, excluded, or debarred from contracting with a Federal entity or has ever had a contract with FDIC, RTC, FSLIC, or their successors rescinded or terminated prior to the contract's completion and which rescission or termination involved issues of conflicts of interest or ethical responsibilities; or
- (4) Any other facts exist which FDIC, in its sole discretion, determines may, through performance of a proposed or existing FDIC contract, provide a contractor with an unfair competitive advantage which favors the interest of the contractor or any person with whom the contractor has or is likely to have a personal or business relationship.

**8.F.1.f. Waivers**

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

**8.F.1.g. Subsequent Submissions**

During the term of the contract, the contractor shall:

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

**8.F.1.h. Failure to Provide Information**

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

**8.F.1.i. Retention of Information**

A contractor shall retain the information upon which it relied in preparing its certification(s) during the term of the contract and for a period of three (3) years following the termination or expiration of the contract and shall make such information available for review by FDIC upon request.

**8.F.1.j. Delayed Compliance in Emergencies**

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

**8.F.1.k. Additional Contractual Requirements**

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

**8.F.2. Minimum Standards**

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

**8.F.3. Procedures**

**8.F.3.a. Contractor Application and Contractor Integrity and Fitness Representations and Certifications (JUL 2003)**

These procedures apply to contracting solicitation and award activities when a contractor completes either the Contractor Application Form or the Contractor Integrity and Fitness Representations and Certifications Form and is unable to certify to any item on either form. These procedures also apply when contractors bring potential conflicts of interest to the attention of FDIC. When either of the Forms, or the matter indicates a potential or actual conflict of interest, the matter shall be referred to the Policy and Compliance Section of ASB, for review and coordination with and resolution by CLU. Field eligibility and conflict of interest issues should be forwarded to the Regional Office's contracting staff. Likewise, the Regional Office's contracting staff should forward those issues to the Policy and Compliance Section in Washington, D.C. for coordination with and resolution by CLU.

**8.F.3.b. Roles, Responsibilities, and Procedures (MAR 2000) (JUL 2003)**

- (1) Acquisition Services Branch
  - (a) The Acquisition Services Branch (ASB) is responsible for reviewing contractor submissions and identifying eligibility issues under 12 CFR Part 366. Generally, eligibility issues arise:
    - [1] During the review of applications submitted by contractors who have expressed an interest in providing services to FDIC;
    - [2] During the review of eligibility representations and certifications submitted by potential and current contractors in connection with a solicitation or modification of a contract;
    - [3] In a request for a waiver of a conflict of interest submitted by a contractor (either upon their own identification of such issues or identification of such issues by FDIC);
    - [4] In a request for eligibility representations and certification limitations;
    - [5] From outside sources of information such as other contractors, media, etc.; or
    - [6] Upon referral of contractor information from FDIC Regional Offices.
  - (b) To receive a solicitation, a contractor who is interested in providing goods or services to FDIC and becoming registered on the FDIC



National Contractor System (NCS) must complete a Contractor Application Form. This form requires contractors to certify that they meet minimum standards of contractor eligibility requirements. ASB will review the Application Form for completeness and identify any potential eligibility issue. If the application is complete and no eligibility issue is raised, ASB will approve the contractor's Application for input into the NCS database. If the application is incomplete, ASB will obtain the missing information from the contractor. If the application contains a qualified answer or an answer that raises eligibility or conflict of interest issues, ASB will collect any necessary information and documentation, and refer the matter to CLU for eligibility determination and resolution.

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

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

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

- (d) When ASB identifies a potential eligibility or conflict of interest issue, it will notify the affected contractor and send a copy of that notification to CLU. When referring an eligibility or conflicts of interest issue to CLU, ASB will provide the appropriate solicitation and/or contract documents. Additionally, ASB will contact the

potential contractor and obtain any documents which may be requested by CLU and necessary for its review and resolution of the issue.

(2) The Legal Division

(a) The Contracting Law Unit.

- [1] The Contracting Law Unit (CLU) of the Legal Division provides legal counsel to ASB in resolving independent contractor issues. CLU will address eligibility cases involving litigation, cases of first impression, and other appropriate cases before those actions are finalized. Once CLU has completed its review, it will send its analysis identifying the legally supportable action(s) to ASB along with any supplementary evidence it has gathered.
- [2] CLU is responsible for the overall administration of the *Contractor Conflicts of Interest Regulations* (12 CFR Part 366) with respect to all contracts for services, with the exception of legal services. CLU determines whether an independent contractor meets the standards enumerated in 12 CFR Part 366 and is eligible to provide services to FDIC. CLU will coordinate with ASB on eligibility determinations.
- [3] CLU will review conflicts of interests identified on a Contractor Application Form and eligibility certification(s) for the final awardee upon referral by ASB. CLU will act on requests for a waiver of an eligibility requirement or a conflict of interest under 12 CFR Part 366 only for the final awardee in a contract action. CLU will issue a written decision of its determination and furnish a copy to ASB and FDIC's Reading Room. CLU will also prepare eligibility determination cases, conflict of interest waiver cases, final determination appeal cases, or other documents for review by the Corporation Ethics Committee (CEC) where CLU determines that a particular case is one that merits consideration. All cases for consideration by CEC will be reviewed by ASB prior to their submission.

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

- (3) Security Management Section, Division of Administration. The Security Management Section (SMS) conducts background checks on contractors and subcontractors, their management officials, and key employees at the request of ASB. If SMA identifies an eligibility issue or a conflict of interest, it will refer that matter to ASB and CLU.
- (4) Office of the Inspector General. The Office of the Inspector General (OIG) is responsible for investigating contractor misconduct and allegations of criminal conduct under 12 CFR Part 366. Allegations of contractor misconduct may be received by the OIG, CLU, or ASB. ASB and CLU will refer allegations they receive to the OIG for investigation.
- (5) Corporation Ethics Committee. The Corporation Ethics Committee (CEC) serves as an appellate body for reconsideration of decisions regarding contractor conflicts of interest made by CLU. CEC has the authority to reverse, stay, or uphold a final decision. Requests for reconsideration of denials of waivers of conflicts of interest, waivers granted with conditions, or other adverse determinations by CLU may be submitted by the affected contractor or by the division or office for whose benefit the waiver decision was sought. Such submissions must be in writing and support the request for reconsideration. Any decision by CEC with respect to a contractor conflict of interest will constitute the final corporation action on the matter. Eligibility, conflicts of interest, or waiver cases going to CEC are prepared by CLU and reviewed by ASB prior to submission.
- (6) Office of Diversity and Economic Opportunity. The Contracting Officer shall notify the Office of Diversity and Economic Opportunity (ODEO), of any adverse action(s) including intent to rescind the contract of or to suspend and/or exclude an MWOB or SDB firm, Joint Venture with MWOB or SDB participation, and/or prime contractor with MWOB or SDB subcontractors.

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**SECTION 8.G. SUSPENSION AND EXCLUSION OF CONTRACTORS****8.G.1. Policy**

FDIC may suspend or exclude contractors that violate the Contractor Conflicts of Interest Regulation, 12 CFR Part 366 (see APM, 8.F., *Contractor Conflicts of Interest, Eligibility, and Waiver Procedures*) as well as for other causes. The policies and procedures stated in this section are based on the Suspension and Exclusion of Contractors and Termination of Contracts Regulation, 12 CFR Part 367. This Regulation is provided as Exhibit XXV, 12 CFR Part 367.

**8.G.2. Applicability**

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

**8.G.3. Suspension**

Contractors suspended from FDIC contracting programs are prohibited from entering into any new contracts with FDIC for the duration of the period of suspension. FDIC shall not solicit offers from, award contracts to, extend or modify existing contracts, award task orders under existing contracts, or consent to subcontracts with such contractors. Suspended contractors are also prohibited from conducting business with FDIC as agents or representatives of other contractors. A suspension shall become effective immediately upon issuance of the notice.

**8.G.4. Exclusion (JUL 2003)**

Contractors excluded from FDIC contracting programs are prohibited from entering into any new contracts with FDIC for the duration of the period of exclusion. FDIC shall not solicit offers from, award contracts to, extend or modify existing contracts, award task orders under existing contracts, or consent to subcontracts with such contractors. Excluded contractors are also prohibited from conducting business with FDIC as agents or representatives of other contractors. These limitations do not become effective upon the notification of the contractor that there is a possible cause to exclude. Rather, they become effective upon the decision to exclude the contractor as defined in APM, 8.G.5.a., *Contracting Law Unit*. FDIC may combine notices of possible cause to exclude with suspensions, thereby causing the proposed exclusion to have immediate effect.

**8.G.5. Roles and Responsibilities (JUL 2003)**

**8.G.5.a. Contracting Law Unit (JUL 2003)**

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

All reports of contractor misconduct that may support suspension or exclusion action under 12 CFR Part 367, including but not limited to violations of Part 366, false certifications as to the contractor's integrity and fitness, conflicts of interest, or other types of contractor misconduct, should be referred to CLU with a copy to the Program Compliance Unit (PCU), ASB. Where information provided to CLU establishes a reasonable belief that conduct warranting a suspension or exclusion may have occurred, CLU will determine if further action is warranted, as discussed below in APM, 8.G.5.b. If CLU determines that the information provided does not support a reasonable belief of actionable misconduct, it will prepare a memorandum closing the case. Notification of such memoranda will be provided to OIG and PCU. If actionable misconduct is determined, CLU will prepare a notice to the contractor as set forth in APM, 8.G.5.b.(2).

**8.G.5.b. Suspension and Exclusion (JUL 2003)**

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

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

**8.G.5.c. Acquisition Services Branch, (JUL 2003)**

- (1) Once a contractor has been suspended or excluded under 12 CFR Part 367, ASB will ensure that the contractor does not obtain any new contract, extension, or modification of an existing contract, except as provided for in 12 CFR Part 367.19.
- (2) ASB will notify its Contracting Officers of any contractor that has been suspended or excluded from providing services to FDIC upon receipt of FDIC's Suspension and Exclusion List from CLU.
- (3) In the event a suspended or excluded contractor is registered on the NCS database, ASB will make the database entries necessary to reflect the contractor's ineligibility to provide services to FDIC.

**8.G.5.d. Security Management Section, Corporate Services Branch, (JUL 2003)**

- (1) The Security Management Section (SMS) conducts background checks on contracting issues related to vendors/contractors, their subcontractors, and key employees at the request of ASB.
- (2) If SMS identifies a false certification or other matter that might warrant suspension or exclusion, it will refer that matter to CLU with a copy to ASB.

**8.G.5.e. Office of the Inspector General (JUL 2003)**

- (1) The Office of the Inspector General (OIG) is responsible for investigating contractor misconduct. Allegations of contractor misconduct may be received by the OIG, CLU, or ASB.
- (2) ASB and CLU may refer allegations they receive to the OIG for investigation.
- (3) OIG may provide the CLU with audit or investigation reports involving contractor misconduct that might warrant suspension or exclusion action. OIG may also provide follow-up investigatory services that may be necessary to support a suspension and/or exclusion.

**8.G.5.f. Corporation Ethics Committee (JUL 2003)**

- (1) A contractor may appeal the decision of the CLU to the CEC.

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

**8.G.6. Resoliciting Proposals Under Terminated Contracts**

When a contract is terminated for default because of a conflict of interest and the services are still required, the Contracting Officer may consider the feasibility of awarding a new contract to the next firm offering best value to FDIC based upon the initial ranking of offerors from the original proposal evaluation process. In deciding to award from the original proposal evaluation, the Contracting Officer shall ensure that the proposal, as evaluated, is still valid and all pre-award requirements specified in the APM can be satisfactorily completed. If the proposal is no longer valid (e.g., the key personnel are no longer available or too much time has elapsed), then the Contracting Officer shall conduct a full resolicitation for the services.



## SECTION 8.H. CONTRACTING WITH FIRMS HAVING UNRESOLVED AUDIT ISSUES

### 8.H.1. Policy

#### 8.H.1.a. Scope (MAR 2000)

FDIC, in its discretion, may refrain from soliciting firms that have unresolved audit issues. In addition, the FDIC may prohibit these same firms from participating as subcontractors under solicitations and/or contracts. The policy may be invoked when the Office of the Inspector General (OIG) or other audit agency identifies questioned costs that may be potentially recoverable and audit issues remain outstanding or unresolved as a result of the contractor's:

- (1) Failure to cooperate with resolution efforts undertaken by FDIC;
- (2) Failure to adequately support questioned costs; or
- (3) Failure to remit the disallowed portion of the questioned cost.

#### 8.H.1.b. Business Need

In support of this policy, FDIC has determined that it is prudent business to selectively refrain from soliciting future services from audited contractors who are uncooperative or noncompliant in resolving audit issues.

### 8.H.2. Definitions

#### 8.H.2.a. Disallowed Cost

Disallowed cost means a questioned cost that management, in a management decision, has sustained or agreed should not be charged to FDIC.

#### 8.H.2.b. Management Decision (MAR 2000)

Management decision means the evaluation by FDIC management of the findings and recommendations included in an audit report and the issuance of a final decision by FDIC management concerning its response to such findings and recommendations, including actions concluded to be necessary.

#### 8.H.2.c. Questioned Cost

Questioned cost means a cost that is questioned in an audit by FDIC because of:

- (1) An alleged violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds;

- (2) A finding that, at the time of the audit, such cost is not supported by adequate documentation; or
- (3) A finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable.

### 8.H.3. Procedures (MAR 2000)

#### 8.H.3.a. Management Decision (MAR 2000)

After the issuance of a final management decision, audit reports that identify questioned costs under FDIC contracts are assigned to a Contracting Officer for resolution. The Contracting Officer shall provide a copy of the audit report to the contractor by USPS certified mail, return receipt requested with a cover letter that:

- (1) Identifies the Contracting Officer primarily responsible for resolving the audit issues and to whom all communications from the contractor should be sent; and
- (2) Requests that the contractor respond to the findings contained in the report within ten (10) business days of receipt of the letter or such other time as specified by the Contracting Officer. Such responses should include supporting documentation where appropriate.

#### 8.H.3.b. Contractor Failure to Adequately Respond (MAR 2000) (JUL 2003)

If the contractor fails to respond to the request, fails to remit the disallowed portion of the questioned costs contained in the audit report, or otherwise fails to adequately respond to the issues raised in the report, the Contracting Officer shall provide the contractor with a letter via express mail delivery that formally advises the contractor of its failure to cooperate pursuant to APM, 8.H., *Contracting With Firms Having Unresolved Audit Issues*. The letter shall also state that:

- (1) The contractor shall now remit the requested repayment or make other arrangements satisfactory to the Associate Director, ASB, or designee, within ten (10) calendar days of receipt of this letter. If this does not occur, the Director, Division of Administration (DOA), may make a determination that the FDIC may refrain from soliciting or awarding contracts for any future goods or services to this contractor, effective of that date;
- (2) The contractor is prohibited from participating as a subcontractor under new FDIC solicitations and/or contracts; and
- (3) This determination shall remain in effect until all issues identified in the audit report are resolved to FDIC's satisfaction and the contractor is provided a letter from the Contracting Officer confirming resolution of all issues.

**SECTION 8.I. ADVANCE PAYMENTS TO FDIC CONTRACTORS****8.I.1. Purpose**

The purpose of this section is to establish policies and procedures governing advance payments to FDIC contractors.

**8.I.2. Definition**

An advance payment is any payment of funds to an FDIC contractor, prior to receiving goods or services under the contract or prior to the contractor actually beginning performance and incurring costs under the contract.

**8.I.3. Policy**

It is the responsibility of contractors to provide all resources needed for performance under FDIC contracts including any financing necessary for performance of the contract. For this reason, advance payments represent an unusual contracting practice and require special consideration, approval, and administration when expressly provided by the terms and conditions of the contract. Therefore, advance payments to contractors are not to be authorized unless their use can be adequately justified, and clearly documented to be in the best interests of FDIC.

**8.I.4. Authorization (MAR 2000)****8.I.4.a. Approval (MAR 2000)**

Advance payments shall not be provided to an FDIC contractor unless authorized in accordance with this section. If a Program Office considers advance payments to be necessary for contractor performance, the request shall be in writing and approved by the Division Director or designee(s) when the advance is greater than \$50,000 or by the senior executive in a given Division or Office in the Field or designee(s) when the advance is \$50,000 or less. Field designees shall not be made lower than two (2) levels from the senior executive-level. The approval must be provided to the Contracting Officer prior to issuance of the Request for Proposal.

**8.I.4.b. Availability (MAR 2000)**

The availability of advances will be set forth in the solicitation and will be provided in accordance with the terms of the contract.

**8.I.4.c. Limitations (MAR 2000)**

Advances may be approved when the contract is competitively awarded and the **advance will not exceed 25% of the base year contract price**, exclusive of option year prices. The advance may be replenished by FDIC on a monthly basis as the contractor applies the funding to properly incurred contractual expenses. This

replenishment does not require the approval for advances as stipulated in this section. Expenditure authority must be obtained for the contract's aggregate amount, including any advanced amounts, from the appropriate corporate official(s) in accordance with the Expenditure Delegations.

**8.I.4.d. Emergency Advance Payments for Property Management Requirements (MAR 2000)**

Under property management contracts and task orders, special situations or circumstances may occur that put FDIC properties at risk or create emergencies that require immediate attention. For purposes of this provision, emergencies are defined as any situation, circumstance, or special occurrence that threatens the safety or soundness of an FDIC property and/or its occupants, has the potential for significantly undermining FDIC's equity in the property (i.e., anticipated code violations, utility liens, condemnation orders), or creates a potential liability.

When emergencies arise (as specified herein), the Regional Director or designee(s) may approve an advance payment(s) for the direct purpose of addressing or correcting the situation. Emergency advance payment(s) shall be approved in accordance with the Expenditure Delegations. The amount of the emergency payment(s) shall not be applied against the 25% limitation stated in APM, 8.I.4.c. above.

**8.I.5. Request for Advance Payment**

If advance payments are considered necessary for performance, the Program Office shall prepare a written request and justification and provide it to the Division Director or Regional Manager, as appropriate, for approval. The request shall include the following information:

**8.I.5.a. Program Office**

Identification of the requesting Program Office and Oversight Manager.

**8.I.5.b. Scope**

A description of the contract and the anticipated dollar value.

**8.I.5.c. Justification**

Justification for the use of advance payments.

**8.I.5.d. Amount**

Amount of the requested advance payment.

**8.I.5.e. Copies**

Copy of the statement of work and contract including the terms and conditions applicable to advance payments and proposed security requirements.

**8.I.5.f. Certification and Applicability**

Certification that the approval of advances is in accordance with the requirements of APM, 8.I., *Advance Payments to FDIC Contractors*.

**8.I.5.g. Commercially Accepted Practice**

Certification that the provision of advances is a commercially accepted practice, is essential to obtaining a qualified contractor, is necessary for overall contractor performance, and is in the best interest of FDIC.

**8.I.6. Security for Advance Payments (MAR 2000)**

The contractor shall provide security for the advance payment(s) in the form of an irrevocable letter of credit and must be in the amount equal to the advance. However, when an advance payment is deposited into an operating account at a financial institution by FDIC's Division of Finance and FDIC is named as a party to that account, then the contractor is not required to provide security for the advance. The jointly established bank account gives FDIC access to the advance funds in case the contractor goes out of business or their contract is terminated. Notwithstanding, **the Contracting Officer shall ensure that all contracts that provide advance payments include fidelity bond insurance coverage to protect FDIC from losses arising from theft, embezzlement, fraud, or misplacement of funds (see APM, 3.H.4.b., *Fidelity Bond*).**

**8.I.7. Administration and Payment of Advance Payments****8.I.7.a. Contracting Officer Responsibility**

The Contracting Officer shall be responsible for ensuring that all requests for advance payments are properly approved and conform to the requirements of this Section. The Contracting Officer shall be responsible for transmitting all approved requests to the Division of Finance (Accounts Payable).

**8.I.7.b. Advance Payments Deposits (MAR 2000)**

The Contracting Officer shall ensure that the terms and conditions associated with providing advance payments to contractors are fully documented in all awarded contracts.

**8.I.7.c. Controls**

The Contracting Officer shall ensure that the amount of advance payments does not exceed the contractor's financial requirements and closely supervise the contractor's withdrawal of funds from the special bank account in which the advance payments are deposited.

**8.I.7.d. Continuing Adequacy of Security**

After contract award, the Contracting Officer shall be responsible for determining that the security continues to be adequate.

**8.I.8. Invoice and Recording Procedures**

Advances will be netted against invoiced/incurred expenses. Expenses will not be funded until amounts previously advanced have been fully recovered. Advances will be issued under the Purchase Order System (POS). Advances will be thereafter posted as miscellaneous receivables from the Contractor under the General Ledger (GL) Accounts-Miscellaneous Receivables, Account #035601. As the contractor's progress payment draws are revised and approved, credit memos will be processed to expense GL Account #035601 and to adjust the POS.

**8.I.9. Contractor Reports**

The contractor shall provide a monthly status/reconciliation report to the Contracting Officer. The report must indicate the use of all funds advanced, the remaining funds available, copies of relevant invoices, and such other documentation as the Contracting Officer may request.

**8.I.10. Restriction of Advance Payments**

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

**8.I.11. Reconciliation of Advances**

All advances to contractors will be promptly reconciled by Oversight Managers and Contracting Officers. Contractors that receive advance payments will be required to provide supporting documentation for all incurred costs, for which advance payments have been made, on a monthly basis. Final reconciliation of all advances shall be completed within sixty (60) days of the final delivery of goods or the performance of services required under the contract.

**8.I.12. Audit and Review**

The Contracting Officer shall ensure that all contractors that receive advances are subject to an annual review by the Division of Resolutions and Receiverships Office of Internal Revenue or by an independent accounting firm retained by FDIC. In addition, audits may be performed by the OIG as necessary.

**SECTION 8.J. Checks Received (JUL 2003)**

**8.J.1. Checks Received (JUL 2003)**

Checks are sometimes received by FDIC personnel, particularly Oversight Managers or Technical Monitors, who are not authorized to process them. For proper procedures for processing such payments, see Circular 4200.1.

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# CHAPTER 9

## OTHER CORPORATION PROCEDURES

### SECTION 9.A. OVERVIEW

#### 9.A.1. Scope

##### 9.A.1.a. Use of Payment Authorization Vouchers

There are certain limited circumstances when goods or services may be acquired using Payment Authorization Vouchers (PAVs). Procedures are given in APM, 9.B., *Use of Payment Authorization Vouchers*.

##### 9.A.1.b. Use of Federal Supply Schedules and Other Contracts

FDIC is authorized to use contracts established by the Federal Government, including the Federal Supply Schedules (FSS) issued by the General Services Administration (GSA). Procedures to use such contracts are given in APM, 9.C., *Using Federal Supply Schedules and Other Contracts*.

##### 9.A.1.c. Use of Other Government Agencies

FDIC may also obtain goods or services from other government agencies through Interagency Agreements (IAAs). Procedures for using IAAs are given in APM, 9.D., *Procedures for Requesting the Procurement of Goods or Services from Other Government Agencies*.

##### 9.A.1.d. Procurement Credit Card Program (MAR 2000)

FDIC's Procurement Credit Card Program is used when goods or limited services in the amount of \$5,000 or less are acquired on behalf of FDIC. Procedures for the program are given in APM, 9.E., *FDIC Procurement Credit Card Program*.

##### 9.A.1.e. Oral Presentations (MAR 2000)

As an alternative to requiring prospective offerors to submit written technical proposals under formal contracting procedures, FDIC may elect to require oral presentations. Procedures for oral presentations are given in APM, 9.F., *Oral Presentations*.

##### 9.A.1.f. Service Contract Act (MAR 2000)

Obligations under the Service Contract Act (SCA) apply to any FDIC contract for services in excess of \$2,500 written by FDIC acting in its corporate capacity that is not specifically exempted by the SCA. Procedures for implementing the Service Contract Act are given in APM, 9.G., *FDIC Compliance with the Service Contract Act*.

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**9.A.1.g. Section 8(a) Program**

FDIC encourages the use of contractors consisting of under-represented groups. FDIC has entered into a Partnership Agreement with the SBA, which operate the Section 8(a) Program that allows FDIC to enter into contracts directly with 8(a) Participants. The policies and procedures for this program are given in APM, 9.H., *Section 8(a) Program*.

**9.A.2. Applicability**

These procedures apply to all FDIC contracts except those exempted under APM, 1.A.1.e., *Exclusions*.

**9.A.3. Roles and Responsibilities**

The following sections in this Chapter 9 identify the roles and responsibilities of individuals who participate in these special contracting programs.

**9.A.4. Policy**

It is FDIC policy to procure goods or services competitively to the fullest extent practicable in accordance with the procedures stated in the APM. This will ensure that the Corporation obtains goods or services of the required quality at fair and reasonable prices while maintaining an arm's length business relationship with prospective offerors and contractors.

**9.A.5. Contracting Authority (JUL 2003)**

Contracting Officers with delegated authority are the only FDIC employees that are authorized to enter into, modify, and terminate contracts on behalf of the Corporation. Corporation employees without delegated contracting authority who acquire goods or services are acting outside the scope of their authority unless as authorized under APM, 9.B.3., *Use Of Payment Authorizations Vouchers*.

**SECTION 9.B. USE OF PAYMENT AUTHORIZATION VOUCHERS****9.B.1. Policy**

It is FDIC policy to procure goods or services competitively to the fullest extent practicable in accordance with the procedures stated in the APM. This will ensure that the Corporation obtains goods or services of the required quality at fair and reasonable prices while maintaining an arm's length business relationship with prospective offerors and contractors.

**9.B.2. Contracting Authority (JUL 2003)**

Contracting Officers with delegated authority are the only FDIC employees who are authorized to enter into, modify, and terminate contracts on behalf of the Corporation. Corporation employees without delegated contracting authority who acquire goods or services are acting outside the scope of their authority unless as authorized under APM, 9.B.3., *Use Of Payment Authorization Vouchers*.

**9.B.3. Use of Payment Authorization Vouchers (MAR 2000)**

As stated in APM, 9.A.5., *Contracting Authority*, Contracting Officers are the only FDIC employees authorized to enter into contracts on behalf of the corporation. However, there are circumstances where goods or services are provided to the corporation through its normal course of business that are not procured by a Warranted Contracting Officer. Expenses for these types of goods and services are listed below and represent the only circumstances where payment may be made by a PAV (see APM, Exhibit I, *Expenditure Delegations for Contracts, Leases, Legal Services, and Non-Procurement Related Expenses*, for definition of Non-Procurement Related Expenses).

**9.B.3.a. Non-Procurement Administrative-Related Expenses (MAR 2000) (JUL 2003)**

- (1) Travel-Related Services. Facilities and services arrangements made by FDIC's travel agency services contractor including but not limited to seminars, meetings, conferences, training sessions and bank closings.
- (2) Utilities. Utilities and local telephone services. Local telephone services may be interpreted as including the actual cost of services associated with cellular/mobile phones, pagers, etc. However, any actual equipment costs should not be paid for by PAV, but by purchase order.
- (3) Catering Services. Payment to FDIC contractors operating food services operations catering functions in FDIC buildings.
- (4) Postage. Postage obtained from the U.S. Post Office.
- (5) Travel Expenses. Payments to reimburse FDIC employees for expenses incurred while on travel status, such as rental of rooms or work space, and related equipment and services, as listed in the Government Travel Regulations (GTR), Section 10710.

- (6) **Invitational Travel.** Payments to reimburse speakers and others invited to attend official FDIC meetings and functions.
- (7) **Membership Fees.** Payments of membership fees or dues associated with corporate sponsored memberships for FDIC employees in professional associations, in accordance with FDIC Circular 2660.1 entitled *Corporation Guidelines for Membership In Professional Organizations*.
- (8) **Relocation Expenses.** Payments to reimburse FDIC employees for relocation and related expenses, in accordance with the GTR. These payments are authorized only by the Travel and Relocation Unit in Washington, D.C.
- (9) **Training Expenses.** Payments to reimburse FDIC employees for training expenses (must be supported by a canceled check indicating that the employee has made payment to the contractor) under an approved SF182.
- (10) **Licensing Fees.** Payments to reimburse FDIC employees for licensing fees relative to maintaining professional accounting for financial certification, including a Certified Public Accountant Certificate.
- (11) **Miscellaneous Items.** Payments for other miscellaneous items such as: commuter payments, replenishment of petty cash or imprest funds, rental of post office boxes, clothing allowances for FDIC drivers in accordance with FDIC policies and procedures, and refunds resulting from duplicate or overpayment to FDIC.
- (12) **Rent Payments.** Payments of rent, including operating expense and tax pass throughs, as set forth in FDIC leases.
- (13) **Payments to Lessors for Lease Related Expenses.** Payments to lessors for expenses other than those provided for in item (12) above, that are either stipulated in or provided for under the lease. Such goods and services shall be provided by or through the lessor and shall be associated with the day-to-day operation of FDIC leased space. The following is a non-exclusive listing of examples of goods and services covered by this item:
  - (a) After hours HVAC;
  - (b) Added janitorial and trash removal;
  - (c) Miscellaneous HVAC;
  - (d) Mechanical, plumbing, and electrical services (including replacement of light bulbs and tubes);
  - (e) Repairs to appliances affixed to the leased premises;
  - (f) Additional pest control services; and

- (g) Miscellaneous carpentry, painting, and repairs.
- (14) Subscriptions. Payment to reimburse Division of Supervision and Consumer Protection (DSC) field office personnel for periodical subscriptions and/or book purchases up to \$115.00 in accordance with the Field Subscription Program.
- (15) Expenses Associated with Senior Executive-Level Meetings. Payment to reimburse Senior Executives (i.e., E-3 Level and higher) for expenses associated with business meetings, including but not limited to meals and meeting rooms.
- (16) FDIC Bills of Lading Expenses. Payments to reimburse General Services Administration (GSA) contractors for FDIC-approved expenses under official FDIC bills of lading.
- (17) Expressions of Sympathy and Acknowledgement of Personal Events. Donations to charities and expenses for U.S. Savings Bonds to acknowledge births and adoptions pursuant to Directive 2800.1, dated February 15, 1997.
- (18) Financial Obligations Under RTC Contracts. Payments relating to contractor claims, settlements and/or aged/unpaid invoices resulting from closeout activities under RTC contracts that were not officially transitioned to FDIC or recorded in the Purchase Order System.
- (19) Job Fairs. Registration fees for job fairs associated with recruiting new FDIC employees only when payment cannot be made with the FDIC procurement credit card.
- (20) Visiting Scholar Program. Payments required under an Intergovernmental Personnel Act Assignment Agreement to Universities, or other non-profit organizations for reimbursement of salaries, fringe benefits, and travel subsistence expenses.
- (21) Newspaper Advertisements. Payment for newspaper advertisements.

**9.B.3.b. Non-Procurement Business/Legal-Related Expenses (MAR 2000) (JUL 2003)**

- (1) Payments to Financial Institutions. Payments to financial institutions for loss sharing or assistance agreement transactions, settlement transactions and bank failure closing activities, such as payment of initial funds to the assuming or agent bank and payment to the Federal Reserve Bank to enable the release of loans that were pledged by the bank prior to closing. This shall also include expenses incurred by FDIC as a non-lead participant in a loan payable to the lead participant.
- (2) Real Property Taxes. Payments of real property taxes on real estate owned or managed by FDIC in either its corporate or its receivership



capacity. This does not include payments related to contracts for tax appeal services or taxes paid directly by property managers.

- (3) **Occupancy Taxes.** Payments of occupancy taxes to the State of Virginia and Arlington County for state bank examiners who stayed at the Seidman Student Center.
- (4) **State and Local Charges.** Payments to Federal, state and municipal government entities for items that, by their nature, are not competitively bid, such as building permits and inspection fees.
- (5) **Proceedings.** Payments associated with legal proceedings or matters such as judgments, court costs, filing fees, bond fees in judicial and nonjudicial foreclosures, court and county clerk fees, Uniform Commercial Code fees, subpoena fees, witness fees, sheriff or process server fees, referee fees, receiver fees, advance checks for foreclosed assets to be purchased by the Division of Resolutions and Receiverships (DRR), court reporters, and experts to assist in the preparation and evaluation of a legal matter.
- (6) **Escrow Funds.** Payment of funds held in escrow, such as trustee for owner funds and work-in-process accounts.
- (7) **Discretionary Claims.** Payments of discretionary claims (general creditor and uninsured depositor claims).
- (8) **Legal Division Expenses.** Payments of Legal Division expenses that cannot be processed through the Legal Services invoice system, such as indemnification of bank officers or FDIC employees.
- (9) **Asset Pool Servicers.** Payments to Asset Pool Servicers involving previously authorized assistance agreements for contractor operating expenses, incentive fees, and permitted advances pursuant to the Servicing Agreement.
- (10) **Subsidy Expenses.** Payment to reimburse receivership for subsidy expenses such as discounts or other closing assistance paid by FDIC as part of the Affordable Housing Program.
- (11) **Banking Services.** Payments to depository institutions for cleared checks, bank service fees, and the purchase of returned checks, and for services to manage the banking relationships of the corporation and receiverships by DOF.
- (12) **Borrowing Charges.** Payments of funds to the receiverships as result of a borrowing from the corporation.
- (13) **Receivership Expenses.** Payments to the Corporation for receivership billings, borrowings, cash sweeps, etc.

- (14) Payroll Servicers. Payments to payroll servicers for payroll expenses related to former employees of failed banks who assisted FDIC during the closing.
- (15) Tax Filing Servicers. Payments to tax filing servicers for amounts withheld from employee relocation benefits, due and payable to tax authorities.
- (16) Mortgages. Payments of principal balance on obligations owed on notes or mortgages payable.
- (17) Refunds. Payments of member bank FDIC insurance assessment refunds.
- (18) Transfer of Funds. Transfer of funds from/to split receivership bank and home locations.
- (19) Legal Notices. Payments for legal notices of claims required by statute.
- (20) Finder's Fees. Payment (called Finder's Fees) to private sector firms or individuals in return for the recovery of FDIC lost property in accordance with the policies and procedures in APM, 10.F., Finder's Fee.
- (21) Affordable Housing Program Expenses. Payments to Technical Assistance Advisors when services have been secured by FDIC Memoranda of Understanding for activities related to the promotion of sales of qualifying residential properties, from training to pre-marketing activities through closing. Also included are payments to monitoring agencies (state housing finance agencies, local entities, and national and local nonprofit organizations) for administrative and monitoring fees pursuant to Memoranda of Understanding and/or Land Use Restriction Agreements.
- (22) Affordable Housing Program Advisory Board Expenses. Administrative support and payment of those expenses covered under the Charter of the Affordable Housing Advisory Board. These expenses include, but are not limited to, travel, meeting space, hotel services, car/van rental for property tours, legal transcription services, per diem, and invitational travel expenses for witnesses.
- (23) Transcripts Expenses. Payments for transcripts and/or other deposition documentation required by FDIC but produced by opposing counsel or court-appointed reporters (i.e., produced outside the control of FDIC).
- (24) Monthly Cooperative Maintenance Fees. Expenses for monthly cooperative maintenance fees for assets owned by the FDIC in either its receivership or corporate capacity.
- (25) Payments to Other Federal Agencies. Payments to other Federal agencies for goods and services.

- (26) Call Report Processing. Payments to reimburse the Federal Financial Institution Examination Counsel (FFIEC) for costs incurred as part of Call Report Processing. The Call Report is a quarterly financial statement that is jointly developed by and filed by the Federal Reserve Board, FDIC, and the Office of the Comptroller of the Currency.
- (27) Property Management. Permitted advances pursuant to the Property Management Agreement.
- (28) Ground Lease. Payments for ground lease expense when paid directly by FDIC.
- (29) RTC Mortgage Backed Securities (MBS) Expenses:
  - (a) Administration Expenses. Payments for fair market valuations and legal opinions incurred in the course of terminating existing RTC issued MBS. Also, payments for expenses related to the administration and termination of existing RTC issued MBS that are associated with and required under the transaction Pooling and Servicing Agreement.
  - (b) Rating Agency Expenses. Payments to Rating Agency Firms for i) providing reviews of reserve fund reductions, which are necessary in order to ensure the certificates maintain their current ratings and ii) to pay trailing expenses subsequent to the termination of a RTC issued MBS.
  - (c) Assignment and Recordation Expenses. Payments associated with the recording and assignment of mortgage loans into trusts as required and set forth in the Pooling and Servicing Agreement of each RTC issued MBS.

#### **9.B.4. Payments Authorized by PAV (JUL 2003)**

FDIC organizational units must submit a completed PAV to the Accounts Payable Processing Unit, Division of Finance (DOF). The PAV must provide all required accounting data and must be signed by an individual with delegated expenditure authority commensurate with the authorization amount.

In addition, all PAVs shall cite the basis for authorizing the payment as stated in APM, 9.B.3., *Use of Payment Authorization Vouchers*. If the APM reference is not listed on the PAV, it will be returned to the approving official for corrections.

#### **9.B.5. Reporting Improper Use of PAVs (JUL 2003)**

PAVs that are used to circumvent the official contracting process will be reported to the Director, Division of Administration on a quarterly basis. DOF will provide ASB with a copy of all improper PAVs on a quarterly basis and ASB will consolidate the information into a quarterly report. The

report will include the name of the official who authorized the payment, date of authorization, date of payment, amount, and description of the goods or services procured.

**9.B.6. Sanctions**

When appropriate, the authorization of one (1) or more payments for improperly acquired goods or services may result in the revocation of the authorizing official's expenditure authority and any other disciplinary actions deemed appropriate for acting outside the scope of their authority.

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## SECTION 9.C. USING FEDERAL SUPPLY SCHEDULES AND OTHER CONTRACTS

### 9.C.1. Scope

#### 9.C.1.a. Definition

Federal Supply Schedules (FSS) are indefinite-delivery contracts because neither the quantities nor the delivery terms are known at the time the contracts are awarded. The General Services Administration (GSA) issues FSS schedules for use by all Federal entities.

#### 9.C.1.b. Use of Federal Supply Schedules

Contracting Officers may place orders under these schedules. All terms of the schedule contract apply to such an order. These schedules are mandatory for certain Federal users, but they are optional for FDIC. FDIC Contracting Officers shall consider using these schedules to simplify the purchasing process for frequently procured items. FDIC is not authorized to change the terms of any FSS schedule.

#### 9.C.1.c. Product Listings

GSA uses Federal Stock Classes (FSCs) to categorize products available from its schedules.

#### 9.C.1.d. Available Services

GSA awards specific service contracts on a regional basis. These vary depending on the needs of the Federal users within each region.

#### 9.C.1.e. Maximum Order Threshold (JUL 2003)

- (1) When an order exceeds the Maximum Order Threshold, the Contracting Officer has the opportunity to contact the FSS contractor to negotiate a lower price before placing the order.
- (2) To assist a Contracting Officer when he or she should seek a price reduction, a level called Maximum Order Threshold is a new provision in the FSS contract. When a Contracting Officer's order exceeds this level, he or she has the opportunity to contact the Contractor for a lower price before placing the order.

#### 9.C.1.f. Schedule Information

FDIC personnel can obtain information on currently available goods or services by ordering copies of the Federal Supply Schedule Program Guide from:

General Services Administration  
Centralized Mailing List Service (7CAFL)  
P.O. Box 6477  
Fort Worth, TX 76115

Phone: (817) 334-5215/5240  
Fax: (817) 334-5227

### **9.C.2. Types of Schedules**

Schedules differ according to type. Some important differences include the level of pre-award competition obtained by GSA and the amount of detail contained in each contract. Basic types are as follows.

#### **9.C.2.a. Multiple-Award Schedules**

These provide a choice among contractors offering comparable products. These schedules reference each listed contractor's price list. ASB is required to obtain the price list and, if needed, a fuller description of the product offered directly from the FSS contractor. After obtaining this information, there are several factors to evaluate before placing an order. FDIC Contracting Officers shall eliminate products that do not meet the needs of FDIC users. Prior to award, Contracting Officers must consider the following items:

- (1) Delivery time. If the required delivery in the Requirements Package is short-term, ASB shall verify that the need for a quick turn-around time is legitimate. The schedule will provide a delivery time, but some FSS contractors may be in a position to offer quicker delivery. Often contractors base contract delivery on a "worst-case" situation. FDIC will often be able to negotiate a better delivery time.
- (2) Specific or unusual circumstances. Included within this category are situations in which a product's performance characteristics do not meet FDIC needs. For example, a copier does not produce the required number of copies per minute or the size of an item will not fit within the available physical space of the FDIC user.
- (3) Compatibility with existing systems or equipment. For example, a box of typewriter ribbons is useless unless the ribbons fit the FDIC user's typewriter.
- (4) Need for special features. For example, an FDIC user may need a calculator designed especially for real estate asset management. Such a calculator should be able to calculate, using only a few keystrokes, remaining balances for a loan amortization during various times in the life of the loan and other specialized information. A standard calculator would not meet this FDIC need.

- (5) Price. Some schedules have a built-in pricing indicator using color code identifiers to indicate lower- (green), medium- (yellow), and higher-priced (red) products. Equipment trade-in considerations and transportation factors may have an effect on the quoted price for specific locations and users. The quoted price, therefore, may not be the best market price. GSA does not negotiate prices with multiple-award schedule holders. It assumes that these contractors provided their best prices as a result of the competitive pressure from other contractors on the schedule. Although this is normally a good assumption, market conditions often change so that FDIC's most advantageous price might be obtained off schedule on the current market. In such cases, market research is worthwhile.

#### **9.C.2.b. Single-Award Schedules**

Single-award schedules provide only one (1) supplier at a specific negotiated price, for delivery at locations identified in the schedule. Most schedules contain all information necessary for placing orders. Some schedules specify that schedule contractor catalogs must be used for additional ordering information, to aid in the selection of fabrics, colors, and similar variables. FDIC Contracting Officers may wish to consider off-schedule market prices before placing orders against these schedules to take advantage of possible lower prices in the current market.

#### **9.C.2.c. New-Item Introductory Schedule**

New or improved products are allowed to enter the FSS system on a trial basis. If Federal demand is sufficient, the product is transferred to a single- or multiple-award schedule.

### **9.C.3. Ordering Procedures (MAR 2000) (JUL 2003)**

Orders from a schedule contractor shall be made directly with the firm, award being made using the FDIC FSS delivery order form. The GSA contract number shall be clearly referenced on the form. The delivery order shall be signed by the Contracting Officer and sent to the contractor for fulfillment. No acknowledgement is necessary. SDBs and MWOBs selected from the FSS shall not receive any evaluation adjustment.

#### **9.C.3.a. FSS Awards of \$100,000 or Less (MAR 2000) (JUL 2003)**

A delivery order may be placed directly with any FSS contractor without further price comparison.

#### **9.C.3.b. FSS Awards Greater than \$100,000 but Less than the Maximum Order Threshold (MAR 2000) (JUL 2003)**

For delivery orders awarded under an FSS contract in this price category, price comparisons shall be conducted with at least three (3) FSS contractors offering the required product or service. The Contracting Officer should ensure a reasonable



number of MWOB or SDB firms are included. At the Contracting Officer's discretion, the price comparisons may be through review of published price lists or through oral or written Requests for Quotations (RFQs). All quotes must be based on the same estimated volume of services or goods to be purchased.

Contracting Officers may allow for a limited technical review, which is optional. If a limited technical evaluation is included, the final award shall be based upon a best value determination including price and/or delivery/technical requirements. The Contracting Officer shall ensure that the verbal or written quotes are documented in the official contract file and clearly justify the propriety of the award decision.

**9.C.3.c. FSS Awards Greater than the Maximum Order Threshold (MAR 2000) (JUL 2003)**

For delivery orders awarded under an FSS contract in this price category, price comparisons shall be conducted with at least three (3) FSS contractors offering the required product or service. The Contracting Officer should ensure a reasonable number of MWOB or SDB firms are included. The Contracting Officer shall seek price reductions by obtaining written quotes from each FSS contractor.

Contracting Officers may allow for a limited technical review (i.e., optional) when procuring goods under an FSS contract. However, Contracting Officers shall require a limited technical evaluation when the FSS award is for services.

The final award shall be based upon a best value determination (e.g., price, technical evaluation and/or delivery requirements for services). The Contracting Officer shall ensure that the written quotes are documented in the official contract file and clearly justify the propriety of the award decision.

**9.C.3.d. Use of Brand Name Specifications (MAR 2000)**

If price comparisons, as required under APM, 9.C.3.b. and c. above, are to be conducted only among FSS contractors selling a specific brand-name item, the Program Office must provide a written justification to the Contracting Officer demonstrating why a specific brand is essential to the requirement. Contracting Officer approval is required prior to requesting verbal or written quotes.

**9.C.3.e. Procuring Non-Schedule Goods or Services (MAR 2000)**

Generally, FSS contracts offer a vast array of goods and /or services covering most customer needs within a given schedule. However, there may be times when a FSS contractor does not offer goods and/or services related (i.e., incidental) to the overall requirement. If the cost of "non-schedule" incidental goods and/or services is less than 25% of the total price of procurement, a FSS contractor is permitted to add these to the FSS delivery order.

## SECTION 9.D. PROCEDURES FOR REQUESTING THE PROCUREMENT OF GOODS OR SERVICES FROM OTHER GOVERNMENT AGENCIES

### 9.D.1. Overview

ASB is responsible for establishing and awarding all Interagency Agreements (IAA) for acquisitions of goods or services from other government agencies. This section delineates procedures to be followed when requesting ASB to acquire goods or services from other government agencies under new or succeeding IAAs.

### 9.D.2. Scope

Goods or services acquired by FDIC from other government agencies include, but are not limited to, bank examination materials from the Federal Reserve Board, postage from the U.S. Postal Service, payroll and related services from the U.S. Department of Agriculture, auditing services from the General Accounting Office, and supplies and forms from the General Services Administration.

### 9.D.3. Responsibility

In order to achieve improved controls over corporate accounting records regarding payments to other government agencies, and to assure conformance to the Contracting Officer Warrant Program and Expenditure Delegations, ASB is assigned the responsibility for awarding all IAAs and acquiring these types of goods or services. This responsibility includes the establishment of IAAs formalizing the acquisition of goods or services from other government agencies and recording the award in the Purchase Order System.

### 9.D.4. Procedures

#### 9.D.4.a. Required Submissions for New and Succeeding IAAs (JUL 2003)

Program Offices shall initiate IAAs by sending a Requirements Package to the appropriate ASB. Requirements Packages consist of:

- (1) A completed Procurement Requisition (form FDIC 3700/01) prepared according to the requirements of APM, 4.A.4., which must include:
  - (a) The name and telephone number of a contact person at the providing agency;
  - (b) The words "Interagency Agreement" typed and highlighted at the top of box 12;
  - (c) The Program Office and billing agency location code and accounting information for the FDIC Program Office (the latter is the FDIC Accounting Control Key (ACK) number); and

- (d) The appropriation symbol of the providing agency (when applicable).
- (2) Evidence of expenditure approval and budgetary approval for the requested goods or services, generally indicated by signatures on the Procurement Requisition;
- (3) A statement of work or specification typed in box 12 of the Procurement Requisition or attached to the Procurement Requisition; and
- (4) In the case of a succeeding IAA, the expiring written IAA with the providing agency.

**9.D.4.b. Information Sources**

- (1) Program Offices should contact the DOF Cash Management Unit for the providing agency location code, accounting information, and appropriation number.
- (2) Program Offices should contact the DOF Fund Accounting Section for the appropriate FDIC ACK.

**9.D.4.c. Contracting Officer Action**

ASB shall make all necessary arrangements with the providing agency for new procurement, and establish the IAA for both new and existing (expiring) IAAs. ASB will also develop a standard format for IAAs, and, when necessary, generate a written IAA for the requirement in consultation with the Legal Division. Copies of all IAAs will be provided to the Program Office and the Cash Management Unit.

**9.D.4.d. Oversight Manager Responsibilities (MAR 2000)**

The Program Office shall appoint an Oversight Manager, and a Technical Monitor if necessary, for an Interagency Agreement when there are substantive services involved, or when the Program Office determines that an Oversight Manager and Technical Monitor are necessary.

**9.D.4.e. Background Investigations (JUL 2003)**

If there is a private (non-government) contractor performing under and Interagency Agreement (IAA), it shall be subject to all of the requirements for background investigations and fingerprinting with which all other private contractors are required to comply. The requirements can be found in APM, 6.E.2.e., *Background Investigations*.

**9.D.4.f. Invoicing**

All IAAs will be processed in the POS as "T" class of order, which does not require prepayment approval by the Program Office. When the providing agency makes the deduction from the FDIC's U.S. Treasury account, an invoice is created which is then downloaded by the Cash Management Unit. The Cash Management Unit will submit the invoice to Accounts Payable to process the payment against the purchase order.

**9.D.4.g. Discrepancies**

Program Offices shall be responsible for tracking expenditures against IAAs on the monthly activity reports distributed by DOF. When discrepancies are noted between the amount of money that the providing agency has deducted from the FDIC's U.S. Treasury account and the IAA terms and conditions, Program Offices shall contact the Contracting Officer for assistance.

**9.D.5. Fedlink Program**

The Fedlink program of the Library of Congress is an example of the effective use of contracts with other agencies. The Library of Congress enters into basic ordering agreements on an annual basis for a variety of information services including periodicals, books, CD-ROMs, computerized services, and other information retrieval services. Volume discounts are negotiated for the Government as a whole. FDIC is an authorized user of the Fedlink program. Delivery orders can be placed by FDIC against Library of Congress' basic ordering agreement with the relevant firm.

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**SECTION 9.E. FDIC PROCUREMENT CREDIT CARD PROGRAM****9.E.1. Overview (MAR 2000)**

This section establishes policies and procedures concerning FDIC's participation in a Government-wide Procurement Credit Card Program for use when goods or limited administrative services of \$5,000 or less are acquired on behalf of FDIC in both its corporate and receivership capacities. The purpose of the credit card program is to provide a simplified method of procuring low dollar value goods or services, and to reduce the administrative timeframes generally associated with these types of procurements. In addition, the process is designed to streamline related payment procedures and reduce administrative prices by facilitating cash management practices through the consolidation of payments, reduction of petty cash funds, and strengthening of internal management controls.

**9.E.2. Background (MAR 2000)**

In an effort to streamline the procurement process for low dollar value goods or services, FDIC has elected to participate in the GSA Government-Wide Credit Card Program. In accordance with the terms and conditions of GSA's master contract for the Purchase Card Services Program, the FDIC has awarded a task order to Bank of America. The period of performance includes a three-year base period from November 30, 1998 through November 29, 2001, with seven (7) one-year renewable option periods that are contingent upon GSA's exercising the Master Contract option periods.

**9.E.3. FDIC Participation**

Most government agencies participating in GSA's Government-Wide Credit Card Program are subject to the Federal Acquisition Regulations (FAR); however, FDIC is not subject to FAR. Therefore, some differences exist between the GSA credit card policies and those of FDIC. The documents provided to participants by Bank of America contain certain policies and procedures that do not apply to FDIC. Participants are to refer to this section 9.E. for guidance regarding FDIC's policy under the GSA's Government-Wide Credit Card Program. If a question arises regarding the applicability of a policy or procedure cited someplace other than in this section, the FDIC Agency Program Coordinator (APC) shall provide clarification and guidance.

**9.E.4. Roles and Responsibilities (MAR 2000)**

Several individuals or offices play a role in the successful operation of FDIC's Procurement Credit Card Program. Their responsibilities are detailed as follows:

**9.E.4.a. Program Administration Function (MAR 2000) (JUL 2003)**

Agency Program Coordinator. The Agency Program Coordinator (APC) function is performed by the Associate Director, ASB . The APC serves as FDIC's primary liaison to Bank of America and GSA and is responsible for the oversight and administration of the FDIC Procurement Credit Card Program nationwide. This includes the day-to-day administrative responsibilities involved in operating the program, as well as monitoring and reporting program activities to FDIC executive

management. The APC is responsible for the development and maintenance of the FDIC Procurement Credit Card Program policy, and provides clarification and guidance to program participants as necessary.

**9.E.4.b. Program Billing Function (MAR 2000) (JUL 2003)**

Program Billing Office. The Acquisition Services Branch (ASB) is responsible for handling all aspects of the billing process associated with the Procurement Credit Card Program. ASB's efforts are coordinated with designated Procurement Credit Card Program participants (specifically, the Accounting Contacts whose functions are described below) to ensure the timely processing of invoices and that payments to Bank of America are made for all cardholder purchases nationwide. ASB verifies the validity of all cardholder statement authorizations against signature cards maintained on file that are signed by program participants who have the delegated authority to approve purchases. ASB also assists program participants with any billing-related problems that arise during the payment and reconciliation process.

**9.E.4.c. Program Participant Functions (MAR 2000) (JUL 2003)**

Integrally involved in the program are three (3) program participants. Their specific functions and responsibilities inherent to the program are described as follows:

- (1) **Approving Officials.** Approving Officials (AOs) represent a division/office and are responsible for reviewing and approving all charges incurred by their cardholders; periodically reviewing purchase receipts in conjunction with the approval of the monthly statements; verifying proper documentation; assisting with the resolution of disputed items, when necessary; and ensuring compliance with the FDIC billing office's requirements for statement verification and approval. Internal procedures should be developed and implemented to ensure that purchase receipts are reviewed periodically with the monthly statements to ensure that purchases are not being split to circumvent the single purchase limit and that the combined charges of their respective cardholders do not exceed established monthly procurement limits. In the event that a cardholder resigns, is reassigned, or terminated, the AO shall notify the APC immediately. The AO may not be subordinate to any cardholder under his/her authority. All AOs will be subject to the specific limitations set forth in the applicable Corporate Redelegations of Expenditure Authority (Form FDIC 1151/01).
- (2) **Cardholders.** Cardholders are designated by the AO, and approved by the APC, to make purchases for their respective division location accounts through the use of their Procurement Credit Cards. Designated cardholders shall be subordinate to their AO. The primary responsibilities with this function are provided as follows:

- (a) Adherence to Policy. Upon receipt of a Cardholder Authority Memorandum and Procurement Credit Card, a cardholder will be responsible for compliance with the policies and procedures of the FDIC Procurement Credit Card Program. Cardholders are responsible for the physical security of their card and for safeguarding the credit card account number. Cardholders must ensure that their card is used solely for official FDIC business, in accordance with FDIC policy, and that the prices obtained for all purchases are fair and reasonable, reflect appropriate discounts, and do not include sales tax.
  - (b) Documentation. Cardholders must be able to support all procurements using the Procurement Credit Card by maintaining sufficient documentation and adequate descriptions to justify the charge as having been made for official FDIC business. Procurements made especially for the purpose of conferences should contain at a minimum a description stating the purpose for the conference, the name of the individual authorizing the function, and a list of all attendees. Conference attendees who are on travel status may not claim per-diem for lunch/dinner furnished at the conference on their travel voucher. Cardholders must maintain sufficient documentation (receipts, charge slips, etc.) for any over-the-counter procurements and maintain a detailed record of all telephone procurements made with the Procurement Credit Card. Cardholders are responsible for verifying the accuracy of the charges reflected on their monthly billing statements and for providing applicable accounting codes with respect to each charge. If a cardholder identifies any charge as invalid, the cardholder must initiate any action necessary to effect resolution, such as obtaining a credit from the vendor or formally disputing the charge through Bank of America.
- (3) Accounting Contacts. Accounting Contacts (ACs) are designated by the AOs to assist ASB with the coordination of the payment process. On a monthly basis, the AC reconciles the cardholder's record of purchases against the cardholder statement for each billing cycle, and prepares a spreadsheet. The spreadsheet contains all purchasing information that was procured within the month's billing cycle, per AO account, and includes accounting information for the appropriation of funds. The AC transmits the spreadsheet(s) and faxes signed front and back copies of authorized cardholder statements to ASB. The ACs are responsible to provide all pertinent documentation, as instructed by ASB, within time-sensitive deadlines to avoid unnecessary interest penalties. Designated ACs are not required to be knowledgeable in accounting practices; however, they should be familiar with Microsoft Excel and FDIC's accounting and organizational code structures.



## 9.E.5. Policy and Guidelines

### 9.E.5.a. FDIC Procurement Credit Card Use

The FDIC Procurement Credit Card Program has been established as a supplement to, not as a replacement for, existing procurement methods, policies, and directives. Its use is intended as another avenue to provide the Corporation with certain low dollar value goods or services that are needed to accomplish its mission. Use of the card as a vehicle to circumvent existing procurement methods, policies and directives is prohibited. It is the responsibility of the cardholder to be familiar with and adhere to existing policies and procedures.

### 9.E.5.b. Authority to Make Purchases with the Procurement Credit Card

Employees designated as cardholders under the FDIC Procurement Credit Card Program may use the Procurement Credit Card to make authorized procurements, within the thresholds set forth in APM, 9.E.5.c., *Procurement Thresholds*. Items procured by the cardholder must be approved in accordance with, and cannot exceed, the AO's functional and delegated expenditure authority. Acquisitions made by authorized cardholders on behalf of FDIC Program Offices must be supported by the appropriate documentation to demonstrate sufficient expenditure authority by the AO for the purchase.

### 9.E.5.c. Procurement Thresholds (MAR 2000) (JUL 2003)

The APC is the FDIC official responsible for approving the designation of cardholders and AOs, and for establishing the maximum procurement thresholds under the FDIC Procurement Credit Card Program. No other official shall possess this authority, unless specifically redelegated by the APC. FDIC's maximum procurement thresholds under the Procurement Credit Card Program are as follows:

- (1) **Single Purchase Limit.** The single purchase limit is the maximum amount a cardholder may charge for any single procurement. Neither cardholders nor merchants are permitted to split a single purchase into smaller amounts in order to avoid exceeding the single procurement threshold. The maximum single purchase limit for any FDIC cardholder shall be \$5,000 unless approved by the APC in writing. All cardholders will be subject to the specific limitations set forth in the Cardholder Authority Memorandum.
- (2) **Monthly Procurement Limit.** The monthly procurement limit is the maximum cumulative amount a cardholder may charge in any single monthly billing cycle. The maximum monthly procurement limit for any FDIC cardholder shall be \$50,000. All cardholders will be subject to the specific limitations set forth in the Cardholder Authority Memorandum.

- (3) **Monthly Division/Office Limit.** The monthly division/office limit is the maximum cumulative amount any FDIC division or office may charge in any single monthly billing cycle, for all of its cardholders, combined. The monthly division/office limit is usually the sum of the monthly procurement limits of all cardholders in a particular division or office account.

**9.E.5.d. Permissible, Prohibited, and Restricted Use (MAR 2000) (JUL 2003)**

- (1) **Permissible Use.** All goods or services that are not specifically included as prohibited or restricted, as described below, may be procured with the Procurement Credit Card.
- (a) **Official Business.** The Procurement Credit Card may be used to procure goods or limited administrative services \$5,000 or less, which are needed for official FDIC business only. Use for other than official FDIC business will result in immediate cancellation of the card and could lead to adverse personnel action. To differentiate from a personal credit card, the Procurement Credit Card was specifically designed to show the Great Seal of the United States and the words United States of America.
- (b) **Permissible Procurement Sources.** The Procurement Credit Card may be used at any establishment at which the VISA Card is accepted as a form of payment. Sources should be rotated to preclude repeated acquisitions from the same merchant. Use of Minority- or Women-Owned Business (MWOB) and Small Disadvantaged Business (SDB) firms is encouraged.
- (c) **Types of Acceptable Purchases.** The following goods and services are considered appropriate for purchase with the Procurement Credit Card in accordance with these procedures and other Corporation policies and procedures as applicable. This list is exemplary only and does not represent all of the acceptable types of purchases.
- [1] Building repairs;
  - [2] Locksmith services;
  - [3] Equipment purchases and repairs;
  - [4] Catering services;
  - [5] Flowers and other expressions of sympathy;
  - [6] Membership fees and association dues;

- [7] External training courses once approved on FDIC Form 2610/12 as defined in FDIC Circular 2600.1;
- [8] Advertisement;
- [9] Conference/meeting rooms off-site;
- [10] Corporate vehicle repair and other services;
- [11] Duplicate keys;
- [12] Reconfiguration of workstations;
- [13] Carpet repair;
- [14] Non-Monetary Awards\*; and
- [15] Newspaper advertisements

\* Refer to directive 2420.1, *Rewards and Recognitions Program*. Requirements pertaining to the purchase of "Refreshments/Meals" must be observed. All non-monetary award purchases must be marked on the bill as such and have adequate supporting documentation.

- (2) Prohibited Goods and Services. In addition, certain types of procurements are strictly prohibited under any circumstances.
- (a) Official travel expenses (transportation expenses, hotel accommodations, meals, or vehicle rentals) for which the current FDIC Bank of America Travel Credit Card is used;
  - (b) Rental or lease of land or buildings;
  - (c) Telecommunications (telephone) services;
  - (d) Cash advances from bank tellers or automated teller machines;
  - (e) Goods or services related to the management and disposition of assets held by FDIC in its receivership capacity, former receivership assets that have been obtained via corporate purchase, or receivership related assets that may have been "assigned" to FDIC in its corporate capacity. These prohibited services include, but are not limited to, appraisals, surveys, environmental assessments, phase I environmental, brokerage services, title policies or commitments, asset searches, or similar goods or services related to asset liquidation activities performed by the Division of Resolutions and Receiverships (DRR); and
  - (f) Outside counsel procured by the Legal Division.

- (3) Restricted Use. Use of the FDIC Procurement Credit Card to procure specific goods or services is respective of established policies that have been implemented within FDIC. For purposes of the Procurement Credit Card Program, and in accordance with established policies and procedures, it is necessary to obtain special clearances prior to procuring specific goods or services, as indicated below:
- (a) Information Resources Management (IRM). The policies and procedures for procuring IRM goods or services require the prior approval from the Division of Information Resources Management (DIRM). For purposes of the Procurement Credit Card Program, and in accordance with established policies and procedures, only the designated cardholders in DIRM are authorized to procure IRM goods or services including maintenance agreements and extended warranties. Requestors from divisions outside of DIRM shall contact a DIRM cardholder, who shall proceed to procure the IRM-related goods or services on their behalf (refer to DIRM Circ. 1330.1, for a more detailed description of DIRM requirements).
  - (b) Office Supplies and Office Equipment. The policies and procedures for procuring office supplies require that cardholders procure only items that are not available through the FDIC supplies contractor or stocked in an FDIC supply room. If the required item is not contained in the FDIC supplies catalog or supply room, cardholders are encouraged to contact the CSB supply staff to ensure the item is not obtainable at FDIC discount prior to procuring the item at retail cost. If the item is not available through the above methods, the cardholder may procure the item using their Procurement Credit Card and charge the centralized CSB office supply budget in accordance with the CSB Supplies Purchasing Policies. The only exception to this policy pertains to Division of Supervision Consumer Protection (DSC) field office sites. These offices may use the credit card to purchase office supplies and office equipment\* without checking the CSB supplies catalog.
 

\* When office equipment is purchased under the terms of this paragraph, the cardholder may also purchase maintenance agreements and/or extended warranties for that equipment.
  - (c) Office Furniture. The policies and procedures for procuring office furniture require the prior approval of DOA/CSB. Only designated cardholders located within the DOS/CSB Facilities Section are authorized to procure office furniture-related goods or services, to include artwork. Requesters from divisions outside of this section shall contact a designated facilities cardholder, who shall proceed to procure the office furniture-related goods or services on their behalf

refer to Circ. 1801.1 for a more detailed description of CSB office furniture purchasing requirements).

- (d) Periodicals, Books, and Subscription Services. The established policies and procedures for procuring periodicals, books, and subscription-related goods or services require the prior approval of DOA/CSB. Only designated cardholders located within the CSB Library and Public Information Center Unit are authorized to procure periodicals/subscription-related goods or services. Requestors outside DOA/CSB, LSS, shall contact a designated LSS cardholder, who shall proceed to procure the periodical/subscription on their behalf (refer to Circ. 3020.2 for more detailed description of LSS periodicals/subscription services purchasing requirements).
- (e) Management/Disposition of Assets. The procurement of goods or services related to asset liquidation activities performed by the Division of Resolutions and Receiverships (DRR), Franchise and Asset Marketing Branch is prohibited per established policies and procedures (APM, 9.E.5.d.(2)(e)). However, notwithstanding this prohibition, a Contracting Officer does have the authority to use his or her credit card to procure incidental goods or services related to an asset (e.g., locksmiths, building repairs, etc.) in a receivership capacity. The decision to use the credit card for this purpose, in lieu of a purchase order, is at the discretion of the Contracting Officer.
- (f) Meals and Beverages (including alcoholic beverages). The policies and procedures for procuring meals and beverages (including alcoholic beverages) using the Procurement Credit Card require the prior written approval of an Executive Manager. All FDIC Executive Managers are required to exercise sound judgment and appropriate discretion when authorizing the purchase of meals and beverages (including alcoholic beverages) for instances involving legitimate awards ceremonies, training events, business meetings with external clients, annual employee appreciation functions, and extended working meetings. AOs are required to review cardholders' monthly statements and supporting documentation to ensure that these expenditures received prior written approval by an Executive Manager and further conform to the requirements as stated in Circular 2410.9.

**9.E.5.e. Convenience Check Use (MAR 2000) (JUL 2003)**

Convenience checks are provided as part of the Procurement Credit Card Program; therefore, all pertinent policies and procedures apply, unless specifically indicated otherwise herein. Cardholders must use the Procurement Credit Card whenever

possible to avoid additional fees associated with the convenience check product. Only in instances where merchants do not accept the Procurement Credit Card is the use of convenience checks appropriate. Verification of a merchant's inability to process credit cards must be documented on the convenience check log at the time that a convenience check is written.

The cardholder must keep convenience checks in a secure location at all times.

The use of convenience checks for third-party drafts is prohibited. Cardholders may not write checks for reimbursement to another employee for FDIC-related purchases. Employees may apply for reimbursement via Petty Cash or PAV.

- (1) **Ordering Procedures.** AOs have the sole authority to request convenience checks. Requests are to be in writing to the APC and will provide the following:
  - (a) **Cardholder Name.** Individual must have a Procurement Credit Card account established in order to obtain convenience checks.
  - (b) **Check Denomination.** Not-to-exceed amounts are imprinted on the checks and are available in \$500, \$1000, \$2,500 and \$5,000 amounts. The denomination may not exceed the cardholder's single purchase limit.
  - (c) **Quantity.** Convenience checks are available in books of ten (10), twenty (20), or fifty (50). Unless specifically directed, FDIC will assign one (1) book of twenty (20) checks per individual request.

The APC will submit the initial request to Bank of America. Once a cardholder account is set up to obtain convenience checks, subsequent orders may be obtained directly by the cardholder as needed. Cardholders do not have the authority to alter set denominations and quantities.

- (2) **Convenience Check Limits.** Convenience check transactions are posted against the cardholder's credit card account and will impact the cardholder's authorized spending thresholds. Cardholders must remain within the authorized spending limits delegated and are responsible for monitoring and reconciling cleared convenience checks against their authorized monthly limit. Checks that exceed either single purchase or monthly purchase limits will be returned for "insufficient funds".
- (3) **Reporting Lost or Stolen Convenience Checks.** Cardholders must notify Bank of America immediately to report lost or stolen convenience checks by calling 1-800-472-1424; and report the lost/stolen checks to the APC in writing. If only one (1) or two (2) convenience checks are missing, a "stop payment" request may be the most appropriate resolution. If, however, more than two (2) convenience checks are detected lost or stolen, the account will be closed and a new account established. Replacement time is approximately two (2) weeks and there is no fee for

reporting lost or stolen convenience checks or for requesting a replacement account. Cardholders should report any valid, outstanding checks that have not yet cleared the bank to prevent them from being affected from the stop-payment process.

Any unused checks shall be reported to Bank of America and promptly destroyed.

If a check is stolen without the cardholder's knowledge and is posted to the cardholder's statement, the cardholder must immediately report the unauthorized transaction to Bank of America.

Bank of America will investigate the fraudulent activity and reverse the charge.

**9.E.5.f. Automatic Teller Machine Access (MAR 2000) (JUL 2003)**

Automatic teller machine (ATM) cash advance is provided on a strictly limited basis as part of the Procurement Credit Card Program; therefore, all pertinent policies and procedures apply, unless specifically indicated otherwise herein. Cardholders must first attempt to use the procurement credit card or convenience checks whenever possible. Unless authorized by the APC, use of the ATM cash advance is a prohibited purchase under the policies and procedures. However, when previously authorized and in instances as cited below, where use of the Procurement Credit Card or convenience checks is not feasible, designated cardholders have the authority to use the ATM cash advance as a method of procuring required goods or services.

- (1) **ATM Access Restrictions.** Cash advance access is limited solely to the Division of Administration (DOA), ASB cardholders detailed to participate in bank closings.

Access to cash advance is permitted solely for the purpose of procuring goods or administrative services to support bank closing requirements.

ATM cash advances obtained through the FDIC Procurement Credit Card shall not be used for travel-related per-diem cash expenses. Those are to be obtained through the travel credit card.

- (2) **Ordering Procedures.** Under the FDIC Procurement Credit Card Program, only cardholders in the Division of Administration (DOA), ASB, who attend bank closings are permitted to have this capability.

Designated DOA AOs have the sole authority to request ATM cash advance access. Requests are to be in writing to the APC.

The APC will process the request through Bank of America that will allow the cardholder to obtain up to a \$500 cash advance from an ATM or bank teller, not to exceed four (4) cash advances per month.

- (3) ATM Cash Advance Limits. ATM cash advance transactions are posted against the cardholder's credit card account and will impact the cardholder's authorized spending thresholds. Cardholders must remain within their authorized spending limits as delegated and are responsible for monitoring their cash advance transactions.

Cardholders are permitted one (1) cash withdrawal per day; four (4) withdrawals per month. ATM cash advance transactions are posted against the cardholder's Procurement Credit Card account and are easily identifiable on the cardholder's statement.

Cardholders may not exceed their delegated single purchase and/or monthly purchase limit.

#### **9.E.6. Administrative Procedures (JUL 2003)**

The day-to-day administrative procedures associated with the FDIC Procurement Credit Card Program are detailed in the following paragraphs. Questions concerning these procedures, or requests for additional guidance, are to be addressed to the APC.

##### **9.E.6.a. Request for Procurement Credit Card Accounts (JUL 2003)**

Requests for new Procurement Credit Cards must be approved by the APC having sole authority for the designation of AOs and cardholders. All requests must be made in writing by the AO, and are to be submitted to the APC. The request shall contain the names of the proposed cardholder(s) and AO, as well as proposed procurement limits. The APC will forward the necessary information to Bank of America for processing.

##### **9.E.6.b. Training Requirements (JUL 2003)**

Newly designated cardholders must first successfully complete the web-based Procurement Credit Card Training Module in order to receive a credit card.

##### **9.E.6.c. Issuance of Procurement Credit Card (JUL 2003)**

Upon issuance of a Procurement Credit Card, the cardholder shall follow the instructions provided by Bank of America for activating and acknowledging receipt of the card. The cardholder will receive a separate written Cardholder Authority Memorandum from the APC, specifying procurement limits and any other restrictions. A copy of the FDIC Procurement Credit Card Program Policies and Procedures will accompany the Cardholder Authority Memorandum, as will certain forms and additional materials associated with the program. The cardholder must sign and return a copy of the Cardholder Authority Memorandum to the APC. This serves as acknowledgement by the cardholder that he or she has received the Procurement Credit Card and understands the FDIC Procurement Credit Card Program Policies and Procedures. The APC shall maintain a current list of authorized AOs, cardholders, and ACs.



**9.E.6.d. Requests for Changes to Maximum Procurement Limits**

If an AO wishes to change existing maximum procurement limits for a cardholder, he or she must submit a written request to the APC detailing the desired changes. The request shall provide adequate justification along with a copy of the applicable form FDIC 1151/01, *Corporate Redlegation of Expenditure Authority* evidencing the AO's delegated expenditure authority equal to or in excess of the requested amount. A signature line for the APC's approval or disapproval should be provided at the bottom of the request. If the proposed changes are approved, a new Cardholder Authority Memorandum will be issued by the APC as appropriate.

**9.E.6.e. Changes to Account Information (JUL 2003)**

Changes to a cardholder's or AO's name or address are to be immediately reported to the APC. The APC will ensure that the changes are processed through Bank of America.

**9.E.6.f. Resignation or Reassignment of Cardholder or Approval Official (JUL 2003)**

When a cardholder or AO leaves FDIC or moves to another FDIC location, he or she must notify the APC immediately in writing or by email of the effective date of departure or reassignment. In support of this change:

- (1) The pre-exit clearance procedures shall be followed and the Administrative Officer must retrieve the departing cardholder's Procurement Credit Card, any remaining convenience checks, and cardholder file, to include receipts for outstanding charges.
- (2) The Administrative Officer shall notify the APC in writing of the cardholder's effective date of departure.
- (3) The APC shall ensure the account is properly cancelled and submit written confirmation of the cancellation to the Administrative Officer.
- (4) Upon receipt of the cancellation confirmation, the Administrative Officer shall destroy and dispose of the cardholder's credit card and convenience checks.
- (5) The Administrative Officer will return the cardholder file with any outstanding receipts and the written confirmation of account cancellation to the AO.
- (6) If the AO wishes to have a replacement card issued to another FDIC employee, he or she should follow the procedures outlined above in APM, 9.E.6.a., *Request for Procurement Credit Card Accounts*.

Prior to an AO's departure, he or she shall contact the APC regarding designation of a new AO, which must be approved by the APC.

**9.E.6.g. Designation of Alternate Approving Official (MAR 2000)**

In instances where it is anticipated that the designated AO will not be available to authorize cardholder purchases, he or she may have another AO from the same division or office perform the function in his or her absence. However, prior to the alternate AO assuming the designated AO's responsibilities, the designated AO must first notify the APC in writing of the alternate designation. A copy of the signature card must also be signed by the alternate AO and submitted to the APC prior to authorizing any purchases.

**9.E.6.h. Lost or Stolen Cards (MAR 2000)**

- (1) Cardholders must promptly report lost or stolen cards to the Bank of America Government Card Services Unit (GCSU) Customer Service hotline at the numbers below:

**1-800-472-1424    Within the U.S.**  
**1-757-441-4124    Outside the U.S. (Call COLLECT)**

Additionally, the cardholder must notify his or her designated AO and APC. Cardholders should also contact these officials if they believe that his or her account number has been compromised or used in a fraudulent manner.

- (2) When reporting the loss or theft to Bank of America, the cardholder may be asked to provide some personal identifying information, such as his or her mother's maiden name. This information is to help Bank of America identify any fraudulent purchase attempts, and is the only time personal information will be requested under the program. Bank of America will issue a new card to the cardholder within two (2) business days after the loss or theft is reported to them.
- (3) Cards reported lost or stolen are immediately blocked from accepting additional charges. Unauthorized charges must be disputed by the cardholder, and the cardholder will not be liable for those charges.

**9.E.7. Procedures for Card Usage****9.E.7.a. Exemption from Sales Tax (MAR 2000)**

Procurements made for official U.S. Government purposes with the Procurement Credit Card are not subject to state or local sales tax. The Procurement Credit Card was designed to enable merchants to readily identify FDIC's tax-exempt status by including the phrase "U.S. GOVT TAX EXEMPT" embossed on the card. Further, the Procurement Credit Card account number is the tax exemption number recognized by the state, to facilitate in procuring items telephonically. It is recommended for cardholders to adhere to the following in order to avoid being charged sales and state taxes, or to obtain credit on taxed charges:

- (1) **Avoiding Tax Charges.** Cardholders must avoid being charged sales tax with their vendor and should inform the merchant of FDIC's exemption from all local sales taxes, prior to the completion of the sale. As a general rule, in the instance that the merchant does not accept the cardholder's instructions to waive the sales tax, the cardholder should make every attempt to procure the goods or services from another merchant who will not charge the tax. However, if time is of the essence in making the purchase and/or there are no other merchants readily available, the cardholder is authorized to proceed with the purchase and paying sales tax is allowable. The circumstances for paying sales tax must be documented by the cardholder and kept with the purchase receipts.
- (2) **Sales Tax Disputes.** In the event that a cardholder is erroneously charged sales tax, FDIC must pay the charge as billed, including the taxed amount. It is important for cardholders to be aware that sales tax may not be treated as a "disputed item" under VISA Operating Regulations. Therefore, every effort must be made for the cardholder and AO to work directly with the merchant to obtain a credit for the full amount of the charge. The merchant must then re-charge the item, excluding the sales tax.

**9.E.7.b. Over-the-Counter Procurements**

Over-the-counter procurements refer to those made in person by the cardholder. Prior to transacting business over-the-counter, the cardholder is responsible for notifying the merchant that procurements for official U.S. Government purposes are not subject to sales tax. Bank of America has established an authorization process whereby the merchant verifies via a telecommunications system each time the Procurement Credit Card is used. This electronic method of verification ensures that the procurement is within the cardholder's single, monthly, and division/office procurement limits. Upon authorization of the charge, the merchant will present the cardholder with a sales draft for signature. Before signing the draft, the cardholder should verify that the amount is correct and that no sales tax has been included. The cardholder shall maintain a file containing all receipts issued for over-the-counter procurements (including cash register receipts). During the statement verification process, these receipts will be used to verify and support the charges reflected on the cardholders statement.

**9.E.7.c. Telephone, Mail-Order, and Internet Procurements (MAR 2000)**

- (1) **Telephone and Mail-Orders.** When placing a telephone order for goods or services which are to be paid for with the Procurement Credit Card, the cardholder must notify the vendor that the procurement is for official U.S. Government purposes and is, therefore, tax exempt. Every attempt shall be made to obtain verification from the vendor that the Procurement Credit Card will not be charged until time of shipment or delivery of the

merchandise or service. This is important for the purposes of statement verification and payment. A cardholder may not authorize payment of a charge for which the goods or services have not been received and accepted. The cardholder should be sure to discuss any applicable shipping or handling charges with the merchant, and confirm the amount to be billed.

- (2) Internet Orders. The Procurement Credit Card may be used to make purchases from the Internet. These purchases shall conform to all policies and procedures stated in APM, 9.E. When placing an Internet order, the cardholder shall follow the procedures stated in APM, 9.E.7.c.
- (3) Documentation. A written record or log shall be maintained by each cardholder to document all orders placed via the telephone, the Internet, or mail orders. This record or log is required for the statement review and verification process. Cardholders should use the FDIC Procurement Credit Card Order Log (Exhibit XXVI).

#### 9.E.7.d. Returned, Damaged, or Unacceptable Procurements

If the procured goods or services are found to be damaged or unacceptable, the cardholder shall promptly return them and work with the merchant to obtain proper credit for the items. Cardholders shall obtain a credit voucher or some proof that the item was returned, such as a receipt or certified mail receipt. On any returns, cardholders should reject inappropriate return charges and handling or restocking charges to the fullest extent possible, and the condition of the item(s) should be documented. Upon receipt of the monthly billing statement, the cardholder must verify that the return has been properly credited to the account, and shall attach the credit slip to the statement for retention in the files. If the merchant is unwilling to accept returned items or prepare a credit voucher, the cardholder shall follow the procedures outlined in APM, 9.E.7.e., *Disputed or Questioned Items*.

#### 9.E.7.e. Disputed or Questioned Items (JUL 2003)

- (1) If a cardholder is charged incorrectly for an item or has a dispute with the merchant over unacceptable goods or services, a dispute form should be completed by the cardholder. This form can be found at <http://fdic01/division/DOA/buying/CreditCard/index.html> under "Billing and Payment Procedures." This form should be transmitted as soon as possible to Bank of America at:

**FAX Numbers: 888-678-6046  
602-597-5158**

A copy of the dispute form shall also be faxed to ASB with the cardholder's statement during the invoice payment process. The fax number is 202-942-3687.

- (2) To preserve FDIC's legal right to dispute a transaction, the dispute form must be received by Bank of America within sixty (60) days of the date of the statement on which the transaction first appeared. In addition, VISA Operating Regulations sometimes require certain written documentation from a cardholder before a reversal of charges can be processed. Instructions on the dispute form will assist cardholders in identifying any specific additional documentation required. Any disputes shown on the cardholders' statements must be properly handled to ensure the preservation of FDIC's rights.

### 9.E.8. Billing and Payment Procedures

#### 9.E.8.a. Billing Procedures (JUL 2003)

- (1) Monthly Statement of Account. All cardholders who have procured goods or services during a billing period will receive a "Monthly Statement of Account" (monthly billing statement) from Bank of America. If a cardholder incurs charges but does not receive a statement within several business days of the end of the billing cycle, the AC should be notified in order to coordinate and reconcile this matter against the master invoice.
- (2) Master Invoice. Concurrent with the issuance of statements to cardholders, Bank of America will issue a separate master invoice to ASB for every FDIC location (Washington, D.C., Regional and Field Offices). These master invoices will include all charges made by each location's cardholders during the billing period. The master invoices will be paid by ASB in Washington, D.C., upon verification of the charges by the cardholders and authorized by the AOs.

#### 9.E.8.b. Statement Review

Upon receipt of the monthly billing statement, the cardholder shall promptly review and verify all charges. A brief description of each procurement shall be noted in the space provided on the statement. (Any discrepancies are to be handled in accordance with the procedures outlined in APM, 9.E.7.e., *Disputed or Questioned Items*.)

#### 9.E.8.c. Statement Authorization (JUL 2003)

Upon proper verification of the charges, the cardholder must sign in the space provided on the back of the statement and forward it to the AO for review. The AO must also sign the back of the statement, authorizing the cardholder's purchases. After the statement has been signed by both the cardholder and AO, the AO forwards it to the designated AC for transmission to DOA/ASB.

NOTE: The Bank of America master invoices require payment within thirty (30) days of receipt by FDIC. Therefore, expeditious review of the monthly statements by all cardholders and AOs is essential.

**9.E.8.d. Alternate Cardholders/AO Authorization (JUL 2003)**

In the event that either the cardholder or AO is not available to sign the cardholder statement, the following shall apply:

- (1) Alternate Cardholder. If the cardholder is not available to sign the statement, the cardholder's designated AO may sign on his or her behalf.
- (2) Alternate AO. If the cardholder's AO is not available to approve the statement, two (2) options are available:
  - (a) An alternate AO may be designated in advance, if it is anticipated that the designated AO will be unavailable. However, prior to the alternate AO assuming the designated AO's responsibilities, the designated AO must first notify DOA/ASB and the APC in writing that an alternate is necessary. A copy of the signature card must also be signed by the alternate AO and submitted to DOA/ASB prior to authorizing any purchases.
  - (b) The cardholder may also request another designated AO from within the same division/office to provide authorization of his or her purchases. To identify established AOs within a division or office, please contact the APC.

**9.E.8.e. Transmission of Monthly Statements to DOAASB (JUL 2003)**

Upon receipt of the approved monthly billing statement from the AO, the AC shall include all applicable accounting information and fax a copy of the statement (front and back) to DOAASB. The original billing statement will then be returned to the cardholder. Additionally, an Excel spreadsheet detailing accounting information and procurement descriptions must be completed and transmitted to DOA/ASB via electronic mail. Instructions regarding these procedures and time frames for submissions will be provided by ASB to designated ACs.

**9.E.8.f. Record-Keeping (JUL 2003)**

It is the responsibility of the AO to ensure that complete records are maintained by the cardholders for all credit card charges. The original monthly billing statement, as well as all original receipts, charge slips, credit slips, and telephone order record or logs are to be retained by the cardholder. All other records and correspondence relating to the FDIC Procurement Credit Card Program shall be retained for five (5) years in accordance with the FDIC Records Retention and Disposition Schedule (Procurement Files).

**9.E.9. Reports and Program Compliance (JUL 2003)**

**9.E.9.a. Reports (MAR 2000) (JUL 2003)**

In addition to issuing monthly statements to cardholders, Bank of America also issues reports to other program participants. Each AO is issued a monthly report of all charges made by his or her cardholders during the period. The APC is issued a summary report of charges made by each division/office, nationwide.

**9.E.9.b. Review of Reports (JUL 2003)**

On an ongoing basis, the APC reviews all charges made each month under the FDIC Procurement Credit Card Program. The charges are reviewed for their appropriateness and compliance with the FDIC Procurement Credit Card Program Policies and Procedures. Additionally, these reviews are to determine possible conflicts with general FDIC administrative policy, such as computer equipment procurement by offices not authorized to procure such equipment. If a violation of GSA, FDIC, or the Bank of America credit card program policy is identified or suspected, the APC will notify the appropriate AO in writing. The matter will be further investigated as appropriate.

**9.E.9.c. On-Site Reviews (JUL 2003)**

Further, periodic on-site reviews may be performed at the request of the APC to ensure conformance with applicable policies and procedures. Improper action on the part of any FDIC Procurement Credit Card Program participant may result in disciplinary action.

**9.E.10. Forms**

Form FDIC 1151/01, *Corporate Redelelegation of Expenditure Authority* may be obtained from the DOA's Document Management Unit by submitting form FDIC 1213/11, *Request to Reprint a Form*.

**SECTION 9.F. ORAL PRESENTATIONS (MAR 2000)****9.F.1. General (MAR 2000)**

This section establishes policies and procedures for soliciting and evaluating oral presentations under solicitations processed under formal contracting procedures (APM, Chapter 6). As an alternative to requiring prospective offerors to submit written technical proposals, the Contracting Officer may elect to require oral presentations in their place. Even though the Contracting Officer may also require supplemental written information, formal written proposals will not be required in addition to oral presentations.

Oral presentations provide offerors with an opportunity to present information verbally and are a substitute for information traditionally provided in writing in response to a solicitation. They may be utilized for solicitations, including task orders, for goods or services with a total estimated dollar amount of \$100,000 or greater. They may also be used when soliciting contractors for goods or services under the Federal Supply Schedules (FSS).

**9.F.2. Purpose (MAR 2000)**

The purpose of oral presentations is to expedite the source selection process by significantly reducing the need for written material, thereby reducing the time involved in evaluation of written technical proposals. Oral presentations allow eligible offerors to submit technical information in person and allow for discussions and immediate clarifications between FDIC and the offeror.

**9.F.3. Applicable Procedures (MAR 2000)**

APM, Chapter 6, *Formal Contracting*, provides policies and procedures for soliciting and evaluating proposals and awarding contracts \$100,000 or greater. These procedures shall be followed when conducting technical evaluations using oral presentations in addition to the procedures stated herein. For example, under APM, 6.C.6., *Proposal Submission Instructions and Evaluation Structure*, Contracting Officers are required to ensure that the solicitation contains detailed proposal submission instructions and the basis for the award. This provision still applies if requiring oral presentations instead of formal written technical proposals.

**9.F.4. Advantages (MAR 2000)**

There are several advantages to using oral presentations. They can save significant procurement cycle time and reduce FDIC's procurement costs and industry's proposal preparation costs, while at the same time, avoiding the "trappings" of lengthy marketing pitches. In addition, they allow Technical Evaluation Panel (TEP) members to feel more involved in the selection process and to observe and communicate with individuals who will be working on the contract. Technical and management processes often can be better conveyed and understood when explained orally. A better understanding about the offeror's capability and key personnel (i.e., their qualifications, how they interact with each other, how they communicate technical information, and the depth of their



knowledge) can be achieved by meeting face-to-face and listening to their oral presentation, when combined with an active interchange.

The Contracting Officer should weigh the advantages stated above with the need for written technical proposals. For example, a written technical proposal may be preferred when the technical and management information is voluminous and/or highly complex or when it is impractical, unnecessary, or inefficient to observe a contractor's team to understand their capabilities (e.g., construction). **Notwithstanding, oral presentations shall not be used if all TEP members cannot attend all presentations.**

#### **9.F.5. Usage (MAR 2000)**

Use of oral presentations shall be at the option of the Contracting Officer, after consultation with the Program Office, for awards \$100,000 or greater. While oral presentations can generally be used under a variety of circumstances, they are particularly useful when the contractor's capability and past performance constitute the primary focus of the evaluation and subsequent award decision. It is essential that the oral presentation topics (i.e., technical requirements) match the technical evaluation criteria.

#### **9.F.6. Planning (MAR 2000)**

The key to conducting successful oral presentations involves a significant amount of planning, which begins at the Requirements Package stage. The Contracting Officer must assess whether the requirement and the evaluation process is geared toward written as opposed to oral information. The Contracting Officer will review the Requirements Package in accordance with APM, Chapter 4, to determine if oral presentation procedures are considered appropriate.

The next stage involves the development of the solicitation document by the Contracting Officer. This will include converting the technical proposal contents from the Requirements Package into oral presentation topics. It also involves developing detailed instructions for offerors to follow in responding to the solicitation, which includes details on preparing and making their presentation. An offeror's failure to conform to the solicitation instructions may render their submission non-responsive.

#### **9.F.7. Solicitation Instructions/Structure (MAR 2000)**

Solicitation instructions fall into two (2) major areas: (1) structure of the solicitation document and (2) the conduct of the oral presentation.

##### **9.F.7.a. Solicitation Document (MAR 2000) (JUL 2003)**

The Contracting Officer shall construct the solicitation document so that all offerors are aware that oral presentations will be required and used for evaluation purposes. The solicitation shall also clearly prescribe the content of offerors' responses. As a general rule, solicitation instructions should require a four-part response from offerors. These parts include (1) a written offer to perform, (2) written information

to be used to assess capability to perform, (3) the oral presentation, and (4) pricing. These four (4) parts are discussed below.

- (1) Offer to Perform. For purposes of the oral presentation process, the written offer will not contain any information used to determine or assess capability (e.g., resumes, past performance references, or the oral presentation itself). This will be the document used to bind the offeror to perform the work, with the designated personnel, at the offered prices.

The offer shall be in writing, on the offeror's letterhead, signed by an authorized official and shall be binding on the offeror. This will constitute the offeror's promise to comply with the terms and conditions of the contract, which includes the statement of work (SOW), and any awarded task order, at the offered prices.

The offer shall also include the following:

- (a) **List** of all key personnel (not copies of resumes);
  - (b) **List** of prospective subcontractors, if applicable;
  - (c) FDIC Integrity and Fitness Representations and Certifications; and
  - (d) Contractor Representations and Certifications.
- (2) Written Information. As a critical part of evaluating capability, the Contracting Officer should require prospective offerors to submit past performance references, resumes of all key personnel, and subcontractor information. This information will be used for evaluation purposes. While FDIC has the right to rely upon the accuracy of the information, it will not become part of the offer or any contract unless agreed to by the parties. This part may be omitted or modified for less complex requirements when the oral presentation will account for 100% of the technical score. **When provided, this information may be scored based upon tailored evaluation criteria or used on a pass-fail basis for determining a short list of the most capable offerors to provide oral presentations.**
- (3) Oral Presentation. The oral presentation constitutes the major portion of the evaluation process. As previously stated, it is a substitute for information traditionally provided in written form, and is in lieu of a formal written technical proposal, except for the written information that shall be required (see subparagraph (2) above). Each eligible offeror shall make an oral presentation to the TEP and Contracting Officer, or Contracting Officer's representative, and, if required, participate in a question and answer session or other appropriate format as discussed in APM, 9.F.7.b.(2). For example, the TEP may use the question and answer period, following the presentation, to gain a better understanding of the offeror's capability and to probe their understanding of the SOW.

No price information shall be presented or contained in the oral presentation or during the question and answer session. Offerors shall not be allowed to provide any written materials relating to the oral presentation after the due date for their response to the solicitation.

- (4) Pricing. The fourth part of the offeror's submission is the price proposal. The requirements for developing the pricing under these procedures are similar to the procedures stated in APM, 6.C.7., *Pricing*.

**9.F.7.b. Oral Presentation Process (MAR 2000)**

- (1) Oral Presentation Topics. The Program Office is responsible for developing the topics to be covered by offerors during the oral presentation. The topics shall be tailored to the specific requirement and designed to demonstrate an offeror's relevant capability to perform the work and experience required by the statement of work. These topics are similar to those that would be used to specify the contents of a written technical proposal.
- (2) Oral Presentation Formats. The oral presentation may be accomplished using any one (1) of four (4) different potential formats or any combination thereof. The formats include (1) briefing; (2) sample task; (3) pop quiz; and (4) question and answer. Complicated or elaborate presentation procedures are not required nor desirable. **Contracting Officers should exercise judgment and flexibility to tailor the presentation method to precisely what is called for to determine which firm possesses the highest level of capability and understanding. Generally, less complex requirements should rely on simple briefing with a question and answer segment.**
  - (a) Briefing. The Briefing allows offerors to present their approach and capability to fulfill the requirements of the RFP. This would include using presentation media to inform evaluators on the specifics of their approach, highlighting main points and themes, and facilitating an understanding of approach and capability. The presentation media must be specified in the RFP and may include overhead transparencies or computer generated/multimedia presentations.
  - (b) Sample Task. The Sample Task requires the offeror to address a scenario-based problem related to the solicitation's statement of work. Under this approach, the offeror may be required to:
    - [1] Respond to sample tasks included in the solicitation by briefing the proposed solution to the TEP;

- [2] Receive sample tasks from the TEP at the beginning of the presentation and provide real-time analysis on-the-spot. and then brief the final solution to the TEP; and
  - [3] Receive sample tasks with the solicitation and then respond to on-the-spot TEP-modified scenarios at the presentation, and then brief the final solution to the TEP.
- (c) Pop Quiz. The Pop Quiz requires offerors to respond to a type of question and answer session, and may be wider in scope than simple questions and answers addressing the briefing material. Questions are designed to test the offeror's understanding of the requirements. Questions are not normally provided to the offerors prior to the presentation. Questions should address the technical requirements in the statement of work to assess capability. They must be clear and concise and the same for all offerors.
- (d) Question and Answer. The Question and Answer uses a question and answer session designed to elicit information about specific relevant topics. This allows for a more free-form interchange with offerors. Offerors are not allowed to ask questions to the TEP. Time should be allowed for follow up questions by the TEP.
- (e) Combination. A combination of approaches may also be used. The most effective combinations would include a Briefing with Question and Answer or a Briefing with Sample Task. The Briefing with Interview would allow offerors to initially address specific technical points and then respond to a question and answer period to probe the offeror's understanding and capability. The Briefing with Sample Task allows for the briefing portion and then uses the sample task to evaluate consistency and soundness of the proposed approach (i.e., staffing qualifications, labor mix and hours, management).

### 9.F.8. Evaluation Criteria (MAR 2000)

The technical evaluation criteria should be provided by the Program Office with the Requirements Package. Criteria should be tailored to the required written information (i.e., resumes, past performance references) and the topics to be covered during the oral presentation. They must be clearly written to reflect the offeror's qualifications, capability, understanding of the requirement, and approach. If the technical evaluation criteria do not track to the written information and oral presentation topics, then the evaluation will be flawed and not result in an accurate technical ranking.

### **9.F.9. Proposal Submission Instructions (MAR 2000)**

All offerors shall be notified in the RFP that a major portion of the response will consist of an oral presentation and that it will be used, along with price and other written information, to evaluate and select the successful offeror. This should also be included in the cover letter accompanying the RFP.

In addition, all offerors shall receive instructions in the RFP regarding the conduct of the oral evaluation process. This includes but is not limited to:

- Disclosing the oral presentation format (e.g., briefing with questions and answers, pop quiz, etc.);
- Listing the types of information to be presented orally (i.e., topics to be covered);
- Establishing the oral presentation time limitations and guidelines;
- Disclosing instructions on who will be required to present the oral information (i.e., Project Manager and key personnel) [Note: the Project Manager shall always be required at the presentation; other key personnel shall also attend as appropriate].
- Establishing guidelines and limitations for presentation media (e.g., font size, bullets/slide);
- Disclosing how notice and time for presentations will be handled and the basis for establishing the order for presentations; and
- Disclosing the type of facility and room layout and equipment available for the offeror to use for its presentation (i.e., classroom or conference room setting with overhead projector).

### **9.F.10. Videotaping the Presentation (MAR 2000)**

The Contracting Officer shall determine whether FDIC shall videotape all offeror presentations. As a general rule, it is not required that all sessions be recorded for historical purposes. However, if the material is complex and/or non-commercial in nature, videotaping may be recommended. If videotaping is necessary, nothing elaborate is required. Simply point a video camera at the presentation screen and capture the slide presentation along with the audio. Planning is essential to ensure adequate tape length and that all video and audio information is captured. Offerors shall not be provided with a copy of their taped presentation. Also, offerors shall not be allowed to videotape or record the presentation.

### **9.F.11. Instructions for Submitting Responses (MAR 2000)**

Responses to solicitations requiring oral presentations will follow the policies and procedures established in APM, Chapter 6, and shall be disclosed in the RFP (see APM, 9.F.13.). A specific due date will be established in the RFP and the late proposal guidelines will apply. For complex requirements or at the discretion of the Contracting Officer, offerors should be required to submit all required documentation, including the actual oral presentation material that will be used for that offeror's presentation, at the proposal due date. The slides shall be provided in a sealed package and

shall remain unopened. This will ensure fairness and consistency among all offerors. On the day of the scheduled presentation, the Contracting Officer shall return the sealed presentation material to the offeror. However, for less complicated or less formal requirements, the Contracting Officer may simply instruct offerors to provide copies of slides at the time of the presentation.

**9.F.12. Evaluation of Proposals (MAR 2000)**

As required by all FDIC solicitations, the RFP shall clearly document what information shall be evaluated for the purposes of making a best value decision. The RFP shall disclose the evaluation criteria and weights and the technical and price weighting to be used for evaluation purposes. Written information (resumes and past performance references) should be evaluated immediately upon receipt using the evaluation score sheets provided by the Contracting Officer. Evaluation of the oral presentation portion of the proposals should be done immediately following each presentation while it is fresh in the minds of the TEP. The TEP should not evaluate during the oral presentations. This is a time for gathering information and the evaluators should be focused and listening to the offeror address the topics. The TEP should caucus directly following the presentation to evaluate the proposal and reach a consensus at that time as to the strengths and weaknesses, as well as the final scoring to be attributed to that offeror.

The oral presentation scores should be combined with scores on any other written information required under the RFP. Consensus scoring and the TEP memorandum shall be prepared in accordance with APM, Chapter 6. Notes taken during the oral presentations shall be considered working papers and provided to the Contracting Officer along with each TEP member's individual evaluation sheets and the consensus scoring. Upon receipt of the TEP memorandum, the Contracting Officer shall combine the technical and price scores in accordance with APM, Chapter 6.

**9.F.13. Standard Document Format (MAR 2000)**

Instructions to offerors regarding the conduct of oral presentations is very specific and different from the standard RFP document. Therefore, all solicitations for oral presentations shall use the standard RFP – Oral Presentations available on the FDICnet. This will ensure that the processes and procedures are consistent. Any substantive changes to these documents shall be pre-approved by the Policy and Compliance Section. FDIC General Provisions shall be provided as part of the solicitation at the time of issuance.

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## SECTION 9.G. FDIC COMPLIANCE WITH THE SERVICE CONTRACT ACT (MAR 2000)

### 9.G.1. Overview (MAR 2000)

This section establishes procedures for implementing the Service Contract Act (SCA) and the responsibilities for establishing proper wage rates payable under covered service contracts.

### 9.G.2. Background (MAR 2000)

The SCA originated in 1965 to protect lower paid workers whose employment depended on government contracts. It was designed to remedy situations where employers bidding on labor-intensive contracts used wage and benefit reductions as a means of competing for contracts with the Federal government. The SCA generally applies to Federal government contracts whose principal purpose is to provide services to be performed by employees performing those services. The U.S. Department of Labor (USDOL) has developed job classifications that include the services covered by the SCA. It has also designated the minimum wage rate, including benefits, which must be paid to employees performing under one of their classifications for covered contracts.

### 9.G.3. Scope (MAR 2000)

For all covered services that are not exempted from the SCA, a contractor must pay workers the minimum wage rate for each covered job classification as determined by the USDOL.

### 9.G.4. Citation (MAR 2000)

41 U.S.C. 351-357.

### 9.G.5. Definitions (MAR 2000)

#### 9.G.5.a. Service Employee (MAR 2000)

“Service employee” means any person engaged in the performance of a contract entered into by the United States and not exempted under the SCA, the principal purpose of which is to furnish services to the Federal government in the United States. Persons employed in a bona fide executive, administrative, or professional capacity are not included.

#### 9.G.5.b. Covered Employees/Services (MAR 2000)

“Covered employees/services” means all those employees or services that are covered by the SCA.

#### 9.G.5.c. Non-Exempted Employees or Services (MAR 2000)

“Non-exempted employees or services” mean those not included in the exemptions under the SCA and included in the definition of service employee.



**9.G.5.d. Commercially Available Services (MAR 2000)**

“Commercially available services” means services of workers available to the general public and based on catalog or published price lists.

**9.G.6. Applicability (MAR 2000)**

Obligations under the SCA apply to any contract for services in excess of \$2,500 unless they have been specifically exempted as outlined in APM, 9.G.7., *Exemptions*, below. When SCA applies, the Contracting Officer must obtain the specific minimum wage rates to be paid by the contractor for job classifications to be used in performing services under the contract, and notify the U.S. Department of Labor of the determination. The solicitation for such contracts must include the minimum wage determinations and the clauses as set forth in Section 12 of the FDIC General Provisions.

**For SCA purposes, all contract renewals or options exercised, all contract extensions, and all modifications to contracts related to labor requirements under the contract are considered totally new contracts and require the inclusion of a new, or revised, wage determination in the contract. Inclusion of a new or revised wage determination requires that the contract be modified. Additionally, a new wage determination must be provided on each anniversary date of a two-year contract and each two-year anniversary of a multi-year contract, with notice of the determination to USDOL as discussed above.**

SCA also applies to subcontracts under covered contracts. Therefore, FDIC contractors must include and flow down the SCA provisions to subcontractors for covered service contracts.

**9.G.7. Exemptions (MAR 2000)**

Many types of services are covered by SCA, which attempts to include all service contract workers who do not fall under the Davis-Bacon Act for construction or the Walsh-Healey Public Contracts Act for supplies. However, several classifications of services have been made exempt by either statute or regulation.

**9.G.7.a. Statutory Exemptions (MAR 2000)**

Contract exemptions mandated by various statutes are as follows:

- (1) Contracts for construction, alteration, or repair of public buildings or public works subject to the Davis-Bacon Act;
- (2) Contracts for work done in accordance with the Walsh-Healey Public Contracts Act for supplies;
- (3) Transportation contracts governed by published tariff rates;
- (4) Contracts for telecommunications services subject to the Communications Act;
- (5) Contracts for public utility and postal operations services; and

- (6) Employment contracts for direct services to a Federal agency by an individual or individuals.

**9.G.7.b. Regulatory Exemptions (MAR 2000)**

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

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

- (1) Automated data processing equipment and office information/word processing equipment;
- (2) Certain scientific and medical equipment; and
- (3) Office/business machines not otherwise exempted where such services are performed by the manufacturer or supplier of the equipment.

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

**9.G.7.c. Special Exemptions (MAR 2000)**

- (1) Receivership Activities Exempt. As applied to FDIC operations, provisions of SCA **DO NOT** apply to contracts written by FDIC acting in its **receivership** capacity. Should contracts need to be written to cover FDIC acting in both its corporate capacity as well as its receivership capacity, the Contracting Officer must assure that services related to each are segregated to ensure that offerors are aware that the SCA wage determination applies only to services performed for FDIC operating in its corporate capacity.
- (2) Exemption Under GSA Contracts. Orders placed against GSA schedule contracts will not trigger an SCA wage determination by FDIC. Since the GSA contract, when originally executed by GSA, made provision for related SCA wage levels as applicable to a given contract, the agency placing an order against the GSA contract is not required to reissue an SCA wage determination for specific orders.

### 9.G.8. Roles and Responsibilities (MAR 2000)

#### 9.G.8.a. U.S. Department of Labor (MAR 2000)

Under the SCA, the U. S. Department of Labor (USDOL) is charged with determining whether a contract qualifies as a “service” contract, issuing minimum wage determinations, enforcing the payment of SCA minimum wages, and approving additional service employee classifications, among other things. USDOL has adopted a preferred method of supplying wage determinations via a database maintained by the U.S. Department of Commerce’s National Technical Information Service (NTIS) FedWorld System. FDIC makes use of the NTIS FedWorld SCA database (hereinafter “NTIS database”) in accordance with a Memorandum of Understanding with USDOL as defined in the **Note** under APM, 9.G.9.c.

#### 9.G.8.b. FDIC Program Office (MAR 2000)

It is the Program Office’s responsibility to ensure that the Requirements Package (see APM, 4.D.3.b., *Requirements Package*) contains an accurate description of any and all services to be performed under a contract. The services required shall be defined in plain language, and shall be identified as professional or technical in nature (as defined above under APM, 9.G.7.b.) versus non-professional or non-technical. Additionally, it shall be the Program Office’s responsibility to identify the geographic area (city/county) within which the services are to be performed. Finally, it shall be the Program Office’s responsibility to identify the predecessor contract having been performed under a union Collective Bargaining Agreement so that it may be determined if special provisions apply, as discussed under APM, 9.G.11.b.

#### 9.G.8.c. FDIC Contracting Officer (MAR 2000)

The Contracting Officer has FDIC’s primary responsibility for compliance with the wage determination requirements of the SCA. First and foremost, the Contracting Officer, through the solicitation, must ensure that the potential offerors on SCA-covered contracts are placed on notice that they must comply with the SCA, and that the requirements of the SCA must flow down to any subcontractors performing covered services.

### 9.G.9. Process (MAR 2000)

For service contracts, the wage determination process involves assessing whether the job classifications in a proposed contract are covered under the SCA. Standard job classifications covered under the SCA are available from the NTIS database discussed above. After matching the proposed job classifications with those listed on the NTIS database, the Contracting Officer shall obtain the applicable minimum wage rates for those classifications and complete two (2) required forms, the Standard Form 98 (SF 98) and Standard Form 98a (SF 98a), identified in APM, 9.G.9.c., below, and submit them to the U.S. Department of Labor. This process is detailed below.

**9.G.9.a. Identification of Covered Services (MAR 2000)**

Upon receipt of the Requirements Package, the Contracting Officer shall, in consultation with the Program Office, and the Legal Division if necessary, review the required services and job classifications and determine whether the services requested are covered by the SCA. FDIC has developed guidelines to be used in making this determination. These guidelines will assist the Contracting Officer in properly classifying contracts covered under SCA. In order for a contract to be considered covered under the SCA, **all three (3)** of the following thresholds must be met:

- (1) The dollar amount of the contract must be \$2,500 or more;
- (2) The contract must be comprised of at least 50% services, as distinguished from supplies (covered under the Walsh-Healy Public Contracts Act) or construction (covered under the Davis-Bacon Act); and
- (3) Of the services being provided, at least 20% must be “covered” services under the SCA as reflected in the NTIS database.

NOTE: The 50% and 20% measurements to be applied under (2) and (3) above are to be made using total first-year contract dollars as the basis for determination of coverage.

**9.G.9.b. Obtaining Wage Determination (MAR 2000) (JUL 2003)**

The Contracting Officer will refer to the NTIS database to select the job classification(s) most closely resembling the requested services. Once the appropriate job classifications and wage rates are selected, the Contracting Officer must provide them in the solicitation by including copies of completed Forms SF 98 and SF 98a. Where appropriate, the Contracting Officer should consult the Legal Division or ASB’s Policy and Compliance Section in making these determinations.

The Contracting Officer will determine the appropriate SCA wage by accessing the NTIS database no more than fifteen (15) calendar days prior to the issuance of the solicitation, the exercise of an option, the execution of a contract extension, or a modification to a covered contract. Each of these circumstances triggers the requirement for providing the SCA wage determination.

**9.G.9.c. Completion of the SF 98 and SF 98a (MAR 2000)**

Once the appropriate job classifications are identified and the wage determination obtained, the Contracting Officer must complete a SF 98 and SF 98a (Notice of Intention to Make a Service Contract and Response to Notice) and forward them to the USDOL. (FDIC maintains a pre-numbered supply of these forms.)

The Contracting Officer will forward a completed SF 98 and SF 98a, to the Administrator, Wage and Hour Division, USDOL, **before the issuance of the solicitation.** In addition to completing the usual sections of the SF 98, the Contracting Officer will complete the RESPONSE TO NOTICE section of the form

by listing the number, including the revision number, of all wage determinations included in the solicitation. An authorized Contracting Officer will sign the RESPONSE section of the form. The SF 98 should be clearly annotated with the letters MOU on or near the NOTICE NO. Section, which appears on the upper right section of the SF 98. All sections of the SF 98 shall be completed fully and accurately. APM Exhibit III contains sample copies of the SF 98 and SF 98a and instructions for completion. The completed SF 98 and SF 98a are to be submitted to the following address:

Administrator  
Wage and Hour Division  
Employment Standards Administration  
U.S. Department of Labor  
Washington, D.C. 20210

NOTE: Under the Memorandum of Understanding FDIC has with the U.S. Department of Labor for use of the NTIS database for SCA wages, no response in the form of a formal wage determination will be issued by USDOL. Once the properly completed SF 98 and SF 98a are forwarded to USDOL, the Contracting Officer is free to begin the solicitation and award process using the standard documents referenced above.

**9.G.9.d. Special Considerations (MAR 2000) (JUL 2003)**

(1) **FDIC SCA Forms Required.** FDIC has developed standard SCA forms for inclusion into the solicitation and contract, as appropriate. These forms are available in APM Exhibit III. The first of these forms is called the “FDIC Wage Determination,” and is to reflect the applicable wage classification(s) and wage rate(s) as found on the NTIS database. This one-page document is to be attached to the wage determination as taken directly from the NTIS database and forwarded as part of the solicitation to interested offerors.

The second of these documents is called the “Contract Addendum – SCA.” This one-page document provides the winning bidder with a restatement of the applicable wage classification and wage rate, but, for information purposes, it will also provide the contractor with the FDIC equivalent wage, were the FDIC to have directly hired such employees. This disclosure is only to the winning offeror and is provided as an attachment to the executed contract. The final contract, therefore, shall include the “Contract Addendum – SCA” along with the SCA-related clauses set forth in provision 12 of the FDIC General Provisions.

(2) In the event that a given solicitation is intended to result in a single contract for services in multiple locations, whether those locations are known or unknown, special procedures will apply. Generally, these

procedures will apply when issuing BOA's or other multiple-location solicitations.

When issuing such a solicitation, the Contracting Officer shall use the originating office location when drawing the wage determination(s) from the NTIS database. This will both provide for level competition among offerors and allow for application of the SCA to specific geographic locations at the time of task order issuance. **Please note that the solicitation must clearly indicate that the wage determination is being applied to the solicitation process for competitive purposes only and that wage determination(s) for the individual locations will be issued in conjunction with any subsequent task orders.**

#### 9.G.10. Types of Job Classifications (MAR 2000)

The types of contracts covered under the SCA have as their principal purpose furnishing of services through the use of covered service employees. The NTIS database contains a complete listing of USDOL's Service Contract Act Directory of Occupations with specific definitions. If there are any questions regarding the classification applicable, the Contracting Officer should be able to resolve them by accessing the NTIS database. In most instances, a clarification can be found that is suitable for the application.

#### 9.G.11. Exceptions to the Use of the NTIS Database (MAR 2000)

The NTIS database **may not be used** and Contracting Officers must submit individual SF 98's and SF 98a's, **and obtain a USDOL-issued wage determination**, for contracts involving the following situations:

##### 9.G.11.a. NTIS Database Lacks Appropriate Work Classification (MAR 2000)

Any solicitation for which the FedWorld system does not contain an appropriate job classification will require a USDOL-issued wage determination.

NOTE: Every effort should be made to use a job classification contained in the NTIS database.

##### 9.G.11.b. Collective Bargaining Agreements (MAR 2000)

If the existing contract is being performed by service employees under an established Collective Bargaining Agreement, and if the successor's contract will be for substantially the same services as were furnished at the same location by the incumbent contractor, the wages and fringe benefits of the successor's service employees are determined by the **predecessor's** collective bargaining agreement. In this event, the **predecessor's** Collective Bargaining Agreement must be filed with the USDOL along with the SF 98, SF 98a and any related documents since SCA requires that the same wages and fringe benefits will apply to the successor contract.

**9.G.11.c. Requests for Additional Classifications and Rates (MAR 2000)**

In the event that unforeseen circumstances result in a service employee job classification being added to a contract after a wage determination applicable to a contract has been obtained and work has been initiated on the contract, the contractor must take steps at that time to establish a classification and rate. This “conformance” process is initiated by the contractor submitting a SF 1444, “Request for Authorization of Additional Classification and Rate” to the Contracting Officer. The employer must complete the contractor portion of the form and have affected employees sign and indicate their agreement or disagreement on the SF 1444 at the time of submittal. (See APM Exhibit III for sample SF 1444.)

The Contracting Officer forwards the SF 1444 to USDOL, including recommendations based upon the Contracting Officer’s review and any additional pertinent information. USDOL has sole approval authority of this request. The contractor may compensate employees at the proposed rate until USDOL’s response is received requiring a higher rate of pay. A conformance action is effective on the first day an employee in the conformed classification performs contract work; therefore a retroactive pay adjustment may be required.

**9.G.11.d. Timing Requirements for Filing SF98 and SF98a for Exceptions (MAR 2000)**

When the Contracting Officer requests a wage determination, it is done by submitting the SF 98 and SF 98a notice to USDOL and waiting for USDOL to respond. The request shall be submitted to the same USDOL address as identified in APM 9.G.9.c.

In order to allow USDOL sufficient time to respond, the SF 98 and SF 98a notice is required to be submitted sixty (60) calendar days prior to issuance of the solicitation, exercise of option, contract extension, or contract modification as may be the case.

NOTE: In the event that a response from USDOL is not received in time for incorporation into the solicitation, the Contracting Officer may proceed with issuance of the solicitation but must include a statement in the solicitation that upon USDOL issuance of the wage determination, contract wages will be adjusted to reflect same.

**9.G.12. Requirements for Revised Wage Determinations (MAR 2000)**

The Contracting Officer shall monitor the NTIS database to determine if an applicable wage determination as set forth in the solicitation has been revised prior to making the contract award. Wage determinations will be considered received by a requestor on the date of their publication in the NTIS database. The provisions below shall be followed to determine whether a revised wage determination must be included in the contract.

If a wage rate is published in the NTIS database ten (10) or more days prior to the award of the related contract, a revised wage rate shall be used and a new wage determination must be submitted to USDOL. If a revised wage rate is published in the NTIS database after award of the contract but

before work under the contract commences, a revised wage determination must be completed and a SF 98 and SF 98a must likewise be sent to the USDOL. Where appropriate, consult the Legal Division regarding the specific timing requirements for revised wage determinations.

Any issuance of a new wage determination will require that the Contracting Officer issue a modification to formally incorporate the new or revised rates into the contract. When the new or revised wage determination is incorporated into the contract, the contractor is entitled to submit a request for an equitable price adjustment for the affected class rates. If the contractor does not formally request an equitable adjustment, the Contracting Officer is not required to increase the applicable contract labor rate(s) as a result of a revised wage determination. However, if an equitable adjustment request is received, the Contracting Officer must review it for reasonableness.

As a general benchmark, the contractor's labor rates should only be increased in the amount of (not to exceed) the net increase in the rate from the old, to the revised, wage determination. For example, if the old wage determination rate increased from \$7.00 to a revised rate of \$7.08, then the corresponding contract labor rate should only be increased by \$.08. Adjustments to contract labor rates shall be accomplished through a separate modification to the contract by the Contracting Officer.

If it is discovered that the most current, applicable wage determination (i.e., covering the appropriate locality, occupations, types of services, and fringe benefit levels for the service(s) to be performed) was not included in the contract, FDIC shall ensure that the applicable wage determination is included in the contract.

### **9.G.13. Enforcement (MAR 2000)**

Enforcement of the Service Contract Act is vested with the USDOL. The extent of FDIC's responsibility to ensure the SCA is being followed shall be to:

#### **9.G.13.a. Awareness (MAR 2000)**

Maintain awareness of the requirements of the SCA;

#### **9.G.13.b. Solicitation and Contract Documents (MAR 2000)**

Ensure that FDIC's solicitation and contract documents contain appropriate clauses referencing the applicability of the SCA;

#### **9.G.13.c. Contractor Compliance (MAR 2000)**

Advise contractors of their need to comply with the SCA should the Contracting Officer become aware of potential violations of the SCA; and

#### **9.G.13.d. Complaints (MAR 2000) (JUL 2003)**

Be responsive to complaints filed with ASB by covered employees under SCA-covered contracts, providing employees appropriate contacts at USDOL, and independently reporting such complaints directly to USDOL.



**9.G.14. Penalties (MAR 2000)**

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

**SECTION 9.H. Section 8(a) Program (JUL 2003)****9.H.1. Background (JUL 2003)**

The 8(a) program is operated by the Small Business Administration (SBA) to provide contracting opportunities with the FDIC for small disadvantaged businesses. FDIC will use limited competition for this Program by soliciting a minimum of three 8(a) firms in writing.

**9.H.2. Delegation of Authority (JUL 2003)**

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

**9.H.3. 8(a) Contracting Process (JUL 2003)****9.H.3.a. Requirements Offered (JUL 2003)**

The Program Office shall determine which requirements are suitable for offering to the 8(a) program and identify, in conjunction with the appropriate SBA servicing offices and ODEO, 8(a) Participants capable of performing these requirements.

**9.H.3.b. Limited Competition (JUL 2003)**

Limited competition means soliciting at least three (3) firms in writing. No oral solicitations shall be made to offerors.

**9.H.3.c. Offering Letter (JUL 2003)**

The Offering Letter shall include the following:

- (1) A description of the work to be performed;
- (2) The estimated period of performance;
- (3) The NAICS code that applies to the principal nature of the acquisition;
- (4) The anticipated dollar value of the requirement, including options;
- (5) Any special restrictions or geographical limitations on the requirement;
- (6) The location of the work to be performed for construction procurements;
- (7) Any special capabilities or disciplines needed for contract performance;
- (8) The type contract to be awarded, such as firm fixed price or labor hour;
- (9) The acquisition history, if any, of the requirement;
- (10) The names and addresses of any small business contractors which have performed on this requirement during the previous twenty-four (24) months;

- (11) Bonding requirements, if applicable;
- (12) Identification of all Participants which have expressed an interest in being considered for the acquisition;
- (13) Identification of the Participants that will be solicited for the acquisition;
- (14) Identification of all SBA field offices which have requested that the requirement be awarded through the 8(a) program; and
- (15) Any other information that the Contracting Officer or Program Office deems relevant or which SBA requests.

**9.H.3.d. Submission for Competitive Procurement (JUL 2003)**

The Contracting Officer shall submit the offering letter for competitive 8(a) procurements to the SBA district office that services the geographical area where the FDIC's contracting activity is located, except that offering letters for construction work will be sent to the SBA district office located in the geographical area where the work will be performed.

**9.H.3.e. Review of Offering Letters**

- (1) Competitive Acquisitions over \$5,000. The SBA will issue a confirming acceptance letter or notification of rejection of the 8(a) Participants within five (5) working days of receipt of an offering letter from FDIC. Absent such a notification of rejection, acceptance may be assumed on the sixth (6<sup>th</sup>) working day. If the award will be made on the initial submission of proposals, the SBA will issue an eligibility determination within two (2) working days after a request from the Contracting Officer. If discussions or negotiations and/or a BAFO will be held, the SBA will issue an eligibility determination for all firms in the competitive range within two (2) working days after a request from the Contracting Officer.
- (2) Acquisitions \$5,000 or Less. The SBA will review the eligibility of the 8(a) Participant within two (2) working days after receipt of a copy of the signed purchase order document. The purchase order document may be delivered by any means acceptable to the SBA district office. The SBA shall provide a copy of any negative eligibility determination to the contracting activity and the 8(a) Participant. Absent receipt of a negative eligibility determination from the SBA within two (2) working days, the 8(a) contractor will be authorized to begin performance. No offering or acceptance letter is required for requirements processed under the simplified acquisition procedures threshold.

**9.H.3.f. Contracts to SBA (JUL 2003)**

The Contracting Officer shall provide a copy of any contract, including basic ordering agreements, task or work orders, modifications, and purchase orders, to the

SBA servicing district office within fifteen (15) calendar days of the date of award. Systemic failure to timely provide the required documents to the SBA may result in suspension or rescission of the Partnership Agreement.

**9.H.3.g. Certain Contract Provisions (JUL 2003)**

The Contracting Officer shall ensure that all contracts awarded pursuant to the Partnership Agreement contain provisions that:

- (1) Require SBA's approval of novation or assignment of contract agreements submitted by the 8(a) Participant regarding conformance to the SBA's requirements for section 8(a) firms, and require the FDIC's approval of such novation or assignment of contract agreements regarding the FDIC's contractor ethics eligibility requirements, background investigations, and security checks as set forth in Section V of the Partnership Agreement; and
- (2) Require advance notice to the SBA (as the prime contractor) prior to issuance of a final notice terminating the contract in whole or in part.

**9.H.4. SBA is Prime Contractor (JUL 2003)**

The contract shall state that, even though the SBA may not be so identified in the FDIC contract, it is still the prime contractor on the contract.

**9.H.5. Award Documents (JUL 2003)**

The SBA will issue a letter to the FDIC Office of Diversity and Economic Opportunity, with a copy to the Associate Director, ASB, on a quarterly basis identifying award documents that have not been received by the SBA district office.

**9.H.6. Contract Administration (JUL 2003)**

Administration of 8(a) contracts shall be conducted in accordance with the policies and procedures of APM, Chapter 7, *Contract Administration*.

**9.H.7. Claims and Disputes (JUL 2003)**

The Contracting Officer shall make interim and final determinations on all claims and disputes, provided that the FDIC shall give written notification to SBA within ten (10) calendar days of any such determination. SBA shall have five (5) calendar days to provide comments and suggestions regarding such determination to the FDIC, which comments and suggestions shall be taken into account by FDIC in making such determination final.

**9.H.8. Joint Ventures (JUL 2003)**

The Contracting Officer shall ensure that all proposed Joint Ventures involving 8(a) Participants are approved by SBA before contracts are awarded.

**9.H.9. Ethics and Security (JUL 2003)**

Prior to award, the FDIC Contracting Officer shall ensure that all of the background investigations of personnel have been completed. The Contracting Officer shall also ensure that any fingerprinting required of contractor and subcontractor personnel has been completed and the personnel are acceptable.

After award, the Oversight Manager shall ensure that all background investigations and fingerprinting are completed and personnel are acceptable for any new contractor or subcontractor personnel that are included in the contract.

**9.H.10. Award (JUL 2003)**

**9.H.10.a. Direct Award (JUL 2003)**

The FDIC Contracting Officer may directly award a contract to the 8(a) Participant, not to the SBA, only after the requirement has been offered to and accepted by the SBA.

**9.H.10.b. Contracts \$5,000 or Less (JUL 2003)**

The FDIC Contracting Officer may make an award of a contract without an offer and acceptance by the SBA if the contract is \$5,000 or less and the simplified procedures for direct award are used.

**9.H.10.c. Contract Form (JUL 2003)**

The standard form contract shall also include the following provisions:

- (1) The appropriate block in the preamble shall identify the awarding FDIC office.
- (2) The SBA district office for the 8(a) Participant shall be identified in the contract.
- (3) The 8(a) Participant's name and address shall be listed as the contractor.

**9.H.11. Termination of Contracts (JUL 2003)**

**9.H.11.a. Notice to SBA (JUL 2003)**

The FDIC Contracting Officer shall give written notice to the SBA ten (10) calendar days prior to any such termination of a contract.

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# CHAPTER 10

## ***ASSET DISPOSITION CONTRACTING PROCEDURES***

### **SECTION 10.A. OVERVIEW (MAR 2000)**

#### **10.A.1. Purpose (MAR 2000)**

The purpose of this chapter is to identify the respective roles and responsibilities for the various personnel involved in the contracting process for the needs of the Division of Resolutions and Receiverships (DRR). The contracting process for the DRR responsibilities are set forth in this chapter and shall be conducted in accordance with the procedures outlined herein.

#### **10.A.2. Background (MAR 2000)**

DRR has certain responsibilities relating to receiverships and the conservation and sale of assets that require a contracting process that differs somewhat from those divisions that generally operate in the corporate capacity. DRR has requirements that are somewhat unique, such as appraisals, loan servicing, and auctions, which have some contracting policies and procedures that deal solely with those requirements. While these policies and procedures are not in conflict with those existing in the APM, the DRR requirements call for more specific definition than the general APM policies and procedures.

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**SECTION 10.B. APPRAISAL CONTRACTS (MAR 2000)****10.B.1. Definition (MAR 2000)**

An appraisal is an opinion or estimate of the value of an asset. Appraisals are provided by trained, certified professionals for a variety of asset types including but not limited to single family residences, commercial properties, vacant land, multi-family properties, unique/single purchase assets, and performing and non-performing loan collateral (i.e., the value of real estate securing the loan).

**10.B.2. Use (MAR 2000)**

Appraisals represent an important and critical aspect of DRR's overall asset management and disposition mission and are relied upon as the basis for, or to assist in, many different business decisions. These include analyzing offers to purchase assets, establishing reserve prices or foreclosure bids, preparing real estate budgets, and developing the strategies for disposing of non-performing loans. In addition, the appraisal process may identify other issues such as environmental hazards, delinquent property taxes, excessive property tax assessments, or necessary maintenance and repairs (see DRR's "Asset Disposition Manual," Chapter X, *Other Disposition Policies and Procedures – Real Estate Appraisals*).

**10.B.3. Objective (MAR 2000)**

The procedures stated in this chapter are designed to establish a streamlined, efficient, and consistent approach to procuring high quality appraisals in a timely manner. They focus on appraisals for single-family residences, vacant land, and commercial properties including but not limited to mortuaries, golf courses, and time-shares.

**10.B.4. Contracting Policy (MAR 2000)**

The appraisal contracting process shall be based upon the most efficient and appropriate procurement strategy considering asset type, quantity, and geographic and market location. A direct award process will be used for awards of \$5,000 or less whereby only one (1) firm is solicited. A competitive process, whereby at least three (3) firms are solicited, shall be used for awards greater than \$5,000, but less than \$100,000. If the appraisal requirement is greater than \$100,000, at least five (5) firms shall be solicited (see APM, 6.B.3.d., *Sources for Solicitation*).

**10.B.5. Roles and Responsibilities (MAR 2000)**

The appraisal contracting process involves the active communication and coordinated effort among Account Officers and Appraisal Review in DRR, and Contracting Officers in ASB. The general roles and responsibilities for the Contracting Officer and the Account Officer (as the primary Program Office representative) are stated in APM, 1.D.2.b., *Acquisition Services Branch*, and

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1.D.2.c., *Program Office*, respectively. In addition, specific responsibilities germane to appraisal contracting are specified below.

**10.B.5.a. Account Officers, DRR (MAR 2000)**

In addition to the requirements stated in APM, 1.D.2.c., *Program Office*, the Account Officer, as the primary Program Office representative, is responsible for:

- (1) Assembling complete and up-to-date asset information and providing it to the Contracting Officer in the Requirements Package;
- (2) Completing the Appraisal Services Information Form (see APM, 10.B.6.b.) for each required appraisal and providing it to the Contracting Officer in the Requirements Package;
- (3) Ensuring an internal quality review of the Requirements Package is conducted (i.e., that the Requirements Package has approved expenditure authority and includes all documentation required by this chapter) prior to forwarding to the Contracting Officer;
- (4) Obtaining written input from Appraisal Review on unique and unusual assets prior to providing the Requirements Package to the Contracting Officer;
- (5) Addressing feedback and written reports from the Contracting Officer regarding quality and status of Requirements Packages;
- (6) Performing contractor oversight including monitoring performance, reviewing and approving/rejecting appraisals and invoices;
- (7) Notifying the Property Manager/borrower and coordinating property access for the appraiser for owned-real estate or loan collateral; and
- (8) Assisting with coordination and resolution of problems encountered with a borrower loan collateral appraisal.

**10.B.5.b. Appraisal Review, DRR (MAR 2000)**

The Appraisal Review Group is responsible for:

- (1) Reviewing the Account Officer's statement of work (SOW) for properties with unique or unusual attributes;
- (2) Providing additional SOW language to address the appraisal requirements for unique or unusual types of assets/properties;
- (3) Assisting in the identification of potential sources for solicitation purposes;

- (4) Acting as technical advisor to the Account Officer and Contracting Officer on any issues that relate to the valuation of the asset, when requested, including unique or unusual assets; and
- (5) Assisting the Account Officer with approving/rejecting the appraisal, when requested.

#### **10.B.5.c. Contracting Officer, ASB (MAR 2000)**

In addition to the general requirements stated in APM, 1.D.2.b., the Contracting Officer is responsible for:

- (1) Reviewing the Requirements Packages on a timely basis, including the Appraisal Services Information Form, identifying any missing information, and notifying the Account Officer as soon as possible of any deficiencies;
- (2) Completing the appraisal SOW based upon the DRR-completed Appraisal Services Information Form;
- (3) Selecting an appropriate procurement strategy that ensures timely delivery of appraisals;
- (4) Identifying potential sources for solicitation for the requirement;
- (5) Conducting the solicitation, evaluation, and award process in accordance with procedures stated herein and in APM, Chapter 5, *Simplified Procurement Procedures*;
- (6) Providing prompt feedback to DRR managers as significant/recurring problems with Requirements Packages are encountered as well as general status reports; and
- (7) Conducting contract administration in accordance with the procedures stated herein and in APM, Chapter 7, *Contract Administration*.

#### **10.B.6. Preparation of Requirements Package (MAR 2000)**

##### **10.B.6.a. General (MAR 2000) (JUL 2003)**

As stated in APM, 10.B.5. above, the Account Officer is responsible for preparing a current, complete, and accurate Requirements Package for all appraisals and delivering it to the Contracting Officer. The general contents for a Requirements Package for appraisal services are stated below and shall include:

- (1) Procurement Requisition prepared according to the requirements of APM, 4.A.4.;
- (2) Appraisal Services Information Form (see APM, 10.B.6.b. below for a complete description);

- (3) Special requirements or asset descriptions for unique or unusual assets;
- (4) Technical evaluation criteria if necessary;
- (5) Special instructions for the SOW and additional technical skills required, if necessary;
- (6) Suggested sources of appraisers; and
- (7) Other documentation for assets having or suspected of having unique or unusual characteristics as necessary (see APM, 10.B.6.c.).

**10.B.6.b. Appraisal Services Information Form (MAR 2000)**

All Requirements Packages for appraisal services shall contain a fully completed and signed Appraisal Services Information Form for each required appraisal. The form shall be signed by the Account Officer and requires the Account Officer to identify and provide the information necessary so that the Contracting Officer may proceed with the solicitation process. When the form is properly completed, the Contracting Officer shall create the solicitation package and proceed expeditiously with the award of the appraisal contract. The form is provided as APM, Exhibit XXIX.

**10.B.6.c. Assets Having Unique/Unusual Characteristics (MAR 2000)**

For the majority of appraisal requirements, the information required in APM, 10.B.6.a. and b. will be sufficient to conduct the contracting process. However, for properties with unique or unusual characteristics, the Account Officer shall forward a completed Appraisal Services Information Form and SOW to the Appraisal Review Group for input. Examples of properties that should be reviewed by the Appraisal Review Group include but are not limited to:

- (1) Leasehold interests with complex ownership/leasehold agreements;
- (2) Properties environmentally impacted or suspected of having environmental problems; and
- (3) Properties that are unique or unusual including mortuaries, planned unit developments (with memberships, common area, restrictive covenants), golf courses/country clubs that are part of a residential community with homeowner rights, time-sharing properties, unusual single family (1-4) residences, hotels, restaurants, and unique single purpose commercial properties.

For properties such as those identified above, it is the Account Officer's responsibility to ensure that the SOW adequately addresses the unique or unusual characteristics of the property and to obtain Appraisal Review's input and additions to the SOW prior to forwarding it to the Contracting Officer. This will ensure that any issues involving the unique or unusual characteristic of the asset and its

subsequent valuation are addressed early in the process to avoid delays and improve the probability for an acceptable appraisal.

Some environmental problems may be too complex for the appraiser to factor into the asset's valuation. In such instances, the appraiser will be required to appraise the property without factoring the environmental condition into the property's appraised value and so qualify the appraisal. However, for all properties with known environmental problems, the problems must be disclosed to the appraiser in the solicitation package.

### **10.B.7. Appraisal Contracting Process (MAR 2000)**

#### **10.B.7.a. Review of Requirements Package (MAR 2000)**

Once a Requirements Package is provided to ASB, the Contracting Officer shall review it in a timely manner and identify any missing information to the Account Officer. If the Requirements Package, including the Appraisal Services Information Form, is complete, the Contracting Officer shall select and conduct the most efficient and appropriate procurement process for the identified asset(s), considering asset type, quantity and geographic location. A direct award process may be used for awards \$5,000 or less and a competitive process shall be used for awards greater than \$5,000.

#### **10.B.7.b. Solicitations for Single Asset Appraisals (MAR 2000)**

APM, 5.D.1.b. provides authority for a direct award process where the Contracting Officer solicits only one (1) firm for awards of \$5,000 or less. Whenever possible, the Contracting Officer will use this authority to solicit a single source to provide timely delivery of appraisals. All appraisal awards greater than \$5,000 shall be solicited using a competitive process.

#### **10.B.7.c. Solicitations for Pooled Asset Appraisals (MAR 2000)**

When appropriate, the Contracting Officer shall pool similar asset types in the same geographic location and market to take advantage of volume discounts. The Contracting Officer must consider the timeliness of performance in all pooling decisions. The appropriate procurement strategy shall be determined based on the total value of the appraisal contract considering the cumulative dollar amount of the pooled assets. Therefore, the Contracting Officer shall use the direct award process for pooled assets with a cumulative contract value of \$5,000 or less.

#### **10.B.7.d. Solicitation List (MAR 2000)**

The Contracting Officer is responsible for creating the solicitation list for appraisal requirements. It should contain only those firms that meet the minimum requirements stated in APM, 10.B.8.a. Prospective sources may be obtained from

the Account Officer, Appraisal Review Group, the National Contractor System (NCS), the Appraisal Institute Directory, the Office of Diversity and Economic Opportunity, or any other appropriate source.

**10.B.7.e. Screening Appraisers (MAR 2000)**

Prior to any solicitation, the Contracting Officer should screen prospective offerors by telephone to determine if they have the capacity to perform the requirement. Only appraisers that have the capacity to perform the appraisal requirement should be contacted for a verbal quote or sent the RFQ. The Contracting Officer shall document the results of the screening process in the official contract file, clearly identifying the offerors to be solicited for a given requirement.

**10.B.7.f. Solicitation Method and Documentation (MAR 2000)**

The Contracting Officer shall conduct the solicitation process using simplified procurement procedures stated in APM, Chapter 5. This includes using written RFQs for appraisal requirements. The RFQ shall provide prospective offerors with sufficient information to prepare a responsive price quote and to provide any other information necessary to conduct an evaluation of the offer/offeror. This includes but is not limited to a complete property identification, work/technical requirements, appraisal due date, contractor qualifications, identification of key appraiser and certification form, and any special instructions or supplements to the statement of work.

**10.B.8. Offer/Proposal Evaluation And Award (MAR 2000)**

**10.B.8.a. Evaluation (MAR 2000) (JUL 2003)**

The Contracting Officer shall be responsible for making the award decision. When technical evaluation criteria are not required, the award decision shall be made on the basis of price alone after confirming the delivery schedule, and that the successful offeror has, as identified in the solicitation, the following qualifications/certifications:

- (1) Currently licensed/certified by the appropriate state government agency;
- (2) Minimum of three (3) years of real estate appraisal experience;
- (3) At least one (1) year of experience appraising the particular asset type in the market/geographic location as the current requirement; and
- (4) No disqualifying conditions in NCS (Integrity and Fitness Representations and Certifications are not required for awards less than \$25,000).

**10.B.8.b. Technical Evaluation Official (MAR 2000)**

If it is necessary to use technical evaluation criteria to evaluate appraiser qualifications beyond those stated in APM, 10.B.8.a., *Evaluation*, the Program Office requiring the appraisal shall select a knowledgeable representative to serve as the Technical Evaluation Official (TEO). The TEO shall be responsible for conducting the evaluation of the appraiser technical proposals following the policies and procedures stated in APM, 5.E., *Evaluation Phase*.

**10.B.8.c. Award (MAR 2000)**

The Contracting Officer shall prepare a purchase order for all appraisal requirements. At the discretion of the Contracting Officer, the Contracting Officer may use a short form or formal contract for complex and/or high volume of assets. The Account Officer shall be notified immediately upon award and provided with a copy of the purchase order, and, if applicable, the short form or formal contract.

**10.B.9. Contract Administration (MAR 2000)****10.B.9.a. General (MAR 2000)**

Contract administration for appraisal requirements shall generally follow the policies and procedures stated in APM, 7.C., *Simplified Contract Administration*, emphasizing quality, timely delivery, approval or rejection of the appraisal, invoice review/payment in accordance with the contract and expenditure ceiling, proper file documentation, and closeout.

**10.B.9.b. Delivery (MAR 2000)**

All appraisals shall be initially provided to the Contracting Officer to record the timeliness of the delivery in accordance with the terms of the contract. After receipt has been documented, the Contracting Officer shall provide the appraisal to the Account Officer for review and approval.

**10.B.9.c. Inspection and Acceptance (MAR 2000)**

The Account Officer shall perform a timely review of the appraisal and notify the Contracting Officer upon acceptance. If the appraisal is not acceptable, the Account Officer shall document the rationale for the rejection and return the appraisal to the Contracting Officer. Appraisal Review personnel will be used to support the inspection and acceptance of an appraisal when requested by the Account Officer. The Contracting Officer shall return the appraisal to the contractor for correction with instructions for resubmission.



**10.B.9.d. Invoicing (MAR 2000) (JUL 2003)**

Invoice review and approval shall be in accordance with APM, 7.I.4., *Invoice Review*, and 7.I.6., *Processing Invoices*. No invoice shall be paid prior to approval of the appraisal.

**10.B.9.e. Performance Evaluation (MAR 2000)**

The Account Officer is strongly encouraged to complete a written evaluation of the contractor's performance using the Contractor Performance Evaluation and Reporting Form (see APM, 7.G.4., *Performance Evaluation*, and Exhibit XVIII).

**SECTION 10.C. LOAN SERVICING CONTRACTS (MAR 2000)****10.C.1. Organizational Responsibilities (MAR 2000) (JUL 2003)**

The following functional areas work in concert to provide comprehensive oversight management and contract administration for contractors under the FDIC's loan servicing contracts. It is recognized that these functional areas have integral responsibilities in the oversight program. This section focuses on DRR accountability as Oversight Managers and Technical Monitors, respectively, for oversight of contractors. In addition, it also focuses on ASB responsibility for administering the contract to ensure performance by the contractor and FDIC.

**10.C.1.a. DOA ASB (MAR 2000)**

Responsible for ensuring contract performance by both the contractor and FDIC; and for general administration of the loan servicing contract, contract enforcement, and resolution of contract issues.

**10.C.1.b. DRR Contract Management, Field Operations Branch (MAR 2000)**

Primarily responsible for monitoring the contractor's technical performance and quality of work and for ensuring that the contractor performs the work as required under the loan servicing contract and appropriate FDIC disposition policies as incorporated by reference under the contract.

**10.C.1.c. DRR Operational Accounting (MAR 2000) (JUL 2003)**

Responsible for recording all financial transactions to FDIC systems; and for monitoring contractor cash management, reconciliation, conversion, and reporting processes to ensure that the highest standards of financial integrity are maintained.

**10.C.2. DOA and DRR Oversight Team: Primary Parties (MAR 2000) (JUL 2003)****10.C.2.a. DOA Contracting Officer (MAR 2000)**

The Contracting Officer is responsible for administration of the contract and is the only person who may enter into or change a contract on behalf of FDIC. Contracting Officer responsibilities include, but are not limited to, monitoring the contractor for compliance with the contract terms and conditions, approving contractor payments, enforcing contract provisions, executing modifications, assisting the Oversight Manager as requested, and notifying the contractor regarding performance deficiencies.

**10.C.2.b. DRR Oversight Manager (MAR 2000) (JUL 2003)**

The Oversight Manager will be confirmed by the Contracting Officer with a *Letter of Oversight Manager Confirmation* (APM, Exhibit XVI), which describes the

Oversight Manager's responsibilities and authorities. The Oversight Manager is the primary FDIC contact point with the contractor and is responsible for coordinating efforts of the oversight team members, including DRR Technical Monitors. The Oversight Manager, pursuant to the authority of the Letter of Oversight Manager Confirmation, coordinates with the contractor on technical matters of performance, gives technical clarification on the statement of work, inspects and accepts work and/or deliverables under the contract, verifies satisfactory delivery of contract items and/or performance, completes the *Contractor Performance Evaluation and Reporting Form* (APM Exhibit XVIII) at the conclusion of contract, and performs other duties as delineated in the Confirmation Letter.

DRR Technical Monitors will work for and assist the Oversight Manager with contract management activities. The DRR Oversight Manager and Technical Monitors will ensure that the needs of FDIC are met through the terms and conditions of the contract. Performance issues noted by the Technical Monitors will be documented and provided to the Oversight Manager, who will promptly notify the Contracting Officer in writing of any noncompliance, deviation in performance, or failure to make progress.

**10.C.2.c. DRR Technical Monitors (MAR 2000) (JUL 2003)**

The DRR Technical Monitors will be confirmed with a *Letter of Technical Monitor Confirmation* (Exhibit XVII) from the Contracting Officer. DRR will designate a lead Technical Monitor to act as a primary contact for communicating with the Oversight Manager, other DRR Technical Monitors, and the contractor. In accordance with the Letter of Technical Monitor Confirmation, the Technical Monitor will provide technical guidance to the contractor on matters including, but not limited to, cash management, accounting, remittance reporting, and relevant internal controls. The Technical Monitor will provide copies to the Oversight Manager of correspondence and reports related to their assigned monitoring responsibilities for inclusion in the Oversight Manager's oversight files. The Technical Monitor may use support staff as liaisons who will represent DRR when dealing with the contractor exclusively for purposes of monitoring DRR assigned functions.

Specific monitoring plans will be developed for each loan servicing contract to establish accountability among FDIC personnel for monitoring various aspects of the contract and to make special provisions that may be necessary for monitoring the servicing of different types of assets. For example, tasks associated with monitoring a full servicing contract for single family assets will differ from tasks associated with monitoring a master servicer reporting activity for loans serviced by others.

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**10.C.3. Monitoring Plans (MAR 2000)**

Monitoring plans will be developed and signed by the Oversight Manager, the Technical Monitors, and the Contracting Officer to signify formal acknowledgment of their assigned responsibilities. The Letters of Confirmation issued by the Contracting Officer to the Oversight Manager and Technical Monitors will be updated to reflect the responsibilities defined in each monitoring plan. Monitoring plans will be modified to reflect any personnel changes on the oversight team. The updated monitoring plan shall be signed and placed in the official contract file, the Oversight Manager file, and the Technical Monitor file and also distributed to notify the oversight team members and management of changes in contract oversight and administration staff accountability.

**10.C.4. ASB and DRR Oversight Team: Monitoring Responsibilities (MAR 2000) (JUL 2003)****10.C.4.a. ASB Monitoring Responsibilities (MAR 2000)**

- (1) Contract Management
  - (a) Enforce contract terms and conditions; and
  - (b) Resolve contractual issues.
- (2) Contract Administration
  - (a) Develop Contract Administration Plan (CAP);
  - (b) Maintain key personnel list;
  - (c) Review eligibility certifications (integrity and fitness);
  - (d) Maintain performance evaluation;
  - (e) Process/approve contract modifications; and
  - (f) Send formal notifications to contractor.
- (3) Contractor Payments
  - (a) Review and approve contractor payments; monitor payments for timeliness and accuracy; verify the accuracy of the contractor's payment of subcontractor costs; and
  - (b) Monitor the expenditure ceiling for each contract (joint ASB/DRR responsibility).

**10.C.4.b. DRR Monitoring Responsibilities (MAR 2000)**

- (1) Oversight Management
  - (a) Review asset stratification to determine level of contractor delegated authority;
  - (b) Maintain current powers of attorney for contractor;

- (c) Sample, track, and review cases for decisions and delegation exceptions; and
  - (d) Serve as primary contact between FDIC and contractor; responsible for approval of specific monitoring plan.
- (2) Default Management
- (a) Monitor collection activity;
  - (b) Review matured/delinquent loans for workouts and modifications;
  - (c) Review assets in foreclosure, litigation, and bankruptcy for disposition;
  - (d) Review delinquent assets for final disposition and/or foreclosure;
  - (e) Evaluate high risk assets with environmental concerns and develop disposition and/or foreclosure; and
  - (f) Evaluate high-risk assets with environmental concerns and develop disposition plans.
- (3) General Servicing
- (a) Monitor and review Congressional, FOIA, and customer inquiries for responsiveness;
  - (b) Verify evidence and payment of hazard insurance and taxes (escrow);
  - (c) Verify 1098s and 1099s are sent when required;
  - (d) Perform periodic review of files, notes, and collateral for appropriate documentation and security;
  - (e) Monitor contractor's support of asset marketing initiatives;
  - (f) Review all contractor policies and procedures for adherence to FDIC guidelines; and
  - (g) Monitor contractor's responsiveness to all reporting, audit, and Standard Asset Valuation Estimate (SAVE) requests.
- (4) Contractor Payments
- (a) Verify satisfactory delivery of contract deliverables and/or performance;
  - (b) For fees, expenses, and advances as defined in APM, 9.B.3.b., invoiced for payment, prepare Payment Authorization Voucher and send to DOF for processing;

- (c) For fees, expenses, advances netted from the remittance, prepare a monthly Memorandum of Certification to approve sums netted for payment and send copy to DOF and ASB; and
- (d) Monitor the expenditure ceiling under each contract (joint DRR/ASB responsibility).

**10.C.4.c. DRR Operational Accounting Monitoring Responsibilities (MAR 2000) (JUL 2003)**

- (1) Cash Management
  - (a) Review cash management/controls;
  - (b) Establish/close out bank accounts;
  - (c) Monitor cash suspense balances;
  - (d) Monitor accounts payable; and
  - (e) Review Control Totals Module (CTM) remittance processing/reporting and clear exception items.
- (2) Reconciliations and Reporting
  - (a) Review bank account reconciliations; clear exception items for all receipt, disbursement, custodial bank accounts;
  - (b) Perform sales reconciliations;
  - (c) Perform conversion reconciliations;
  - (d) Review investor/agency reporting; and
  - (e) Review participation reporting.
- (3) Portfolio Administration
  - (a) Develop and execute conversion plans;
  - (b) Resolve conversion balancing issues;
  - (c) Validate financial institution number (FIN) termination processing;
  - (d) Sample/validate loan payoff calculations;
  - (e) Sample/validate adjustable rate mortgage (ARM) adjustments and system calculations of principal, interest, taxes, and insurance (P&I, T&I);
  - (f) Sample/validate late charges accrual; and
  - (g) Sample/validate compliance with Internal Revenue Service (IRS) regulations for issuing forms 1098, 1099A, and 1099C.

- (4) Contractor Payments
  - (a) Process Payment Authorization Vouchers approved by ASB/DRR;
  - (b) Process contractor remittances concurrent with DRR review of fees, expenses and/or advances netted from the remittance (DOF processing may occur prior to DRR review and approval); and
  - (c) As requested, provide consultation and audit services to DRR to assist in the development of methods and tests to facilitate DRR monthly review of contractor fees, expenses and/or advances either invoiced or netted from the remittance.

**10.C.5. Contractor Visitation (MAR 2000) (JUL 2003)**

DRR will conduct visitations in accordance with the terms and conditions of the loan servicing contract and the specific monitoring plans to review the controls and processes in place, verify contractor performance against scheduled/reported performance, and ensure that the highest standards of financial integrity are maintained. When appropriate, visits will be conducted using a team approach (ASB/DRR/DOF) to minimize the number of visits so as not to interfere with the contractor's performance.

**10.C.6. Audits (MAR 2000) (JUL 2003)**

ASB and DRR representatives will be responsible for notifying each other of any and all contacts from the GAO, OIG, Office of Internal Control Management (OICM), or other auditing groups. The ASB point of contact will be the Contracting Officer. The DRR point of contact for all audits is the Office of Internal Review. Any audit findings related to functions performed by a contractor will be addressed by ASB or DRR depending upon the subject of the finding. Representatives from each division will participate in entrance and exit meetings and discussions of any preliminary findings. Inquiries and written matters for further consideration and related documentation will be shared and joint responses provided if appropriate. ASB and DRR representatives will consult one another for scheduling and attending meetings with audit team representatives.

**10.C.7. Support Staff (MAR 2000) (JUL 2003)**

The DRR Technical Monitor may use other DRR personnel and/or contractor support to act as liaisons for requests to the contractor that pertain exclusively to contractor functions DRR is responsible for monitoring. The liaisons will work closely with the Technical Monitor on any issues related to the contractor. For issues requiring Oversight Manager/Technical Monitor assistance, liaisons will provide a briefing, including a summary of the issue, chronology of efforts and communications with the contractor, and copies of relevant documentation.

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**SECTION 10.D. AUCTION CONTRACTS (MAR 2000)****10.D.1. Auction Contracting (MAR 2000)**

An auction is a means by which FDIC, acting in its corporate, conservatorship, or receivership capacity, pursues disposition of owned real estate; furniture, fixtures and equipment; or loans. Auctions can be either open-outcry or sealed bid events, and are conducted by third party contractors.

**10.D.2. Use (MAR 2000)**

FDIC is mandated to dispose of its assets in a timely fashion and recover acceptable levels of value. Auctions represent an important and critical aspect of DRR's overall asset management and disposition mission. Contractors performing auctions are required to develop and implement a comprehensive marketing plan for assigned assets, which includes but is not limited to, property/market analysis, placement of auction advertising and public relations campaigns, preparation and dissemination of promotional materials, auction staffing, auction day implementation, post auction sales if necessary, and closing activities.

**10.D.3. Objective (MAR 2000)**

The procedures stated in this section are designed to establish a streamlined, efficient, and consistent approach to procurement of high quality auctions in a timely manner. They focus on open-outcry and sealed bid auctions of FDIC assets and address specific roles and responsibilities of DRR, ASB, and Legal Division staff as related to auction planning, solicitation and award of auction contracts, and auction contract administration.

**10.D.4. Contracting Policy (MAR 2000)**

FDIC Program Office and ASB officials will work as a team to ensure that auction contracts are properly planned and executed in accordance with APM, 10.D. All auction contracts must be administered to ensure adequate control and documentation of all expenses.

The auction process has been delineated into three (3) specific phases: planning; solicitation and award; and contract administration. This section addresses the key responsibilities for each phase and supplements existing FDIC policies and procedures, including but not limited to DRR's "Asset Disposition Manual."

**10.D.5. Planning (MAR 2000)**

Planning for the auction contracting process involves active communication and a coordinated effort between the DRR Program Office official and the Contracting Officer in ASB. This process begins with ASB's receipt of DRR's Requirements Package.



**10.D.5.a. Review of the Requirements Package (MAR 2000)**

The Contracting Officer should perform an internal quality review of the Requirements Package to determine that adequate expenditure authority has been obtained and to ensure that all required documentation and information has been included. The asset disposition method and fee structure applicable to the auction contract are particularly important. The attributes of the portfolio will determine the disposition method. DRR will prescribe the fee structure and marketing strategy that best fits the product eligible for disposal. The fee structure selected will dictate the advertising methodology and responsibilities as defined in the Requirements Package submitted to ASB. If the SOW requires the contractor to provide services beyond calling the auction, the solicitation shall require each offeror to submit a complete cost proposal for all expected services, including but not limited to a commission/fee structure, a comprehensive marketing plan, an auction budget, and a time line. Analysis of these components is critical in the evaluation and selection of the most qualified and cost effective contractor.

**10.D.5.b. Contractor Performance Management File (MAR 2000)**

It is the DRR Internal Review's responsibility to ensure that the oversight management file is established by the DRR Oversight Manager in accordance with the policies and procedures as defined in APM, Chapter 7, *Contract Administration*.

**10.D.5.c. Auction Advances (MAR 2000)**

Advance payments to Contractors are not typically provided. Therefore, advances are not authorized unless their use can be adequately justified and clearly documented to be in the best interest of FDIC. For example, advances may be justified for large auction events as a way to ensure, to the fullest extent practicable, that Minority- or Women-Owned Businesses or Small Disadvantaged Businesses are given the opportunity to participate. Advances must be requested by the Program Office and may only be made under the following terms and conditions:

- (1) Advances require prior written approval from the Program Office under the following levels of authority:
  - (a) Division Director or designee when the advance is \$50,000 or less.
  - (b) The senior executive or designee at the regional or field office when the advance is greater than \$50,000.
- (2) The availability of advances will be set forth in the solicitation, and will be provided in accordance with the terms of the auction contract.
- (3) The contract is competitively awarded.
- (4) Advances will not exceed 25% of the auction budget excluding commissions for the base contract price.

- (5) Only one (1) advance will be made per auction contract.
- (6) The Contractor shall provide acceptable security in the form of an irrevocable letter of credit that must be in an amount equal to the advance.
- (7) Advances will be netted against invoiced/incurred expenses. Expenses will not be funded until amounts previously advanced have been fully recovered.
- (8) Advances will be tracked under the Purchase Order System (POS) and will be posted as miscellaneous receivables from the contractor under the General Ledger (GL) Account-Miscellaneous Receivables, Account # 036901. As the contractor's advanced payment draws are received and approved, credit memos will be processed to expense GL Account # 036901 and adjust the POS.
- (9) A monthly status/reconciliation report is required from the contractor. All advances to contractors will be promptly reconciled by the DRR Program Office official and the Contracting Officer. The report must indicate the use of funds advanced, remaining funds available, and a reconciliation to the auction budget substantiated with proper invoices and documentation pursuant to subparagraphs 10.D.7.b.(2)(a) through (h) below. Final reconciliation of all advances shall be completed within sixty (60) days of the final performance of auction services required under the contract.
- (10) Advances against commissions are prohibited.
- (11) Refer to APM, Section 8.I., *Advance Payments to FDIC Contractors*, to ensure that all requirements related to advances have been met.

#### **10.D.6. Solicitation and Award (MAR 2000)**

ASB, the Program Office, and the Legal Division shall work as a team to ensure that all potential contractors have a clear understanding of the required services and the terms and conditions under which these services are to be provided.

##### **10.D.6.a. DRR Oversight Manager Responsibilities (MAR 2000)**

- (1) Ensure continuance of due diligence to confirm the marketability of the assets and further refine the asset inventory list.
- (2) Attend the post-award conference.

##### **10.D.6.b. Contracting Officer Responsibilities (MAR 2000) (JUL 2003)**

- (1) Prepare the Request for Proposal (RFP).
- (2) Ensure an adequate competitive base when soliciting contractors, including requesting input from the Program Office and ODEO.

- (3) Ensure that a Technical Evaluation Panel reviews the marketing plan, auction budget, and time lines submitted by all offerors for any task order or contract solicitations made under a basic ordering agreement. The purpose of this review is to ensure the adequacy and reasonableness of the submitted plans as well as the ability of the offeror to perform under its proposal.
- (4) Evaluate the offerors' price proposals.
- (5) Work with the Security Management Section in Corporate Services Branch to ensure that a complete background investigation and fingerprinting, if required, are conducted on the contractor, their key personnel, and subcontractors prior to the award of the contract in accordance with APM, 6.E.2.e., *Background Investigations*. Ensure that the investigation is completed in a timely manner.
- (6) Prepare the final contract documentation, and award the contract.
- (7) Conduct a post-award conference or phone call with the Oversight Manager, Contracting Officer, Legal Division, and the contractor to clearly define the responsibilities and expectations of the parties.

**10.D.6.c. Legal Division Responsibilities (MAR 2000)**

- (1) Provide assistance, as necessary, to the Contracting Officer and Program Office during the solicitation and award process.
- (2) Review the Request for Proposal (RFP) and contract prior to distribution to prospective offerors for awards greater than \$100,000.
- (3) When requested by the Contracting Officer, provide auction contracts and auction BOAs.
- (4) Continue addressing marketability issues related to the asset inventory as necessary.
- (5) Attend the post-award conference as necessary.

**10.D.7. Contract Administration (MAR 2000)**

**10.D.7.a. Purpose (MAR 2000)**

The purpose of the contract administration function is to ensure that the contractor is providing the goods and services as prescribed under the contract. APM, 10. D. 7. establishes the dual responsibilities of the Oversight Manager and Contracting Officer for certain contract administration duties (e.g., monitoring the contractor's performance).

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**10.D.7.b. DRR/ASB Coordination (MAR 2000)**

Contract administration includes both contractor and contract oversight. Contractor oversight is primarily the responsibility of the Program Office through the assigned Oversight Manager. The Oversight Manager ensures that the contractor performs at a technically acceptable level. The contract oversight is primarily the responsibility of ASB through the Contracting Officer. The Contracting Officer ensures that the contract is performed in accordance with its terms and conditions. To achieve contract objectives, close coordination and teamwork must exist between the Oversight Manager and the Contracting Officer. Outlined below are the respective duties that the Oversight Manager and Contracting Officer must perform when administering auction contracts:

- (1) **Contract Modifications.** The finalized marketing plan, auction budget, and time line are the primary control mechanisms for monitoring the contractor's performance and compliance with the terms and conditions of the auction contract. Under certain circumstances, it may be necessary to adjust any of these items or handle unforeseen expenses. Modifications to the auction budget must be within the scope of the contract and must be approved within delegated authority and fully supported by appropriate documentation. Adjustments to the finalized asset inventory list, the marketing plan, or the time line will require prior approval from the Program Office Regional Manager and a subsequent written modification of the auction contract by the Contracting Officer.

Refer to APM, 7.H., *Changes/Modifications to Contracts*, to ensure that all required duties for both the Oversight Manager and Contracting Officer related to contract modifications have been met.

- (2) **Invoice Processing.** Prior to payment, all invoices will require joint review by the Oversight Manager and the Contracting Officer. As part of the review process, the Oversight Manager and Contracting Officer will:
  - (a) Confirm that the contractor has provided original invoices and two (2) copies following the format prescribed by the auction contract and APM, 7.I.6., *Processing Invoices*;
  - (b) Ensure that invoices adequately describe the services rendered and delineate the costs for providing said services when dealing with partial payments;
  - (c) Confirm that invoices for print media expenses are accompanied by the insertion orders and tear sheets;
  - (d) Review the invoices for reasonableness, accuracy, and supporting documentation pursuant to the terms and conditions of the auction contract;

- (e) Conduct periodic performance reviews to ascertain that the services invoiced were actually provided and are consistent with the terms and conditions of the auction contract and that the contractor is adhering to the agreed upon time lines;
- (f) Reconcile the contractor's invoices to the auction budget under the fee structures defined in the contract. Unless a contract modification has been approved, invoices that exceed the line item in the auction budget will be disallowed; invoices in line with the auction budget will be authorized for payment;
- (g) Use the asset/property's settlement statement to ensure that all commissions paid to the auctioneer match the commission schedule in the contract upon final closing of properties or assets for auctions of real property or assets where FDIC does not directly pay the auctioneer's commission; and
- (h) Identify any adverse expense trends and submit recommendations for corrective action to the appropriate delegated authority, as necessary.

Refer to APM, 7.I., *Contract Payments*, to ensure that all required duties for both the Oversight Manager and Contracting Officer related to invoice processing have been met.

**10.D.8. Contractor Performance Evaluation Report (MAR 2000)**

As outlined in APM, 7.G.4., *Performance Evaluation*, the Contracting Officer is responsible for ensuring that the Oversight Manager completes the *Contractor Performance Evaluation and Reporting Form* (Exhibit XVIII) in a timely manner. This form provides information on a contractor's performance that may be critical to evaluating subsequent procurements.

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**SECTION 10.E. SUBSIDIARY CONTRACTING (MAR 2000)****10.E.1. Background (MAR 2000)**

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

**10.E.2. Applicability of the APM (MAR 2000)**

The APM shall not apply to a subsidiary unless the subsidiary elects that it apply. The election to follow the APM and have Contracting Officers in ASB contract on behalf of the subsidiary requires a resolution of the board of directors of the subsidiary (Resolution) and a Service and Agency Agreement (SAA).

**10.E.3. Board Resolution (MAR 2000)**

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

**10.E.4. Service and Agency Agreement (MAR 2000)**

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

**10.E.5. Contracting Capacity (MAR 2000)**

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

**10.E.6. Processing Invoices (MAR 2000)**

Contracts for subsidiaries shall be entered in the Purchase Order System as a "Y class" entry, indicating that payment of such invoices shall be the responsibility of the subsidiary and not FDIC.

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The Contracting Officer shall review all invoices in accordance with the terms and conditions of the contract and forward these invoices to the Oversight Manager for approval. After the Oversight Manager approves the invoice, it is returned to the Contracting Officer, who shall keep a copy for the official contract file and send the original invoice to the subsidiary for payment.

**10.E.7. Documentation (MAR 2000)**

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

**SECTION 10.F. FINDER’S FEE (MAR 2000)**

**10.F.1. Background (MAR 2000)**

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

**10.F.2. Use of Private Sector Firms (MAR 2000)**

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

Payment of such fees shall be made by a payment authorization voucher (PAV) pursuant to APM, 9.B.3.b.(20).



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## SECTION 10.G. CLOSING SUPPORT FOR FINANCIAL INSTITUTION CONTRACTS (MAR 2000)

### 10.G.1. Scope (MAR 2000)

Closing a financial institution requires the coordinated efforts of many specialists under the supervision of DRR. Contracting Officers participate in this process during pre-closing and post closing activities.

### 10.G.2. Pre-Closing Activities (MAR 2000)

Prior to closing, the Contracting Officer, with DRR and the Legal Division, will complete an initial inventory during the on-site review of the institution's contracts to determine the dollar value/ceiling price, period of performance, description of services, and general terms and conditions. The Contracting Officer will use best efforts to obtain copies of all institution contracts. The initial contracts inventory will be used to reconcile against the status of the institution's contracts ninety (90) days following the closing.

### 10.G.3. Post Closing Activities (MAR 2000)

#### 10.G.3.a. Post Closing Review of Institutions Contracts (MAR 2000)

Ninety (90) calendar days following the closing, the Contracting Officer and DRR shall conduct a post closing review all of the institution's contracts. The purpose of this review is to reconcile this list against the initial inventory completed during the pre-closing on-site review.

#### 10.G.3.b. Identification (MAR 2000)

The post closing review will identify:

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

Even though disposition decisions on most institution contracts should generally be made at the 90-day-post-closing date, DRR shall have up to one-hundred-eighty (180) calendar days from the closing to make a repudiation decision on a contract.

#### 10.G.3.c. Additional Information (MAR 2000)

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

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- (1) Payment schedules;
- (2) Analysis of terms and conditions (e.g., egregious provisions);
- (3) Potential conflicts of interest and integrity and fitness of the contractor;
- (4) Cost effectiveness of the contract and the availability of ongoing FDIC contracts that could provide more attractive terms;
- (5) Adequacy of the performance to date; and
- (6) Legal Division review, if appropriate.

**10.G.4. Preparation of Expenditure Authority Case (MAR 2000)**

Following the 90-day post closing review, DRR will prepare a case for expenditure authority in the total aggregate dollar value for each contract to continue performance through expiration. The case shall break out the total dollar amounts of each contract. The expenditure authority will be based upon the information known at the time based on current service levels. Additional expenditure authority shall not be required for minor increases in a contract's ceiling price unless the increase is based on adding additional (new) requirements. The case shall be prepared and submitted for approval as soon as possible following the 90-day review.

**10.G.5. Contract Administration Activities (MAR 2000)**

**10.G.5.a. Authority Between Closing and Retaining or Repudiating a Contract (MAR 2000)**

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

**10.G.5.b. Retained Contracts (MAR 2000)**

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

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# FDIC Acquisition Policy Manual

## APPENDIX A – LIST of ACRONYMS

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AC	Accounting Contact
ACK	Accounting Control Key
A-E	Architect-Engineer
AIS	Automated Information System
AO	Approving Official, Procurement Credit Card Program
APC	Agency Program Coordinator, Procurement Credit Card Program
APM	Acquisition Policy Manual
ARM	Adjustable Rate Mortgage
ATM	Automatic Teller Machine
ASB	Acquisition Services Branch
BAFO	Best and Final Offer
BIF	Bank Insurance Fund
BOA	Basic Ordering Agreement
BPA	Blanket Purchasing Agreement
CAP	Contract Administration Plan
CATS	Contractor Application Tracking System
CBA	Cost Benefit Analysis
CEC	Corporation Ethics Committee
CFO	Chief Financial Officer
CLU	Contracting Law Unit
COO	Chief Operating Officer
CPMS	Contractor Performance Management System
CPPM	Contract Policies and Procedures Manual (RTC Document)
CSB	Corporate Services Branch
CSQI	Cardholder Statement of Questioned Item (Bankcard Program)
CTM	Control Totals Module
DOA	Division of Administration, FDIC

DIRM	Division of Information Resources Management, FDIC
DOF	Division of Finance, FDIC
DSC	Division of Supervision and Consumer Protection, FDIC
DRR	Division of Resolutions and Receiverships, FDIC
E/CSU	Employee/Contractor Security Unit (in Security Management Section)
EPRIS	Electronic Procurement Routing Invoice Solution
FAR	Federal Acquisition Regulation
FDIC	Federal Deposit Insurance Corporation
FDICnet	FDIC Intranet
FF&E	Furniture, Fixtures, and Equipment
FFIEC	Federal Financial Institution Examination Counsel
FFP	Firm Fixed Price (contract type)
FHLB	Federal Home Loan Bank
FHLBB	Federal Home Loan Bank Board
FIN	Financial Institution Number
FIRREA	Financial Institutions Reform, Recovery, and Enforcement Act
FIS	Financial Information System
FOIA	Freedom of Information Act
FOIA/PA	Freedom of Information Act (1967) and Privacy Act (1974)
FSC	Federal Stock Class
FSLIC	Federal Savings and Loan Insurance Corporation
FSS	Federal Supply Schedule
GAO	General Accounting Office
GL	General Ledger
GSA	General Services Administration
GTR	Government Travel Regulations
IAA	Interagency Agreement
IRM	Information Resources Management
IRS	Internal Revenue Service

LOC	Letter of Credit
LMS	Learning Management Server
LSS	Library Services Section
JNCP	Justification for Noncompetitive Procurement
LAMIS	Loans and Assets Management Information System
LH	Labor Hours (contract type)
MOL	Maximum Order Limitation
MRS	Management Review Staff
MWOB	Minority- or Women-Owned Business
NCS	National Contractor System
NTEU	National Treasury Employees Union
NTIS	National Technical Information System
OCC	Office of the Comptroller of the Currency
ODEO	Office of Diversity and Economic Opportunity
ODC	Other Direct Costs
OES	Office of the Executive Secretary
OICM	Office of Internal Control Management
OIG	Office of the Inspector General
OM	Oversight Manager
OMB	Office of Management and Budget
OSHA	Occupations Safety & Health Administration
OTS	Office of Thrift Supervision
PAL	Procurement Action Log
PAV	Payment Authorization Voucher
PDCS	Policy Development and Compliance Section
P&I	Principal and Interest
PO	Purchase Order
POS	Purchase Order System
PPA	Prompt Payment Act

PR	Procurement Requisition
QA	Quality Assurance
QC	Quality Control
REO	Real Estate Owned
ReqLog	Requisition Log System
RFI	Request for Information
RFP	Request for Proposal
RFPLog	Request for Proposal Log System
RFQ	Request for Quotation
RMBCS	Rocky Mountain Bank Card System
RTC	Resolution Trust Corporation
SAA	Service and Agency Agreement
SAVE	Standard Asset Value Estimation
SCA	Service Contract Act
SAIF	Savings Association Insurance Fund
SBA	Small Business Administration
SDB	Small Disadvantaged Business
SDLC	System Development Life Cycle
SBA	Small Business Administration
SIC	Standard Industrial Classification
SOW	Statement of Work
SSO	Source Selection Official
SSP	Source Selection Plan
T&M	Time and Materials (contract type)
TEO	Technical Evaluation Official
TEP	Technical Evaluation Panel
TIN	Taxpayer Identification Number
USDOL	United States Department of Labor
USPS	United States Postal Service



# FDIC Acquisition Policy Manual

## APPENDIX B – GLOSSARY of TERMS

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**Acceptance** – The act of an authorized representative approving a contractor's delivered work product after all FDIC contract requirements have been verified.

**Account Officer, DRR** – The primary Program Office specialist responsible for managing and the sale of the asset(s).

**ACK** – Accounting Control Key - the combination of the organization code, program code, location, account, and fund. The ACK is used to apportion payments to specific budgets, and determines which cost centers and accounts are used for all accounting transactions. In the case of procurement transactions, the ACK directly determines which organization will be charged via the budget process.

**Adequate Competition** – The solicitation of three or more firms having the potential to provide the goods or services requested.

**Administrative Changes** – Modifications to contract documents that do not require the signature of both parties, and do not involve substantive changes to the rights and/or duties of either party.

**Advance Payment** – Any payment of funds to an FDIC contractor prior to receiving goods or services under the contract or prior to the contractor actually beginning performance and incurring cost under the contract.

**Affordable Housing Program (AHP)** – An FDIC program that increases the stock of affordable housing through disposition of eligible residential properties to low- and moderate-income families. The affordable housing created comes from the agency's inventory of owned real estate.

**Anticompetitive** – Activity that is designed by one or more participants to diminish or eliminate competition by collusion, conspiracy, fraud, or other circumvention of open and fair competition.

**Appeal** – A request made by a contractor for a reconsideration by the Director, Division of Administration, of the Contracting Officer's decision after review by the Associate Director, ASB, on claims of \$100,000 or greater.

**Appraisal** – An opinion or estimate of the value of a real property asset provided by trained, certified professionals.

**Appraisal Review, DRR** – The Appraisal Review Group acts as technical advisor to the Account Officer and Contracting Officer on issues relating to valuation of assets and approval of appraisals.

**Asset Pool Servicers** – Contractors that service a portfolio of assets.

**Auction** – An asset sales strategy in which assets are sold either individually or in pools to the highest bidder in an open-outcry auction.

**Automated Information Systems (AISs)**- An application of information technology that is used to process, store, or transmit information.

**Award** – Execution of the contract by a warranted Contracting officer on behalf of the Corporation.

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**Background Investigations Review** – A generic term that describes a check or checks that the Security Management Section (SMS) completes on contractors and its personnel to ensure they meet minimum security and integrity and fitness standards as set forth by FDIC.

**Bank Insurance Fund (BIF)** – One of the two federal deposit insurance funds created by Congress in 1989 and placed under the FDIC’s administrative control. The BIF insures deposits in most commercial banks and many savings banks. The FDIC’s “permanent insurance fund,” which had been in existence since 1934, was dissolved when the BIF was established. The money for a deposit insurance fund comes from the assessments contributed by member banks and also from investment income earned by the fund.

**Basic Ordering Agreement (BOA)** – An agreement setting forth terms and conditions to be applied to future task orders agreed between FDIC and contractor(s) signatory to the Agreement.

**Best and Final Offer (BAFO)** – A final revision to the original proposal by the offerors after discussions reflecting the firm’s best offer to FDIC.

**Best-Value Determination** – The process by which FDIC personnel determine which offer will produce the greatest overall benefit to the FDIC.

**Bid Protest Procedures** – The process that an offeror, if an interested party, may use to challenge a solicitation before contract award.

**Bill of Lading (FDIC)** – A document evidencing receipt of goods for shipment, identifying the goods, and stating the terms of contract for carriage.

**Binder** – A temporary document signed by an insurance underwriter, agent, or broker with authority to bind the insurance carrier, which provides that the specified coverage is in effect until an insurance policy can be delivered and states the principle terms of that policy.

**Blanket Purchasing Agreement (BPA)** – An agreement (not a contract) for meeting anticipated recurring requirements, primarily for goods and routine types of services, which establishes an account, or accounts, with a qualified source or sources against which call orders are issued by a person with ordering authority.

**Board of Directors** – The governing body of FDIC, or any corporation, empowered to elect and appoint officers and agents to act on matters on behalf of and affecting the corporation.

**Bridge Bank** – A temporary national bank established and operated by the FDIC on an interim basis to acquire the assets and assume the liabilities of a failed institution until final resolution can be accomplished. The use of bridge banks generally is limited to situations in which more time is needed to permit the least costly resolution of a large or complex institution.

**Business Reference Check** – A check of the business and financial status of the selected offeror prior to award.

**By-laws of a corporation** – The policies, rules, and regulations adopted by a corporation to govern the internal activities of the corporation.

**Call Order** – Orders placed under a Blanket Purchase Agreement.

**Cardholder Statement of Questioned Item (CSQI)** – A form used to report incorrect charges to an IMPAC card or to document disputes with merchants over unacceptable goods or services.

**Certificate of Appointment** – A document received by a warranted Contracting Officer which shows evidence of a Contracting Officer’s appointment, signed by the Associate Director, ASB.

**Certificate of Insurance** – A summary document signed by the insurance broker or other authorized agent of the insurance carrier which verifies that a policy has been written and states the nature of the coverage in general terms.

**Claim** – A written demand or assertion for payment of money, a request for adjustment or interpretation of contract terms, or for other relief arising under or relating to the contract. Claims may be made by either FDIC or a contractor.

**Claim Decision Review** – A review requested by a contractor of a Contractor's Officer's decision concerning a claim by the Associate Director, ASB, which is the final FDIC action for claims less than \$100,000. Claim decision reviews for claims over \$100,000 may be appealed to the Director, Division of Administration.

**Closeout** – The final contract administration process undertaken to complete a contract and close out the contract file.

**Collusion** – A fraudulent agreement between two or more parties to eliminate competition, restrain trade, or otherwise accomplish an illegal purpose.

**Commercial Goods** – Those goods determined to be in the commercial market place, as documented by market research (e.g., office equipment and supplies), sold in substantial quantities to the general public in the course of normal business operations at prices based upon established catalog or market prices.

**Commercially Available Services**- For purposes of the Service Contract Act (SCA), services of workers available to the general public and based on catalog or published price lists.

**Competition** – When three or more offerors, acting independently, attempt to obtain a contract with FDIC and the successful offeror is selected on the basis of the criteria specific to the solicitation.

**Competition Advocate Program** – A Program administered by the Policy and Compliance Section of ASB, to monitor noncompetitive awards on a Corporate-wide basis in relation to overall competitive awards. This function relies on data collection and trend analysis generated from the Purchase Order System (POS) and other sources.

**Competitive Range** – The range of proposals that have a reasonable chance of being selected for contract or task order award established after the initial evaluation of proposals has been completed.

**Conflict of Interest** – As defined by 12CFR Part 366, *Contractor Conflicts of Interest*, a situation in which:

- 1) A contractor; any management official or affiliated business entity of a contractor; or any employee, agent, or subcontractor of a contractor who will perform services under a proposed or existing contract with the FDIC, that has one or more personal, business, or financial interests or relationships which would cause a reasonable individual with knowledge of the relevant facts to question the integrity or impartiality of those who are or will be acting under a proposed or existing FDIC contract; or
- 2) A contractor; any management official or affiliated business entity of a contractor; or any employee, agent, or subcontractor of a contractor who will perform services under a proposed or existing contract with the FDIC, that is an adverse party to the FDIC, RTC, FSLIC, or their successors in a lawsuit; or
- 3) A contractor; any management official or affiliated business entity of a contractor; or any employee, agent, or subcontractor of a contractor who will perform services under a proposed or existing contract with the FDIC, that has ever been suspended, excluded, or debarred from contracting with a Federal entity or has ever had a contract with the FDIC, RTC, FSLIC, or their successors rescinded or terminated prior to the contract's completion in which the rescission or

termination involved issues of conflicts of interest or ethical responsibilities; or

- 4) Any other facts that exist which the FDIC, at its sole discretion, determines during the proposal phase or the performance of an existing FDIC contract that the contractor obtained an unfair competitive advantage favoring the interest of the contractor or any person with whom the contractor has or is likely to have a personal or business relationship.

**Conservatorship** – The legal procedure provided by statute for the interim management of financial institutions used by the FDIC. Under the pass-through receivership method, after the failure of a savings institution, a new institution is chartered and placed under agency conservatorship; the new institution assumes certain liabilities and purchases certain assets from the receiver of the failed institution. Under a straight conservatorship, the FDIC may be appointed conservator of an open, troubled institution. In each case, the conservator assumes responsibility for operating the institution on an interim basis in accordance with the applicable laws of the federal or state authority that chartered the new institution. Under a conservatorship, the institution’s asset base is conserved pending the resolution of the conservatorship.

**Constructive Change** – An informal change not done in accordance with the contract’s change clause which causes the contractor to do additional work for which it neither contracted nor volunteered.

**Contract** – An agreement between two or more competent parties which creates an obligation to do or not to do a particular thing. As used herein, a contract shall include FDIC contracts, purchase orders, task orders, and orders under multiple requirement contracts.

**Contract Action Schedule** – A milestone schedule used to establish processing timelines for the solicitation process.

**Contract Administration** – The process of ensuring that all aspects of an FDIC contract are fulfilled, beginning after the award of the contract and continuing through the closeout of the contract.

**Contract Administration Phase** – That portion of the contracting process in which the Oversight Manager determines whether the contractor is performing pursuant to the terms of the contract.

**Contract Administration Plan** – An extension of the Contract Action Schedule which covers the administration of a contract and is required for contracts having a total estimated value of \$100,000 or greater.

**Contract Ceiling** - The dollar amount which may not be exceeded for a specific contract.

**Contract Modification** – A written alteration in the specifications, delivery point, rate of delivery, contract period, cost, quantity, or other provisions of an existing contract which create a substantive change, whether made unilaterally (under a provision in the contract) or bilaterally by mutual agreement of the parties to the contract.

**Contract Oversight** – The monitoring process for ensuring that the contract is performed as written by both parties. The Contracting Officer is the primary FDIC official responsible for Contract Oversight.

**Contract Performance Management System (CPMS)** – An information system maintained by the Policy and Compliance Section, ASB, to provide past performance information on contractors that can be used in the evaluation process. Requests for past performance information shall be made on all purchase orders, contracts, and basic ordering agreements with total estimated values of \$50,000 or more.

**Contracting Capacity- Conservatorship** – FDIC contracts for the sole purpose of fulfilling its conservatorship responsibilities on behalf of an open institution that is operating under FDIC’s management and control. Contracts will frequently include those for the performance of day-to-day operations or asset liquidation activities.

**Contracting Capacity- Corporate** – FDIC contracts for the purpose of fulfilling corporate responsibilities and goals, such as employee training, marketing policies, information systems, etc. These contracts are usually generated from FDIC Headquarters in Washington, D.C.

**Contracting Capacity- Corporate Liquidator** – FDIC contracts to liquidate property where title has passed from a conservatorship to receivership.

**Contracting Capacity- Receivership** – FDIC contracts for the purpose of fulfilling its receivership responsibilities, which include managing and disposing of receivership assets, and completing the business of closed institutions.

**Contracting Document** – Standard form documents prepared by ASB in Washington, jointly with the FDIC’s Legal Division, to provide consistent FDIC contracting documents for use throughout FDIC.

**Contracting Law Unit (Legal Division)** – The Contracting Law Unit (CLU) of the Corporate Legal Issues Section of the Legal Division provides legal counsel to the Acquisition Services Branch in resolving contracting issues and to the Ethics Unit, Executive Secretary Section in resolving independent contractor issues.

**Contracting Officer** – The FDIC representative with delegated contracting authority to enter into and contractually bind, administer and terminate contractual instruments on behalf of FDIC.

**Contractor** – An individual, corporation, partnership, joint-venture, or other third party entity that enters into a contract with FDIC to provide goods, services, or other requirements pursuant to its terms and conditions.

**Contractor Application Tracking System (CATS)** – A multi-user PC LAN-based data system which tracks the receipt and processing of vendor applications and enables Acquisition Services Branch management to determine the status of a vendor application in progress.

**Contractor Confidentiality Agreement** – An agreement signed by offerors or contractors before receiving confidential information. If the confidential information is provided during the solicitation phase, all offerors must sign the Agreement before receipt of the information in, or associated with, an RFP. The Agreement is provided in the APM as *Exhibit II*.

**Contractor Conflicts Database Subsystem** – A subsystem of NCS containing information on firms who have potential conflicts which may preclude them from entering into contractual relationships with FDIC.

**Contractor Database Subsystem** – A subsystem of NCS that contains information on prospective vendors who have registered with FDIC to provide certain goods or services. Interested vendors register by completing a vendor application form (FDIC 3700/13).

**Contractor Eligibility Review** – The Contracting Officer shall review the National Contractor System (NCS) prior to any award, regardless of dollar value, to ensure that the prospective/successful offeror is not excluded or suspended from doing business with FDIC. In addition, the Contracting Officer shall require the selected offerors to submit contractor eligibility certifications for purchase orders and contracts of \$25,000 or greater (See Exhibit VII, Contractor Eligibility Review Request).

**Contractor Oversight** – The process of ensuring that the contractor delivers the products or performs the services as required under the contract to fulfill the requirements and mission of the Program Office.

**Contractor Past Performance Information** – Information on the performance of contractors on previous FDIC contracts acquired from the *Contractor Performance Evaluation and Reporting Form*, Exhibit XVIII. Past performance information of a contractor may be used in the evaluation process, provided this information is available in the Contractor Performance Management System (CPMS).

**Contractor Performance Evaluation and Reporting Form** – The form used by the Oversight Manager in the Program Office to evaluate the quality of the contractor's performance which is then submitted to the Contracting Officer. This report is provided as Exhibit XVIII, *Contractor Performance Evaluation and Reporting Form*. The information provided by this report is made available to Program Offices and Contracting Officers through the CPMS for subsequent procurements where it may provide critical information.

**Contractor Performance Management System** – That system which contains information on the past performance of contractors on FDIC contracts.

**Contractor Personnel** – All employees of a contractor who perform under an FDIC contract. These employees include key and non-key personnel.

**Convenience Checks** – Product and service provided by Bank of America which allows checks to be written on a credit card/account within authorized dollar limits.

**Corporation Ethics Committee** – Serves as an appellate body for reconsideration of decisions regarding contractor conflicts of interest made by the Executive Secretary.

**Cost** – The amount to be expended by a contractor for goods or services to be delivered to the FDIC, to which the contractor adds some additional amount (fee or profit) in order to establish the price to be charged to, and paid by, the FDIC.

**Covered Employee/Services** - For purposes of the Service Contract Act (SCA), all those employees or services that are covered by the SCA.

**Cure Letter** – A notice issued by the Contracting Officer to a contractor for unsatisfactory performance under the terms of the contract instructing the contractor to "cure" its performance within a specified period of time.

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

**Debriefing** – Post award discussion with an unsuccessful offeror to discuss the strengths and weaknesses of its proposal. The purpose of a debriefing is to inform the offeror why its proposal was not selected; emphasize the areas in which improvement may enhance its chances of receiving future contract awards; and provide an understanding of the general basis for the selection of the successful offeror.

**Defalcation** – The act of a defaulter; the act of embezzling; failure to meet an obligation; the misappropriation of trust funds or money held in any fiduciary capacity; or the failure to properly account for such funds.

**Delivery Order** – An order for supplies or services placed against an established contract or with Government sources for supplies.

**Disallowed Cost** – A questioned cost that management, in a management decision, has sustained or agreed should not be charged to the government.

**Discussions/Negotiations** – The goal of holding discussions/negotiations is to assure the FDIC that the prospective offeror or firms in the competitive range understand and can achieve the performance requirements of the FDIC solicitation.

**Dispute** – A claim that remains unresolved after the Contracting Officer has made a final decision on the claim.

**Due Diligence** – A potential purchaser's on-site inspection of the books and records of a failing institution. Before an institution's failure, the FDIC invites potential purchasers to the institution to review pertinent files so they can make informed decisions about the value of the failing institution's assets. All potential purchasers must sign a confidentiality agreement. In addition, contractors may be hired to perform due diligence work on assets that are earmarked for multi-asset sales initiatives. By hiring outside firms to provide and certify the due diligence, investors have the assurance that an independent source has provided them with reliable investment information.

**Errors and Omissions Insurance** – A type of insurance generally required of contractors performing professional or semi-professional services (e.g., financial advisory services) where the contractor's advice or guidance could unintentionally deviate from what is right, true, or correct and result in a loss to FDIC.

**Evaluation** – The process of determining which of the offerors' proposals are responsive to the requirements of the solicitation package and which offeror is most qualified in terms of technical expertise or cost, or both.

**Evaluation Criteria** – Written technical criteria for the purpose of proposal evaluation that are communicated to offerors in the solicitation.

**Exclusion** – Denial of admittance to, or participation in, the solicitation or the contract award process.

**Expenditure Authority** – The authority for approving the corporation's expenditures for awarding competitive and noncompetitive contracts as established by the Expenditure Delegations.

**Expenditure Ceiling** – The dollar limit on the expenditure for a particular contract which has been approved in accordance with the Expenditure Delegations.

**FDICnet** - The Intranet for the FDIC.

**Federal Reserve Bank (FRB)** – One of the 12 regional banks in the Federal Reserve System. The 12 FRBs and their 25 branches, which are managed by the Board of Governors of the Federal Reserve System, perform a variety of functions, including operating a nationwide payments system, distributing the nation's currency, supervising and regulating member banks and bank holding companies, and serving as banker for the U.S. Treasury. The FRBs supervise and examine state chartered banks that are members of the Federal Reserve System (state member banks).

**Federal Supply Schedules (FSS)** – Contracts awarded to suppliers of goods and services by the General Services Administration (GSA) which are used to facilitate the timely acquisition of goods or services by any Federal Agency or other qualifying organization. FSS terms and conditions, rather than those normally used by FDIC, apply to these contracts.

**Fee** – A fixed charge, usually for professional services or goods, that is added to the contractor's actual costs to produce the total contract price to FDIC.

**Fidelity Bond** – Insurance provided to indemnify employees against loss by reason of the dishonesty of employees or as a result of the nonperformance of contracts. In fidelity insurance contracts, the insurance company issues fidelity insurance bonds as a guaranty against loss arising from the default or dishonesty of the insured person. Fidelity bonds are issued for three classes of risk: larceny, culpable negligence, and unfaithful discharge of duty.

**Finder's Fee** – Payment to private entities for locating and identifying assets of cash or cash-equivalents belonging to failed institutions, conservatorships, or receiverships.

**Firm Fixed Price (FFP) Contract** – A contract where the contractor is paid a fixed price upon performance of the services or delivery of the goods. The price is not influenced by the contractor's cost of performance. FFP contracts are appropriate where the statement of work and the FDIC requirements are well defined and well documented.

**First Tier Subcontractor** – Any person or entity that enters into a contract with a person or entity holding a contract with the FDIC for goods or services (referred to as the prime contractor), whereby the subcontractor supplies goods/materials/supplies or services to the prime contractor in accordance with the terms and conditions of its contract with the FDIC.

**Fixed Price Contract** – A contract under which a rate is established to determine the ultimate price to be paid to the contractor for successful performance. The fixed price may be expressed as a percent or unit rate which is then multiplied by actual performance of the contractor (e.g., gross sales proceeds, quantity of goods delivered, number of hours worked) to determine the overall price to be paid to the contractor.

**Formal Contracting** – The competitive contracting process to be generally used for the acquisition of complex goods or services, goods or services with a total estimated dollar amount of \$100,000 or greater where technical evaluation procedures are required, or for commercial goods of \$5,000,000 or greater.

**Fraud** – An intentional perversion of truth for the purpose of inducing someone to rely upon it and part with something of value or surrender a legal right.

**General Accounting Office (GAO)** – An investigative arm of the U.S. Congress charged with examining all matters relating to the receipt and disbursement of public funds. Established in 1921 to independently audit federal government agencies, the GAO functions under the direction of the Comptroller General of the United States, who is appointed by the President and confirmed by the Senate for a 15-year term.

**Goods** – Supplies, materials, equipment, or other tangible personal property that are the deliverables or subject matter of a contract between the FDIC and a contractor.

**Indemnification** – In general, a collateral contract or assurance under which one person agrees to secure another person against either anticipated financial losses or potential adverse legal consequences.

**Independent Price Determination** – The process a contractor uses to determine its proposed prices without any consultation, communication, or agreement with any other offeror or competitor.

**Inspection** – The process whereby FDIC determines if the delivery of the goods or performance of services, as defined in the contract, are met by the contractor. Inspection may be performed at another location or at a time other than the time of performance, if so defined. Inspection shall be performed by the Oversight Manager, or his or her authorized representative.



**Insured Deposit** – Deposit in an FDIC insured commercial bank, savings bank, or savings association that is fully protected by FDIC deposit insurance. Savings, checking, and other deposit accounts, when combined, are generally insured up to \$100,000 per depositor in each financial institution insured by the FDIC. Deposits held in different ownership categories, such as single or joint accounts, are separately insured. Also, separate \$100,000 coverage is usually provided for retirement accounts, such as individual retirement accounts.

**Interagency Agreements** – A procedure whereby a federal agency obtains goods or services from another Federal agency.

**Interested Party** - An interested party is anyone who is included on the solicitation list and has submitted a proposal in response to the solicitation.

**Invoice** – A written itemized statement prepared by the contractor and presented to FDIC, defining in detail the goods and/or services delivered and the compensation due for that delivery.

**Irrevocable Letter of Credit** – An instrument or document issued on behalf of a buyer stating that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the letter. Letters of credit must be issued in conformity with all applicable rules and regulations. The engagement can be either an agreement to honor or statement that the issuer is authorized to honor the credit.

**Justification for Noncompetitive Procurement (JNCP)** – The process of justifying an award to a sole or single source for goods or services without going through a competitive process for procurements over \$5,000.

**Key Personnel** – Contractor personnel that are deemed essential and critical to the performance of the contract and who are contractually required to perform by the Key Personnel contract clause.

**Labor Hour Contract** – A contract for services to the FDIC under which the contractor provides services to the FDIC and is paid a specified fee per hour.

**Late Proposals** – Proposals and modifications which are received after the date and time established in the solicitation. The Contracting Officer shall promptly return the late proposal or modification to the offeror, giving written notice that the proposal or modification was received late and was not considered.

**Legal Division** – See Contracting Law Unit.

**Letter of Oversight Manager Confirmation** – A letter prepared by the Contracting Officer which contains a description of the Oversight Manager's authority and responsibility in performing designated functions on behalf of the FDIC.

**Letter of Technical Monitor Confirmation** – A letter prepared by the Contracting Officer which contains a description of the Technical Monitor's authority and responsibility in performing designated functions on behalf of the FDIC.

**Letter of Termination** – A letter issued by the Contracting Officer to a contractor that gives notice of FDIC's intention to terminate a contract. Letters of Termination should include the following:

- The applicable contract clause authorizing the termination (for convenience or for default);
- The type of termination – complete or partial, and if partial, a description of both the portion of the contract to be terminated and the portion that will not be terminated;
- The effective date of the termination; and
- Additional instructions, as required (e.g., if for default, the facts constituting the default).

**Level of Effort Contract** – A type of contract stating the work in terms of an amount of effort (usually man-hours or man-years) to be performed by specified classes of employees over a given period of time.

**Liquidation** – Finalizing the business affairs and operations of a failed insured depository institution through the orderly disposition of its assets after it has been placed in receivership.

**Loan Servicer** – A contractor hired by the FDIC to manage loans of failed institutions.

**Loss Payee** – Under property insurance, which includes fidelity bond coverage, the party named as being entitled to all or part of the insurance proceeds in connection with the covered property in which it has an interest.

**Management Decision** – The evaluation by FDIC management of the findings and recommendations included in an audit report and the issuance of a final decision by FDIC management concerning its response to such findings and recommendations, including actions concluded to be necessary.

**Market Research** – Obtaining *general* knowledge about the availability and types of goods or services for future acquisitions and identifying firms offering goods or services that are available in the marketplace. Market research is required to substantiate justifications for noncompetitive procurements.

**Memorandum of Understanding (MOU)** – An explicit recognition of a need to formalize the consultative policy framework and document exceptions to established policies within that framework when all stakeholders are in agreement over the terms of those exceptions.

**Milestone** – A significant event or date of delivery in the performance of a contract which should be monitored by the FDIC during contract administration.

**Milestone Schedule** – A schedule established for all contracting milestone dates for contracts of \$100,000 or greater.

**Minority-Owned-Business** – Firm(s) in which at least 51% of the ownership and control is directly and unconditionally held by one or more minorities. A firm, which is principally owned by another business entity or by a trust (including employee stock ownership trusts) that is in turn owned and controlled by one or minorities, does not meet this definition. In the case of a firm which is a corporation, at least 51% of each class of voting stock outstanding, and 51% of the aggregate of all stock outstanding, must be unconditionally owned by one or more minorities. Additionally, the firm(s) management and daily business operations must be conducted by one or more minorities. The minority individuals must have managerial experience of the extent and complexity needed to run the firm. A minority owner's unexercised right to cause a change in the control or management of the firm does not constitute minority control and management, regardless of how quickly or easily the right could be exercised.

**Multiple-Order Requirements Contracts** – A contract that provides for filling purchase requirements during a specified contract period pursuant to delivery orders.

**National Contractor System (NCS)** – A mainframe system providing inquiry and reporting access to contracting personnel consisting of four subsystems: (1) Contractor Database Subsystem; (2) ODEO Contractor Statistics Database Subsystem; (3) Contractor Conflicts Database Subsystem; and (4) Security Subsystem. NCS serves as a vendor solicitation source list of firms who are interested in providing goods or services to FDIC.

**NCS Eligibility Review** – The review of the National Contractor System (NCS) by the Contracting Officer prior to any award, regardless of dollar value, to ensure that the apparent awardee is not excluded or suspended from doing business with FDIC. In addition, the Contracting Officer shall require prospective offerors to submit contractor eligibility certifications for purchase orders and contracts of \$25,000 or greater (See Exhibit VII, *Contractor Eligibility Review Request*).

**Noncompetitive Award** – A contract awarded after only one source is solicited.

**Noncompetitive Procurement Procedures** – Used for procurement of goods or services when only one source is solicited.

**Nonconforming Goods or Services** – Goods or services that do not confirm to contractual requirements.

**Non-Exempted Employees or Services** - For purposes of the Service Contract Act (SCA), those not included in the exemptions under the SCA and included in the definition of service employee.

**Novation Agreement** – Substitution of a new contractor for the original contractor. Contractors cannot assign contracts without FDIC’s prior approval.

**ODEO Contractor Statistics Database Subsystem.** A subsystem of NCS containing summary level information on solicitations sent out and proposals received by ethnicity.

**Offerors Conference** – A conference held during the proposal submission phase for prospective offerors to obtain clarification from FDIC personnel on matters of interest prior to their submission of offers.

**Office of the Inspector General** – An independent federal organization established to audit the programs and operations of the FDIC and to investigate complaints of fraud, waste, and mismanagement in those programs. The Inspector General Act of 1978, as amended, required the chairman to appoint an inspector general beginning in 1989, the position changing to a presidential appointment in 1994.

**Official Contract File** – The central file containing the official contract records.

**Official Oversight File** – The complete record of the status of the contract after award, and results of the oversight of the contract, maintained by the Oversight Manager.

**Option** – A unilateral right of FDIC to extend the period of performance of a contract or to purchase additional quantities of a specified product or service under predetermined conditions as defined in the basic contract.

**Oral Solicitations** – Verbal requests for quotations from the contractor under the following circumstances: (1) when the award is less than \$25,000; and (2) when the evaluation is based solely on the lowest priced offer.

**Ordering Methods** – Systems of ordering goods or services pursuant to the terms of a contract or agreement. Examples are task orders under existing basic ordering agreements (BOAs), delivery orders under multiple-order requirements contracts, or call orders under blanket purchase agreements (BPAs).

**Organizational Conflict of Interest** – Conflicts of interest involving the organization, as opposed to the individual. (See also “Conflicts of Interest”).

**Oversight Management Plan** – The plan provided by the Program Office prior to contract award detailing the extent of FDIC’s resources assigned to oversee the project and the controls that will be implemented to monitor contractor performance and billings.

**Oversight Manager** – An FDIC employee appointed by a Program Office and confirmed by the Contracting Officer with responsibility to monitor and evaluate contractor performance under an FDIC contract.

**Partial Termination** – Termination of only part of the deliverables due under a contract, permitting the contractor to perform certain remaining functions related to the contract.

**Past Performance** – The degree that the contractor has met the requirements of past contract engagements. Past performance is one of the evaluation criteria used for evaluating technical proposals.

**Payment Authorization Vouchers** – A method of paying for goods or services which are purchased without utilizing the contracting process. As stated in APM, 9.A.5., *Contracting Authority*, Contracting Officers are the only FDIC employees authorized to enter into contracts on behalf of the corporation. However, there are circumstances where goods or services are provided to the corporation through its normal course of business that are not procured by a Warranted Contracting Officer. Expenses for these types of goods and services are listed in APM, 9.B. and represent the only circumstances where payment may be made by a PAV (See Exhibit I, *Expenditure Delegations for Contracts, Leases, Legal Services, and Non-Procurement Related Expenses*, for definition of Non-Procurement Related Expenses).

**Personal Conflict of Interest** – A personal conflict of interest exists when an individual's private interests conflict or raise a reasonable question of conflict with the performance of their duties and job responsibilities as a contractor's employee or an employee of the FDIC. An individual's private interests may include a financial and/or employment interest related to themselves, their spouse, minor child, or dependent(s).

**Post-Award Conference** – A meeting held between the Contracting Officer, Oversight Manager and Technical Monitors, the Legal Division, and other relevant FDIC personnel, and the newly selected contractor to ensure there is a clear understanding of all contract terms and to clarify any potential issues.

**Presolicitation** – A phase in the contracting process which consists of requirements planning and development, and completion of a Requirements Package, including the statement of work, evaluation criteria, detailed price estimate, and all other documents necessary for the Acquisition Services Branch to develop the necessary solicitation package. Expenditure authority is also obtained during this phase prior to issuance of the solicitation package.

**Price** – Price is equivalent to total value of the contract, including elements of the contractor's costs and fee for profit.

**Price Analysis**– The process of ensuring that contract costs are fair and reasonable to the FDIC, involving the utilization of various techniques such as the comparison of proposed prices from various offerors, comparison of proposed prices with FDIC price estimates, and comparison of proposed prices with other contractor prices.

**Price Competition** – The determination that a proposed price is based on competitive quotations.

**Price Realism** – The analysis performed for an offeror's proposal to determine whether the prices proposed are realistic for the work to be performed, and are consistent with the offeror's technical proposal.

**Price Reasonableness Determination** – Examination by the TEP to determine if the proposed price is realistic for the work to be performed, reflects a clear understanding of the requirements, and is consistent with the offeror's technical proposal.

**Privity of Contract** – The legal relationship and responsibility between parties to the same contract. FDIC has privity of contract with the contractor; the contractor has privity of contract with the FDIC and with the first-tier subcontractor; the first-tier subcontractor has privity of contract with the contractor and with the second-tier subcontractor; and so on.

**Procurement Action Log (PAL)** – PAL records the PR Number, Program office contact, date received by the Acquisition Services Branch and the ASB Contracting Officer. After the resulting award, ReqLog is updated by the Contracting Officer to add the award date.

**Procurement Credit Card** – The Procurement Credit Card is issued by FDIC to provide a simplified method of procuring low dollar value goods or services. The Program is administered by the Agency Program Coordinator (APC). The APC function is performed by the Associate Director, ASB. The Procurement Credit Card has a single purchase limit of \$5,000 and a monthly maximum limit of \$50,000. The policies, procedures, and restrictions for using the Procurement Credit Card are set forth in APM, 9.E., *FDIC Procurement Credit Card Program*.

**Procurement Requisition** – A form used by the Program Office to request goods or services and which is included in the Requirements Package.

**Program Office** – The Program Office is the FDIC organizational unit sponsoring and/or holding ownership of products leased or bought, or services performed.

**Prompt Payment Act (PPA)** – Requires FDIC to pay complete and correct invoices either on the date specified in the contract, or if there is no such date, within thirty (30) calendar days after acceptance of the goods or services, the Contracting Officer's receipt of a proper invoice from the contractor, or receipt and acceptance of goods or services, whichever is later. In the event that FDIC fails to pay such invoices within the prescribed time period, interest shall begin to accrue at a rate set by the Department of Treasury. FDIC is obligated to pay such interest automatically until the invoice is paid without the request of the Contractor. The PPA applies only to contracts entered into by FDIC in its corporate capacity.

**Proposal** – An offer or promise that, if accepted, becomes a contract. A proposal is usually made in response to a solicitation.

**Protest** – A written objection by an interested party concerning the terms of a solicitation, the award or proposed award of a contract, or any other action relating to the solicitation or award of a contract.

**Purchase Order** – A written document authorizing the vendor to deliver specified goods to FDIC, providing the amount that the FDIC will pay and the terms of payment for conforming goods.

**Quality Assurance (QA)** – The task performed by persons outside an organization to improve and monitor the quality of its output. This would include inspections performed by FDIC representatives to make sure that the quality of a contractor's delivered services or goods complies with the terms of an FDIC contract.

**Quality Control (QC)** – The task performed within an organization to improve the quality of its output. This would include inspection systems set up by a contractor to monitor its own output at key intervals in the contracting process to ensure that the work meets the contract requirements.

**Questioned Cost** – A cost that is questioned in an audit by FDIC because of:

- An alleged violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds;
- A finding that, at the time of the audit, such cost is not supported by adequate documentation; or
- A finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable.

**Ratification** – The act of approving an unauthorized commitment made by a representative of FDIC who lacked the authority to contractually commit the FDIC.

**Recusal** – The process by which a person removes himself/herself from the decision making process, as in the instance of a personal conflict of interest.

**Request for Proposal (RFP)** - A solicitation for proposals to be submitted to FDIC for services or products required.

**Request for Quotations (RFQ)** – May be used for solicitation purposes under simplified procedures and may be either oral or written.

**Requirements Package** – A written request submitted by the Program Office to the Acquisition Services Branch which initiates the contracting process and includes describing what is needed, defining when the need must be met, and verifying that the procurement has been approved by the official with the appropriate level of expenditure authority.

**Rescission** – The unmaking of a contract – not only terminating it, but also annulling or abrogating the contract from the beginning.

**Resolution** – The disposition plan for a failed institution, designed to (1) protect insured depositors and (2) minimize the losses to the relevant insurance fund, which are expected from covering insured deposits and disposing of the institution’s assets. Resolution methods generally include purchase and assumption transactions, insured deposit transfers, and straight deposit payoffs. The term “resolution” can also refer to the assistance plan, through open bank assistance for a failing institution.

**Savings Association Insurance Fund (SAIF)** – One of the two federal deposit insurance funds created by FIRREA in 1989 and placed under the FDIC’s administrative control. Created for the thrift industry, SAIF succeeded the FSLIC as the insurer of deposits to specified limits at savings associations (also called S&Ls) and many savings banks.

**Scope** – All work that was originally contemplated at the time of contract award and expressed in the Statement of Work.

**Second or Third Tier Subcontractor** – Any person or entity that provides goods/materials/supplies and/or services to the first tier subcontractor on an FDIC contract for inclusion in the performance of that contract by the first tier subcontractor and the prime contractor.

**Security Subsystem** – A subsystem of NCS containing administrative tables required to maintain NCS.

**Selection Recommendation Report** – Report prepared by the Contracting Officer and signed by the TEP Chairperson, and approved by the Source Selection Official, if appropriate, documenting an award decision and based on the final signed TEP memorandum, cost analysis, and all other relevant decision-making factors.

**Senior Contract Officials** – Persons who, by virtue of their positions, have official organizational authority and responsibility for a contracting function.

**Service Contract Act (SCA)** – The McNamara-O’Hara Service Contract Act of 1965 requires that contractors pay not less than prevailing wages and fringe benefits, and provide safe work conditions under Federal contracts for the performance of non-professional services in the United States.

**Service Employee** - For purposes of the Service Contract Act (SCA), any person engaged in the performance of a contract entered into by the United States and not exempted under the SCA, the principal purpose of which is to furnish services to the Federal Government in the United States. Persons employed in a bona fide executive, administrative, or professional capacity are not included.

**Services** – Any actions conducted by personnel in support or as the primary task of a contract, product installation or performance of agreed terms.

**Setoff** – A demand for money by the FDIC against amounts otherwise due to a contractor for performance under the same or a different contract resulting in a reduction to or elimination of a net amount due the contractor.

**Settlement** – Full or partial payment of a claim.

**Show Cause Letter** – A demand issued by the Contracting Officer to a contractor who does not meet the terms and conditions of the contract to show cause why the contract should not be terminated. The show cause letter may follow a cure notice if the contractor does not cure unsatisfactory performance.

**Simplified Contracting** – Contracting procedures used for services up to \$100,000 or commercial goods up to \$5,000,000, or goods or services having a noncomplex, simple nature.

**Site Visits** – A visit to the contractor’s site to verify the contractor’s performance against scheduled and reported performance to determine the adequacy of the contractor’s facilities and working conditions and to verify that the proper employees are working on the contract and are assigned to appropriate tasks.

**Small Disadvantaged Business (SDB) Program** - The Small Business Administration (SBA) has implemented the Small Disadvantaged Business (SDB) Program to provide equity in contracting with small business concerns owned and controlled by individual(s) determined to be socially and economically disadvantaged. The program certifies small business concerns that meet specific social, economic, ownership, and control eligibility criteria as Small Disadvantaged Businesses.

**Solicitation** – An oral or written communication of the FDIC requirements to prospective offerors, requesting proposals or offers from them.

**Solicitation List** – A group of potential offerors selected by FDIC to receive solicitation materials.

**Source List** – A list of firms available to provide particular goods or services developed by the Acquisition Services Branch, in conjunction with the Program Office and ODEO.

**Source Selection Information** – Information related to the selection of offerors to receive a RFP or RFQ for a particular contract.

**Source Selection Official (SSO)** – An official selected by the Program Office to review the Selection Recommendation Report. If the SSO disagrees with the Selection Recommendation Report, it shall be brought to the attention of the Associate Director, DOA, for resolution. The SSO procedures are specified in APM, 6.E.5, *Source Selection Official Review*.

**Source Selection Plan** – A written plan which provides guidelines and a control mechanism for the proposal evaluation and selection process. (See Exhibit IX, *Source Selection Plan Organization*.)

**Standard Industrial Classification (SIC) Code** - As used in the SDB Program, the code by which the Department of Commerce will identify those industries in which small disadvantaged businesses will receive price or technical credits or evaluation adjustments.

**Statement of Work** – The statement of work (SOW) establishes the scope of services that a contractor will provide.

**Subcontracting Plan** – A written plan provided by the prime contractor detailing what portions of the obligations set forth in the contract will be performed by other entities under contract(s) with the prime contractor.

**Subcontractor** – Any firm, individual, or entity with whom the contractor or another subcontractor has entered or intends to enter into a contract to perform services or provide goods to fulfill the contractor's obligation under its contract with FDIC.

**Subsidiary** – Any company which is owned or controlled directly or indirectly by another company.

**Substantive Change** – A change to a contract which alters the rights and obligation of the parties. It requires a bilateral agreement between the parties for a modification to the contract document. Some examples of substantive changes include changes in the amount of fees paid to a contractor, changes in delivery schedules, and changes in key personnel.

**Supplemental Agreement** – A contract modification that is signed by the parties to the contract.

**Surety Bond** – A bond providing the guarantee that a principal will carry out the contractual obligations that the principal has agreed to perform, or alternatively, to compensate the other parties to the contract for losses resulting from the principal's failure to perform.

**Suspension** – Temporary interruption of the performance of a contract by the contractor at the demand of the FDIC.

**Suspension and Exclusion Regulation** – 12 CFR Part 367, *Suspension and Exclusion of Contractors and Termination of Contracts Regulation* provides two levels of action against contractors who are in violation of the *Contractor Conflicts of Interest Regulation*. Suspended and excluded contractors may not enter into any new contracts for the duration of the suspension or exclusion period.

**System Development Life Cycle (SDLC)** - The System Development Life Cycle (SDLC) describes a full range of tasks and products that may be required for the development of an information system. The SDLC should be adapted to address the specific requirements of an individual project. The purpose of the SDLC is to provide a repeatable, uniform process to develop new FDIC automated information systems and enhance or maintain existing systems. Use of the SDLC will help ensure that systems are developed efficiently and cost effectively and meet user needs.

**Task Assignment** – Task assignments may be used with contracts and delivery orders under Federal Supply Schedules or under other contracts as specified therein when greater specificity is required for services to be performed or goods delivered. The Oversight Manager may issue task assignments under the terms and conditions of the contract if task assignments are necessary. Task assignments are primarily used to supplement DIRM contracts or delivery orders that incorporate a System Development Life Cycle (SDLC) requirement.

**Task Order** – A contract awarded under an existing basic ordering agreement (BOA).

**Technical Analysis** – See Technical Evaluation.



**Technical Evaluation** – The examination of proposals to determine which offeror is most qualified to perform under the contract. The Program Office has primary responsibility for developing evaluation criteria, which are derived from the statement of work (SOW).

**Technical Evaluation Official (TEO)** – An FDIC employee who evaluates the written proposals for compliance with the solicitation’s technical requirements and the evaluation criteria established in the solicitation.

**Technical Evaluation Panel (TEP)** – A panel of FDIC employees established to evaluate the written proposals for compliance with the solicitation’s technical requirements and the evaluation criteria established in the solicitation. The TEP may include a Legal Division Advisor and an ODEO MWOB Specialist as non-voting members.

**Technical Monitor (TM)** – An FDIC employee nominated by a Program Office and confirmed by the Contracting Officer with responsibility to assist the Oversight Manager in monitoring contractor performance in designated areas.

**Telephone Solicitation** – The process of contacting potential offerors on the solicitation list by telephone to obtain verbal quotations.

**TEP Consensus Meeting** – The meeting of the TEP as a group after individual evaluation of the proposals to discuss the strengths and weaknesses of each proposal and to achieve consensus using a rational, agreed upon method (e.g., thorough discussion).

**Termination for Convenience** – The cancellation by FDIC of all or any portion of the unfinished remainder of the performance obligations set forth in a contract for the convenience of FDIC.

**Termination for Default** – The termination of a contract where the contractor has failed to perform a material obligation under the contract such as failing to deliver within the prescribed time or failing to make satisfactory progress.

**Third Party** – Any non-FDIC individual or organization that provides a product or service handling or managing FDIC data or information.

**Time and Materials Contract** – A contract for the acquisition of services on the basis of direct labor hours at specified, fixed hourly rates with materials provided, usually at the contractor's cost.

**Unauthorized Commitment** – An assurance that results in a contractual action, either an original contract or a modification, that is not binding because the FDIC representative who made it lacked the authority to undertake the action on behalf of FDIC.

**Waivers of Conflicts of Interest** – Waivers of conflicts of interest may be granted when, in light of all relevant circumstances, the interests of the FDIC in the contractor’s participation outweighs the concern that a reasonable person may question the integrity of the FDIC’s operations.

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

**Warrant** – The Contracting Officer's certificate of authority to engage private sector firms in providing goods and services to FDIC. The Contracting Officer Warrant Program establishes five levels of warrant authority and assigns contracting responsibilities based on training, experience, and position.

**Women-Owned Business** – Firm(s) in which at least 51% of the ownership and control is directly and unconditionally held by one or more women. A firm, which is principally owned by another business entity or by a trust (including employee stock ownership trusts) that is in turn owned and controlled by one or more women, does not meet this definition. In the case of a firm which is a corporation, at least 51% of each class of voting stock outstanding, and 51% of the aggregate of all stock outstanding, must be unconditionally owned by one or more women. Additionally, the firm(s)'s management and daily business operations must be conducted by one or more women. The women must have managerial experience of the extent and complexity needed to run the firm. A woman owner's unexercised right to cause a change in the control or management of the firm does not constitute minority control and management, regardless of how quickly or easily the right could be exercised.

**Work Product** - Any and all tangible or intangible products, reports, information recorded by whatever medium, documents, written materials, documentation, and any and all other Work Product, and portion of any of the foregoing, prepared, generated, delivered or created by the contractor's performance under an FDIC contract.

**Written Solicitation** – The solicitation of potential offerors by a written solicitation document when the anticipated price is over \$25,000.

# FDIC Acquisition Policy Manual

## List of Exhibits

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<u><i>Exhibit Number</i></u>	<u><i>Name</i></u>
Exhibit I	Expenditure Delegations for Contracts, Leases, Legal Services, and Non-Procurement Related Expenses and Amendments
Exhibit II	Contractor Confidentiality Agreement ( <i>FDIC 3700/46</i> )
Exhibit III	Forms Used to Request Wage Determinations <ul style="list-style-type: none"><li>◆ Notice of Intention to Make a Service Contract and Response to Notice (<i>SF 98</i>)</li><li>◆ Attachment A (<i>SF 98a</i>)</li><li>◆ Request for Authorization of Additional Classification and Rate (<i>SF 1444</i>)</li><li>◆ FDIC Wage Determination</li><li>◆ FDIC Contract Addendum - SCA</li></ul>
Exhibit IV	Implementation Procedures for Contracting-out Decisions for Contracts for Services (Article 17) [ <b>Reserved</b> ]
Exhibit V	Application for Contracting Officer Warrant <ul style="list-style-type: none"><li>◆ Guidelines for Completing Contracting Officer Warrant</li><li>◆ Application for Contracting Officer Warrant</li></ul>
Exhibit VI	Guidelines for Development of Cost Estimates for Contractual Goods or Services <ul style="list-style-type: none"><li>◆ Development of Cost Estimates for Contractual Requirements</li><li>◆ Sample Contract Cost Estimate</li></ul>
Exhibit VII	Contractor Eligibility Review Request ( <i>FDIC 3700/26</i> )
Exhibit VIII	Oral RFQ Log
Exhibit IX	Source Selection Plan Organization
Exhibit X	Contract Milestone Schedule
Exhibit XI	Proposal Weighting and Ranking Analysis <ul style="list-style-type: none"><li>◆ Price Evaluation Scoring Summary</li><li>◆ Technical Evaluation Scoring Summary</li><li>◆ Combined Price/Technical Weighted Evaluation</li><li>◆ Combined Technical and Price Points Scoring Summary</li></ul>

**Exhibit  
Number****Name**

Exhibit XII	Documentation for Technical Evaluation Panel: <ul style="list-style-type: none"> <li>◆ Memorandum Establishing Technical Evaluation Panel</li> <li>◆ Conflict of Interest Statement</li> <li>◆ Confidentiality Agreement</li> <li>◆ Memorandum Establishing Technical Evaluation Guidelines</li> <li>◆ Technical Evaluation Panel Rating Form</li> <li>◆ TEP Memorandum</li> </ul>
Exhibit XIII	Contracting Officer Sample Letters <ul style="list-style-type: none"> <li>◆ Authorizing Contractors to Commence Work</li> <li>◆ Intent to Exercise Option</li> </ul>
Exhibit XIV	Background Investigation Forms <ul style="list-style-type: none"> <li>◆ Background Investigation Questionnaire for Contractors (FDIC 1600/07)</li> <li>◆ Background Investigation Questionnaire for Contractor Personnel and Subcontractors (FDIC 1600/04)</li> <li>◆ Fair Credit Reporting Act Notice and Authorization (FDIC 1600/10)</li> </ul>
Exhibit XV	Sample Letters <ul style="list-style-type: none"> <li>◆ Contract Contingent Award/Award Letter</li> <li>◆ Notification to Unsuccessful Offeror Letter</li> </ul>
Exhibit XVI	Letter of Oversight Manager Confirmation (FDIC 3700/22)
Exhibit XVII	Letter of Technical Monitor Confirmation (FDIC 3700/23)
Exhibit XVIII	Contractor Performance Evaluation Documentation <ul style="list-style-type: none"> <li>◆ Contractor Performance Evaluation and Reporting Form (FDIC 3700/24)</li> <li>◆ Contractor Performance Evaluation Transmittal Letter</li> </ul>
Exhibit XIX	Consent to Assignment Forms <ul style="list-style-type: none"> <li>◆ Version A – FDIC will not hold Assignor liable for Assignee’s actions</li> <li>◆ Version B – FDIC will hold Assignor and Assignee joint and severally liable</li> </ul>
Exhibit XX	Invoice Review Checklists <ul style="list-style-type: none"> <li>◆ Invoice Review Checklist for Contract Specialists</li> <li>◆ Invoice Review Checklist for Oversight Managers</li> </ul>
Exhibit XXI	Travel Invoice Review Checklist for Contract Specialists
Exhibit XXII	Contractor Travel Reimbursement Guidelines

<u>Exhibit Number</u>	<u>Name</u>
Exhibit XXIII	Contracting File Checklists <ul style="list-style-type: none"> <li>◆ Purchase Order (\$5,000 or Less) File Checklist</li> <li>◆ Simplified Contracting File Checklist</li> <li>◆ Formal Contracting File Checklist</li> </ul>
Exhibit XXIV	12 CFR, Part 366 ( <i>Contractor Conflicts of Interest</i> )
Exhibit XXV	12 CFR, Part 367 ( <i>Suspension and Exclusion of Contractors and Termination of Contracts</i> )
Exhibit XXVI	FDIC Procurement Credit Card Order Log
Exhibit XXVII	Contract Administration Plan ( <i>FDIC 3700/35</i> )
Exhibit XXVIII	Oversight Manager File Check List
Exhibit XXIX	Appraisal Services Information Form ( <i>FDIC 9000/03</i> )
Exhibit XXX	Contractor Past Performance RFP Reference Check Questionnaire ( <i>FDIC 3700/29</i> )
Exhibit XXXI	Pre-Exit Clearance Record for Contractors ( <i>FDIC 3700/25</i> )
Exhibit XXXII	Contractor Representations and Certifications <ul style="list-style-type: none"> <li>◆ FDIC Contractor Representations and Certifications (<i>FDIC 3700/04a</i>)</li> <li>◆ Executive Order 11246 and Amendments (Equal Employment Opportunity)</li> <li>◆ 41 CFR, Part 60-1 (Equal Employment Opportunity)</li> <li>◆ Disclosure of Lobbying Activities (OMB - SF LLL)</li> <li>◆ Disclosure of Lobbying Activities Continuation Sheet (<i>OMB - SF LLL - A</i>)</li> </ul>
Exhibit XXXIII	FDIC Integrity and Fitness Representations and Certifications ( <i>FDIC 3700/12</i> )
Exhibit XXXIV	Contract Closeout Documents <ul style="list-style-type: none"> <li>◆ Contract Closeout Letter to Contractor</li> <li>◆ Contract Closeout Memorandum to Oversight Manager</li> <li>◆ Contract Closeout Checklists</li> </ul>
Exhibit XXXV	Product Evaluation or Demonstration <ul style="list-style-type: none"> <li>◆ Memorandum of Understanding (MOU)</li> <li>◆ Confidentiality Agreement</li> </ul>
Exhibit XXXVI	Oversight Management Monitoring Plan
Exhibit XXXVII	Tax Exemption

FEDERAL DEPOSIT INSURANCE CORPORATION

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CERTIFIED COPY OF RESOLUTION OF THE BOARD OF DIRECTORS

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I, Robert E. Feldman, Executive Secretary of the Federal Deposit Insurance Corporation, do hereby certify that the attached is a true and correct copy of a resolution duly adopted at a meeting of the Board of Directors of said Corporation, regularly called and held on the 26th day of May, 1998, and that the same has not been amended or rescinded and is now in full force and effect.

(SEAL)

665040

IN WITNESS WHEREOF, I have hereunto subscribed my name and caused the seal of the Corporation to be affixed hereto, in the City of Washington and District of Columbia, this 26th day of May, 1998.



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Executive Secretary  
Federal Deposit Insurance Corporation

Resolution No. I (Corporate Seal No 065040):

WHEREAS, the Board of Directors (“Board”) of the Federal Deposit Insurance Corporation (“FDIC” or “Corporation”) is responsible for administering the Federal Deposit Insurance Act and the provisions of numerous other laws regarding insurance, regulation, and supervision of depository institutions; and

WHEREAS, Article IV, section 5, of the Bylaws of the Corporation provides in part that “[w]ithin the limitations of the law, the Board of Directors may delegate any of its specific or incidental powers to any standing or special committee of the Corporation or to any officer or agent of the Corporation upon such terms and conditions as it shall prescribe, except the power to amend these Bylaws or to adopt new bylaws”; and

WHEREAS, on September 17, 1996, and by resolution bearing Seal No. 060985, the Board delegated to various FDIC officials the authority to approve expenditures of funds associated with contracts, purchase orders, orders under Basic Ordering Agreements and other multiple-order requirements contracts, and all other contractual instruments awarded in the Corporate, receivership, or conservatorship capacities, leases, legal services, and non-procurement related expenses of the Corporation, which resolution was entitled “Expenditure Delegations for Contracts, Leases, Legal Services, and Non-Procurement Related Expenses” (“Expenditure Delegations”); and

WHEREAS, paragraph a. of section IV of the Expenditure Delegations establishes provisions governing delegated authority actions with respect to noncompetitive procurements except for noncompetitive contracts and legal referrals of \$2,500 or less in aggregate value, which are subject to and governed by contracting policies and procedures issued by the Director of the Division of Administration and the General Counsel, respectively; and

WHEREAS, because purchases of goods and services readily available in the marketplace are simple in nature and the availability of market price information assures a fair price, the Board has determined that increasing the aggregate value threshold for noncompetitive contracts and legal referrals from \$2,500 to \$5,000 would increase administrative efficiency but would not subject the Corporation to risks of higher costs for goods and services; and

WHEREAS, the Expenditure Delegations require further amendment to correct omissions in connection with an August 4, 1997, amendment thereto.

NOW, THEREFORE, BE IT RESOLVED, that resolution bearing seal No. 060985, dated September 17, 1996, as amended by resolutions bearing Seal Nos. 061244, 062371, and 063808, dated respectively, October 29, 1996, May 6, 1997, and August 4, 1997, is further amended by --

- in section III thereof, removing the words “Deputies to the Chairperson” and inserting in their place the words “Deputy to the Chairperson and COO”; and
- in paragraph a. of section IV thereof, removing the figure “\$2,500” and inserting “\$5,000” in its place; and
- removing the words “a deputy to the Chairperson is effective only when confirmed in writing by such deputy to the Chairperson” wherever they appear and inserting in their place the words “the Deputy to the Chairperson and Chief Operating Officer or the Chief Financial Officer is effective only when confirmed in writing by such official, as appropriate.”

FEDERAL DEPOSIT INSURANCE CORPORATION

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CERTIFIED COPY OF RESOLUTION OF THE BOARD OF DIRECTORS

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I, Robert E. Feldman, Executive Secretary of the Federal Deposit Insurance Corporation, do hereby certify that the attached is a true and correct copy of a resolution duly adopted at a meeting of the Board of Directors of said Corporation, regularly called and held on the 26th day of May, 1998, and that the same has not been amended or rescinded and is now in full force and effect.

(SEAL)

065041

IN WITNESS WHEREOF, I have hereunto subscribed my name and caused the seal of the Corporation to be affixed hereto, in the City of Washington and District of Columbia, this 26th day of May, 1998.



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Executive Secretary  
Federal Deposit Insurance Corporation



Resolution No. II (Corporate Seal No. 065041):

WHEREAS, the Board of Directors (“Board”) of the Federal Deposit Insurance Corporation (“FDIC” or “Corporation”) is responsible for administering the Federal Deposit Insurance Act and the provisions of numerous other laws regarding insurance, regulation, and supervision of depository institutions; and

WHEREAS, Article IV, section 5, of the Bylaws of the Corporation provides in part that “[w]ithin the limitations of the law, the Board of Directors may delegate any of its specific or incidental powers to any standing or special committee of the Corporation or to any officer or agent of the Corporation upon such terms and conditions as it shall prescribe, except the power to amend these Bylaws or to adopt new bylaws”; and

WHEREAS, on December 11, 1996, and by resolution bearing seal No. 061427, the Board established the Corporation’s Standing Committee structure and delegated to those committees authority either to act on certain matters or to make recommendations to the Board on various matters presented to it; and

WHEREAS, section I of that resolution established the Case Review Committee and subparagraph (4) of paragraph B thereof states that the Case Review Committee shall, with respect to the Contract Dispute Resolution Process regarding contracts transferred to the Corporation in connection with the termination of the Resolution Trust Corporation (“RTC”), hear and decide appeals of certain RTC contract claims in dispute; and

WHEREAS, a total of 726 RTC contracts were transitioned to the FDIC for continued support, with only 24 such contracts remaining active and no appeal on an RTC contract claim has been received since November 1996; and

WHEREAS, FDIC contract claims are considered under procedures set forth in the Acquisition Policy Manual, with the final decision in such claims made by the Division of Administration; and

WHEREAS, both processes provide a fair and administratively sound approach to claims settlement, but the process for resolving RTC contract claims is more labor-intensive and costly than the process for resolving FDIC contract claims; and

WHEREAS, the Board has determined that the process for resolving FDIC contract claims provides a sufficient level of administrative control and diligence in reaching resolution for any residual RTC contract claims that may be received and that its utilization will streamline the administrative processes, result in cost savings to the Corporation, and increase responsiveness to clients.

NOW, THEREFORE, BE IT RESOLVED, that resolution bearing seal No. 061427, dated December 11, 1996, as amended by resolution bearing Seal No. 063808, dated August 4, 1997, is further amended by deleting subparagraph (4) of paragraph B of section I and by renumbering subparagraphs (5) and (6) and subparagraphs (4) and (5), respectively.

BE IT FURTHER RESOLVED, that the Board of Directors hereby delegates to the Director, Division of Administration, the authority to resolve all contract claims or disputes under the procedures established in the Acquisition Policy Manual, whether those claims or disputes arise out of FDIC contracts or RTC contracts transitioned to the FDIC.

FEDERAL DEPOSIT INSURANCE CORPORATION

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CERTIFIED COPY OF RESOLUTION OF THE BOARD OF DIRECTORS

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I, Robert E. Feldman, Deputy Executive Secretary of the Federal Deposit Insurance Corporation, do hereby certify that the attached is a true and correct copy of a resolution duly adopted by the Board of Directors of said Corporation, on the 17th day of September, 1996, by notational vote, and that the same has not been amended or rescinded and is now in full force and effect.

(SEAL)

IN WITNESS WHEREOF, I have hereunto subscribed my name and caused the seal of the Corporation to be affixed hereto, in the City of Washington and District of Columbia, this 17th day of September, 1996.

060985

  
Deputy Executive Secretary  
Federal Deposit Insurance Corporation

## RESOLUTION

WHEREAS, the Board of Directors ("Board") of the Federal Deposit Insurance Corporation ("FDIC" or "Corporation") is responsible for administering the Federal Deposit Insurance Act and the provisions of numerous other laws regarding the insurance, regulation, and supervision of depository institutions; and

WHEREAS, Article IV, section 5, of the Bylaws of the Corporation provides in part that "[w]ithin the limitations of the law, the Board of Directors may delegate any of its specific or incidental powers to any standing or special committee of the Corporation or to any officer or agent of the Corporation upon such terms and conditions as it shall prescribe, except the power to amend these Bylaws or to adopt new bylaws"; and

WHEREAS, on December 15, 1992, by resolution bearing Seal No. 054241, the Board of Directors of the Federal Deposit Insurance Corporation adopted certain delegations of authority entitled "Corporate Delegations of Authority"; and

WHEREAS, the Board subsequently amended resolution bearing Seal No. 054241 on September 28, 1993, and May 16, 1995, by resolutions bearing Seal Nos. 055910 and 058801, respectively; and

WHEREAS, the Board is of the view that the existing Corporate Delegations of Authority established by resolution bearing Seal No. 054241, as amended, are in need of substantial revision in order to fulfill the requirement of the Corporate Operating Plan that delegations of authority be changed in order to reduce processing time, empower employees, and promote accountability; and

WHEREAS, on March 24, 1992, by resolution bearing Seal No. 052581, the Board adopted certain delegations of authority to the General Counsel (or designee) to retain and approve payment of private attorneys or law firms for liquidation matters, professional liability matters, resolution matters, and general matters; and

WHEREAS, on November 10, 1992, by resolution bearing Seal No. 053929, the Board adopted in paragraphs (1) and (2) of section E thereof certain delegations of authority to the Corporation's General Counsel (or designee) to retain and approve payment of private attorneys or law firms for matters concerning the management of the FSLIC Resolution Fund; and

WHEREAS, the Board subsequently amended resolution bearing Seal No. 053929 on November 10, 1992, by resolution bearing Seal No. 053930; and

WHEREAS, the Board is of the view that the existing delegations of authority to the General Counsel established by resolution bearing Seal No. 052581 and paragraphs (1) and (2) of section E of resolution bearing Seal No. 053929, as amended, are also in need of substantial revision in order to fulfill the requirement of the Corporate Operating Plan that delegations of authority be changed in order to reduce processing time, empower employees, and promote accountability; and

WHEREAS, the Corporate Delegations Task Force has recommended that the "Corporate Delegations of Authority" (1) be revised to increase the dollar limits under which the officers of the Corporation can obligate the Corporation exercising delegated authority, to clarify that the delegations are applicable to contracting, leasing, legal services, and non-procurement related expenditures, and to reduce the number of exceptions to the basic delegated authority dollar limits, and (2) be retitled the "Expenditure Delegations for Contracts, Leases, Legal Services, and Non-Procurement Related Expenses"; and

WHEREAS, by resolution bearing Seal No. 59817, the Board, on December 12, 1995, among other things, delegated to Corporation managers and committees the authority the Chief Executive Officer of the Resolution Trust Corporation ("RTC") had, prior to the termination of the RTC on December 31, 1995, delegated to RTC managers pursuant to various sections of the RTC Master Delegations of Authority, as modified, as attached and incorporated into such resolution ("Modified Master Delegations of Authority"); and

WHEREAS, the Board had specifically contemplated in resolution bearing Seal No. 59817 that each section of the Modified Master Delegations of Authority would be effective until such section is specifically revoked by the Board either in amendments to the Corporation's delegations of authority or in any other resolution; and

WHEREAS, adoption of the delegations of authority set out hereinafter will effectively supersede the need for the existence of section VII(C) of the Modified Master Delegations of Authority, entitled "Delegations of Authority Regarding Approval of Outside Counsel, Legal Matter Budgets, and Payment of Legal Bills" and section X of the Modified Master Delegations of authority, entitled "Delegations of Authority -- Contracting."

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors, consistent with the authority in the Federal Deposit Insurance Act and the Bylaws of the Corporation, hereby delegates to various FDIC officials in the manner set out below the authority to approve expenditures of funds associated with contracts, purchase orders, orders under Basic Ordering Agreements and other multiple-order requirements contracts, and all other contractual instruments awarded in the Corporate, receivership, or conservatorship capacities, leases, legal services, and non-procurement related expenses of the Corporation.

BE IT FURTHER RESOLVED, that the Board of Directors hereby authorizes the Director of the Division of Administration (1) to serve as the Corporation's chief contracting officer with the authority to develop contracting policy and to carry out and conduct the contracting function on behalf of the Corporation and (2) to serve as the Corporation's senior leasing official with the authority to manage, supervise, and direct the Corporation's space management function.

BE IT FURTHER RESOLVED, that the Board of Directors hereby authorizes the General Counsel to serve as the Corporation's chief contracting official for legal services with the authority to develop contracting policy for legal services and to carry out and conduct the legal services contracting function on behalf of the Corporation.

BE IT FURTHER RESOLVED, that section VII(C) of the Modified Master Delegations of Authority, entitled "Delegations of Authority Regarding Approval of Outside Counsel, Legal Matter Budgets, and Payment of Legal Bills" and section X of the Modified Master Delegations of Authority, entitled "Delegations of Authority -- Contracting," which the Board had incorporated into resolution bearing Seal No. 59817, are hereby rescinded.

BE IT FURTHER RESOLVED, that resolution bearing Seal No. 052581 and paragraphs (1) and (2) of section E of resolution bearing Seal No. 053929, as amended by resolution bearing Seal No. 053930, are hereby rescinded.

BE IT FURTHER RESOLVED, that to ensure that existing legal referrals made in accordance with the foregoing rescinded resolutions delegating authority to the General Counsel shall be deemed to comply with this Resolution, the Board of Directors hereby determines that such legal referrals shall be deemed to have expenditure approval of the estimated cost to complete the legal referral as may have been set forth in the authority to sue memorandum, approved budget, legal services invoice, or other document authorizing the legal referral, as approved prior to adoption of this resolution.

BE IT FURTHER RESOLVED, that resolution bearing Seal No. 054241, as amended by resolutions bearing Seal Nos. 055910 and 058801, is hereby rescinded, and the following new "Expenditure

Delegations for Contracts, Leases, Legal Services, and Non-Procurement Related Expenses" are hereby adopted and approved:

- I. Definitions. In order to clarify the usage of certain words or terms contained herein for the purposes of these delegations of authority, the following definitions are provided:
  - a. CFO means the Chief Financial Officer.
  - b. Contract means a mutually binding legal relationship that obligates the seller to furnish goods or services of any nature, except legal services as defined herein. Contracts include without limitation purchase orders, orders issued under a Basic Ordering Agreement ("BOA") and other multiple-order requirements contracts, software licensing agreements, and all other contractual instruments used by the Division of Administration to acquire goods and services on behalf of the Corporation or any receivership or conservatorship. All contracts not otherwise mentioned in this definition shall be subject to these delegations unless specifically excepted by these delegations or otherwise by the Board of Directors.
  - c. Contract Modification means any written change in the terms of a contract involving the specifications, delivery point, rate of delivery, contract period, price quantity, or any other provision. Contract modifications involve either administrative or substantive changes. Administrative modifications are awarded on a unilateral basis and generally do not change or alter the rights of the parties to the contract (e.g., a change in the billing address). Substantive modifications are awarded on a bilateral basis and generally involve changes in the rights of the parties to the contract (e.g., extensions to the period of performance).
  - d. Contracting Authority means the specific authority held by the Director of the Division of Administration, as the Corporation's chief contracting officer, to develop contracting policy, to solicit proposals, and to enter into, modify, and terminate contracts on behalf of the Corporation or any receivership or conservatorship. The Director of the Division of Administration's contracting authority may be redelegated only to Contracting Officers in the Division of Administration.
  - e. Contracting Officer means an employee of the Corporation within the Division of Administration with delegated authority to legally bind the Corporation by signing contracts and all modifications issued thereto.
  - f. COO means the Deputy to the Chairman and Chief Operating Officer or the Chief Operating Officer, as is applicable.
  - g. Expenditure Authority means the authority to approve planned expenditures associated with contracts, leases, legal services, and non-procurement related expenses. These expenditures include contractor fees, costs, and expenses associated directly with acceptable performance under Corporation contracts or legal referrals in the Corporate, receivership, or conservatorship capacities and non-procurement related expenses as defined herein. For legal services, expenditure authority includes the authority to approve expenditures associated with actions necessary and appropriate to protect the Corporation's interests. For leases and lease amendments, expenditure authority means the authority to approve all payments associated with the occupancy of the leased facility over the lease term, including base rent, tax and operating expense escalations, and the costs associated with the initial occupancy of the leased facility (including initial tenant alterations, cabling, wiring and moving costs).

- h. Expenditure Ceiling means a dollar limit on expenditures which have been approved in accordance with these delegations for contracts, legal referrals, and non--procurement related expenses. The total dollar amount approved for (1) a contract shall include the estimated cost for all contractual requirements for the initial period of performance and option periods, if applicable, (2) a BOA or multiple-order requirements contract shall include all orders to be awarded in an aggregate amount, and (3) a legal referral shall include the estimated cost to complete the legal referral. In addition, expenditure ceiling means the total dollar amount approved for a non-procurement related expense.
- i. Lease means an agreement between the FDIC and a landlord in which the landlord agrees to convey to the FDIC exclusive possession of real property over a designated period of time in exchange for payment of rent.
- j. Lease Amendment means any changes to the terms of a lease including, but not limited to, changes which extend the term of the lease, increase the rentable square footage of the premises leased, or increase the rent paid under the lease.
- k. Leasing Authority means the specific authority held by the Director of the Division of Administration, as the Corporation's senior leasing official, to develop leasing policy, to solicit proposals and to enter into, modify, sublease, and terminate leases on behalf of the Corporation or any receivership or conservatorship.
- l. Leasing Official means an employee of the Corporation within the Division of Administration to whom the Director of the Division of Administration has delegated authority to solicit proposals and to enter into, modify, sublease and terminate leases.
- m. Legal Referral Authority means the specific authority held by the General Counsel as the Corporation's chief contracting official for legal services to enter into, modify, and terminate legal referrals on behalf of the Corporation or any receivership or conservatorship. The Legal Division shall have sole authority to develop contracting policy for legal services and to solicit proposals for legal services. The General Counsel's legal referral authority may be redelegated only to senior lawyers ("Senior Legal Staff") in the Legal Division.
- n. Legal Referral means a binding legal relationship that obligates the legal services provider to furnish legal services. Legal referrals include referral letters, task order agreements, task orders, joint referrals, and all other agreements used by the General Counsel to acquire legal services on behalf of the Corporation or any receivership or conservatorship. All legal referrals not otherwise mentioned in this definition shall be subject to these delegations unless specifically excepted by these delegations or otherwise by the Board of Directors.
- o. Legal Referral Modification means any written change in the terms of a legal referral.
- p. Legal Services mean professional services provided by private attorneys or law firms, including services of non-lawyers in their employ, outside neutrals for alternative disputes resolution, including evaluators, mediators, and arbitrators, and supporting services provided by others outside the legal profession to support the professional services of private attorneys, law firms, or Legal Division lawyers.
- q. Noncompetitive Procurement means the acquisition of goods or services, except legal services, when only one source is solicited or when the goods or services can only be provided by a single source, according to policies and procedures developed by the Division of Administration. For legal services, a noncompetitive procurement means

the award of a legal referral when only one private attorney, law firm or service provider is considered.

- r. Non-procurement Related Expenses mean expenses that will result in payments by the Corporation or receiverships using approved methods and procedures other than contracts awarded by the Division of Administration or legal referrals awarded by the Legal Division. Such methods include, but are not limited to, Payment Authorization Vouchers issued in accordance with Corporate policies and procedures, Petty Cash vouchers, training reimbursements under form SF-182, Travel Authorizations/Notices of Relocation Authorization, Memoranda of Understanding, and Interagency Agreements.
- s. Senior Legal Staff means senior lawyers within the Legal Division with delegated authority to legally bind the Corporation by signing referral letters and modifications thereto.

## II. General

- a. No official or employee of the Corporation may enter into a contract, lease, or legal referral or authorize an expenditure of funds for a contract, lease, legal referral, or non-procurement related expense in excess of the amount available in the program office's annual Budget without prior approval of the CFO. The Budget includes approved estimates of expenditures required to support Corporate objectives. However, it does not automatically constitute authority to enter into contracts or legal referrals or authorize the payment of non-procurement related expenses. All planned expenditures shall be reviewed and approved prior to procurement, execution of legal referral, or payment of non-procurement related expenses in accordance with delegated authority, subject to these Delegations.
- b. Expenditure authority for competitive and noncompetitive contracting or legal referrals or for authorizing payments of non-procurement related expenses is a program office responsibility. It relates to the process of approving the use of funds prior to the award of contracts, execution of legal referrals, or payment of non-procurement related expenses. Expenditure authority does not give the program office the approval to conduct and solicit contract actions or to execute contracts or legal referrals. These responsibilities belong solely to Contracting Officers in the Division of Administration with proper delegated authority and Senior Legal Staff in the Legal Division with proper delegated authority for legal services, respectively.
- c. For non-procurement related expenses, expenditure authority must be obtained prior to binding the Corporation to making payments thereunder. For contracts, expenditure authority must be obtained prior to issuance of the solicitation. Under unique circumstances, the Director of the Division of Administration may approve the issuance of a solicitation prior to obtaining expenditure approval.
- d. The Division of Administration is responsible for obtaining approval for leases and lease amendments.
- e. Notwithstanding any other provision of this resolution, the Vice Chairman and the Director (Appointive) may approve Petty Cash vouchers, training reimbursements under form SF-182, Travel Authorizations, and Travel Vouchers associated with the operations of their respective offices in accordance with applicable Corporation administrative policies and procedures.

- III. Basic Delegations. Expenditure authority for contracts, legal services, and non-procurement related expenses, in the Corporate, receivership, or conservatorship capacities, is delegated according to the dollar amounts set forth below and is subject to the Exceptions and the Limitations contained in sections IV and IX, respectively, of these Delegations. The authority delegated to a division or office director who reports to the Deputy to the Chairperson and Chief Operating Officer or the Chief Financial Officer is effective only when confirmed in writing by such official, as appropriate.

<u>Level of Authority</u>	<u>Dollar Limits</u>
Office Directors	Up to \$1,000,000
Inspector General	Up to \$2,000,000
Division Directors	Up to \$2,000,000
Deputies to the Chairperson	Up to \$3,000,000
COO and CFO jointly	Up to \$5,000,000
Chairperson	Up to \$5,000,000
Board of Directors	Over \$5,000,000

- IV. Exceptions to the Basic Delegations. The following exceptions apply to the Basic Delegations stated in section III.

- a. Noncompetitive Procurements. Expenditure authority with respect to noncompetitive procurements is delegated according to the dollar amounts set forth below. The authority delegated to a division or office director who reports to the Deputy to the Chairperson and Chief Operating Officer or the Chief Financial Officer is effective only when confirmed in writing by such official, as appropriate. Noncompetitive expenditure authority is calculated based on the total value of the specific noncompetitive requirement being considered for execution. This section shall not apply to contracts and legal referrals of \$5,000 or less in aggregate value. Contracts and legal referrals below this threshold shall be subject to and governed by contracting policies and procedures issued by the Director of the Division of Administration and by the General Counsel for the Legal Division, respectively.

<u>Level of Authority</u>	<u>Dollar Limits</u>
Division Directors/ Office Directors/ Inspector General	Up to \$50,000
COO and CFO jointly	Up to \$250,000
Chairperson	Up to \$250,000
Board of Directors	Over \$250,000

- b. Receivership Expenses. Receivership expenses, other than those arising under contracts for goods or services awarded by the Corporation as receiver, shall be approved and paid in accordance with applicable delegations of authority granted by the Board of Directors to employees of the Division of Resolutions and Receiverships. Those expenses include but are not limited to funding loan commitments, purchasing and selling assets, paying off secured borrowings, paying



any Federal Reserve debt, paying insured deposits, and paying administrative expenses of the receiver, as that term is used in section 360.4 of the Corporation's regulations; provided, however, that such administrative expenses must not be in connection with contracts for goods or for services awarded by the Corporation as receiver following the failure of the institution for which it is acting as receiver.

V. Approval Level Needed to Lease Space and Enter into Lease Amendments

- a. New Leases. The approval level needed for new leases is stated below in paragraph b. Receipt of approval to lease space from the appropriate authority shall constitute approval to make rental payments over the entire term of the lease. All leases are subject to review by the Legal Division with respect to form and content.
- b. Level of Authority to Approve New Leases. The Board of Directors retains the authority to approve leases for multi-division offices (including Field Service Centers and Regional Offices); and leases for single division offices when the lease term is three (3) years or more. The Director of the Division of Administration is hereby delegated the authority to approve all other leases including, but not limited to, single division offices when the lease term is less than three (3) years; leases for warehouse space; and leases for Field Offices for the Division of Supervision and/or the Division of Compliance and Consumer Affairs.
- c. Lease Amendments. The approval level required for lease amendments is delegated according to the dollar amounts set forth below in paragraph d. Approval is required for the estimated amount of the specific lease amendment being considered for execution including base rent, tax, and operating expense escalations over the remaining term of the lease. The authority delegated to the Director of the Division of Administration is effective only when confirmed in writing by the Deputy to the Chairman and Chief Operating Officer. All amendments to leases are subject to review by the Legal Division with respect to form and content.
- d. Level of Authority to Approve Lease Amendments. The following levels of authority shall be used to approve all lease amendments:

<u>Level of Authority</u>	<u>Dollar Limits</u>
Director, Division of Administration	Up to \$3,000,000
Board of Directors	Over \$3,000,000

VI. Expenditure Ceiling. The following describes how to determine the dollar amount of a planned expenditure so that proper approval may be obtained.

- a. Contracts. The expenditure ceiling for a contract shall include the aggregate dollar amount necessary for complete performance.
- b. Contract Modifications. Expenditure authority for contract modifications shall be based on the cumulative value of the contract plus modification. However, when a contract is awarded on a competitive basis and the modification is noncompetitive, then expenditure authority is only required for the value of the noncompetitive modification being considered for execution. Expenditure authority for multiple noncompetitive modifications under the same contract must be obtained on a cumulative value basis.

- c. Contracts with Options. If options are to be included in the proposed contract at the time of award, then the expenditure ceiling for the basic period of performance and all options shall be included in the approved expenditure authority.
- d. Orders Awarded Under Basic Ordering Agreements Multiple-Order Requirements Contracts. For all BOAs and multiple-order requirements contracts, the expenditure ceiling shall include the total cumulative dollar amount of all orders to be awarded thereunder during the basic term and, if applicable, all option terms. Expenditure authority for individual orders to be awarded under BOAs and multiple-order requirements contracts is not required as long as the cumulative amount of the orders does not exceed the expenditure ceiling. However, orders under BOAs or multiple-order requirements contracts shall be approved by the appropriate division or office director or designee.
- e. Legal Referral. The expenditure ceiling for a legal referral shall include the aggregate dollar amount necessary for complete performance of the legal referral, including any modifications thereto.
- f. Budget Approval. Expenditure authority shall always be obtained in the total cumulative amount for all contracts and legal referrals. Although expenditure authorization may be approved on a multi-year basis, Budget approval must still be obtained on an annual basis. With respect to existing multi-year leases which received approval from the required authority prior to execution of the lease or lease amendment, the Division of Administration shall provide, as part of the Budget preparation process, the anticipated rental amounts to be paid during the Budget year for all such leases which will be in effect at the beginning of the Budget year, and such rental amounts will be included in the Budget.

VII. Functional Concurrence Requirements. The Corporation has established, and will continue to establish from time to time, policies and procedures associated with the acquisition of certain types of goods and services. These policies and procedures generally establish a single division with functional responsibility for specific goods and services and, among other things, require that division's concurrence prior to contract award. The following goods and services shall require concurrence from the Division designated below prior to awarding any contract:

<u>Expenditure</u>	<u>Concurring Division</u>
Temporary help, furniture and equipment, facilities, and corporate goods and services.	Division of Administration
Information Resources Management goods and services	Division of Information Resources Management
Travel and Relocation	Division of Finance

VIII. Functional Concurrences Requirements for Legal Services. The Corporation has established, and will continue to establish from time to time, policies and procedures associated with the procurement of legal services. These policies and procedures generally establish the requirement that the division for whom the legal services are performed concur in the expenditure of funds for certain legal referrals. The Legal Division shall obtain the concurrence of the division for whom the legal services are performed when the expenditure ceiling for a legal referral, including modifications, exceeds \$2,000,000.

- IX. Limitations to the Basic Delegations - Prohibited Contracts/Legal Referrals. Contracts for services and legal referrals that establish an employer-employee relationship between the Corporation and the contractor's employees are designated as personal services contracts and are prohibited. The Director of the Division of Administration and the General Counsel shall be responsible for developing policies and procedures that will enforce this prohibition for their respective areas of contracting responsibility.
- X. Contracting Authority
- a. Director of the Division of Administration. The Director of the Division of Administration is authorized to serve as the Corporation's chief Contracting Officer with the authority to develop policies and procedures with respect to contracting and to sign and award contracts on behalf of the Corporation, when such contracts have been approved under the appropriate expenditure authority cited herein. The Director is also authorized to take other action necessary and appropriate to perform the contracting and procurement functions as assigned to the Division of Administration by the Corporation's Bylaws.
- b. The authority to develop policies and procedures with respect to contracting and to solicit proposals and to enter into, modify, and terminate contracts may be delegated from the Director of the Division of Administration to Contracting Officers within the Division of Administration. Any Corporation employees without the delegated contracting authority to solicit proposals or enter into, modify, and terminate contracts are acting outside the scope of their authority.
- c. General Counsel. The General Counsel is authorized to serve as the Corporation's chief contracting official for legal services with authority to develop policies and procedures with respect to contracting for legal services and to sign and award legal referrals on behalf of the Corporation, when such legal referrals have been approved under the appropriate expenditure authority cited herein. The General Counsel is also authorized to take other action necessary and appropriate to protect the Corporation's interests and to perform the legal services contracting function as assigned to the Legal Division by the Corporation's Bylaws.
- d. The authority to develop policies and procedures with respect to legal services contracting and to enter into, modify, amend, and terminate legal referrals may be delegated from the General Counsel to Senior Legal Staff within the Legal Division. Any Corporation employees who enter into, modify, amend, and terminate legal referrals, without delegated legal referral authority, are acting outside the scope of their authority.
- XI. Leasing Authority. The Director of the Division of Administration is authorized to develop policies and procedures with respect to leasing space and to enter into leases and lease amendments on behalf of the Corporation when such agreements have been approved in accordance with this Delegation. The Director is also authorized to take other action necessary and appropriate to acquire space for the Corporation as assigned to the Division of Administration by the Corporation's Bylaws. Any employees who solicit proposals or enter into, amend, sublease, or terminate leases without authority to do so are acting outside the scope of their authority. Notwithstanding the foregoing, the Director of the Division of Resolutions and Receiverships or his or her designee may, pursuant to paragraph C(35) of resolution bearing Seal No. 062371, dated May 6, 1997, lease temporary space for a period not to exceed 24 months for field liquidation operations based on prevailing market rates in

the area, provided that any such lease is in connection with the failure of an institution for which it is acting as receiver.

XII. Funding Authority. The Director of the Division of Finance is authorized to fund actions approved by appropriate authorities under this and other Corporation resolutions and the Rules and Regulations of the Corporation, unless prohibited by law. The Director of the Division of Finance is also authorized to take other actions necessary and appropriate to carry out the budgeting, funding, and accounting functions of the Division of Finance as set out in the Bylaws of the Corporation (to integrate budget execution and accounting functions in order to monitor the financial execution of the Corporation's Budget; to receive, deposit, disburse, manage, safely keep and account for all funds of the Corporation; and maintain all accounting records of the Corporation). This includes authority for write-off of miscellaneous Corporate receivables deemed to be uncollectible or for which the cost of collection is not justified, with the concurrence of the Director of the appropriate program office.

XIII. Miscellaneous Provisions

- a. Redelegation of Approval Authority. Any of the authorities delegated herein including but not limited to the Basic Delegations (section III) or in the Exceptions to the Basic Delegations (section IV), may be redelegated to responsible subordinate staff members in accordance with applicable procedures. Copies of any such redelegations shall be provided to the Director of the Division of Finance, the Director of the Division of Administration, and the Executive Secretary, and shall identify the staff member(s) to whom authority has been redelegated, state the specific authority redelegated, and be signed by the redelegating official or, in the case of a redelegation by the Board, by the Executive Secretary.
- b. Consistency with Applicable Laws and Regulations. These Delegations set out applicable delegated authority limits unless otherwise prohibited by law or by the Corporation's Rules and Regulations.
- c. Approval Consistent with Corporation Administrative Policy and Procedures. It is the responsibility of the approving authority to ensure that actions approved under these Delegations are approved in accordance with published Corporation administrative policies and procedures.
- d. Expenditure Decisions Affecting Corporation Policy. Expenditure authority delegated or redelegated pursuant to this resolution shall not be exercised when a potential expenditure decision could affect Corporation policy or attract unusual attention or publicity. The authority to make expenditure decisions in such circumstances is reserved to the Board of Directors.

CONFIRMATION OF DELEGATION OF AUTHORITY

On September 17, 1996, by resolution bearing Seal No. 060985, the Board of Directors delegated Expenditure Authority, as that term is defined therein and subject to certain exceptions and limitations, for contracts and non-procurement related expenses up to \$1,000,000 for office directors and up to \$2,000,000 for division directors (with a limit of up to \$50,000 for noncompetitive procurements for both division and office directors). In making the delegations described above, the Board provided that the authority delegated to a division or office director who reports to a deputy to the Chairperson is effective only when confirmed in writing by such deputy to the Chairperson. I hereby confirm the delegation of Expenditure Authority described above to each division and office Director under my general supervision.

9/19/96

Date

*Dennis F. Allen*

Deputy to the Chairman and  
Chief Operating Officer

CONFIRMATION OF DELEGATION OF AUTHORITY

On September 17, 1996, by resolution bearing Seal No. 060985, the Board of Directors delegated Expenditure Authority, as that term is defined therein and subject to certain exceptions and limitations, for contracts and non-procurement related expenses up to \$1,000,000 for office directors (with a limit of up to \$50,000 for noncompetitive). In making the delegations described above, the Board provided that the authority delegated to a division or office director who reports to a deputy to the Chairperson is effective only when confirmed in writing by such deputy to the Chairperson. I hereby confirm the delegation of Expenditure Authority described above to each office Director under my general supervision.

09/17/96

Date

*Paul J. ...*

Deputy to the Chairman for Policy

CONFIRMATION OF DELEGATION OF AUTHORITY

On September 17, 1996, by resolution bearing Seal No. 060985, the Board of Directors delegated Expenditure Authority, as that term is defined therein and subject to certain exceptions and limitations, for contracts and non-procurement related expenses up to \$1,000,000 for office directors and up to \$2,000,000 for division directors (with a limit of up to \$50,000 for noncompetitive procurements for both division and office directors). In making the delegations described above, the Board provided that the authority delegated to a division or office director who reports to a deputy to the Chairperson is effective only when confirmed in writing by such deputy to the Chairperson. I hereby confirm the delegation of Expenditure Authority described above to each division and office director under my general supervision.

September 17, 1996  
Date

William A. Longbeak  
Deputy to the Chairman for Finance  
and Chief Financial Officer

## CONTRACTOR CONFIDENTIALITY AGREEMENT

**[NOTE: THIS AGREEMENT SHOULD BE EXECUTED BY AN AUTHORIZED OFFICIAL OF THE RECIPIENT AND BY EACH EMPLOYEE OF THE RECIPIENT WHO WILL WORK ON SITE AT A FDIC FACILITY]**

This Confidentiality Agreement ("Agreement") is executed this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ by \_\_\_\_\_ **[INSERT NAME OF CORPORATION OR OTHER ENTITY OR EMPLOYEE OF THE RECIPIENT WHO WILL WORK ON SITE AT A FDIC FACILITY]** ("Recipient") and Federal Deposit Insurance Corporation, acting in any capacity ("FDIC").

In consideration of the mutual promises set forth herein, Recipient and FDIC agree to the following:

1. Confidential Information. FDIC acting in any of its capacities, may provide Recipient with, or allow Recipient access to, or Recipient may obtain certain information not generally known to the public concerning federally insured depository institutions, Federal Deposit Insurance Corporation, Receiver, assets of the Receiver, Conservator, assets of the Conservator, and any other confidential information. All such information shall be known as "Confidential Information." Recipient might from time to time also obtain information or access to information that is not given directly to Recipient. All such information so obtained shall also be considered and treated as Confidential Information.

2. No Disclosure. Except as expressly permitted by Paragraph 3 below, Recipient shall not at any time disclose, permit the disclosure of, release, disseminate, or transfer, whether orally or by any other means, any part of such Confidential Information to any other person or entity of whatever kind or nature, including without limitation a corporation, government, or individual, without the express prior written consent of an authorized representative of FDIC. Recipient shall return any and all written Confidential Information, and all copies made of such items, to FDIC upon FDIC request, but in any event no later than the date that Recipient has performed all services to be performed for FDIC pursuant to any existing contract, or at the close of the solicitation in connection with which the Confidential Information was given to Recipient. Recipient hereby agrees that such Confidential Information and any documents provided may be used by Recipient only as authorized by FDIC. **[ADD THE FOLLOWING IF THE RECIPIENT IS A CORPORATION OR OTHER ENTITY]** Recipient shall take all reasonable measures to ensure that there shall be no disclosure of any such Confidential Information to any unauthorized person by Recipient's employees, agents, or attorneys.

3. Permitted Disclosure.

a. Court Order. Recipient shall immediately notify FDIC of any court order or subpoena requiring disclosure of Confidential Information and shall cooperate with legal counsel for FDIC in the appeal or challenge of any such order or subpoena. Recipient may disclose Confidential Information required to be disclosed pursuant to court order or subpoena, but only after the FDIC as Receiver has exhausted any lawful and timely appeal or challenge that the FDIC as Receiver elects to file or make in connection with such court order or subpoena.

b. Provision of Service to FDIC. If Recipient is required to perform services for FDIC pursuant to written contract with the Receiver, then Recipient may reveal to a third party only the Confidential Information that is reasonably necessary for Recipient to reveal in connection with the performance of Recipient's obligations to FDIC, and only so long as Recipient has first obtained from the third party a written agreement to abide by the terms of this Agreement in the same manner, and to the same extent, that Recipient is bound hereunder.



**[USE THE FOLLOWING PARAGRAPH IF THE RECIPIENT IS A CORPORATION OR OTHER ENTITY]**

4. Recipient as Corporation, Partnership, or Joint Venture. If Recipient is a corporation, partnership or joint venture, the provision of this Agreement relating to access to, and disclosure of, Confidential Information shall apply to all officers, directors, partners, employees, and agents of Recipient, as applicable, and Recipient shall be responsible for ensuring the compliance of all such parties with the terms hereof.

**[USE THE FOLLOWING PARAGRAPH IF THERE ARE SUBCONTRACTORS]**

5. Subcontractors. If Recipient has one or more subcontractors, Recipient shall obtain from each of them and their personnel who will work on site at a FDIC facility an agreement that is substantially the same as this Agreement and the Agreement for Recipient's personnel who will work on site at a FDIC facility, and Recipient shall ensure that all subcontractors adhere to the terms of such agreement.

6. Applicable Law --Jurisdiction. This Agreement shall be governed by Federal law, and, to the extent that State law would apply under applicable Federal law, the laws of the State of \_\_\_\_\_ . Recipient consents to venue and personal jurisdiction in the United States District Court for the \_\_\_\_\_

District of \_\_\_\_\_ should any dispute relating to this Agreement occur.

7. Attorney's Fees. If any legal action or other proceeding of any kind is brought for the enforcement of this Agreement, or because of any alleged breach, default, or any other dispute in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover all reasonable attorney's fees and other costs incurred in such action or proceedings, in addition to any relief to which it may be entitled.

8. Entire Agreement. This Agreement embodies the entire agreement between the parties in relation to the subject matter herein and supersedes all prior understandings or agreements, oral or written, between the parties hereto.

Recipient

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

FDIC

By: \_\_\_\_\_

Title: \_\_\_\_\_

MAIL TO:

2. ESTIMATED SOLICITATION DATE (use numerals)

Month	Day	Year
-------	-----	------

3. ESTIMATED DATE BIDS OR PROPOSALS TO BE OPENED OR  
NEGOTIATION BEGUN (use numerals)

Month	Day	Year
-------	-----	------

4. Date contract performance to begin (use numerals)

Month	Day	Year
-------	-----	------

5. PLACE(S) OF PERFORMANCE

6. SERVICES TO BE PERFORMED (describe)

7. INFORMATION ABOUT PERFORMANCE

A.  Services now performed by a contractor      B.  Services now performed by Federal employees      C.  Services not presently being performed

8. IF BOX A IN ITEM 7 IS MARKED, COMPLETE ITEM 8 AS APPLICABLE

a. Name and address of incumbent contractor      b. Number of any wage determination(s) in incumbent's contract

c. Name(s) of union(s) if services are being performed under collective bargaining agreement(s). Important: Attach copies of current applicable collective bargaining agreements.

RESPONSE TO NOTICE  
(by Department of Labor)

- A. The attached wage determination(s) listed below apply to procurement.
- B. As of this date, no wage determination applicable to the specified locality and classes of employees is in effect.
- C. From information supplied, the Service Contract Act does not apply (see attached explanation).
- D. Notice returned for additional information (see attached explanation).

9. OFFICIAL SUBMITTING NOTICE

SIGNED:	DATE
TYPE OR PRINT NAME	TELEPHONE NO.

10. TYPE OR PRINT NAME AND TITLE OF PERSON TO WHOM RESPONSE IS TO BE SENT AND NUMBER AND ADDRESS OF DEPARTMENT OR AGENCY, BUREAU, DIVISION, ETC.

Signed: \_\_\_\_\_  
(U.S. Department of Labor)  
  
\_\_\_\_\_  
(Date)

FOR INFORMATION ONLY

# GENERAL EXPLANATION

The amended Service Contract Act requires the Secretary of Labor to issue wage determinations applicable to employees engaged in the performance of service contracts in excess of \$2,500. Standard Form 98, Notice of Intention to Make a Service Contract, with Attachment A, provides an orderly procedure for a contracting agency to request such a wage determination and for the Department of Labor to respond. Any questions as to whether a notice is required in a particular procurement situation should be resolved by reference to Title 29, Part 4, Code of Federal Regulations, or by submission of the questions to the Department of Labor.

Under normal circumstances the Department of Labor will respond to a notice within 30 days of receipt. If there is urgent need for more expeditious handling, this should be explained when the notice is submitted. In the event the necessary response is not received by the contracting agency on a timely basis the Department of Labor should be contacted.

In any case where section 4(c) of the Act requires adherence to compensation provisions of a collective bargaining agreement applicable under a predecessor contract the agency desires to request a hearing on the issue of substantial variance between the wages and fringe benefits provided under such agreement and those prevailing in the locality, the request should be submitted with the notice of intent, in accordance with the provisions of 29 CFR 4.10, and sufficiently far in advance of the need for the wage determination to allow time for appropriate action as provided in that section of the regulations.

The notice is divided along functional lines (1) first part which must be completed by the contracting agency, items 2 through 10 of the basic form and items 11 through 14 of the attachment; and (2) the Response to Notice to be completed by the Department of Labor. The basic form and its attachment are provided in quadruplicate sets with carbon inserts. The original and two copies of the basic form and of each set of attachments used (with snap-out carbons removed and the forms fastened together) are to be sent to the address preprinted on the basic form. One copy of the basic form and one copy of the attachment are to be retained by the agency.

## INSTRUCTIONS-AGENCY PORTION OF NOTICE Entries on Basic Form

**Item 1-**This number is preprinted on the basic form for identification and control purposes. Refer to this number when contacting the Department of Labor about the notice.

**Item 2-**Enter the estimated solicitation date.

**Item 3-**Enter the date the bids or proposals are expected to be opened or the negotiations started.

**Item 4-**Enter the date contract performance is expected to begin.

**Item 5-**The entry as to place of performance depends on a variety of factors. If the place of performance is fixed, as with a contract for janitorial services at a particular installation, enter the appropriate city, county and State. If performance is to be at several known places, attach a list. If the contract is for transportation services between points, enter the city, county and State of origin and of destination. If the place of performance may be anywhere depending on who is awarded the contract (as, for example, certain laundry contracts), enter "unknown." If necessary for clarity, attach a brief explanation of the entry in Item 5.

**Item 6-**Describe the services to be performed in such a manner that it will be clear what type or types of services are called for by the contract. In many instances simple codes will suffice: "Janitorial services at Headquarters Building Fort Sill." "Food service and kitchen/pulver service at Banquet Mess, Camp A.P. Hill." "Laundry and drycleaning services for Base Hospital, Eglin AFB." "Garbage collection at Ft. Hood." Unusual types of services must be described in more detail.

**Item 7-**Mark the appropriate box.

**Item 8-**It is very important under the amended Service Contract Act that appropriate entries be made in Item 8 if Box A of Item 7 has been marked.

- Enter the name and address of the incumbent contractor.
- Enter the number(s) of any wage determination(s) made part of the incumbent's contract. For example: 71-69 (Rev 3) and 69-43 (Rev 4).
- Enter the name(s) of union(s) if any of the services are being performed by the incumbent contractor under collective bargaining agreement(s). If an entry is required in c., a copy of all current applicable collective bargaining agreements must be furnished with the notice. The notice will be returned without action by the Department of Labor if this is not done.

**Item 9-**It is often necessary for the Department of Labor to get in touch with the contracting official who submitted the notice in order to clarify participants and expedite a response. The name of this official should be printed or typed in the space provided and he should sign his name above. The telephone number, including area code, should

**Item 10-**Print or type this entry in the space provided within the brackets. This is used by the Department of Labor to identify the contracting agency and for mailing purposes.

## ENTRIES ON ATTACHMENT A

**Item 11-**Enter the notice number found in Item 1 of the basic form.

**Item 12-**Enter the classes of service employees to be employed in performing the contract. A simple entry may suffice: "Janitor," "Window cleaner," "Automotive mechanic," "Guard," "Stenographer," "Typist," "Warehouseman," "Till clerk." Where more complex jobs are involved, it will expedite handling to use a few lines below the entry for a class to describe briefly what the employee will do—a sort of capsule job description. The entries in Item 12 are crucial as they enable the Department of Labor to "match" the job to be performed against existing wage determinations or available wage payment data.

**Item 13-**Enter the number of employees to be employed in each class listed in Item 12. Do not omit this figure even though it may be necessary to use a rough estimate.

**Item 14-**The amended Service Contract Act (section 2(a)(5)) requires the contracting agency to include in the contract: "A statement of the rates that would be paid by the Federal agency to the various classes of service employees if section 5341 of Title 5, United States Code, were applicable to them." The Secretary of Labor is required to give "due consideration" to such rates in making wage and fringe benefit determinations.

For purposes of the entries in Item 14, assume that each class of employees listed in Item 12 is to be Federally employed; that is, to be employed directly as "wage board" or "blue collar" employees by the contracting agency and who, if so employed, would receive wages as provided in 5 United States Code 5341. Enter the hourly wage rate that each such listed class would be paid. The agency's personnel office may be of help in determining the appropriate hourly rate entries.

While the "statement" made part of the contract must include both the hourly wage rates and fringe benefits that would be paid to the various classes, it is not necessary to furnish fringe benefit information as part of the notice. In giving "due consideration" to the fringe benefits that would be paid, the Department of Labor will consult the formula previously made available to all contracting agencies for use in preparing the "Statement" required to be made part of the contract.

## INSTRUCTIONS-RESPONSE PORTION OF NOTICE (Completed by Department of Labor)

The original copy of the basic form and the original copy of the attachment will be returned to the contracting agency with appropriate entries by the Department of Labor in that portion of the basic form reserved for Response to Notice.

- If this box is marked, the wage determination(s) applicable will be listed by number and attached. The wage rates and fringe benefits reflected in the attached wage determination(s) are applicable to the procurement and must be made part of the contract. (If wage rates and fringe benefits are not provided in the wage determination(s) for particular classes of service employees to be employed on the contract, conforming action must be taken as provided in Title 29, Part 4, section 4.6(b)(2), Code of Federal Regulations.)
- If this box is marked, no wage determination applicable to the specified locality and classes of employees is in effect. However, successor contractors may not pay less than the collectively bargained wage rates and fringe benefits, including any prospective increases, applicable to employees of the predecessor contractor except where, upon a hearing, it is found that such wage rates and fringe benefits are substantially at variance with those that prevail in the locality. In no case may an employee be paid less than the minimum wage under section 6(a)(1) of the Fair Labor Standards Act.
- From time to time the Department of Labor receives a notice with respect to a proposed contract which on the basis of the information supplied by the contracting agency, is not subject to the Service Contract Act. If box C is marked, an explanation will be attached.
- This box will be marked if the notice must be returned for additional information. An explanation will be attached so that the contracting agency will know what action to take.

## ADDITIONAL WAGE DATA

The Department of Labor welcomes any wage rate and fringe benefits data the contracting agency may submit in connection with a notice, as well as any explanatory information that will assist in understanding the proposed procurement.



**REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND RATE**

CHECK APPROPRIATE BOX  
 SERVICE CONTRACT  
 CONSTRUCTION CONTRACT

NOTE: THE CONTRACTOR SHALL COMPLETE ITEMS 3 THROUGH 16 AND SUBMIT THE REQUEST, IN QUADRUPPLICATE, TO THE CONTRACTING OFFICER

1. TO:		2. FROM: (REPORTING OFFICE)	
--------	--	-----------------------------	--

3. CONTRACTOR		4. DATE OF REQUEST	
5. CONTRACT NUMBER	6. DATE BID OPENED (SEALED BIDDING)	7. DATE OF AWARD	8. DATE CONTRACT WORK STARTED (IF APPLICABLE) (SCA ONLY)

10. SUBCONTRACTOR (IF ANY)

11. PROJECT AND DESCRIPTION OF WORK (ATTACH ADDITIONAL SHEET IF NEEDED)

12. LOCATION (CITY, COUNTY AND STATE)

13. IN ORDER TO COMPLETE THE WORK PROVIDED FOR UNDER THE ABOVE CONTRACT, IT IS NECESSARY TO ESTABLISH THE FOLLOWING RATE(S) FOR THE INDICATED CLASSIFICATION(S) NOT INCLUDED IN THE DEPARTMENT OF LABOR DETERMINATION NUMBER: \_\_\_\_\_ RATE: \_\_\_\_\_

a. LIST IN ORDER: PROPOSED CLASSIFICATION TITLE(S), JOB DESCRIPTION(S), AND RATIONAL FOR PROPOSED CLASSIFICATIONS (SCA ONLY)	b. WAGE RATE(S)	c. FRINGE BENEFITS PAYMENTS

(Use reverse or attach additional sheets, if necessary)

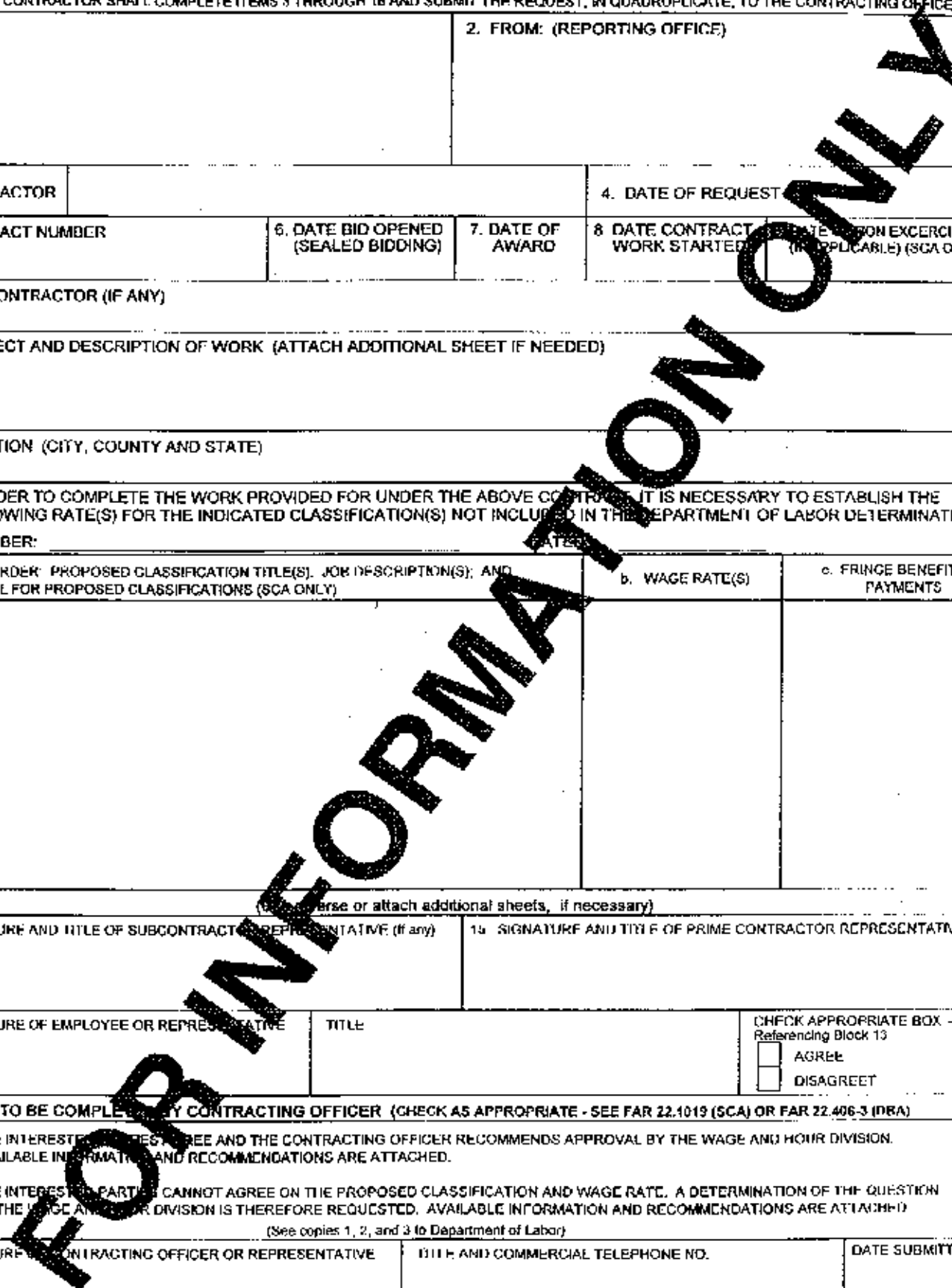
14. SIGNATURE AND TITLE OF SUBCONTRACTOR REPRESENTATIVE (if any)	15. SIGNATURE AND TITLE OF PRIME CONTRACTOR REPRESENTATIVE
--	--

16. SIGNATURE OF EMPLOYEE OR REPRESENTATIVE	TITLE	CHECK APPROPRIATE BOX - Referencing Block 13 <input type="checkbox"/> AGREE <input type="checkbox"/> DISAGREE
---	-------	---

TO BE COMPLETED BY CONTRACTING OFFICER (CHECK AS APPROPRIATE - SEE FAR 22.1019 (SCA) OR FAR 22.406-3 (DBA))

- THE INTERESTED PARTIES AGREE AND THE CONTRACTING OFFICER RECOMMENDS APPROVAL BY THE WAGE AND HOUR DIVISION. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.
- THE INTERESTED PARTIES CANNOT AGREE ON THE PROPOSED CLASSIFICATION AND WAGE RATE. A DETERMINATION OF THE QUESTION BY THE WAGE AND HOUR DIVISION IS THEREFORE REQUESTED. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.  
 (See copies 1, 2, and 3 to Department of Labor)

17. SIGNATURE OF CONTRACTING OFFICER OR REPRESENTATIVE	PHONE AND COMMERCIAL TELEPHONE NO.	DATE SUBMITTED
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**REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND RATE**  
**(Continuation of Block 13)**

a. LIST IN ORDER: PROPOSED CLASSIFICATION TITLE(S); JOB DESCRIPTION(S); AND RATIONAL FOR PROPOSED CLASSIFICATIONS (SCA ONLY)	b. WAGE RATE(S)	c. FRINGE BENEFITS PAYMENTS
<b>FOR INFORMATION ONLY</b>		

[Download form and modify as necessary]

# FEDERAL DEPOSIT INSURANCE CORPORATION WAGE DETERMINATION

## Notice of Wages Payable Pursuant to McNamara-O'Hara Service Contract Act of 1965

**Wage Determination Number:** [From FedWorld Database]

**Solicitation Number:**

**Description:** [Insert one or two sentence description of work to be performed]

**Attachment:** Copy of NITIS FedWorld Database

FDIC has determined that contractor employees covered by the Service Contract Act of 1965 (SCA) will be used in the labor classifications listed in **Column (A)**. The U. S. Department of Labor, under the direction of the Secretary of Labor, has determined that such employees shall not be paid less than the hourly wage rates listed in **Column (B)**, as applicable to the appropriate labor classification.

<b>(A)</b> <b>Labor Classification</b> <b>Occupation Code and Title</b>	<b>(B)</b> <b>Minimum Hourly Wage</b> <b>Rate (1)</b>
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

NOTE: (1) The contractor is required to add a location-specific health & welfare benefit add-on to the above rate. This add-on can be found in footnotes to the Wage Determination.

[Download form and modify as necessary]

# FEDERAL DEPOSIT INSURANCE CORPORATION

## CONTRACT ADDENDUM- SCA

### Notice of Wages Payable Pursuant to McNamara-O'Hara Service Contract Act of 1965

**Contract/Task Order Number:** [Insert Contract Number, PO number, and/or Task Order Number as appropriate]

**Description of Work:** [Insert one or two sentence description of work to be performed]

**Attachment:** Copy of NTIS FedWorld Database

FDIC has determined that contractor employees covered by the Service Contract Act of 1965 (SCA) will be used in the labor classifications listed in **Column (A)**. The U. S. Department of Labor, under the direction of the Secretary of Labor, has determined that such employees shall not be paid less than the hourly wage rates listed in **Column (B)**, as applicable to the appropriate labor classification. The amended Service Contract Act, Section 2(a)(5), also requires the contracting agency to include in the contract, a statement of the equivalent rates that would be paid by FDIC to the various classes of service employees if such employees were directly hired and paid as FDIC employees. These FDIC GG/CG/WG Pay Scales can be accessed via the FDIC Intranet on the Personnel Services Branch Home page. These wage rates are to be listed below in **Column (C)**.

(A) Labor Classification Occupation Code and Title	(B) Minimum Hourly Wage Rate (1)	(C) FDIC Equivalent Wage Rate (2)
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		

NOTES: (1) The contractor is required to add a location-specific health & welfare benefit add-on to the above rate. This add-on can be found in footnotes to the Wage Determination. (2) The FDIC equivalent wage rate is the base FDIC wage rate as determined from the GG/CG/WG Pay Scales presented on the FDIC PSB Home Page. This rate would be adjusted to reflect current FDIC Locality Pay Differential, Regional Pay Differential, and the FDIC fringe benefit rate, for a total of 35%.



**Implementation Procedures for Contracting Out Decisions  
for Contracts for Services  
Article 17**

**Reserved**

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Federal Deposit Insurance Corporation

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**GUIDELINES FOR COMPLETING CONTRACTING OFFICER WARRANT**

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**WARRANT LEVEL REQUIREMENTS**

<b>Level</b>	<b>Business Experience</b>	<b>Contracting Experience</b>	<b>Minimum Education Level</b>
<b>V</b>	<b>8 years</b>	<b>5 years</b>	<b>Bachelor's Degree</b>
<b>IV</b>	<b>7 years</b>	<b>4 years</b>	<b>Bachelor's Degree</b>
<b>III</b>	<b>6 years</b>	<b>3 years</b>	<b>Bachelor's Degree</b>
<b>II</b>	<b>5 years</b>	<b>3 years</b>	<b>H.S. Diploma</b>
<b>I</b>	<b>4 years</b>	<b>2 years</b>	<b>H.S. Diploma</b>

The experience requirements are minimums; however, contracting experience may also be used to partially satisfy the business experience requirements.

The following minimum standards shall be met prior to certification as a Warranted Contracting Officer.

**Level V (unlimited):**

**Education:**

A bachelor's degree from an accredited institution.

**Business Experience:**

Eight (8) years of business experience is required. Business experience must include five (5) years of current, progressively complex and responsible contracting experience including staff or policy support.

**Training:**

Successful completion of contract training courses. See list below\*

**Level IV (not-to-exceed \$10M):**

**Education:**

A bachelor's degree from an accredited institution.

**Business Experience:**

A minimum of seven (7) years of business experience is required. Business experience must include four (4) years of progressively complex and responsible contracting experience.

**Training:**

Successful completion of contract training courses. See list below.\*

**Level III (not-to-exceed \$5M):**

**Education:**

A bachelor's degree from an accredited institution.

**Business Experience:**

A minimum of six (6) years of business experience is required. Business experience must include three (3) years of progressively complex and responsible contracting experience.

**Training:**

Successful completion of contract training courses. See list below.\*

**Level II (not-to-exceed \$1M):****Education:**

A high school diploma is required.

**Business Experience:**

A minimum of five (5) years of business experience is required. Business experience must include three (3) years of progressively complex and responsible contracting experience.

**Training:**

Successful completion of contract training courses. See list below.\*

**Level I (not-to-exceed \$100K):****Education:**

A high school diploma is required.

**Business Experience:**

Four (4) years of general business experience of which at least (2) must demonstrate satisfactory performance in a contracts office with duties requiring contracts related knowledge, skills and abilities.

**Training:**

Successful completion of contracting training courses. See list below.\*

**Educational Equivalencies may apply as follows:****Graduate Level Substitution**

Successful completion of graduate level study in business related fields may be substituted for business experience, but not contracting experience, at the rate of six (6) semester credit hours for three (3) months of experience.

**Bachelor's Degree Substitution**

A bachelor's degree from a four (4) year undergraduate program may be substituted for two (2) years of business experience, but cannot be substituted for the contracting experience requirements.

**Associate's Degree Substitution**

An associate's degree in a business-related field of study may be substituted for six (6) months of business experience, but cannot be substituted for the contracting experience requirements.

**Professional Development**

Successful completion of a comprehensive professional development program for contracts personnel or of an examination leading to certification by a nationally recognized professional association, such as the National Contract Management Association or the National Association of Purchasing Management, may be used to substitute for one (1) year of contracting experience.

## **TRAINING PLAN DEVELOPMENT AND COURSE MATERIAL**

### **Training Plans:**

The contract related training needs of each Contracting Officer must be determined jointly by the supervisor and the employee. The supervisor shall ensure that each employee receives all contracting training courses to support their individual warrant requirements.

### **Course Approval Policy:**

The following policies shall govern the acceptability of training courses for the purpose of meeting training requirements for the Contracting Officer Warrant Program.

- (1) Training must be directly related to the knowledge required for success in a position of contracts responsibility.
- (2) Training may be provided by FDIC or by FDIC-approved external organizations.
- (3) Correspondence courses, if approved in advance, by the Assistant Director, Policy and Compliance Section, ASB, shall be acceptable for credit. The number of credit hours applicable to correspondence courses will be determined on a case-by-case basis.
- (4) A course that addresses contract subject areas, in addition to those prescribed in Chapter 2, FDIC Circular 3700.16, FDIC Acquisition Policy Manual, shall be acceptable in part, provided that the number of hours for applicable credit is readily identifiable.
- (5) Required training hours must represent actual classroom hours unless correspondence courses are authorized in advance. Training credit hours for courses shall be on the basis of seven (7) hours per day for each class day of training, or 1 to 3 hours for each web-based training course, as appropriate.
- (6) Courses satisfying the requirements of Chapter 2, and completed prior to the effective date of the Contracting Officer Warrant Program shall be acceptable.

### **Contracting Training Courses\***

Contracting Officers shall be required to successfully complete the in-house web-based training as follows:

#### **ASB Sponsored Contracting Training Courses**

- (a) Oversight Management Instruction
- (b) Statements of Work Preparation (under development)
- (c) Performance Based Statements of Work (under development)
- (d) Statement of Work (SOW) Workshops (under development)

In addition, the Contracting Officers are encouraged to take the appropriate specialty oversight management course that relates to a new assignment.

### **Timing:**

These courses shall be taken prior to appointment.

### **Training Requirements to Maintain Warrant:**

In order to maintain a Contracting Officer Warrant, Contracting Officers shall complete an annual minimum of twenty (20) hours of training. The training must enable the individual to acquire and demonstrate an in-depth functional knowledge of the laws, policies, procedures, and methods applicable

to commercial, Federal and FDIC contracts, and to effectively manage complex contracting actions. Such training may address the following topics:

- (1) Negotiation Techniques
- (2) Price Analysis
- (3) Performance Evaluation
- (4) Contract Terminations
- (5) Contract Administration
- (6) Commercial and Government Contract Law
- (7) Best Value Contracting
- (8) Contract Claims
- (9) Incentive Contracting
- (10) Other training as approved on a case-by-case basis

Completion of any web-based oversight management specialty course offered by FDIC will count towards satisfying the annual 20 hours of training necessary to maintain a warrant. Additional hours may be provided for ASB workshops and meetings involving acquisition policies and procedures.

**Training Course Approval:**

Non-FDIC contracting courses must be approved by the Policy and Compliance Section, ASB. Recommendations for course approval must be submitted, in writing, by the senior contract official including a statement as to why the course(s) should be approved. The senior contract official must supply the course syllabus and information materials along with the request for approval. Requests shall be submitted to the Chief, Policy Development Unit.

Federal Deposit Insurance Corporation  
**APPLICATION FOR CONTRACTING OFFICER WARRANT**

Warrant Level Requested

**SECTION I – APPLICANT INFORMATION**

Name ( <i>Last, First, MI</i> )	Position	Location
---------------------------------	----------	----------

**SECTION II – EDUCATION AND EQUIVALENCIES**

High School Graduate	Year	Name of School	School Address
<input type="checkbox"/> YES <input type="checkbox"/> NO			

College Graduate	Year	Name of School	School Address
<input type="checkbox"/> YES <input type="checkbox"/> NO			

Dates of Attendance From: \_\_\_\_\_ To: \_\_\_\_\_

Degree(s) Received	Year

Equivalencies

Post-Graduate Study	Year(s)	Name of School	School Address
<input type="checkbox"/> YES <input type="checkbox"/> NO			

Dates of Attendance From: \_\_\_\_\_ To: \_\_\_\_\_

Degree(s) Received	Year

**SECTION III – BUSINESS EXPERIENCE (*Demonstrated knowledge, skills, and abilities*)**

**Contracting Work History**

Date(s)	Experience	Position

**Previous Contracting Officer Warrants Held**

Organizations	Level or Warrant	Date(s)	Reason for Termination

Other Pertinent Experience			
Date(s)	Months of Experience	Position	Duties

**Training – FDIC-Developed Courses Completed (If additional space is needed attach a separate sheet.)**

Course	Hours	Date(s)

**Other Pertinent Courses Completed**

Course	Hours	Date(s)

**SECTION IV – APPLICANT’S CERTIFICATION**

I certify that the material provided by me for this qualification statement is accurate as of the date of this application.

Signature of Applicant	Date
------------------------	------

**SECTION -V – APPROVING OFFICIALS**

I have reviewed this application and have determined that this warrant is needed and the nominee possesses the minimum qualifications for a Level            Warrant.

Supervisor’s Name and Title (Please print or type)	Signature	Date
--	-----------	------

Assistant Director or Head of the Regional Contracting Function Concurrence	Date
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**GUIDELINES FOR DEVELOPMENT OF COST ESTIMATES  
FOR CONTRACTUAL GOODS OR SERVICES  
Reference to APM, 4.I. and 4.I.2.b.(6)**

Cases presented to the Deputies to the Chairman, Chairman, and Board to request expenditure authority for contracts must include an independent cost estimate. It is important for these estimates to be as accurate as possible in reflecting the total amount to be spent over the entire contract period, including option years. The cost estimate provides:

- A basis for approving expenditure authority;
- Information for budget planning;
- A basis for comparing alternative approaches; and
- A foundation for cost evaluation of proposals from offerors.

Complete cost estimates include all aspects of required contractor performance, and should represent the total amount projected to be paid to the contractor. For complex or high dollar value contract actions, such as those subject to Board approval, cost estimates are to be detailed and include supporting data and analysis. Although an estimate, by definition, is not exact, using a systematic approach increases the precision of the estimate and provides a reasonable expectation of cost to be incurred by FDIC.

The following steps are fundamental to development of a cost estimate:

- (1) Identify the appropriate cost components for the goods and/or services to be acquired.
- (2) Determine the quantity required for each cost component.
- (3) Determine the most appropriate source of equivalent cost data for each cost component.
- (4) Develop estimates for cost components based on equivalent cost data.

Each step is discussed in more detail below. A summary of these guidelines is provided in Attachment 1 of this Exhibit.

**STEP 1 IDENTIFY APPROPRIATE COST COMPONENTS:**

The first step in preparing a cost estimate is to identify the cost components that apply to the proposed contract. Identifying these components requires a clear understanding of the goods or services required.

Depending on the statement of work for the requirement, one or more cost components may be applicable to the estimate. For example, a cost estimate to purchase office furniture may entail only a few simple components, such as furniture, delivery services, and set-up services. An estimate for labor-hour based services requires more detail in the form of a breakdown of skill levels into labor categories. Some conventional cost components include:



- Labor
- Travel
- Purchases of Goods or Units of Service
- Delivery and Installation Services
- Maintenance/Repair Services
- Leases
- Supplies
- Contractor-Provided Space/Facilities

**STEP 2 DETERMINE THE QUANTITY REQUIRED FOR EACH COST COMPONENT:**

This step involves determining the level of goods and/or services needed to meet the program objective. Accurately estimating requirements is a critical step. The level of work to be provided for each cost component has a direct impact on the total cost of the contract. The projected number of units of work should be stated separately for each component. Further explanation is provided below:

- **Labor Hour Services:** Based on the volume of work and specific skill levels required (i.e., project manager, technician, analyst, clerk), determine the appropriate labor categories. Estimate the total number of work hours required for each labor category.
- **Travel:** In estimating reimbursable costs for travel, consider such factors as geographic location of work sites, the number of trips to be made, and number of contractor personnel required to travel. Use allowable per diem and transportation rates to develop estimates. Where appropriate, impose limits on the amount to be reimbursed for travel costs.
- **Purchases:** Determine the number of items or units of service to be purchased, and any associated delivery and installation charges. For example, purchases of equipment may be estimated by number of items while purchase of construction services requires estimates of square footage.

In the case of estimates for blanket purchase contracts, there may be a wide variety of items to be purchased, and it may be impossible to project exact quantities for each in advance. For this type of contract requirement, an alternative is to express requirements for each cost component in terms of minimum and maximum quantities. In this case, the maximum quantity will generally be used as a basis for projecting total potential contract costs and associated expenditure authority requirements.

- **Materials and Supplies:** For this component, routine costs should be provided in the form of a consolidated summary of individual material/supply quantities and the basis for pricing. Materials may include raw materials, parts, components, assemblies, and reimbursable services such as material handling. Supplies may include paper, computer supplies, etc. These are often estimated in terms of an

average expected consumption per month. Any non-routine items should be specifically identified with separate cost data.

- **Contractor-Provided Space and Facilities:** If the contractor will provide space and facilities (including furniture, computers, equipment, etc.), estimate the costs expected to be charged by the contractor for providing these items. This estimate can often be obtained from historical data, and is normally provided in terms of anticipated equivalent monthly charges.

### **STEP 3 DETERMINE COST DATA:**

Once cost components and estimated quantities have been determined, the next step is to identify the most appropriate source of cost data for use in developing estimated costs for each identified component.

Cost estimates for recurring services or purchases are often based on historical costs of prior contracts, or on commercial prices obtained from market research, published catalogs, or GSA Federal Supply Schedules. Comparisons can also be made to similar in-house work. Listed below are the most frequently used sources for obtaining cost data:

- Historical FDIC contracts for same or similar services
- Historical in-house costs for performing services
- Costs of other government contracts for same or similar services
- GSA Schedule prices
- Vendor catalogs and published or advertised prices
- Market value or information gained through market survey

Generally, cost data should be no older than six months to remain relevant to the current requirement. The Management and Cost Analysis Section, Division of Finance can provide historical data on in-house work, and the Acquisition Services Branch can assist in obtaining market information or providing historical cost data from prior contracts.

Once cost information has been obtained, it may require adjustment as appropriate to include specific circumstances related to the requirement. Both internal and external factors can affect the applicability of costs for the requirement under consideration. Some of these include:

- **Market Conditions:** As time passes, prices are often impacted by changes in supply, demand, technology, inflation, and other factors. Generally, an estimate should be based on the most recent costs available. Ideally, estimates should be based on costs that were established under similar contract terms and market conditions. For example, rates for accounting services may be lower in the non-tax season when demand is less. Retailers experience seasonal fluctuations that may impact costs. Anticipating such factors increases the accuracy of the cost estimate. Cost estimates for option years may require adjustments for inflation, resulting in a higher contract price.
- **Quantity or Size:** Variations in ordering quantities can affect unit pricing for both goods and services. Usually, smaller ordering quantities produce higher unit prices.

Conversely, larger volume purchases often result in discount prices that are lower than published prices. It is important to provide estimates based on equivalent order quantities.

- **Geographic Location:** Because location can greatly impact cost comparability, attempts should be made to estimate costs using data related to the same geographic area. For example, costs of labor, hotels, office space, and transportation vary widely between sites. Therefore, when it is necessary to compare costs across geographic boundaries, price differences should be determined and the cost estimate adjusted accordingly.

Other typical influences to be considered in developing cost estimates are cost efficiencies resulting from new technology, highly specialized labor skill requirements, and schedule or delivery constraints.

#### **STEP 4      DEVELOP COST ESTIMATES FOR COST COMPONENTS**

Using the adjusted cost data from step 3 above, apply unit costs to the quantities developed in step 2 to determine the total cost for each cost component. The total of costs for all components is equivalent to the total contract price.

A suggested format for a contract cost estimate is provided as Attachment 2 of this Exhibit. This format can be used to present summarized contract cost estimates, including all option years. The format may be modified as required to meet specific needs.

Documentation supporting the summary cost estimate should explain the basis of costs, sources of data, and assumptions used in estimating each applicable cost component. Details vary with the dollar value and/or complexity of the proposed contract. For simple and lower dollar estimates, only a brief statement may be required defining projected costs to FDIC. Estimates for complex and high dollar value requirements should include more details of the analysis and cost schedules, as well as supporting data.

## Development of Cost Estimates for Contractual Requirements

### *SUMMARY OF GUIDELINES*

1. **Identify cost components that appropriately represent goods and/or services to be acquired through the contract. These include such components as:**

- X Services provided by Labor Hour (defined by category/skill level)
- X Travel
- X Purchase of goods
- X Leases
- X Purchase of Units of Service (i.e., services charged per case, per document, per asset, per class, etc.)
- X Maintenance/Repair requirements
- X License or Copyright Fees
- X Supplies
- X Reimbursable Expenses (miscellaneous administrative expenses, material handling, etc.)
- X Contractor-Provided Space/Facilities
- X Storage Costs
- X Other

2. **Determine the quantity required for each cost component (number of hours, number of items, etc.).**

3. **Estimate equivalent, comparable cost data for each component. Listed below are appropriate sources for obtaining cost information for use in developing cost estimates.**

- X Historical FDIC contract costs for same or similar services
- X Historical in-house costs for same or similar services
- X Costs of other Government contracts for same or similar services
- X GSA Schedule prices
- X Vendor catalogs and published or advertised prices
- X Market value or information gained through conduct of market survey

**Adjust estimates for any specific circumstances that could impact costs for the requirement. Such circumstances include:**

- X Discounts for large volume purchases
- X Cost efficiencies resulting from new technology
- X Seasonal influences on prices
- X Highly specialized labor skill requirements
- X Geographic area for performing work
- X Schedule or delivery constraints
- X Inflation adjustments for option years

4. **Determine the total estimated cost of each component by applying adjusted unit costs obtained in Step 3 to quantities determined in Step 2. The total of costs for all cost components is equivalent to the Total Contract Cost.**

## SAMPLE CONTRACT COST ESTIMATE

COST COMPONENTS AND ESTIMATED QUANTITIES							TOTAL COST (BASE PERIOD)	TOTAL COST OPT. YR 1	TOTAL COST OPT. YR 2	TOTAL CONTRACT COSTS
<b>1. COST COMPONENT: Labor Hours</b>										
CATEGORY	HOURS (BASE PERIOD)	RATE (BASE PERIOD)	HOURS (OPT YR 1)	RATE (OPT YR 1)	HOURS (OPT YR 2)	RATE (OPT YR 2)				
Project Manager	1,780	\$75.00	1,200	\$82.50	1,200	\$90.75	\$133,500	\$90,000	\$99,000	\$322,500
Analyst	2,000	\$50.00	700	\$55.00	500	\$60.50	\$100,000	\$35,000	\$38,500	\$173,500
Technician	800	\$40.00	200	\$44.00	200	\$48.40	\$32,000	\$8,000	\$8,800	\$48,800
Clerk	400	\$22.00	400	\$24.20	200	\$26.62	\$8,800	\$8,800	\$9,680	\$27,280
<b>Total Labor Costs</b>							<b>\$274,300</b>	<b>\$141,800</b>	<b>\$155,980</b>	<b>\$572,080</b>
<b>2. COST COMPONENT: Travel</b>										
DESTINATION	NUMBER OF TRIPS PER CONTRACT YR	NUMBER OF TRAVEL DAYS	NUMBER OF PERSONS TO TRAVEL	PER DIEM	AIR FARE					
ATLANTA	2	3	1	\$270	\$480	\$750	\$750	\$750	\$2,250	
CHICAGO	4	3	3	\$990	\$512	\$1,502	\$1,502	\$1,502	\$4,506	
IRVINE	3	4	2	\$1,000	\$780	\$1,780	\$1,780	\$1,780	\$5,340	
<b>Total Travel Costs</b>						<b>\$4,032</b>	<b>\$4,032</b>	<b>\$4,032</b>	<b>\$12,096</b>	
<b>3. COST COMPONENT: Maintenance of Equipment</b>										
MONTHLY COST PER ITEM	NUMBER OF ITEMS MAINTAINED	TOTAL MONTHLY COSTS	NUMBER OF MONTHS (BASE PERIOD)	NUMBER OF MONTHS (OPTION YR 1)	NUMBER OF MONTHS (OPTION YR 2)					
\$110	200	\$22,000	6	12	8	\$132,000	\$264,000	\$176,000	\$572,000	
<b>GRAND TOTAL ESTIMATED CONTRACT COST:</b>							<b>\$410,332</b>	<b>\$409,832</b>	<b>\$336,012</b>	<b>\$1,156,176</b>

Federal Deposit Insurance Corporation  
Contractor Relations Group  
**CONTRACTOR ELIGIBILITY REVIEW REQUEST**

1) DATE OF REQUEST

**NOTE: Read Instructions on Page 2, prior to completing this form**

**SECTION I - INFORMATION ABOUT CONTRACTOR**

2) NAME OF CONTRACTOR

3) CONTRACTOR TAX ID NUMBER

4) ADDRESS OF CONTRACTOR

4a) CITY

4b) STATE

4c) ZIP CODE

**SECTION II - CONTRACTOR'S POINT OF CONTACT**

5) NAME OF CONTACT PERSON

6) TITLE

7) TELEPHONE NUMBER

8) FAX NUMBER

**SECTION III - PENDING CONTRACT INFORMATION** *(Complete this Section if conflict is in relation to a pending solicitation/award, and attach a copy of the solicitation to this form.)*

9) SOLICITATION/RFP NUMBER

10) ANTICIPATED AWARD DATE

11) PROJECTED CONTRACT EXPENDITURE AMOUNT

**SECTION IV - ELIGIBILITY REPRESENTATIONS AND CERTIFICATIONS**

12. Has contractor submitted current Eligibility Representations and Certifications? *(Check one)*

YES *(If "yes," attach to this request)*

NO *(If no, explain below)*

13. Has the National Contractor System (NCS) been checked?

YES *(If "yes," attach "firm status screen" to this request)*

NO *(If no, explain below)*

**SECTION V - COMMENTS, SPECIAL INSTRUCTIONS, NATURE OF CONFLICT** *(If additional space is needed, attach a separate sheet.)*

14) REQUESTED BY

15) TELEPHONE NUMBER

16) DATE

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## INSTRUCTIONS FOR COMPLETING FORM FDIC 3700/26 CONTRACTOR ELIGIBILITY REVIEW REQUEST

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This form is to be used when requesting a review of a conflict situation involving a potential or current contractor. It is important to note that only contractors who have potential conflicts are to be submitted for review. Generally, contractors who are listed on the National Contractor System (NCS) with no conflicts and have submitted current "FDIC Eligibility Representations and Certifications" (which also indicate no conflicts are present) do not need to be reviewed. A review must be requested when the contractor's FDIC Eligibility Representations and Certifications include any "yes" answers to the questions in paragraph 2 (Conflicts of Interest) questions (a) through (e), and paragraph 4 (Defaults); a "no" answer to question 5 (Employees and Subcontractors); or any explanations or attachments other than an organizational chart. Also, use this form when any potential conflict is self-disclosed by a contractor or a potential conflict is discovered by FDIC contracting personnel. In the case of a solicitation or RFP, this form should be submitted as early in the proposal review process as possible.

This form has been designed to allow for ease of submission. Basic information has been requested to assist the Contractor Relations Group in achieving a short turn around time on all requests.

If at any time questions arise as to the usage or meanings contained within this form, call the Contractor Relations Group, in Washington, for clarification.

- 1) **Date of Request** - Date the Contractor Eligibility Review Request is completed.
- 2) **Name of Contractor** - Full name of the contractor. **Do not** use abbreviations or acronyms without including the full name (i.e., FDIC/Federal Deposit Insurance Corporation).
- 3) **Contractor Tax Identification (ID) Number** - Tax ID Number of the contractor. In the case of multiple locations, list the Tax ID Number of the conflicted branch or office, as well as the main office, if known.
- 4) **Address of Contractor** - Actual address of the contractor. In the case of multiple locations, list the address of the conflicted branch or office, including the City, State, and ZIP Code.
- 5) **Name of Contact Person** - The individual within the contractor's organizational structure that is designated, or is best able, to answer questions from the FDIC.
- 6) **Position Title** - Contractor's contact person's position title.
- 7) **Telephone Number** - Contractor's contact person's telephone number.
- 8) **Facsimile Number** - Contractor's contact person's fax number.
- 9) **Solicitation/RFP Number** - The number of the specific Solicitation or RFP that the contractor is competing for. Attach a copy of the Solicitation/RFP to this request.
- 10) **Anticipated Award Date** - Anticipated date of award.
- 11) **Projected Contract Expenditure Amount** - The projected expenditure amount of the contract, if applicable.
- 12) **Has the Contractor Submitted Current Eligibility Representations and Certifications** - Reflects whether the contractor has submitted current Eligibility Representations and Certifications. If they have been submitted, include with this request. If they have been requested, so note. If not, explain why in the Comments Section of this form. Generally, all submissions for review as a result of a Solicitation or RFP should have current Eligibility Representations and Certifications on file.
- 13) **Has the National Contractor System (NCS) been checked** - Identifies whether the NCS has been checked. If NCS has been checked, and is the source of the conflict, include a copy of the Firm Status Screen from the Conflicts Module. If NCS has not been checked, explain why in the Comments Section.
- 14) **Requested By** - Signature of contracting official.
- 15) **Telephone Number** - Telephone number of contracting official.
- 16) **Date** - Date Contractor Eligibility Review Request is signed.

# ORAL RFQ LOG

Requisition/Purchase Order No. \_\_\_\_\_

Award Date: \_\_\_\_\_

Delivery Date: \_\_\_\_\_

Description: \_\_\_\_\_

Contracting Officer: \_\_\_\_\_

Program Office: \_\_\_\_\_

COMPANY	CONTACT	PHONE NO.	DATE CALLED	DELIVERY SCHEDULE COMPLIANCE YES/NO	QUOTED PRICE	ADDITIONAL TERMS/ CONDITIONS

NAME SUCCESSFUL BIDDERS	TAX ID.	ADDRESS	NCS CHECK YES/NO	EXPENDITURE AUTHORITY AMOUNT

**AWARD RATIONALE:**



## Source Selection Plan Organization

In accordance with the policies and procedures specified in APM 6.B.3., Source Selection Plans (SSPs) shall be developed for all awards of \$100,000 and greater and for awards for commercial goods of \$5,000,000 and greater. The SSP shall be organized as follows:

- Part 1                    Purpose  
This section states the overall objective of conducting the proposal evaluation process.
- Part 2                    Background  
This section details the activities and events leading up to the decision to initiate a competitive solicitation process for the requirement and includes the anticipated contract type, single award vs. Basic Ordering Agreement, Contract Milestone Schedule and cost estimate.
- Part 3                    Description of the Required Goods and/or Services  
This section will provide a description of the requirement and include the delivery and/or performance schedule, key personnel requirements, and labor categories with qualifications (if Time and Materials or Labor Hour).
- Part 4                    Description of the Evaluation Methodology  
This section provides a description of the evaluation methodology and includes a list of the technical evaluation criteria and the technical points (or weights) associated with each criterion; the technical vs. cost proposal weighing (e.g., 60% technical and 40% cost); the total points available for the technical and price proposal; and application of the Small Disadvantaged Business (SDB) price and technical evaluation incentives. The TEP Evaluation Score Sheets may be attached if available.
- Part 5                    Organization and Members of the Technical Evaluation Panel  
This section should list all Technical Evaluation Panel members, identifying the TEP Chairman, and the Contracting Officer, Legal Division representative and ODEO MWOB Specialist. This section also documents that the voting TEP members and other non-voting members of the TEP will complete the Confidentiality Agreement and Conflict of Interest Certification and are free from conflicts.
- Part 6                    Special or Unique Requirements  
This section should list all other elements of the evaluation including but not limited to the review of Contractor Eligibility Representations and Certifications, SDB status, financial review (if required), and all pre-award reviews specified in APM 6.E.2. Also, this section identifies whether a Source Selection Official is to be used and identifies the individual and functional role (when a contract requirement involves a complex, business sensitive, unusual or one-time purchase involving a significant expenditure of funds, the Contracting Officer shall consider the use of a Source Selection Official (SSO) in the evaluation process).

**FEDERAL DEPOSIT INSURANCE CORPORATION  
CONTRACT MILESTONE SCHEDULE**

<p>Program Office: POC Name : POC Tel. No.:</p> <p>Date Required by:</p> <p>RFP No.:</p> <p>Title: Contracting Officer:</p>	<p><b>Dates Received</b></p> <p>Original: (Date)</p> <p>Revision No.: (Date)</p>
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Milestones	Projected Date or Not Applicable	Actual Date
1. Complete Requirements Package with Cost Estimate received		
2. Statement of Work finalized		
3. Contract Milestone Schedule completed		
4. Solicitation List completed		
5. Review of Offerors in NCS completed		
6. ODEO Review of Solicitation List completed		
7. Wage Determination requested, if applicable		
8. Technical Evaluation Panel (TEP) Members and Chairperson Appointed		
9. Source Selection Plan completed (if over \$100,000)		
10. RFP with Contract prepared		
11. Legal Review of RFP/Contract (if over \$100,000) completed. ODEO review of RFP/Contract completed (if over \$100,000).		
12. Wage Determination received, if applicable		
13. Expenditure Authorization provided		
14. RFP issued		
15. Questions Due		
16. Offerors= Conference (if applicable)		
17. Responses to Questions		

Milestones	Projected Date or Not Applicable	Actual Date
18. Proposal Receipt Date		
19. TEP convened		
20. Contractor Performance Evaluation Information requested		
21. Price Analysis/Price Reasonableness completed and provided to TEP		
22. Technical Evaluation completed		
23. TEP Consensus completed		
24. TEP Report completed		
25. Competitive Range Determination established, if applicable		
26. Technical Discussions/Negotiations initiated, if applicable		
27. Technical Discussions/Negotiations completed, if applicable		
28. Best and Final Offer requests sent, if applicable		
29. Best and Final Offer Proposals received, if applicable		
30. Best and Final Evaluation results (evaluation completed and provided to Contracting Officer)		
31. Contracting Officer Selection Recommendation Report Approved		
32. Pre-award Approvals obtained (specify) A. Eligibility Certification Review completed B. Background Investigation C. Business Reference Check D. Site Visit		
33. Source Selection Official Approval received, if applicable		
34. Executed contract received from successful Offeror		
35. Contract executed		
36. Notification to Unsuccessful Offerors distributed		

<b>REPRESENTATIVES</b>	
Name	Signature
Program Office:	
Acquisition Services Branch:	

# PRICE PROPOSAL WEIGHTING AND RANKING ANALYSIS

*All entry directions relate to completion of Price Evaluation Scoring Summary on following page.  
(See also Job Aid entitled "FDIC Proposal Evaluation.")*

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## ***STEP 1: Identify Total Technical Points Available***

This information will normally be available from the RFP by multiplying the total number of criteria (typically 6 to 10) by the maximum points for each criteria (e.g. 9 criteria × 10 points = 90 technical points.) May include weighting on points.

## ***STEP 2: Determine Price and Technical Weighting Factors***

(APM requires standard 40% price and 60% technical weighting factors, unless supervisory approval is granted for a higher technical percentage.)

## ***STEP 3: Determine Total Price Points Available (enter 60 @ Position B)***

(To determine total price points, multiply technical points by ratio of price weight/technical weight.)

## ***STEP 4: Determine Lowest Offered Price With Price Adjustment for SDB Firms***

(To determine SDB-Adjusted price, multiply all SDB offers by 10% and subtract this "SDB Incentive" amount from the originally bid amount.)

## ***STEP 5: Determine the Price Point Allocation Factor (Enter Percentages in Col. C6)***

(To determine Price Weighting Factor, divide the lowest price by each Offeror's price. If the Offeror is an SDB, divide the lowest price by the SDB-Adjusted price. If the lowest price is the SDB-adjusted price, divide the SDB-adjusted price by each offerors' price.)

## ***STEP 6: Determine Offerors' Allocated Price Points (Enter Price Points in Col. C7)***

(To determine the Offerors' allocated price points, multiply the available price points by the Price Weighting Factor developed in STEP 5.)

## ***STEP 7: Combine Technical Scores and Price Scores and Establish Overall Total Point Ranking***



## TECHNICAL EVALUATION SCORING SUMMARY

RFP No.: _____		Date: _____		
Contracting Officer: _____				
Total Technical Points Available: _____ Technical Evaluation Adjustment: _____				
Offeror Name	SDB Status	Original Technical Points	SDB Incentive <sup>1</sup>	Adjusted Technical Points

---

<sup>1</sup> SDB incentive (technical evaluation adjustment) is determined as follows:  
 For an SDB firm subcontracting no more than 50% of work, all of technical points.  
 For a non-SDB firm subcontracting to an SDB firm at least 10%, but no more than 50%,  
 of the work, a percentage of the technical points based on amount of subcontracting.  
 Example:  $\frac{30\% \text{ subcontracting}}{50\% \text{ maximum subcontracting}} = 60\%$

60% X 20 technical points = 12 points for SDB incentive

**SUMMARY SPREADSHEET:** Combined Price/Technical Weighted Evaluation (Excel spreadsheet with formulas)  
**RFP NO:**  
**DESCRIPTION OF SERVICES:**  
**GSA SCHEDULE NO:**  
**DATE PREPARED:**

Ranking Order	Offeror	***** P R I C E *****						***** TECHNICAL *****					* SUMMARY *
		Total Price Points Available	SDB Status	Proposed Price	SDB 10% Price Evaluation Adjustment (if applicable)	Final Proposed Price (For Bid Evaluation Purposes)	TOTAL PRICE SCORE	Total Technical Points Available	TEP Consensus Technical Score*	SDB Technical Evaluation Adjustment (if applicable)	TOTAL TECHNICAL SCORE	TOTAL COMBINED WEIGHTED SCORE	
1						\$0	#DIV/0!				0	#DIV/0!	
2						\$0	#DIV/0!				0	#DIV/0!	
3						\$0	#DIV/0!				0	#DIV/0!	
4						\$0	#DIV/0!				0	#DIV/0!	
5						\$0	#DIV/0!				0	#DIV/0!	

\_\_\_\_\_ are certified SDB firms, as verified on the SBA's pro-net database, on XX/XX/03 (see attached pro-net print screens). XXX firms elected for the [price evaluation adjustment]

[technical evaluation adjustment].

\*Prior to applying SDB Technical Evaluation Adjustment, if applicable

**NOTE: Total Price and Technical Points Available were determined as follows:**

**PRICE/TECHNICAL WEIGHTING EVALUATION FACTORS: 60% Technical Vs. 40% Price**

**TOTAL TECHNICAL POINTS AVAILABLE : \_\_\_ points**

**TOTAL PRICE POINTS AVAILABLE : \_\_\_ points**  
 (CALCULATION: Total Technical Points Available (AAA) multiplied by the price weighting (40%) divided by the technical weighting (60%) = Total Price Points Available  
 [AAA x .40 / .60 = 67 ]

**TOTAL POINTS AVAILABLE (Price and Technical Combined): \_\_\_ points**  
 (CALCULATION: Total Technical Points Available plus Total Price Points Available = Total Points Available  
 [XXX + YYY = ZZZ ]

Prepared by:  
 \_\_\_\_\_  
 Contract Specialist                      Date

Approved by:  
 \_\_\_\_\_  
 Contracting Officer                      Date

Concur:  
 \_\_\_\_\_  
 TEP Chairperson                      Date

\*\* Confidential Contracting Information -- Not for Public Disclosure \*\*







## MEMORANDUM ESTABLISHING TECHNICAL EVALUATION PANEL

### MEMORANDUM

**TO:** Technical Evaluation Panel

**FROM:** Contracting Officer

**DATE:** \_\_\_\_\_

**RE:** Technical Evaluation of Proposals for RFP No. \_\_\_\_\_

The following individuals are designated as members of the Technical Evaluation Panel (TEP) for the subject procurement:

Chairperson \_\_\_\_\_

Members \_\_\_\_\_

\_\_\_\_\_

The TEP will convene on \_\_\_\_\_ at \_\_\_\_\_. Copies of all technical proposals will be provided to the TEP members at that time, along with a Memorandum Establishing the Technical Evaluation Guidelines. All members shall be present for a TEP orientation and briefing by the Contracting Officer. Also, a video, entitled "*FDIC Guidelines for Technical Evaluation Panels*" will be shown for those who have not yet seen it or for those wishing to receive a refresher on the subject. All proposals shall be evaluated by the TEP strictly against the evaluation criteria listed in the RFP to ensure that all proposals are evaluated in a uniform manner.

Prior to the initiation of the Technical Evaluation, a "Confidentiality Agreement" and a "Conflict of Interest Statement" must be signed by each member of the TEP. All potential or real conflicts of interest must be disclosed to the Contracting Officer immediately.

You are reminded that TEP members will be required to participate throughout the pre-award phase of this procurement, i.e., Technical Evaluation, Technical Discussions, Final Technical Analysis, and analysis of Best and Final Offer (BAFO)/Negotiated Final Offers.

Each TEP member must complete an evaluation worksheet for each proposal with accompanying written justification for the point score. This documentation must be of sufficient detail to document a proposal's strengths and weaknesses against the technical evaluation criteria. All worksheets must be furnished to the contracting officer along with the narrative evaluation of the proposals.

The TEP Chairperson shall prepare a comprehensive TEP Consensus report at the conclusion of the evaluation process.

# CONFLICT OF INTEREST STATEMENT

## MEMORANDUM

**TO:** Technical Evaluation Panel Member

**FROM:** Contracting Officer

**DATE:** \_\_\_\_\_

**RE:** Conflict of Interest Guidance for RFP No. \_\_\_\_\_

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It is important that complete objectivity be maintained in this evaluation proceeding; therefore, you must determine if you have any interest which might conflict with your duties in connection with the responsibilities as a panel member.

You should keep in mind that a conflict of interest situation may exist where your private interests (including previous employment) conflict or raise a reasonable question of conflict with your duties and responsibilities. The potential conflict is of concern whether it is real or apparent.

18 U.S.C. 208 prohibits personal and substantial participation of an individual in matters before the agency in which the individual, his or her spouse, minor child, or general partner has a financial interest<sup>1</sup> It extends to any organization in which the individual serves as an officer, director, trustee, general partner, or employee or an organization with which the individual is negotiating for prospective employment<sup>2</sup>

5 CFR 2635, Subpart E, Impartiality in Performing Official Duties, prohibits participation in a particular matter involving specific parties that is likely to have a direct and predictable effect on the financial interest of a member of the individual's household, or knows that a person with whom the individual has a covered relationship is a person or represents a party to such matter<sup>3</sup>

The purpose of this memorandum is to request that you review on a continuing basis your situation and if you identify any financial and/or employment interest related to yourself, your spouse, minor child or dependent(s) which may create a conflict of interest or the appearance thereof in the context of your duties and responsibilities as a technical evaluation official or as a member of, or advisor to, a technical evaluation panel, you should notify the Contracting Officer or Deputy Ethics Counselor immediately.

In reviewing your situation, you should ask yourself the following questions:

1. Have I, or my spouse, minor children, or dependent(s) (hereinafter "Family"), had any connection as an employee, officer, owner, director, member, trustee, general partner, advisor, or consultant to any of the organizations to be solicited or those who have submitted proposals, or do I, or my family, have any continuing financial interests through a pension or retirement plan, shared income, or other arrangement as a result of any current or prior employment or business or professional association?<sup>1</sup>

2. Am I or my family now negotiating or do I or my family have any arrangement concerning prospective employment with any proposer? If you have sent a resume to, or had any discussions regarding employment with any of the firms whose proposals you are being requested to evaluate, you need to contact the Ethics Section. Unless the Ethics Section determines otherwise, you must recuse yourself--that is not participate in the review of any of the proposals.<sup>2</sup>

3. Do I or my family have any financial interest through the ownership of stock, stock options, bonds, securities, or other arrangements including trust, in any proposer?

4. Am I the immediate supervisor of any other member of the Technical Evaluation Panel?

The undersigned, as a member of the Technical Evaluation Panel, hereby acknowledges the notification that he/ she is subject to Federal statutes relating to conflicts of interest and the regulation promulgated thereunder, as more particularly set forth in FDIC Circular 2410-6, entitled, "Conflict of Interest for FDIC Employees."

If you believe that no present conflict of interest exists, please complete the attached agreement and return it to the Contracting Officer promptly.

# AGREEMENT

This is to confirm that to the best of my knowledge and belief, I have no current conflict of interest which may interfere with my assignment and I agree to report promptly any such conflict of which I become aware.

\_\_\_\_\_  
Name / Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

<sup>1</sup> Negotiation means discussion or communication with another person, or such person's agent or intermediary, mutually conducted with a view toward reaching an agreement regarding possible employment with that person. The term is not limited to discussions of specific terms and conditions of employment with a specific position.

<sup>2</sup> A covered relationship includes anyone with whom the individual has or seeks to have a business, contractual or other financial relationship that involves other than a routine consumer transaction. It includes a person who is a member of the employee's household, or who is a relative with whom the employee has a close personal relationship. It includes a person for whom the employee's spouse, parent or dependent child is, to the employee's knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee. It includes any person for whom the employee has, within the last year, served as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee. It also includes any organization, other than a political party, in which the employee is an active participant. Participation is active, for example, if it involves service as an official of the organization or in a capacity similar to that of a committee or subcommittee chairperson or spokesperson, or participation in directing the activities of the organization. In other cases, significant time devoted to promoting specific programs of the organization, including coordination of fundraising efforts, is an indication of active participation. Payment of dues or the donation or solicitation of financial support does not, in itself, constitute active participation.

<sup>3</sup> A financial interest is any current or contingent ownership of you, your spouse or minor child with respect to any equity, or security interest in real or personal property or a business and may be an indebtedness of compensated employment relationship. It thus includes, for example, interests in the nature of stocks, bonds, partnership interests, fee and leasehold interests, mineral and other property rights, deeds of trust, and liens, and extends to any right to purchase or acquire any such interest, such as a stock option or commodity future.

## CONFIDENTIALITY AGREEMENT

**TO:** Technical Evaluation Team (including Source Selection Official, if applicable)

**FROM:** Contracting Officer

**DATE:** \_\_\_\_\_

**RE:** Technical Evaluation of Proposals for RFP No. \_\_\_\_\_

You are a Source Selection Official, if applicable, or a member of, or advisor to, the panel formed to evaluate proposals submitted in response to the subject RFP. In order to ensure the confidentiality of financial and technical data that may have been submitted by private firms under the subject solicitation, you are requested to sign the following agreement and promptly return this Agreement to the contracting officer.

### AGREEMENT

Prior to the award of a contract under the subject solicitation, I will not disclose or discuss information provided by the bidders concerning their bid prices or technical proposals. Moreover, I will not disclose or discuss the technical evaluation team's evaluation of bid prices, technical proposals, competitive range determinations, rankings of proposals, and reports of the evaluations of proposals.

Except, I may disclose or discuss such matters with the Office of Inspector General or the Office of Executive Secretary (Ethics) to the extent such disclosure or discussion is necessary to report possible wrongdoing or resolve an ethics issue.

Provided further that, I may disclose information on the solicitation list, the source selection plan, the scoring methodology, the number of proposals received, the names of the offerors, the number of SDB/MWOB proposals received, and any amendments to the solicitation upon request by an official in the Program Office who has an interest in and a need to know the outcome of the evaluation.

After the award of the contract, I cannot disclose or discuss the evaluation process or the activities of the evaluation team with anyone outside the FGDIC, except pursuant to legally enforceable service of process, after consultation with the FDIC's Legal Division.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Name/Title: \_\_\_\_\_

NOTE: Release of confidential and privileged commercial or financial information to any person outside the FDIC included in the offerors' proposals is prohibited by the Freedom of Information Act, 5 U.S.C. 552, by criminal statute 18 U.S.C. 1905, and by the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. 2635. Failure to comply may result in sanctions under the law and/or appropriate disciplinary action.

## MEMORANDUM ESTABLISHING TECHNICAL EVALUATION GUIDELINES

**MEMORANDUM TO:** TEP Chairperson and Panel Members

**FROM:** (Name), Contracting Officer

**SUBJECT:** Technical Evaluation Guidelines for  
RFP No. \_\_\_\_\_

The purpose of this memorandum is to set forth the technical evaluation guidelines for evaluating proposals. All proposals shall be evaluated by the Technical Evaluation Panel (TEP) strictly against the evaluation criteria listed in the Request for Proposal (RFP) to ensure that all proposals are evaluated in a uniform manner.

Proposals received in response to the subject RFP are listed in Attachment (*insert number*) along with a list of the technical proposals being distributed to you.

All members of the TEP shall complete and return executed Confidentiality Agreements and Conflict of Interest Statements prior to assuming any TEP responsibilities. Any potential conflict of interest situation between any TEP member and any prospective offeror should be brought to the Contracting Officer's attention prior to evaluating the proposals in question.

*All members of the TEP must receive an orientation and briefing by the Contracting Officer before the evaluation process can begin, including the TEP video if members have not viewed it previously.*

### **Technical Evaluation Process:**

**General Responsibilities.** Each technical proposal shall be reviewed by the TEP to determine if it meets the requirements of the RFP. The Contracting Officer is responsible for ensuring that the TEP is convened and that it completes its work on a timely basis. The TEP members are responsible for evaluating proposals in accordance with the procedures established in the Source Selection Plan, the evaluation criteria specified in the RFP, the procedures established in FDIC's Acquisition Policy Manual (APM), and procedures set forth herein.

**Safeguarding Proposals.** All contracting staff, the TEP Chairman and TEP members shall safeguard proposals to prevent unauthorized disclosure. The Contracting Officer is responsible for proposals in the possession of the Acquisition Services Branch. During the evaluation process, the TEP Chairperson is responsible for all copies of proposals in possession of the TEP. Proposals shall be contained in a secured location.

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**Conduct During Proposal Evaluation.** The proposals are for evaluation purposes only and should not be duplicated, used or disclosed in whole or in part for any purpose other than evaluation under this RFP. Every precaution should be taken to ensure that the confidentiality of the proposals is maintained and proposals are accessible only to those who have a need to review them in connection with this proposal evaluation.

**TEP Procedures.**

- (1) **Initial Briefing by the Contracting Officer.** The briefing agenda shall cover:
  - (a) Evaluators' responsibility for protecting contracting information;
  - (b) The number of proposals received;
  - (c) The schedule for completing the evaluation;
  - (d) Key RFP terms and conditions and significant statement of work contents;
  - (e) Resumes of key personnel and how they will be reviewed;
  - (f) Any proposal format requirements;
  - (g) Evaluation criteria and their corresponding standards;
  - (h) Need to obtain and consider past performance information;
  - (i) Ranking procedures, including score and weight assignment;
  - (j) The application of price incentive points; and
  - (k) Documentation requirements including the standard protective marking statement ("*Confidential Contracting Information-Not for Public Disclosure*") to be included on all proposal evaluation documentation and recommendation reports; and
  - (l) The signing of a Confidentiality Agreement and a Conflict of Interest Certification, Attachment (*insert number*) by each evaluator.

The following briefly describes your roles and responsibilities as members of the Technical Evaluation Panel.

- (1) **Guidelines for Individual Evaluations.** Individual proposals shall be evaluated against the evaluation criteria, *not* compared against one another. Generally, evaluators should take the following steps:
  - (a) **Scan Each Proposal.** Evaluators should get a sense of the organization, contents, and style of the offeror's proposal.
  - (b) **Read Each Proposal Carefully.** Evaluators should analyze each proposal using the evaluation criteria as a checklist and any proposal instructions provided in the RFP.

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- (c) **Document the Review of Each Proposal.** All numeric scores must be supported with written narratives. Evaluators shall document all deficiencies. Evaluators shall also document all strong points, as well as all weak points, all mistakes and ambiguities, and point out where clarifications are needed. All review comments should be organized and referenced by proposal part (volume, chapter, section, page number, and so forth) and referenced by the evaluation criteria to which the comments pertain.
  - (d) **Summarize Review Findings of Each Proposal.** After evaluating a proposal, evaluators shall summarize its strengths and weaknesses.
  - (e) **Rate Each Proposal.** To complete the evaluation, evaluators shall assign a score to each proposal and support the score with a written (brief) narrative. Since the goal of the evaluation process is to predict success and narrow the field of possibilities, *it is imperative, regardless of the scoring system used, that evaluators assign positive scores only if clearly justified in accordance with the evaluation criteria.* It is inappropriate, for instance, to assign even a low number of points to any particular criterion, or to the proposal as a whole, in order to indicate an appreciation of effort on the part of the offeror. Evaluators shall complete the evaluation and scoring of each proposal before proceeding to the next one.
- (2) **Non-Responsive Proposals.** At the Contracting Officer's discretion, proposals that are nonconforming to the RFP shall be considered non-responsive and eliminated from further consideration.
  - (3) **Clarification of Proposals.** If during the evaluation process detailed above, or in the consensus meeting, TEP members need clarification of any aspect of a proposal, the TEP Chairperson shall request such clarification from the Contracting Officer. Only the Contracting Officer has the authority to request clarification from an offeror, and the request shall be made in writing.
  - (4) **Past Performance.** Past performance shall be a scored criterion. The TEP will obtain any available performance information on all offerors from the Contracting Officer and offerors' references and will use the information obtained in evaluating an offeror's proposal against the performance criterion.
  - (5) **TEP Consensus Meeting.** After the individual TEP members have completed and documented their evaluations, the TEP shall meet as a group to discuss the strengths and weaknesses of each proposal. The TEP shall achieve consensus using a rational, agreed upon method (e.g. through discussion). The TEP shall not just average scores to reach consensus.
  - (6) **TEP Memorandum Procedure.** Prior to receiving the price proposals from the Contracting Officer, the TEP Chairperson shall provide a memorandum documenting the panel's position

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on each proposal. The memorandum shall reflect the consensus reached at the TEP consensus meeting or the basis upon which the TEP Chairperson made a decision if a consensus could not be reached. All TEP members must sign the memorandum.

(7) **TEP Memorandum Content.** The TEP Memorandum (APM Exhibit XII) shall list proposals in descending order, starting with the top-rated proposal. The TEP Memorandum shall include:

- [1] An analysis, keyed to the specific evaluation criteria of the technically acceptable and unacceptable proposals, including an assessment of each offeror's ability to accomplish the technical requirements;
- [2] A narrative statement reflecting the strengths and weaknesses of each proposal;
- [3] A summary of technical scores plus each evaluator's individual scores and supporting narrative;
- [4] The evaluators' score sheets; and
- [5] A narrative statement which addresses the price realism.

(8) **Review of TEP Memorandum.** The Contracting Officer shall review the TEP Memorandum to ensure that all proposals were evaluated fairly and in accordance with the evaluation criteria listed in the RFP.

**Award Selection and Debriefing:**

The evaluation sheets will be used to form the basis of the determination of the competitive range, negotiations, and selection of the contractor. In addition, this information will be utilized to conduct all debriefings. If you have any questions regarding this evaluation or require assistance in any manner, please contact the Contract Specialist handling this RFP.

**Attachments:**

1. *(identify attachment)*
2. *(identify attachment)*
3. *(identify attachment)*
4. *(identify attachment)*

# TECHNICAL EVALUATION PANEL RATING FORM

## TECHNICAL RATING SUMMARY

Firm: \_\_\_\_\_ RFP No. : \_\_\_\_\_  
 Tax I.D.: \_\_\_\_\_ RFP Description: \_\_\_\_\_  
 Date: \_\_\_\_\_ TEP Member: \_\_\_\_\_

**Total Technical Evaluation Score (from last page)** \_\_\_\_\_

Ranking: Circle a number from the range corresponding to the rating and multiply by weight to arrive at score.

Criterion	Description	Out- Standing	Very Good	Satis- factory	Poor	Unsatis factory	Criterion Weight*	Score
1		10/9	8/7	6/5	4/3/2	1/0		
Comment: Specify Strength/ Weakness/ Deficiency								
Criterion	Description	Out- Standing	Very Good	Satis- factory	Poor	Unsatis factory	Criterion Weight	Score
2		10/9	8/7	6/5	4/3/2	1/0		
Comment: Specify Strength/ Weakness/ Deficiency								

- From Source Selection Plan

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Criterion	Description	Out- Standing	Very Good	Satis- factory	Poor	Unsatis- factory	Criterion Weight	Score
3		10/9	8/7	6/5	4/3/2	1/0		
<p>Comment: Specify Strength/ Weakness/ Deficiency</p>								
Criterion	Description	Out- Standing	Very Good	Satis- factory	Poor	Unsatis- factory	Criterion Weight	Score
4		10/9	8/7	6/5	4/3/2	1/0		
<p>Comment: Specify Strength/ Weakness/ Deficiency</p>								
Criterion	Description	Out- Standing	Very Good	Satis- factory	Poor	Unsatis- factory	Criterion Weight	Score
5		10/9	8/7	6/5	4/3/2	1/0		
<p>Comment: Specify Strength/ Weakness/ Deficiency</p>								

Criterion	Description	Out- Standing	Very Good	Satis- factory	Poor	Unsatis- factory	Criterion Weight	Score
6		10/9	8/7	6/5	4/3/2	1/0		
Comment: Specify Strength/ Weakness/ Deficiency								
Criterion	Description	Out- Standing	Very Good	Satis- factory	Poor	Unsatis- factory	Criterion Weight	Score
7		10/9	8/7	6/5	4/3/2	1/0		
Comment: Specify Strength/ Weakness/ Deficiency								
Criterion	Description	Out- Standing	Very Good	Satis- factory	Poor	Unsatis- factory	Criterion Weight	Score
8		10/9	8/7	6/5	4/3/2	1/0		
Comment: Specify Strength/ Weakness/ Deficiency								

<b>TOTAL TECHNICAL EVALUATION SCORE</b>	
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## TEP MEMORANDUM

- *In accordance with the policies and procedures specified in APM, 6.D.4.c.(7), prior to receiving the price proposals from the Contracting Officer, the TEP Chairperson shall provide the Contracting Officer with a memorandum documenting the panel's position on each proposal. The memorandum shall reflect the consensus reached at the TEP consensus meeting or the basis upon which the TEP Chairperson made a decision if a consensus could not be reached. All TEP members must sign the memorandum.*
- *At the bottom of each page of the TEP Memorandum, the following protective marking shall be stated: "Confidential Contracting Information-Not for Public Disclosure."*
- *The memorandum shall be organized as follows:*

TO: (insert name), Contract Specialist  
ASB/Acquisition Services Branch

FROM: (insert name), TEP Chairperson

SUBJECT: Technical Evaluation Panel (TEP) Memorandum  
RFP No.: \_\_\_\_\_  
RFP Title: \_\_\_\_\_

On (insert date) through (insert date), a Technical Evaluation Panel evaluated (insert number) proposal(s) in response to RFP No. \_\_\_\_\_. The TEP members are identified below:

\_\_\_\_\_, TEP Chairperson  
\_\_\_\_\_, TEP Panel Member  
\_\_\_\_\_, TEP Panel Member

A TEP kick-off meeting was held the morning of (insert date), with all voting panel members present and (insert name, Contract Specialist). During the meeting, instructions for evaluating the proposals, conflicts of interest, confidentiality issues and the point scoring system defining the maximum number of points were discussed. Additionally, the TEP members who had not seen the TEP video were required to view it. At the conclusion of the meeting, each person executed the required Conflict of Interest Statement and Confidentiality Agreement provided by the Contract Specialist. All members were briefed in this area and acknowledged each was free from actual and/or potential conflicts of interest.

The TEP reviewed and analyzed each of the technical proposals indicated below. In reviewing each proposal, panel members utilized the evaluation criteria noted on the attached individual Technical Evaluation Panel rating forms. Following the TEP's evaluation of all technical proposals, and after providing the Contracting Officer a memorandum documenting the panel's position on each proposal, the Contract Specialist forwarded a price analysis summary to the TEP for review.

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**TECHNICAL EVALUATION CRITERIA:**

The Technical Evaluation Criteria were as follows:

- A. \_\_\_\_\_ (\_\_\_ points)
- B. \_\_\_\_\_ (\_\_\_ points)
- C. \_\_\_\_\_ (\_\_\_ points)
- D. \_\_\_\_\_ (\_\_\_ points)
- E. \_\_\_\_\_ (\_\_\_ points)

**TECHNICAL EVALUATION AND SCORING:**

Each proposal was reviewed independently of the others and each panel member gave an evaluation rating for each criterion to each proposal. After individual ratings were performed, the panel held a consensus meeting and determined a consensus rating for each offeror's technical proposal (*see attached TEP Consensus Technical Rating Forms*). Out of a possible total of (*insert number*) technical points, the final consensus scores were as follows:

<b><u>TECHNICAL RANKING</u></b>	<b><u>OFFEROR'S NAME</u></b>	<b><u>*INDIVIDUAL TEP SCORES</u></b>	<b><u>TEP CONSENSUS SCORE</u></b>
1.	_____	___ ___ ___	___
2.	_____	___ ___ ___	___
3.	_____	___ ___ ___	___

*\*[Insert TEP names]*

*[Insert this sentence if ALL offerors were technically qualified]:*

All of the offerors were considered technically qualified.

*[Insert these sentences if any of the offerors were NOT technically qualified]:*

All of the offerors were considered technically qualified except for \_\_\_\_\_. \_\_\_\_\_'s proposal was deemed "not technically qualified" by the TEP for reasons summarized below.

Non-responsive proposals should be identified too.

The following summarizes the TEP's assessment of each offeror's ability to accomplish the technical requirements, the offeror's strengths and weaknesses for each evaluation criterion, and includes the consensus score for each individual evaluation criterion.

**1. OFFEROR: [ insert name of top ranked firm ]:**

**Evaluation Criterion A**

**Maximum Points Possible: \_\_ points**

*(Example: management plan and plan to attract & retain qualified personnel)*

**CONSENSUS SCORE: \_\_ points**

**STRENGTHS:**

*[Insert TEP consensus comments / strengths of proposal]*

**WEAKNESSES:**

*[Insert TEP consensus comments / weaknesses of proposal, if any]*

**NOTE: REPEAT THE ABOVE SEQUENCE FOR EACH EVALUATION CRITERION**

**2. OFFEROR: [ insert name of 2<sup>nd</sup> ranked firm ]:**

*[Insert strengths and weaknesses for each evaluation criterion, as was done for the top ranked firm in paragraph 1 above.]*

**3. OFFEROR: [ insert name of 3<sup>rd</sup> ranked firm ]:**

*[Insert strengths and weaknesses for each evaluation criterion, as was done for the top ranked firm in paragraph 1 above.]*

If you have any questions regarding the information contained in this TEP Memorandum, please call me at (insert phone number of TEP Chairperson or designee).

**TEP CONCURRENCE:**

\_\_\_\_\_, TEP Chairperson

\_\_\_\_\_, Panel Member

\_\_\_\_\_, Panel Member

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## **PRICE REASONABLENESS DETERMINATION:**

After the Contract Specialist reviewed the memorandum documenting the panel's position on each proposal which included the completed TEP Evaluation Rating Forms (*Individual and Consensus*), the Contract Specialist provided the price proposals and price analysis spreadsheets to the TEP for review. In order to determine price reasonableness, the TEP reviewed the price proposals of all firms to ensure that the proposed prices were realistic for the work to be performed, reflected a clear understanding of the requirements, and were consistent with the offeror's technical proposal. The TEP's review and determination included:

- (a) The number and caliber of people to be assigned to various aspects of the proposed work;
- (b) Proposed labor rates or proposed material fees;
- (c) Necessity and price of proposed resources for the requirement; and
- (d) The price, amount, and necessity of travel.

***[The TEP should work with the Contract Specialist to draft a paragraph that addresses the reasonableness of the top ranked firm's proposal or the top two proposals, if appropriate]***

**Attachments:** TEP Technical Evaluation Rating Forms (*Individual*)  
TEP Technical Evaluation Rating Forms (*Consensus*)



**CONTRACTOR AUTHORIZATION TO START WORK BEFORE FULLY  
EXECUTED CONTRACTUAL DOCUMENTS ARE IN PLACE**

[Insert Name and Address of Contractor]

TIN NO.: \_\_\_\_\_

Dear: \_\_\_\_\_

[Insert Name of Contractor] was authorized by the undersigned to commence work on [Insert date] and to expend up to \$\_\_\_\_\_ under [Insert Contract/Task Order/Modification Number], while the (contract/task/order modification) is being finalized. This (contract/task order/modification) provides for [Insert Purpose of Contract/Task Order/Modification], in accordance with the enclosed statement of work.

(OPTIONAL PARAGRAPH) Work performed under this authorization shall be limited as follows:

[Insert Any Limitations on Tasks to be Performed]

All work performed and costs incurred by your firm under this authorization are subject to the final negotiated terms and conditions of the (contract/task order/modification) [add only for task orders and modifications: and the terms and conditions of {Insert Purchase Order} Contract Number] \_\_\_\_-\_\_\_\_-\_\_\_\_. All work performed and costs incurred will also be subject to negotiation to determine applicability of the effort to the requirements of the (contract/task order/modification) and the acceptability of the cost to FDIC.

[Insert Name of Contractor] shall promptly notify this office in writing when 75% and 100% of the funds authorized above have been expended. No funds shall be expended in excess of the authorized amount without further authorization from this office. Any costs incurred or funds expended in excess of the authorized amount without proper authorization will not be reimbursed by FDIC.

If you have questions, please contact [Insert Name of Contracting Officer] at [Insert Phone Number].

Sincerely,

Contracting Officer

Enclosure

**[SAMPLE LETTER FOR INTENTION TO EXERCISE AN OPTION]**

*[PLACE ON LETTERHEAD]*

**[DATE]**

**NAME OF CONTRACTOR  
CONTRACTOR ADDRESS  
CITY, STATE & ZIP CODE**

Re: Notice of Intent to Exercise Option Under Contract No. **[CONTRACT NUMBER]**

Dear **[NAME OF CONTRACTOR]**:

In accordance with Article II, Section 2.3, *Notice of Exercise of Option*, under Contract Number **[CONTRACT NUMBER]** between **[NAME OF CONTRACTOR]** and FDIC, FDIC hereby notifies you of its intent to exercise Option Period Number **[INSERT NUMBER]** for a period of **[NUMBER OF YEARS]** year(s) and the contract shall be extended from **[DATE OF START OF NEW PERIOD]** to **[NEW DATE OF TERMINATION OF CONTRACT]**.

This notification of FDIC's intent does not obligate nor guarantee that the subject Contract will be extended for the indicated term. A formal contract modification signed by a warranted Contracting Officer will be provided as confirmation of FDIC's official extension of the subject contract.

If you have any questions concerning this matter, please contact **[NAME OF CONTRACTING OFFICER OR OTHER CONTACT]** as soon as possible on **[TELEPHONE NUMBER]**.

Sincerely,

**[NAME OF CONTRACTING OFFICER]**  
Contracting Officer  
Acquisition Services Branch  
Division of Administration

cc: **[INSERT NAME OF OVERSIGHT MANAGER]**

Federal Deposit Insurance Corporation  
**BACKGROUND INVESTIGATION QUESTIONNAIRE FOR CONTRACTORS**

**INSTRUCTIONS:** Complete each item as it applies to your firm. *(Please type or print.)*

**SECTION I - CONTRACTOR INFORMATION**

1. NAME OF CONTRACTOR <i>(Do not use acronyms unless applicable.)</i>		2. FEDERAL TAX ID NUMBER
3. TRADE NAME <i>(If different from contractor name)</i>		
4. TYPE OF BUSINESS		
5. STREET ADDRESS <i>(Include City, State, and ZIP Code)</i>		
6. SOLICITATION/CONTRACT NO. <i>(If applicable)</i>	7. CONTACT NAME	8. TELEPHONE NUMBER

**SECTION II - JOINT VENTURE ENTITIES**

9. NAME OF JOINT VENTURE (1)		10. FEDERAL TAX ID NUMBER
11. STREET ADDRESS <i>(Include City, State, and ZIP Code)</i>		
12. CONTACT NAME		13. TELEPHONE NUMBER
14. NAME OF JOINT VENTURE (2)		15. FEDERAL TAX NUMBER
16. STREET ADDRESS <i>(Include, City, State, and ZIP Code)</i>		
17. CONTACT NAME		18. TELEPHONE NUMBER

Check this box if information on additional entities has been attached to this form.

**SECTION III - CERTIFICATION AND AUTHORIZATION**

I hereby authorize FDIC to conduct any investigation or inquiry necessary to verify the aforementioned information and the information provided to the FDIC regarding contracting with the FDIC in order to verify the contractor's fitness and integrity to provide services to or on behalf of the Federal Deposit Insurance Corporation. The background investigation I am authorizing may require information contained herein and acquired during the investigation to be disclosed to third parties, including credit-reporting businesses and State and local licensing agencies. I hereby authorize and give my consent to such disclosures.

**NOTE:** Management official means any shareholder, employee, or partner who controls a company and any individual who directs the day-to-day operations of a company. With respect to a partnership whose management committee or executive committee has responsibility for the day-to-day operations of the partnership, management official means only a member of such committee but, if no such committee exists, management official means each of the general partners. (12 U.S.C. § 366.2(l))

19. NAME OF MANAGEMENT OFFICIAL COMPLETING FORM <i>(Type or print)</i>		20. TITLE
21. SIGNATURE <i>(Sign in Ink)</i>		22. DATE

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## ESTIMATED REPORTING BURDEN

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Assistant Executive Secretary (Administration), OES, Room F-4001, FDIC, Washington, D.C. 20429; and to the Office of Management and Budget, Paperwork Reduction Project (3064-0072), Washington, D.C. 20503.

## PRIVACY ACT STATEMENT

Collection of this information is authorized by 12 U.S.C. §§ 1819, 1820(a), 1821, and 1822(f); Executive Order 9397; and 12 C.F.R. Part 366. The information requested on this form will be used by FDIC personnel to conduct background investigations of contractors seeking to provide goods or services to the FDIC to determine whether the individual meets the FDIC fitness and integrity standards. Specifically, the information provided may be disclosed to third parties, including credit-reporting businesses and State and local licensing agencies, as necessary to conduct the background investigation authorized herein. Your Federal Tax Number [Social Security Number (SSN)] is requested to further ensure record accuracy and to differentiate you among others with similar or identical names. Disclosure of this information may also be made in accordance with the "routine uses of records" listed in the FDIC's Financial Information Management Records, #30-64-0012, including disclosure to: the General Accounting Office for inspection by auditors; appropriate Federal or State agencies for enforcement if a violation or possible violation of civil or criminal law is apparent; a court, magistrate, or administrative tribunal when the FDIC is a party to the proceeding or has a significant interest in the proceeding; the U.S. Office of Personnel Management and other appropriate agencies or offices to the extent disclosure is necessary to carry out government-wide personnel management, investigatory, and adjudicatory functions; a congressional office in response to an inquiry made at the request of the individual; the Internal Revenue Service, the Social Security Administration, State and local tax authorities; the FDIC Office of the Inspector General for audit purposes; a consultant, person or entity who contracts or subcontracts with the FDIC, to the extent necessary for the performance of the contract or subcontract; and to the Department of the Treasury, or another party for the purpose of collecting or assisting in the collection of a delinquent debt owed to the FDIC. Completing this form is voluntary. However, failure to provide all of the requested information (including your SSN) may delay or prevent the FDIC from conducting its investigation, which may preclude you and your employer from consideration for the award of a contract.



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**QUESTION 25. When is there a pattern or practice of defalcation? (12 CFR § 366.4)**

You have a pattern or practice of defalcation under 12 CFR Section 366.3(c) when you, any person that owns or controls you, or any entity you own or control (see Note below) has a legal responsibility for the payment on at least two obligations that are:

- a. To one or more FDIC-insured depository institutions;
- b. More than ninety (90) days delinquent in the payment of principal, interest, or a combination thereof; and
- c. More than \$50,000 each.

**QUESTION 26. What causes a substantial loss to a Federal deposit insurance fund? (12 CFR § 366.5)**

You cause a substantial loss to a Federal deposit insurance fund under 12 CFR Section 366.3(d) when you, or any person that owns or controls you, or any entity you own or control (see Note below) has:

- a. An obligation to us that is delinquent for ninety (90) days or more and on which there is an outstanding balance of principal, interest, or a combination thereof of more than \$50,000;
- b. An unpaid final judgment in our favor that is in excess of \$50,000, regardless of whether it becomes discharged in whole or in part in a bankruptcy proceeding;
- c. A deficiency balance following foreclosure of collateral on an obligation owed to us that is in excess of \$50,000, regardless of whether it becomes discharged in whole or in part in a bankruptcy proceeding; or
- d. A loss to us that is in excess of \$50,000 that we report on IRS Form 1099C, Information Reporting for Discharge of Indebtedness.

**QUESTION 27. What is a default on a material obligation? (12 CFR § 366.13 (b))**

A default on a material obligation occurs when a loan or advance with an outstanding balance of more than \$50,000 is or was delinquent for ninety (90) days or more.

**NOTE: How is my ownership or control determined? (12 CFR § 366.6)**

- a. Your ownership or control is determined on a case-by-case basis and depends on the specific facts of your situation and the particular industry and legal entity involved. You must provide documentation to us to use in determining your ownership or control.
- b. The interest of a spouse or other family member in the same organization is imputed to you in determining your ownership or control.
- c. The following are examples of when your ownership or control may or may not exist. The examples are not inclusive.
  - (1) You have control if you are the president or chief executive officer of an organization.
  - (2) You have ownership or control if you are a partner in a small law firm.
  - (3) You have control if you are a general partner of a limited partnership. You have ownership of control if you have a limited partnership interest of twenty five percent (25%) or more.
  - (4) You have ownership or control if you have the:
    - (i) Power to vote, directly or indirectly, 25% or more interest of any class of voting stock of a company;
    - (ii) Ability to direct in any manner the election of a majority of a company's directors or trustees; or
    - (iii) Ability to exercise a controlling influence over the company's management and policies.

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**Notice and Authorization  
Pertaining to Consumer Reports  
Pursuant to the Fair Credit Reporting Act of 1970, 15 U.S.C. § 1681, et seq.**

Please take notice that one or more consumer reports may be obtained for employment purposes. Because a background investigation will be conducted as part of a determination of your fitness for employment, or for performance under a contract, you are also entitled to request additional disclosures concerning the nature and scope of the investigation.

By signing this form, you are giving consent to have your consumer reports furnished by consumer reporting agencies as part of an investigation to determine your (1) fitness for Federal employment, (2) clearance to perform contractual service, and/or (3) security clearance or access. The information obtained may be redisclosed to other Federal agencies for the above purposes and in fulfillment of official responsibilities to the extent that such disclosure is permitted by law.

This authorization is valid for one (1) year from the date signed or upon my separation of employment/services from the FDIC.

I \_\_\_\_\_ hereby  
(Name of Employee/Applicant)

authorize the Federal Deposit Insurance Corporation to obtain such report(s) from any consumer-reporting agency for employment purposes.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Social Security Number

Executive Order 9397 (Nov. 22, 1943) asks Federal agencies to use Social Security Numbers (SSN) to help identify individuals in agency records. Your SSN is therefore needed to keep records accurate, because other people may have the same name. Providing your SSN is voluntary. However, failure to provide the requested information could result in the FDIC receiving an erroneous credit report.

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**SECTION III – AUTHORIZATION TO RELEASE INFORMATION AND CERTIFICATION**

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Carefully read the authorization to release information and the certification below, then sign and date in ink.

I hereby authorize FDIC to conduct any investigation or inquiry necessary to verify the aforementioned information, the information provided in my resume or other personal data in order to verify my fitness and integrity to provide services for the Federal Deposit Insurance Corporation. The background investigation I am authorizing may require information contained herein and acquired during the investigation to be disclosed to third parties, including credit-reporting businesses and state and local licensing agencies. I hereby authorize and give my consent to such disclosures. This authorization will remain valid for the life of the contract or until termination of my employment or affiliation with the contractor, whichever is sooner. Photocopies of this authorization that show my signature are as valid as the **original signed by me**. (Pursuant to section 604 of the Fair Credit Reporting Act, a separate notice in writing pertaining solely to obtaining a credit/consumer report will be provided to you. See 15 U.S.C. § 1681b(2)(A)).

I certify that I have read and understood each question asked of me on this form, and that the information provided, including attachments to this form, is true and correct to the best of my knowledge, information, and belief. I understand that anyone who knowingly or willfully makes false or fraudulent statements or representations in connection with disclosures or certifications herein may be subject to fines and/or imprisonment or both (18 U.S.C. § 1001 and § 1007). I agree to notify the FDIC immediately of any change in circumstances that would require disclosure hereunder.

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32. PRINT OR TYPE NAME

32. SIGNATURE AND DATE (*Sign in ink*)

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**ESTIMATED REPORTING BURDEN**

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Assistant Executive Secretary (Administration), OES, Room F-4001, FDIC, Washington, D.C. 20429; and to the Office of Management and Budget, Paperwork Reduction Project (3064-0072), Washington, D.C. 20503.

**PRIVACY ACT STATEMENT**

Collection of this information is authorized by the Federal Deposit Insurance Act (12 U.S.C. §§ 1819, 1821, and 1822(f)(3) and (4)), Executive Order 9397, as well as the FDIC regulations at 12 CFR Part 366. The requested information will be used by FDIC personnel to conduct background investigations of contractors seeking to provide services to the FDIC to determine whether the individual meets the FDIC's fitness and integrity standards. Specifically, the information provided may be disclosed to third parties including credit-reporting businesses and state and local licensing agencies as necessary to conduct the background investigation authorized herein.

Disclosure of information on this form may also be made to appropriate Federal or state agencies if a violation or possible violation of a civil or criminal law is apparent; to the General Accounting Office for inspection by auditors; and, to a Congressional office in response to an inquiry made at the request of the individual or in accordance with the other "routine uses of records" listed in the FDIC's Financial Information System 30-64-0012. Your Social Security Number (SSN) is requested to ensure record accuracy. Completion of this form is voluntary, but failure to provide the requested information, including your SSN, may preclude you and your employer from consideration for the award of a particular contract.



## [Sample Contingent Award/Award Letter]

[PUT ON FDIC LETTERHEAD]

[DATE]

[Insert name and address of successful offeror]

Dear [Insert company's point of contact]:

The Federal Deposit Insurance Corporation ("FDIC") has completed its evaluations of the proposals submitted in response to RFP No. [Insert number of RFP] ("Insert title of RFP") and is pleased to inform you that [Insert name of offeror] has been selected for award. At this time, you are requested to sign the enclosed contracts (2 copies) and return both originals to me by [Insert date], at the address below.

Please be aware that the award of the Contract will be contingent upon (1) FDIC's successful completion of background investigations on your company and its key personnel, and (2) your company providing evidence of insurance, as specified in Article IX of the Contract (i.e., Liability Insurance). Such evidence may be (1) a binder or (2) a copy of the original policy. Your company shall also provide a Certification of Insurance which shall include the following mailing address and reference the Contract Number (*Insert contract number*):

Federal Deposit Insurance Corporation  
Attn: [Insert name of contracting officer]  
550 17th Street, NW, Room [Insert room number]  
Washington, DC 20429

Your company's evidence of insurance shall be provided to FDIC no later than ten (10) calendar days after the date of execution of the Contract.

The FDIC will forward one fully executed contract to you for your files. **No binding contract will come into existence until both parties have signed the Contract.** Your interest in FDIC contracting and the efforts you have made to participate are appreciated. If you have any questions regarding the enclosed contract, please contact me at [Insert telephone number].

Sincerely,

[Insert name and title]

Enclosures

## **[Sample Unsuccessful Offeror Letter]**

*(PUT ON FDIC LETTERHEAD)*

*[Date]*

*[Insert name and address of the unsuccessful offeror]*

Subject: *[Insert the Request for Proposal No.]*

Dear *[Insert company's point of contact]:*

The Federal Deposit Insurance Corporation (FDIC) has completed the review of all proposals received in response to the subject Request for Proposal for *[Insert title of RFP]*. Unfortunately, we must advise you that your company is an unsuccessful offeror. The FDIC selected *[Insert the name of the successful offeror]* to provide the required goods and/or services.

Your proposal was determined not to offer the best value for the requirement. We sincerely appreciate your interest in this important effort and invite your company to submit proposals for future requirements.

*[Insert the following paragraph for offering debriefings if technical evaluations were conducted.]*

If you would like to receive a debriefing, please contact *[Insert name and telephone number of the Contract Specialist]* in writing no later than ten (10) calendar days from the date of this letter. A debriefing will be scheduled and held by telephone or in person, within fifteen (15) days after receipt of a timely request.

If you have any questions, please contact me at (202) 942-XXXX.

Sincerely,

Contracting Officer

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Federal Deposit Insurance Corporation  
**Division of Administration**  
**LETTER OF OVERSIGHT MANAGER CONFIRMATION**

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DATE:

MEMORANDUM TO: Oversight Manager/Program Office

FROM: Contracting Officer

SUBJECT: Confirmation as the Oversight Manager Under:  
Contract/Agreement No.: \_\_\_\_\_; Task No.: \_\_\_\_\_

In accordance with program office designation, you are hereby confirmed as the Oversight Manager (OM) with respect to performance oversight matters within the scope of Contract \_\_\_\_\_, Task Order \_\_\_\_\_, or Interagency Agreement\*, \_\_\_\_\_, which has been issued to \_\_\_\_\_.

**Please note that this confirmation does not authorize the OM to: (1) modify or alter the contract or any of its terms and conditions; (2) waive Federal Deposit Insurance Corporation's (FDIC) rights with regard to the Contractor's compliance with the statement of work, price, delivery, or any other terms or conditions; or (3) approve any actions which would result in additional charges to FDIC. All such actions must be made in writing by the cognizant Contracting Officer.**

- A. This confirmation authorizes you to perform the tasks listed below to the extent required by the terms of the contract.
1. Coordinate with the Contractor all technical matters of performance which may arise in the performance of this contract.
  2. Give technical clarification as to the meaning of the statement of work including inspection, testing, and acceptance procedures.
  3. Monitor and inspect the Contractor's progress and performance to assure compliance with the contract terms and conditions.
  4. Receive and accept deliverables (supplies, services, and/or reports) on behalf of FDIC.
  5. Verify satisfactory delivery of contract items and/or performance and approve invoices for payment.
  6. If this contract contains a warranty or maintenance clause, notify the Contracting Officer and Contractor of any deficiencies in material or workmanship immediately and monitor response and repair times as stipulated in the contract.
  7. For System Development Life Cycle (SDLC) based contracts, if the use of task assignments is intended, execute task assignments according to the provisions and requirements in the contract and the applicable contracting procedures.
- B. In addition, pursuant to this confirmation, you are responsible for:
1. Knowing the scope and limitations of your confirmation.
  2. Performing the specific duties assigned herein:
    - a. Promptly notifying the Contracting Officer in writing of any noncompliance or deviation in performance or failure to make progress.
    - b. Reviewing and approving documents and invoices promptly. Delays in processing invoices may cause late payment by FDIC and the incurring of interest charges.
  3. Ensuring that the total dollar value of all invoices for the contract does not exceed the expenditure authority for the contract.
  4. Ensuring that the work does not go beyond the scope of the contract as provided in the SOW.
  5. Maintaining constant cognizance with respect to technical compliance with contract terms on the part of the Contractor.
  6. Knowing and understanding the terms and conditions of the contract.
  7. Using good judgment, skill, and reasonable care in the exercise of your designation.

\* When using an Interagency Agreement, substitute "Interagency Agreement" for "Contract" and "Agency" for "Contractor."

8. Protecting privileged and sensitive information.
9. Visiting the Contractor's work site periodically, if appropriate, to check on the following aspects and informing the Contracting Officer of your findings through submission of a trip report prepared in accordance with your office's internal procedures:
  - a. Verifying actual performance versus scheduled performance; and
  - b. Taking action needed, if any, to restore contract schedule.
10. Implementing the FDIC-furnished property provisions of the contract, if applicable. The Oversight Manager responsibilities with respect to such property include:
  - a. Preparing an itemized list of such property showing serial numbers, if any;
  - b. Ensuring that delivery of the property to the Contractor is made in accordance with the contract;
  - c. Providing the Contracting Officer with the property list and Contractor acknowledges, in writing, receipt for such property; and
  - d. Inspecting each unit of property upon its return from the Contractor and notifying the Contracting Officer of such return and/or deficiencies.
11. With respect to identification badges for contractors, the Oversight Manager shall:
  - a. Prepare a list of all contractor and subcontractor employees who require and are issued a badge, and
  - b. Ensure that all badges are returned when each contractor and subcontractor employee terminates work on the subject contract.
12. Performing inspection and acceptance required by the contract in accordance with the time limitation stated therein. The results must be forwarded to the Contracting Officer.
13. Providing the Contractor with information, FDIC Directives, relevant FDIC policies, and other items necessary to successfully carry out its duties.
14. Preparing, upon completion of the contract, the Contractor Performance Evaluation Form and submitting it to the Contracting Officer.
15. Preparing, upon completion of the contract or when personnel changes occur, the Pre-Exit Clearance Form and ensuring that all badges, keys, and other items specified on that Form are returned.
16. Ensuring that new contractor personnel are approved by the Contracting Officer where required; ensuring that all contractor personnel possess the requisite experience; and that all contractor personnel are established and working under the appropriate contract labor categories.
17. Ensuring that all contractor and subcontractor personnel, including those added after contract award, undergo Background Investigation under contracts greater than \$100,000, and fingerprinting on every contract.
18. If information technology is included in the contract, adhering to the responsibilities set forth in any FDIC Circular relating to security for information technology.
19. Organizing and maintaining an Oversight Manager File.
20. Transferring the Oversight Manager File to any successor oversight manager(s), with instructions and information as necessary or desirable in assuming the duties of oversight management, with a written copy of the instructions and information to the Contracting Officer.

If you believe the delivered supplies or services should be rejected, the Contracting Officer should be notified in writing with a brief memorandum documenting the reasons for rejection. If questions arise which are not clearly answered in the contract (including the statement of work) or if disputes with the Contractor occur, a written report to the Contracting Officer shall be prepared setting forth the problem encountered. This confirmation is limited to the referenced contract. You may select one or more Technical Monitors to perform some of the tasks listed above. You should notify the Contracting Officer of the need for Technical Monitors, and the Contracting Officer shall issue a Letter of Technical Monitor Assignment to these individuals. Responsibility for successful completion of these tasks, however, remains with you.

**This confirmation may be terminated at any time by written notice from the Contracting Officer. Please notify the Contracting Officer if you are transferred from your present position or unable to continue as Oversight Manager for the referenced contract.**

**ACKNOWLEDGEMENT OF RECEIPT BY OVERSIGHT MANAGER** *(Sign and return the **original** to the Division of Administration – Acquisition Services Branch Contracting Officer (for placement in the contract file) and retain one copy for the Oversight Manager's file.)*

OVERSIGHT MANAGER'S SIGNATURE	DATE
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**ACKNOWLEDGEMENT OF RECEIPT BY CONTRACTOR** *(Sign and return the **original** to the Division of Administration – Acquisition Services Branch Contracting Officer (for placement in the contract file) and retain one copy.)*

CONTRACTOR'S SIGNATURE	DATE
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Federal Deposit Insurance Corporation  
**Division of Administration**  
**LETTER OF TECHNICAL MONITOR CONFIRMATION**

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DATE:

MEMORANDUM TO:            Technical Monitor

FROM:                        Contracting Officer

SUBJECT:                    Confirmation of Technical Monitor Under: \_\_\_\_\_  
Contract/Agreement No.: \_\_\_\_\_; Task Order No.: \_\_\_\_\_

In accordance with program office designation, you are hereby confirmed as the Technical Manager (TM) with respect to performance oversight matters within the scope of Contract/Agreement No.: \_\_\_\_\_, Task Order No.: \_\_\_\_\_, or Interagency Agreement\*, \_\_\_\_\_, which has been issued to \_\_\_\_\_.

**Be advised that your confirmation as TM does not authorize you to change the contract or task order scope, funding, delivery schedule, or final acceptance of deliverables. Direct written communication with the Contracting Officer must be from, or through the Oversight Manager.**

Your specific responsibilities shall be assigned by and coordinated with the Oversight Manager in accordance with the Letter of Oversight Manager Confirmation. Other assigned duties and responsibilities are as follows:

1. Provide technical guidance and monitoring of contractor activities as assigned by the OM in accordance with requirements stated in the contract;
2. If appropriate, conduct site visits to the contractor's work site to determine actual contractor performance; evaluate changes in technical performance affecting personnel, schedules, deliverables, and costs; and ensure that employees charged to the contract are actually performing the work under the contract;
3. Provide for the necessary analysis of the contractor's utilization of personnel for completing contract requirements;
4. Provide ongoing monitoring and evaluation of the contractor's technical and cost performance, including progress in accordance with the contract delivery schedule and projected budget;
5. Closely examine all contractor invoices and immediately identify any discrepancies;
6. Provide for review of contract deliverables;
7. Review and evaluate contractor recommended changes (e.g., scope, deliverables, schedules, and funding) for approval by the Oversight Manager and Contracting Officer;
8. Prepare written communications, as required, for approval by the Oversight Manager and/or Contracting Officer;
9. Submit documents relating to your area of responsibility for maintenance in the Oversight Manager's working file;
10. Review and evaluate contractor invoices, status reports, and report any problems to the Oversight Manager;
11. If information technology is included in the contract, adhering to the responsibilities set forth in any FDIC circular relating to security for information technology.

\* When using an Interagency Agreement, substitute "Interagency Agreement" for "Contract" and "Agency" for "Contractor."

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**Also, to avoid the issuance of any conflicting instructions to the contractor, you shall not provide any directions which differ with those issued by the Oversight Manager.**

In the event you have any questions pertaining to this assignment, please contact the Oversight Manager \_\_\_\_\_ on \_\_\_\_\_.

Thank you,

CONTRACT NUMBER	TASK NUMBER
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**ACKNOWLEDGEMENT OF RECEIPT BY TECHNICAL MONITOR** *(Sign and return the **original** to the Division of Administration – Acquisition Services Branch Contracting Officer (for placement in the contract file) and retain one copy for the Oversight Manager file.)*

TECHNICAL MONITOR'S SIGNATURE	DATE
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**ACKNOWLEDGEMENT OF RECEIPT BY CONTRACTOR** *(Sign and return the **original** to the Division of Administration – Acquisition Services Branch Contracting Officer (for placement in the contract file) and retain one copy.)*

CONTRACTOR'S SIGNATURE	DATE
------------------------	------

**CONTRACTOR PERFORMANCE EVALUATION AND REPORTING FORM INSTRUCTIONS**

**SECTION I – CONTRACT INFORMATION**

- List the name and address of the Contractor.
- List the name of the Contracting Officer and the Contracting Officer's location.
- Indicate the contract award date and contract expiration date.
- Identify the contract number and tax identification number of the Contractor being evaluated.
- State the contract/task order value, including any option amounts.
- Provide a brief description of the work being performed under the contract.

**SECTION II – TYPE OF REVIEW**

Check the appropriate block to indicate the type of report and indicate the period covered by the report.

**SECTION III – RATINGS**

Using the Rating Guidelines, assign each area a rating of Unsatisfactory (0/1), Poor (2/3/4), Satisfactory (5/6), Very Good (7/8), or Outstanding (9/10). Use "N/A" if there is no information to make a determination. Provide a brief narrative for each of the categories rated. Indicate the contract requirements that were exceeded or were not met by the contractor and to what degree. Also calculate the average score of the ratings and fill in the Summary Rating.

**SECTION IV – SUBCONTRACTORS**

Indicate whether subcontractors are/were involved. Briefly summarize the performance of any subcontractors that have major responsibilities under the contract or are required to perform a significant part of the contract requirement. This space may also be used to evaluate a prime Contractor's management of a subcontractor.

**SECTION V – KEY PERSONNEL**

List the name of the Program Manager (*required*) and the names of key personnel (*optional*). Briefly describe the performance of the key personnel listed.

**SECTION VI – CUSTOMER SATISFACTION**

Check the appropriate answer to indicate whether the Contractor was committed to customer satisfaction. For the final report, indicate whether you would hire this firm again.

**SECTION VII – FDIC OVERSIGHT MANAGER'S SIGNATURE**

The Oversight Manager signs this block.

**CONTRACTING OFFICER CONCURRENCE**

The Contracting Officer initials this block indicating concurrence with the initial rating.

**SECTION VIII – CONTRACTOR'S REVIEW**

Indicate whether the Contractor submitted a rebuttal or comments. Attach a copy of the Contractor's rebuttal to this report, or indicate its location, if filed separately.

**CONTRACTOR'S REPRESENTATIVE**

The Contractor signs this block indicating review of the rating.

**SECTION IX – REVIEWING OFFICIAL'S DECISION**

If the Contracting Officer and the Contractor are unable to agree on a final rating, the matter is to be referred to an individual one level above the Contracting Officer. Attach a copy of the review official's decision to this report, or indicate its location, if filed separately.

**SECTION X – FINAL SUMMARY RATINGS**

Adjust the ratings initially assigned in Section III, if appropriate, based on any comments, rebuttals, or additional information provided by the Contractor and if necessary, by the contracting officer's supervisor. Calculate a final summary rating of the Contractor's performance.

**SECTION XI – CONTRACTING OFFICER'S SIGNATURE**

The Contracting Officer signs the report when all actions are completed and provides a copy of the completed report to the Contractor, Oversight Manager, and Assistant Director, Policy and Compliance Section, Acquisition Services Branch.

# CONTRACTOR PERFORMANCE EVALUATION AND REPORTING FORM

## SECTION I – CONTRACT INFORMATION

NAME OF CONTRACTOR \_\_\_\_\_

CONTRACTOR'S ADDRESS		CITY	STATE	ZIP CODE
CONTRACTING OFFICER'S NAME		CONTRACTING OFFICER'S LOCATION		
CONTRACT AWARD DATE	CONTRACT EXPIRATION DATE	CONTRACT NUMBER	TAX ID NUMBER	

CONTRACT/TASK ORDER VALUE : \$ \_\_\_\_\_

DESCRIPTION OF CONTRACT: *(Restrict to 4 lines)*

## SECTION II – TYPE OF REVIEW *(Check one only)*

INTERIM *(Performance issue)*     
  EXERCISE OF OPTIONS     
  CONTRACT COMPLETION

REPORTING PERIOD: FROM \_\_\_\_ TO \_\_\_\_.

## SECTION III – RATINGS

Summarize Contractor performance and enter the "number" in the box that corresponds to the number rating for each rating category. *(See last page for Rating Guidelines.) Use an "X" to indicate "N/A" if there is no information to support a determination.*

		UNSATISFACTORY 0/1	POOR 2/3/4	SATISFACTORY 5/6	VERY GOOD 7/8	OUTSTANDING 9/10	N/A
QUALITY OF PRODUCT OR SERVICE COMMENTS:	<b>RATING:</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
COST CONTROL COMMENTS:	<b>RATING:</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TIMELINESS OF PERFORMANCE COMMENTS:	<b>RATING:</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
BUSINESS RELATIONS COMMENTS:	<b>RATING:</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**SUMMARY RATING:** *(Add the ratings above and divide by the number of areas rated.)*

TOTAL RATING:



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**SECTION IV – SUBCONTRACT INFORMATION**

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1. ARE SUBCONTRACTORS INVOLVED? *(Check one)*

YES

NO

PLEASE COMMENT ON THOSE SUBCONTRACTORS THAT HAVE PROVIDED SIGNIFICANT CONTRIBUTION TO OVERALL CONTRACT PERFORMANCE *(Restrict to 14 lines)*

---

**SECTION V – CONTRACTOR KEY PERSONNEL**

---

NAME OF PROGRAM MANAGER -

COMMENTS *(Restrict to 8 lines)*

---

NAME OF KEY PERSON (1) -

COMMENTS *(Restrict to 8 lines)*

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NAME OF KEY PERSON (2) -

COMMENTS *(Restrict to 8 lines)*

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**SECTION VI - CUSTOMER SATISFACTION**

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IS / WAS THE CONTRACTOR COMMITTED TO CUSTOMER SATISFACTION? (Check one)  YES  NO

IS THIS THE FINAL REPORT? (Check one)  YES  NO

WOULD YOU HIRE THIS FIRM AGAIN? (Check one)  YES  NO

COMMENTS (Restrict to 14 lines)

---

**SECTION VII – FDIC OVERSIGHT MANAGER INFORMATION**

---

NAME OF OVERSIGHT MANAGER	PHONE NUMBER ( ) -
SIGNATURE OF OVERSIGHT MANAGER	DATE
CONTRACTING OFFICER CONCURRENCE: (Initial) _____	DATE

---

**SECTION VIII – CONTRACTOR'S REVIEW/CONCURRENCE**

---

WERE ANY COMMENTS, REBUTTALS, OR ADDITIONAL INFORMATION PROVIDED BY THE CONTRACTOR? (Check one)  YES  NO

IF "YES," THEY ARE ON FILE IN (Give location)	PHONE NUMBER ( ) -
---	-----------------------

ARE THE FILES OR COPIES OF THE FILES ATTACHED? (Check one)  YES  NO

NAME OF CONTRACTOR REPRESENTATIVE	PHONE NUMBER ( ) -
SIGNATURE OF CONTRACTOR REPRESENTATIVE	DATE

---

**SECTION IX – REVIEWING OFFICIALS DECISION**

---

WERE CONTRACTOR COMMENTS REVIEWED AT A LEVEL ABOVE THE CONTRACTING OFFICER? (Check one)  YES  NO

IF "YES," THEY ARE ON FILE IN (Give location)	PHONE NUMBER ( ) -
---	-----------------------

ARE THE FILES OR COPIES OF THE FILES ATTACHED? (Check one)  YES  NO

---

**SECTION X – FINAL SUMMARY RATINGS**

---

Re-assess Section III ratings based on Contractor comment. Indicate changes below if appropriate.

QUALITY	COST CONTROL	TIMELINESS	BUSINESS RELATIONS

**FINAL SUMMARY RATING:** (Add the ratings above and divide by the number of areas rated.)

**SECTION XI – CONTRACTING OFFICER’S SIGNATURE**

NAME OF CONTRACTING OFFICER	PHONE NUMBER ( ) -
SIGNATURE OF CONTRACTING OFFICER	DATE

**RATINGS GUIDELINES**

CRITERIA:	QUALITY OF PRODUCT OR SERVICE	COST CONTROL	TIMELINESS OF PERFORMANCE	BUSINESS RELATIONS
	<ul style="list-style-type: none"> <li>- Compliance with contract requirements/ Statement of Work</li> <li>- Timely and accurate reports</li> <li>- Capability and effectiveness of personnel</li> <li>- Technical excellence</li> </ul>	<ul style="list-style-type: none"> <li>- Record of controlling costs</li> <li>- Current, accurate, and complete billings</li> <li>- Relationship of the negotiated costs to actual</li> <li>- Cost efficiencies</li> </ul>	<ul style="list-style-type: none"> <li>- Met interim milestones</li> <li>- Reliability</li> <li>- Responsiveness to technical direction</li> <li>- Completed on time, Including wrap-up and contract administration</li> <li>- Met delivery schedules</li> <li>- No liquidated damages assessed</li> </ul>	<ul style="list-style-type: none"> <li>- Effective management, including subcontracts</li> <li>- Reasonable/ cooperative behavior</li> <li>- Responsive to contract requirements</li> <li>- Notification of problems</li> <li>- Flexibility</li> <li>- Pro-active vs. reactive</li> </ul>
<b>0/1 - UNSATISFACTORY</b>	Contractor is not in compliance and is jeopardizing the achievement of contract objectives.	Contractor is unable to manage costs effectively.	Contractor delays are jeopardizing performance of contract objectives.	Response to inquiries, technical/service/ administrative issues is not effective.
<b>2/3/4 - POOR</b>	Major problems have been encountered.	Contractor is having major difficulty in managing costs effectively.	Contractor is having major difficulty meeting milestones and delivery schedules.	Response to inquiries, technical/service/ administrative issues is marginally effective.
<b>5/6 - SATISFACTORY</b>	Minor inefficiencies/errors have been identified.	Contractor is usually effective in managing costs.	Contractor is usually effective in meeting milestones and delivery schedules.	Response to inquiries, technical/service/ administrative issues is usually effective.
<b>7/8 - VERY GOOD</b>	Contractor is in compliance with contract requirements and/or delivers quality products/services.	Contractor is effective in managing cost and submits current, accurate, and complete billings.	Contractor is effective in meeting milestones and delivery schedules.	Response to inquiries, technical/service/ administrative issues is effective.
<b>9/10 - OUTSTANDING</b>	The Contractor has demonstrated an outstanding performance level in any of the above four categories that justifies adding points to the score. It is expected that this rating will be used in those rare circumstances when contractor performance clearly exceeds the performance levels described as "Very Good."			

**[CONTRACTOR PERFORMANCE EVALUATION TRANSMITTAL LETTER]**

**[PLACE ON FDIC LETTERHEAD]**

**[Insert Contractor's Address]**

**Subject:** FDIC Contractor Performance Evaluation

**Dear: [Insert Contractor's Point of Contact]:**

The purpose of this letter is to provide you with the enclosed Contractor Performance Evaluation and Reporting Form which addressed your performance under FDIC's Contract Number **[insert contract number]**. Pursuant to the Acquisition Policy Manual, we are requesting you to review, sign, and return this evaluation form to our offices within 10 business days of the date of this letter.

In the event you have any comments or wish to provide a rebuttal concerning the content of this evaluation, please be advised that you have 30 days to appeal this evaluation. If we are unable to agree on a final rating for this evaluation, then the matter would be referred to the Assistant Director, Headquarters Operations Section, Acquisition Services Branch, for a final decision and adjustment to the final rating, if appropriate. Once the evaluation form is fully executed, you will be provided a copy for your records. If no response is received within the timeframes as set forth herein, then this evaluation will be final and will be officially entered into FDIC's Contractor Performance Management System.

Thank you for your prompt response to this request. Please contact me on **[insert Contracting Officer's phone number]** should you have any questions regarding this matter.

Sincerely

**[Insert Contracting Officer's Name]**  
Contracting Officer

Enclosure (1)

Consent to Assignment - Version A  
Version A should only be used when FDIC will not hold  
Assignor liable for Assignee's actions.

CONSENT TO ASSIGNMENT

This Consent to Assignment ("Consent") is entered into this \_\_\_ day of \_\_\_\_\_, 19\_\_, effective as of \_\_\_\_\_, 19\_\_, ("Effective Date") by and between \_\_\_\_\_, a \_\_\_\_\_, whose principal office is located at \_\_\_\_\_, ("Assignee") and \_\_\_\_\_, a \_\_\_\_\_, whose principal office is located at \_\_\_\_\_ ("Assignor") and the Federal Deposit Insurance Corporation, as receiver/conservator for the institutions designated in the Agreement and/or the Federal Deposit Insurance Corporation, in its corporate capacity, a corporation organized and existing under the laws of the United States with its principal office in Washington, D.C. ("FDIC").

RECITALS:

- A. FDIC and Assignor have previously entered into a Contract, Contract No. \_\_\_\_, dated as of \_\_\_\_\_, 19\_\_ ("Contract"), pursuant to which Assignor agreed to perform certain services on behalf on FDIC in exchange for the various fees and payments described in the Contract. The Contract, together with all attachments, exhibits, amendments, modifications, and any other documents executed in contemplation of or during performance of the Contract including the Indemnity Agreement between Assignor and FDIC, shall be referred to as the "Contract Documents."
- B. Assignor desires to assign and delegate to Assignee certain of Assignor's rights and obligations under the Contract Documents, and Assignee desires to assume such rights and obligations ("Assigned Rights"). The Contract entered into by Assignor and FDIC requires that the FDIC consent to any assignment of the Contract.
- C. FDIC has agreed to permit the assignment of the Assigned Rights in accordance with the terms hereof and the terms and conditions of the Contract Documents.

NOW, THEREFORE, the parties, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby agree as follows:

1. Assignment.

1.1. As of the Effective Date of this Consent, Assignor hereby assigns, conveys, and transfers to Assignee all of its rights, obligations and duties, including, but not limited to, duties of performance to FDIC, liabilities and privileges of any kind whatsoever in, to, and under the Contract Documents, except for any continuing obligations and duties of Assignor as set forth elsewhere in this Consent.

1.2. As of the Effective Date of this Consent, Assignee hereby assumes from Assignor all rights, obligations, duties, including, but not limited to, duties of performance to FDIC, liabilities and privileges of any kind whatsoever in, to, and under the Contract Documents to FDIC.

1.3. FDIC hereby consents to the assignment of the Contract Documents in accordance with the terms and conditions of this Consent and the Contract Documents. Assignee shall hereafter be entitled to and shall enjoy all privileges and rights under the Contract Documents, including, without limitation, delegations of authority from FDIC to Assignor, if applicable, any indemnification provided pursuant to the Contract, and any Indemnity Agreement between Assignor and FDIC.

## 2. Indemnification.

2.1. Assignor hereby agrees to indemnify, defend, and hold harmless FDIC from any and all losses, liabilities, obligations, costs, claims of any and every kind including, without limitation, court costs and attorney's fees to which FDIC may be subject arising out of or related to the performance of obligations under the Contract Documents and/or this Consent prior to the Effective Date of this Consent.

2.2. Assignee hereby agrees to indemnify, defend, and hold harmless FDIC from any and all losses, liabilities, obligations, costs, claims of any and every kind including, without limitation, court costs and attorney's fees to which FDIC may be subject arising out of or related to the performance of obligations under the Contract Documents and/or this Consent as of the Effective Date of this Consent.

3. Authority. FDIC represents and warrants that the person[s] executing this Consent have the authority to bind FDIC hereto.

4. Fees and Other Compensation under the Contract Documents. All fees, costs, reimbursements, indemnification payments, other compensation and claims thereto of any type whatsoever (the "Fees") which have accrued prior to the Effective Date of this Consent under the Contract Documents shall be vested in Assignor. All Fees which accrue under the Contract Documents on or after the Effective Date of this Consent shall be vested in Assignee. The parties to this Consent acknowledge that payments from FDIC may be received by Assignor after the date of this Consent, and Assignor and Assignee hereby agree to resolve any and all disputes over any such payment between Assignor and Assignee and FDIC shall have no liability to Assignor or Assignee for incorrect payment of Fees. The parties further agree that FDIC is hereby released from any and all claims for Fees which have accrued prior to the Effective Date of this Consent.

5. Representations of Assignor. Assignor covenants, represents, and warrants as follows:

5.1. The Assigned Rights are not subject to any prior assignment, in whole or in part. Assignor has good title to, and is the sole owner of, all of the Assigned Rights, free and clear of all liens and other encumbrances, and such shall be the case upon the time of sale, assignment, and transfer to Assignee of the Assigned Rights.

5.2. Assignor has the rights, power, legal capacity, and authority to execute and deliver this Consent and to consummate the transaction contemplated hereby.

5.3. This Consent shall constitute the valid, legal, and binding agreement of Assignor, and is enforceable against Assignor in accordance with its terms.

5.4. Assignor has delivered or will deliver to Assignee true and complete copies of the Contract Documents; there have been no modifications to the Contract Documents, other than those modifications expressly identified to Assignee by Assignor; and as of the date of this Consent, there exists no event of default under any of the Contract Documents.

6. Representations of Assignee. Assignee covenants, represents and warrants as follows:

6.1. Assignee has the rights, power, legal capacity, and authority to execute and deliver this Consent and consummate the transaction contemplated hereby.

6.2. This Consent shall constitute the valid, legal, and binding agreement of Assignee, and is enforceable against Assignee in accordance with its terms.

7. Liability. Assignor agrees that, notwithstanding any provision to the contrary contained in this Consent, Assignor shall remain liable and be responsible to FDIC for any and all duties, obligations or liabilities arising from or related to the Contract Documents prior to the Effective Date of this Consent. Nothing contained herein shall be construed to release Assignor of its duties, responsibilities, or obligations with respect to the FDIC which under the Contract Documents survive expiration or termination.

8. Governing Law. This Consent shall be governed by and construed in accordance with the laws and regulations of the United States and, where no conflict exists, with the laws of the state that is indicated in the Contract Documents for governing law.

9. Limitations of Assignment. Except as may otherwise occur by operation of law, neither Assignor nor Assignee to this Consent may assign this Consent or any of the rights or obligations set forth herein or subject hereof without the specific written consent of all of the other parties to this Consent. Subject to the foregoing, this Consent shall inure to the benefit of and be binding upon the successors and assigns of the FDIC, Assignor and Assignee. Except for transfers of interest by FDIC, nothing in this Consent shall entitle any person or entity other than the parties hereto to any claim, cause of action, remedy, or right of any kind.

10. Duplicate Copies. This Consent and all amendments hereto shall be in writing and executed in duplicate copies by duly authorized agents of the parties. Each such duplicate shall be deemed an original but each duplicate copy shall constitute one and the same instrument.

11. No Waiver of Rights. This Consent sets forth the terms and conditions under which the parties have agreed to Consent to the assignment of the Assigned Rights. Nothing contained herein shall be construed to be a waiver of any rights or remedies that the parties may have under the Consent, the Contract Documents, or by operation of law.

12. Entire Agreement; Amendment. This Consent and the Contract Documents entered into pursuant to the terms hereof supersede all previous agreements between the parties concerning the consent to assignment and constitute the entire agreement between the parties concerning the consent to assignment. No oral statements or prior written material not specifically incorporated herein shall be of any force and effect, and no changes in or additions to the Consent shall be recognized unless incorporated herein by written amendment signed by all parties, such amendment to become effective on the date stipulated.

IN WITNESS WHEREOF, this Consent was entered into on the date set forth herein as first written above.

ASSIGNOR

FEDERAL DEPOSIT  
INSURANCE CORPORATION  
AS RECEIVER/CONSERVATOR

By: \_\_\_\_\_

By:

Name: \_\_\_\_\_

Name:

Title: \_\_\_\_\_

Title:

ASSIGNEE

FEDERAL DEPOSIT  
INSURANCE CORPORATION  
[in its corporate capacity]

By: \_\_\_\_\_

By:

Name: \_\_\_\_\_

Name:

Title: \_\_\_\_\_

Title:



Consent to Assignment - Version B  
Version B should only be used when FDIC will hold  
Assignor and Assignee joint and severally liable.

CONSENT TO ASSIGNMENT

This Consent to Assignment ("Consent") is entered into this \_\_\_\_ day of \_\_\_\_\_, 19\_\_, effective as of \_\_\_\_\_, 19\_\_, ("Effective Date") by and between \_\_\_\_\_, a \_\_\_\_\_, whose principal office is located at \_\_\_\_\_, ("Assignee") and \_\_\_\_\_, a \_\_\_\_\_, whose principal office is located at \_\_\_\_\_ ("Assignor") and the Federal Deposit Insurance Corporation, as receiver/conservator for the institutions designated in the Agreement and/or the Federal Deposit Insurance Corporation, in its corporate capacity, a corporation organized and existing under the laws of the United States with its principal office in Washington, D.C. ("FDIC").

R E C I T A L S:

A. FDIC and Assignor have previously entered into a Contract, Contract No. \_\_\_\_, dated as of \_\_\_\_, 19\_\_ ("Contract"), pursuant to which Assignor agreed to perform certain services on behalf on FDIC in exchange for the various fees and payments described in the Contract. The Contract, together with all attachments, exhibits, amendments, modifications and any other documents executed in contemplation of or during performance of the Contract including the Indemnity Agreement between Assignor and FDIC, shall be referred to as the "Contract Documents."

B. Assignor desires to assign and delegate to Assignee certain of Assignor's rights and obligations under the Contract Documents, and Assignee desires to assume such rights and obligations ("Assigned Rights"). The Contract entered into by Assignor and FDIC requires that FDIC consent to any assignment of the Contract.

C. FDIC has agreed to permit the assignment of the Assigned Rights in accordance with the terms hereof and the terms and conditions of the Contract Documents.

NOW, THEREFORE, the parties, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby agree as follows:

1. Assignment.

1.1. As of the Effective Date of this Consent, Assignor hereby assigns, conveys, and transfers to Assignee all of its rights, obligations and duties, including, but not limited to, duties of performance to FDIC, liabilities and privileges of any kind whatsoever in, to and under the Contract Documents, except for any continuing obligations and duties of Assignor as set forth elsewhere in this Consent.

1.2. As of the Effective Date of this Consent, Assignee hereby assumes from Assignor all rights, obligations, duties, including, but not limited to, duties of performance to FDIC, liabilities and privileges of any kind whatsoever in, to, and under the Contract Documents to FDIC.

1.3. FDIC hereby consents to the assignment of the Contract Documents in accordance with the terms and conditions of this Consent and the Contract Documents. Assignee shall hereafter be entitled to and shall enjoy all privileges and rights under the Contract Documents, including, without limitation, delegations of authority from FDIC to Assignor, if applicable, any indemnification provided pursuant to the Contract, and any Indemnity Agreement between Assignor and FDIC.

2. Indemnification. Assignor and Assignee hereby agree to indemnify, defend, and hold harmless FDIC from any and all losses, liabilities, obligations, costs, claims of any and every kind including, without limitation, court costs and attorney's fees to which FDIC may be subject arising out of or related to the performance of obligations under the Contract Documents and/or the Consent.

3. Authority. FDIC represents and warrants that the person[s] executing this Consent have the authority to bind FDIC hereto.

4. Fees and Other Compensation under the Contract Documents. All fees, costs reimbursements, indemnification payments, other compensation and claims thereto of any type whatsoever (the "Fees") which have accrued prior to the Effective Date of this Consent under the Contract Documents shall be vested in Assignor. All Fees which accrue under the Contract Documents on or after the Effective Date of this Consent shall be vested in Assignee. The parties to this Consent acknowledge that payments from FDIC may be received by Assignor after the date of this Consent, and Assignor and Assignee hereby agree to resolve any and all disputes over any such payment between Assignor and Assignee, and FDIC shall have no liability to Assignor or Assignee for incorrect payment of Fees. The parties further agree that FDIC is hereby released from any and all claims for Fees which have accrued prior to the Effective Date of this Consent.

5. Representations of Assignor. Assignor covenants, represents, and warrants as follows:

5.1. The Assigned Rights are not subject to any prior assignment, in whole or in part. Assignor has good title to, and is the sole owner of, all of the Assigned Rights, free and clear of all liens and other encumbrances, and such shall be the case upon the time of sale, assignment, and transfer to Assignee of the Assigned Rights.

5.2. Assignor has the rights, power, legal capacity, and authority to execute and deliver this Consent and to consummate the transaction contemplated hereby.

5.3. This Consent shall constitute the valid, legal, and binding agreement of Assignor, and is enforceable against Assignor in accordance with its terms.

5.4. Assignor has delivered or will deliver to Assignee true and complete copies of the Contract Documents; there have been no modifications to the Contract Documents, other than those modifications expressly identified to Assignee by Assignor; and as of the date of this Consent, there exists no event of default under any of the Contract Documents.

6. Representations of Assignee. Assignee covenants, represents, and warrants as follows:

6.1. Assignee has the rights, power, legal capacity, and authority to execute and deliver this Consent and consummate the transaction contemplated hereby.

6.2. This Consent shall constitute the valid, legal, and binding agreement of Assignee, and is enforceable against Assignee in accordance with its terms.

7. Joint and Several Liability. Assignor and Assignee agree that, notwithstanding any provision to the contrary contained in this Consent, Assignor and Assignee shall remain jointly and severally liable and be responsible to FDIC for any and all duties, obligations, or liabilities arising from or related to this Consent and the Contract Documents. Nothing contained herein shall be construed to release Assignor from its duties, responsibilities, or obligations with respect to the FDIC which under the Contract Documents survive expiration or termination.

8. Governing Law. This Consent shall be governed by and construed in accordance with the laws of the United States and, where no conflict exists, with the laws of the state that is indicated in the Contract Documents for governing law.

9. Limitations of Assignment. Except as may otherwise occur by operation of law, neither Assignor nor Assignee to this Consent may assign this Consent or any of the rights or obligations set forth herein or subject hereof without the specific written consent of all of the other parties to this Consent. Subject to the foregoing, this Consent shall inure to the benefit of and be binding upon the successors and assigns of the FDIC, Assignor and Assignee. Except for transfers of interest by the FDIC, nothing in this Consent shall entitle any person or entity other than the parties hereto to any claim, cause of action, remedy, or right of any kind.

10. Duplicate Copies. This Consent and all amendments hereto shall be in writing and executed in duplicate copies by duly authorized agents of the parties. Each such duplicate shall be deemed an original but each duplicate copy shall constitute one and the same instrument.

11. No Waiver of Rights. This Consent sets forth the terms and conditions under which the parties have agreed to Consent to the assignment of the Assigned Rights. Nothing contained herein shall be construed to be a waiver of any rights or remedies that the parties may have under the Consent, the Contract Documents, or by operation of law.

12. Entire Agreement; Amendment. This Consent and the Contract Documents entered into pursuant to the terms hereof supersede all previous agreements between the parties concerning the consent to assignment and constitute the entire agreement between the parties concerning the consent to assignment. No oral statements or prior written material not specifically incorporated herein shall be of any force and effect, and no changes in or additions to the Consent shall be recognized unless incorporated herein by written amendment signed by all parties, such amendment to become effective on the date stipulated.

IN WITNESS WHEREOF, this Consent was entered into on the date set forth herein as first written above.

ASSIGNOR

FEDERAL DEPOSIT  
INSURANCE CORPORATION  
AS RECEIVER/CONSERVATOR

By: \_\_\_\_\_

By:

Name: \_\_\_\_\_

Name:

Title: \_\_\_\_\_

Title:

ASSIGNEE

FEDERAL DEPOSIT  
INSURANCE CORPORATION  
[in its corporate capacity]

By: \_\_\_\_\_

By:

Name: \_\_\_\_\_

Name:

Title: \_\_\_\_\_

Title:

# INVOICE REVIEW CHECKLIST FOR CONTRACT SPECIALISTS

**For each invoice review, obtain the following information from the contract, purchase order, or task order file:**

- a. Cumulative approved expenditure authority document (i.e., case, board approval, purchase requisition)**
- b. Contract, purchase order or task order fee schedule**
- c. Invoicing procedures and requirements (i.e., content and format) specific to the contract, purchase order or task order**
- d. Contract, purchase order or task order expense pre-approval requirements**
- e. Period of performance**
- f. Modifications to the fee schedules, period of performance or invoicing procedures and related effective dates**

<b>General</b>			
DESCRIPTION	YES	NO	N/A
1. Is the invoice in the format required by the contract, purchase order or task order? Does the invoice contain the following information: Name of Vendor Vendor ID Invoice Date Mailing Address Contract, purchase order or task order number Description of the goods or services Quantities Price			
2. Are the cumulative and current amounts invoiced less than or equal to the authorized contract, purchase order, or task order value and the approved expenditure authority?			
3. Are the invoices mathematically correct and do amounts on the attached summary sheets, supporting schedules or receipts agree with the invoiced amounts?			
4. Is the payment of the invoice subject to the Prompt Payment Act and have the contract payment terms and vendor information been verified in the Purchase Order System?			
5. Does the invoice itemize the supplies or services in accordance with the terms and conditions of the contract, purchase order, or task order?			
6. Does the invoice include amounts that have been previously invoiced? If yes, are these amounts still unpaid?			

<b>Services</b> <i>(Includes services performed, workmanship and material furnished or used in performing services)</i>			
DESCRIPTION	YES	NO	N/A
1. Have the services been itemized and billed at the units and rates contained in the contract, purchase order or task order fee schedule?			
2. Were the services rendered during the contract, purchase order or task order period of performance?			
3. If the invoice includes labor hours, do the labor categories and rates agree with the contract, purchase order or task order? <b>(and the Service Contract Act requirements, if applicable.)</b>			
4. Do the number of hours and labor categories recorded on the supporting time sheets and/or subcontractor invoices agree with the number or hours and labor categories claimed on the invoice?			
5. Are the time sheets signed and dated by the employee and approved by contractor supervisory personnel?			
6. If the labor hours include overtime, are the overtime hours charged in accordance with the contract, purchase order or task order?			
7. Was subcontract labor pre-approved and have the associated costs been invoiced at the same amounts that the contractor actually paid or was billed by the subcontractor? <b>(i.e., the amounts invoiced for subcontractor labor or materials do not include unallowable mark-ups or profit margin additions unless specifically allowed by the contract, purchase order or task order terms and conditions.)</b>			
8. If the invoice includes amounts for materials, does the invoice include supporting documents (i.e., receipts or other third party support documentation) and have the materials been invoiced at actual cost or amounts established in the terms and conditions of the contract, purchase order, or task order?			

<b>Supplies</b> <i>(Includes but is not limited to raw materials, components, intermediate assemblies, end products, lots of supplies and data)</i>			
DESCRIPTION	YES	NO	N/A
1. Are the amounts invoiced for supplies itemized at unit prices authorized by the contract, purchase order, or task order fee schedule?			
2. Are the cumulative quantities invoiced below or equal to quantities authorized by the contract, purchase order, or task order?			

<b>Other</b>			
DESCRIPTION	YES	NO	N/A
1. Does the invoice include unauthorized late charges, penalties or interest and have these amounts been deducted from the approved invoice amounts?			
2. Does the invoice include sales tax and has the sales tax been deducted from the approved invoice amounts?			

<b>Travel</b>			
DESCRIPTION	YES	NO	N/A
<b>Please refer to the Contractor Travel Invoice Review Guidelines</b>			

# INVOICE REVIEW CHECKLIST FOR OVERSIGHT MANAGERS

<b>CONTRACT NUMBER:</b> _____ <b>TASK ORDER NUMBER (if applicable):</b> _____ <b>CONTRACTING OFFICER:</b> _____ <b>PROGRAM OFFICE:</b> _____ <b>OVERSIGHT MANAGER:</b> _____ <b>INVOICE NUMBER:</b> _____ <b>CONTRACTOR:</b> _____ <b>DATE:</b> _____
--

DESCRIPTION	YES	NO	N/A
1. Does the invoice contain the following information: Name of Vendor Vendor ID Invoice Date Contract, purchase order or task order number Description of the goods or services Quantities Fee schedule or Price per delivery			
2. Are the cumulative and current amounts invoiced less than or equal to the authorized contract, purchase order or task order ceiling price.			
3. Are the invoices mathematically correct and do amounts on the attached summary sheets, supporting schedules or receipts agree with the invoiced amounts?			
4. Does the invoice include amounts that have been previously invoiced? If yes, are these amounts still unpaid?			
5. Have the services been itemized and billed at the units and rates contained in the contract, purchase order or task order fee schedule?			
6. Was the period billed within the period of performance?			



# INVOICE REVIEW CHECKLIST FOR OVERSIGHT MANAGERS

DESCRIPTION	YES	NO	N/A
7. If the invoice includes labor hours, do the labor categories and rates agree with the contract, purchase order or task order? <b>(or the Service Contract Act requirements, if applicable.)</b>			
8. Do the number of hours and labor categories recorded on the supporting time sheets and/or subcontract invoices agree with the number or hours and labor categories claimed on the invoice?			
9. Are the time sheets signed and dated by the employee and approved by contractor supervisory personnel?			
10. If the labor hours include overtime, are the overtime hours charged in accordance with the contract, purchase order or task order.			
11. Was subcontract labor pre-approved and have the associated costs been invoiced at the same amounts that the contractor actually paid or was billed by the subcontractor? <b>(i.e., the amounts invoiced for subcontractor labor or materials do not include unallowable mark-ups or profit margin additions unless specifically allowed by the contract, purchase order or task order terms and conditions.)</b>			
12. If the invoice includes amounts for materials, does the invoice include supporting documents (i.e., receipts or other third party support documentation) and have the materials been invoiced at actual cost or amounts established in the terms and conditions of the contract, purchase order, or task order?			
13. Has travel been properly approved and do the costs appear to be normal?			

Certification

The information on the invoice referenced above correctly cross-references to the contract under which payment is requested as indicated above.

There is sufficient funding on the contract and under the expenditure authority to pay the invoiced amount.

The invoiced amount and contract number stated in POS are correct.

**(Invoices that fail this certification shall not be provided to the Oversight Manager for review or AP for payment until the deficiency is corrected).**

\_\_\_\_\_  
Oversight Manager

\_\_\_\_\_  
Date

**TRAVEL INVOICE REVIEW CHECKLIST  
FOR CONTRACT SPECIALISTS**

	DESCRIPTION	YES	NO	N/A
	<b>General</b>			
1.	Are the cumulative invoiced contractor travel costs less than or equal to the contract, purchase order or task order authorized travel amounts at time the contractor incurred the expense?			
2.	Was the temporary assignment at least <b>50 miles</b> from contractor office or residence?			
3.	Was the contractor travel pre-approved by the FDIC oversight manager?			
4.	Are the contractor travel expenses submitted on the FDIC travel voucher forms or pre-approved alternative forms?			
5.	Does the travel voucher include the following information: <ul style="list-style-type: none"> <li>a. Name of person on travel and that person's title or relationship to the contractor</li> <li>b. Purpose of travel</li> <li>c. Date, time of departure from office or residence and destination</li> <li>d. Date and time of return to office or residence</li> <li>e. Mode of travel</li> </ul>			
	<b>Per Diem</b>			
1.	Was the official travel for 24 hours or more and required overnight lodging?			
2.	Is the per diem claimed based on current rates for the last official duty point of the day?			
3.	Is the per diem claimed pro rated (in quarterly increments) based on the time of departure/return from/to the contractor's residence?			

	<b>DESCRIPTION</b>	<b>YES</b>	<b>NO</b>	<b>N/A</b>
4.	If the contractor reports to the official duty station for more than an hour at the beginning or end of the temporary assignment, is the per diem pro rated based on the time of departure from the official duty station or on the time of return to the official duty station?			
5.	If the contractor partakes of full meals provided by the FDIC, is the per diem claimed reduced by the appropriate amounts in the attached table?			
	<b>Lodging</b>			
1.	Is the lodging claimed supported by original invoices and do the amounts appear reasonable? (Government and/or corporate rates are to be used when available.)			
2.	If a temporary assignment concludes during the workday and is located within 100 miles of the contractor's official station or residence, did the contractor employee return to the residence, rather than remaining at the temporary location overnight?			
	<b>Special Travel Allowance</b>			
1.	Was the contractor in TRAVEL STATUS for 24 hours or less without requiring lodging?			
2.	Was the contractor absent from the residence 11 hours or more if working an 8 hour day or 3 hours more than the regular scheduled work day?			
3.	Are the amounts claimed in compliance with the rates stated in the Contractor Travel Reimbursement Guidelines (paragraph 8.0) and are they supported by original receipts that include the name of the dining establishment, date of service and amount paid?			
4.	Are the amounts claimed for allowable transportation expenses and are they supported by original receipts? (see below)			

	DESCRIPTION	YES	NO	N/A
	<b>Extended Duty Travel</b>			
1.	Was the contractor on travel for more than <b>5</b> continuous working days?			
2.	Was the reimbursement claimed for return to residence <b>Every Other</b> weekend while on extended travel?			
3.	If the contractor elects to remain at the temporary assignment, was reimbursement only claimed for the actual expenses for lodging and per diem?			
4.	If the contractor travels to an alternate location, was reimbursement claimed for the lesser of: <ul style="list-style-type: none"> <li>a. the cost of returning to residence</li> <li>b. the cost of remaining at the temporary assignment</li> <li>c. the cost of travel to the alternate location</li> </ul>			
	<b>Transportation Costs</b>			
1.	Was transportation by airline, train, bus, taxi, rental car, metro and/or privately owned vehicle?			
2.	Was the travel in route to and from a temporary assignment and, if appropriate, did it include travel to and from a common carrier?			
3.	Was travel by the most direct route available?			
	<b>Transportation Costs - Air Fare</b>			
1.	Was air travel in the coach seating? (First class travel is <b>NOT</b> allowed. i.e. F, FC, FAC fare basis)			
2.	If the itinerary allows for the use of a restricted fare and the contractor requires a change, was a reasonable exchange fee claimed?			

	DESCRIPTION	YES	NO	N/A
	<b>Transportation Costs - Taxi</b>			
1.	<p>Are claims for taxi fares supported by original receipts and are for transportation:</p> <ul style="list-style-type: none"> <li>a. when other public transportation or courtesy transportation is not available?</li> <li>b. when traveling between terminals and residence, hotel or office while on official travel status?</li> <li>c. when traveling from contractor's residence to official duty station (only if the stay at the duty station is less than 1 hour) to depart on a temporary assignment that requires at least one night's lodging and from the residence on the day of return?</li> </ul> <p><b><i>--Taxi fares to obtain meals are not reimbursable.--</i></b></p>			
	<b>Transportation Costs - Privately Owned Vehicle</b>			
1.	Does the contractor own or lease the privately owned vehicle (POV) and was travel by POV considered the most advantageous form of transportation available?			
2.	Are the contractor claims for use of a POV calculated at the current rate stated in the Contractor Travel Reimbursement Guidelines?			
3.	<p>If applicable, did the contractor claim and have supporting original receipts for the reasonable costs of :</p> <ul style="list-style-type: none"> <li>Parking</li> <li>Tolls</li> <li>Ferries</li> </ul>			
4.	If applicable, did the contractor claim mileage and parking to the common carrier terminal?			
5.	If applicable, did the contractor claim mileage and parking costs to be dropped off or picked up at the common carrier terminal and were each of the POV round trip costs less than a one-way taxi fare?			

	DESCRIPTION	YES	NO	N/A
	<b>Transportation Costs - Rental Car</b>			
1.	Are the contractor claims for rental car usage approved and justified in advance?			
2.	Are the contractor claims for rental car usage supported by original receipts and for the least expensive vehicle necessary to complete the job?  <i>-- FDIC will NOT reimburse the rental of Luxury Vehicles.--</i>			
3.	Are the contractor claims for gasoline purchased for rental cars supported by original receipts?			

# **CONTRACTOR TRAVEL REIMBURSEMENT GUIDELINES**

**February 2003**

## **1.0 INTRODUCTION**

The Contractor should have a policy that requires its employees to use sound business judgement in both determining the need for travel, as well as in expending Contractor financial resources when travel is necessary. The following guidelines are provided to assist the Contractor in its compliance with contractual requirements to limit expense reimbursement to those costs that do not exceed FDIC travel reimbursement guidelines. Travelers will not be reimbursed for excess costs caused by:

- An indirect route as a matter of personal preference
- Premature departure for personal reasons from a temporary location; or
- Extending a stay for personal reasons.

## **2.0 APPLICABILITY**

To be entitled to Lodgings-Plus per diem reimbursement, the contract must allow for travel and the Contractor's employee must be on a temporary assignment that is at least 50 miles in distance from either his/her office or residence. If a temporary assignment concludes during the workday and is located within 100 miles of the Contractor's official station or residence, the Contractor employee is expected to return to their residence, rather than remain at the temporary location overnight. The cost of travel for spouses, other family members, and friends is not allowable under any circumstances.

## **3.0 TRAVEL AUTHORIZATION**

Contractors shall ensure that all travel on behalf of the FDIC is necessary and allowable under the contract. A management official of the Contractor shall authorize all travel and travel vouchers reflecting travel expenditures.

## **4.0 AIR TRAVEL**

Air travel should be in coach class only, unless the employee bears the cost of the difference between coach and first class. Travel should be planned as far in advance as possible to take advantage of discounted fares; especially, if reasonable certainty exists that the event will take place. If a restricted fare is booked and the Contractor's employee requires a change, a reasonable exchange fee may be claimed.

## **5.0 RENTAL CARS**

Generally, no car larger than a mid-size should be rented. The Contractor should have a policy that requires employees to compare the cost of car rental with other forms of transportation and to choose the cheaper mode of transportation. The use of rental cars, even if authorized, must be justified in writing by the traveler and attached to the voucher. Claims for rental car gasoline must be supported by original receipts.

## **6.0 LODGING**

The Contractor is expected to have a policy that provides for reasonable but not extravagant lodging accommodations for employees in travel status. The Contractor should make use of

government rates whenever possible; otherwise, corporate rates or other discounts should be obtained.

**If the contract is a level of effort type of contract (e.g., labor hour or time and materials) with reimbursable travel, and the contractor must be in the Washington, D.C., area overnight, the contractor is required to stay at the L. William Seidman Center (Seidman Center) providing space is available. The contractor shall notify the Contracting Officer of the need for a reservation, and the Contracting Officer shall contact the Seidman Center to make the reservation. If space is not available, the Seidman Center management will obtain an alternate reservation, or provide permission for contractor to obtain alternate lodging. For reimbursement, the contractor must provide written evidence of lack of availability at the Seidman Center at the time of submission of travel voucher.**

Any hotel expenses considered excessive or unreasonable will not be reimbursed. Instead, in those cases, lodging reimbursement will be limited to the U.S. Government GSA lodging rate for the city in question as listed in the most recent OAG Official Traveler – Travel Guide.

#### **7.0 SUBSISTENCE**

Employees on overnight travel status shall be reimbursed on a per diem basis. The current FDIC per diem rates allowable are listed in Section 16.0 of these Guidelines. Specific per diem rates for different localities may be found on the General Services Administration web site, the specific citation for which is as follows:

<http://policyworks.gov/org/main/mt/homepage/mtt/perdiem/travel.shtml>. When an employee is on per diem, incidental expenses such as laundry and dry cleaning are considered to be covered by the per diem.

#### **8.0 MISCELLANEOUS EXPENSES**

Employees in non-overnight travel status, who are away from their residence at least 11 consecutive hours excluding meal time, and the meal is specifically authorized, should be reimbursed on actual expense incurred basis with meal cost limited to a \$10.00 charge (receipt needed) or \$6.00 without a receipt. According to the IRS regulations, the Contractor must report this expense as income.

#### **9.0 LONG DISTANCE PERSONAL CALLS**

While on travel status, an employee may claim the actual amount incurred, not to exceed \$3 per day, for personal long-distance telephone calls while on an overnight travel assignment. This is in addition to per diem, if applicable.

#### **10.0 USE OF PERSONAL OWNED VEHICLE**

The Contractor may reimburse an employee for use of his/her personal vehicle while on Contractor related business. The maximum reimbursement rate will be the rate stipulated by the IRS (See Section 18.0 for the current rates).

In addition, a Contractor employee may be reimbursed 8 cents for the first additional Contractor employee passenger and 4 cents for each additional Contractor passenger. According to the IRS regulations, the additional expense reimbursement must be reported as income to the employee.



If an employee chooses to use his/her own vehicle in lieu of air travel, the maximum reimbursement will be the lesser of the cost of air travel or mileage reimbursement and the per diem difference.

NOTE: FDIC does **not insure** contractors, their employees, or their vehicles for liability.

### **11.0 TAXICABS**

The use of taxicabs is permitted while Contractors are on official travel for FDIC. Taxi hire is appropriate when:

- a) public transportation, airport limousine service, and/or hotel courtesy transportation is not available or when time or other factors make it impractical to use available public conveyances;
- b) traveling between transportation terminals and the residence, hotel, or office while in an official travel status; or
- c) for travel from the Contractor's residence to the official station to depart on an assignment requiring at least one night's lodging, and from the official station to the residence on the day the employee returns from that trip.

Taxi fares for trips used to obtain meals will not be reimbursed.

Reimbursement for taxicab fares (plus the customary 15% tip) will be made only if an appropriate receipt is submitted with the voucher.

### **12.0 NON-REIMBURSEMENT EXPENSES**

Examples of expenses that will not be reimbursed include the following:

- a. alcoholic beverages, entertainment;
- b. laundry, dry cleaning and pressing (per diem reimbursement);
- c. travel insurance;
- d. parking fines;
- e. charges incurred because of indirect travel for personal reasons;
- f. gratuities and tips paid to porters, waiters, bellboys, and hotel maids inside the lodging facility (per diem reimbursement);
- g. nonproductive time related to official travel to and from one's temporary duty station; and
- h. any charges, fees, or other associated costs related to the making of reservations or other accommodations for travel.

### **13.0 RECEIPTS**

Except for per diem expenses, valid original receipts are required for all expenditures regardless of cost. If a receipt is not normally provided for the expense (metro, bus token, etc.), the certification signed by the traveler on the voucher will justify the expense.

Receipts submitted with the voucher should be originals indicating the name of the payee, date paid, amount, and the service rendered. This includes the original Passenger Receipt Coupon of the airline ticket. If an electronic ticket is used, the boarding passes for each flight must be submitted with the travel voucher.

**14.0 TRAVEL VOUCHER COMPLETION**

After completion of travel, a travel voucher (may use contractor’s voucher) must be submitted for reimbursement. In addition, dates and times of each departure from residence or office, arrival at and the name of the place of temporary assignment, and arrival at the office or residence must be shown on the travel voucher. A certification signed by the traveler must be included on the travel voucher that states that the trip indicated was actually taken and that all expenses are accurate and correct.

**15.0 INVOICES**

Contractors billing for reimbursement of travel expenses must submit an original and two (2) duplicates of each invoice to include all supporting documents.

The penalty for invoicing a travel voucher that falsifies any item in the claim forfeits the claim (28 U.S.C. 2514). Further, travelers who falsify a claim may be fined or imprisoned for not more than 5 years or both (18 U.S.C. Section 1001), and a corporation may be fined up to maximum of \$500,000 (18 U.S.C. Section 3571 (c) ).

**16.0 PER DIEM FOR OVERNIGHT TRAVEL:**

**AMOUNT OF PER DIEM TO BE CLAIMED:**

<b>DEPARTING</b>						
<b>Sites with per diem rate of:</b>	<b>\$30.00</b>	<b>\$34.00</b>	<b>\$38.00</b>	<b>\$42.00</b>	<b>\$46.00</b>	<b>\$50.00</b>
If you <b>leave</b> between:						
12 Midnight to 5:59 AM	\$30.00	\$34.00	\$38.00	\$42.00	\$46.00	\$50.00
6:00 AM to 11:59 AM	\$22.50	\$25.50	\$28.50	\$31.50	\$34.50	\$37.50
12 Noon to 5:59 PM	\$15.00	\$17.00	\$19.00	\$21.00	\$23.00	\$25.00
6:00 PM to 11:59 PM	\$ 7.50	\$ 8.50	\$ 9.50	\$10.50	\$11.50	\$12.50
<b>RETURNING</b>						
<b>Sites with per diem rate of:</b>	<b>\$30.00</b>	<b>\$34.00</b>	<b>\$38.00</b>	<b>\$42.00</b>	<b>\$46.00</b>	<b>\$50.00</b>
If you <b>return</b> between:						
12 Midnight to 5:59 AM	\$ 7.50	\$ 8.50	\$ 9.50	\$10.50	\$11.50	\$12.50
6:00 AM to 11:59 AM	\$15.00	\$17.00	\$19.00	\$21.00	\$23.00	\$25.00
12 Noon to 5:59 PM	\$22.50	\$25.50	\$28.50	\$31.50	\$34.50	\$37.50
6:00 PM to 11:59	\$30.00	\$34.00	\$38.00	\$42.00	\$46.00	\$50.00

**17.0 MEAL DEDUCTIONS**

If meals are provided by another person or entity, the following amounts shall be deducted from per diem rates.

<b>PROVIDED MEALS DEDUCTIBLE FROM MAXIMUM PER DIEM RATES*</b>						
<b>MAXIMUM PER DIEM RATES:</b>	<b>\$30.00</b>	<b>\$34.00</b>	<b>\$38.00</b>	<b>\$42.00</b>	<b>\$46.00</b>	<b>\$50.00</b>
<b>BREAKFAST</b>	\$6	\$7	\$8	\$9	\$9	\$10
<b>LUNCH</b>	\$6	\$7	\$8	\$9	\$11	\$12
<b>DINNER</b>	\$16	\$18	\$20	\$22	\$24	\$26
<b>INCIDENTALS</b>	\$2	\$2	\$2	\$2	\$2	\$2

\*For those destinations that are not listed, the maximum hotel expense shall be \$55.00 per day and the maximum per diem rate shall be \$30.00.

**18.0 MILEAGE RATE FOR USE OF PERSONAL VEHICLE:**

**Effective January 1, 2003, the mileage rate allowed for use of a personal vehicle on business is 36.0 cents per mile.**

# FDIC PURCHASE ORDER (\$5000 OR LESS) FILE CHECKLIST

PR No.:	Descriptions Of Services:	RFQ/RFP No.:	
Program Office:	Program Office Representative/ Ext:	Contract No.:	
Contract Award Date:	Contract Specialist:	Oversight Manager (OM):	OM Extension:
Contractor:		Point Of Contact (POC):	POC Phone No:
<input type="checkbox"/> Corporate		<input type="checkbox"/> Corporate Liquidator	<input type="checkbox"/> Receivership
<input type="checkbox"/> Contract		<input type="checkbox"/> Basic Ordering Agreement	<input type="checkbox"/> Task Order

**INSTRUCTIONS:** Check below as appropriate. (If not applicable, check N/A)

	PART-I	IN	N/A
ITEM #			
1	Requirements Package/ Expenditure Authority		
2	Solicitation List ( 1 Source ≤ \$5,000)		
3	Solicitation Method		
	a) Oral/ Amendments		
	b) RFQ/ Amendments		
4	Competitive Offers Only		
	a) Oral RFQ Log		
	b) Abstract of Quotations/Offer		
	c) Technical/Price Evaluation Documentation		
	d) Successful Offer		
5	Contractor Verification		
	a) NCS Check (Disqualifying Conditions)		

	PART - II		
1	Award		
	a) Award Decision Documentation/ POS Entry		
2	Modifications		
	a) Procurement Requisition /Expenditure Authority		
	b) Executed Modification/ POS Entry if applicable		
3	Contractor Payment		
	a) Invoice		
4	Competitive Offers Only		
5	General Correspondence		
6	Closeout		
	a) Final Payment/ POS Documentation (Screen 19)		

## FDIC SIMPLIFIED CONTRACTING FILE CHECKLIST

PR NO.:	DESCRIPTIONS OF SERVICES:	RFQ/RFP NO.:
PROGRAM OFFICE (PO):	PROGRAM OFFICE REPRESENTATIVE/ EXT:	CONTRACT NO.:
CONTRACT AWARD DATE:	CONTRACT SPECIALIST:	OVERSIGHT MANAGER (OM):
		OM EXTENSION:
CONTRACTOR:	POINT OF CONTACT (POC):	POC PHONE NO.:

PURCHASE ORDER
  CONTRACT

**INSTRUCTIONS:** Check below as appropriate. (If not applicable, check N/A)

ITEM #		IN	N/A	ITEM #		IN	N/A
	<b>PART I SOLICITATION DOCUMENTATION</b>				<b>PART IV CONTRACT AWARD/ADMINISTRATION</b>		
1	Requirements Package/Expenditure Authority			1	Award Letter / contingent on B.I.		
2	Solicitation List/MWOB Status			2	Purchase Order/Contract		
3	Solicitation Method			3	Modifications/POS Entry		
3a	Oral Solicitation			4	Oversight Manager/TM Letter		
3b	RFQ			5	OM/TM/POC Notice to Contractor		
3c	RFP			6	Delivery/Acceptance Documentation		
4	Amendments			7	Invoice Log and Invoices		
				8	Letter to Exercise Option		
	<b>PART II EVALUATION DOCUMENTATION</b>				<b>PART V CORRESPONDENCE</b>		
1	Oral RFQ Log (Price Only) & Abstract of Written Quotations/Offers			1	External Correspondence		
2	Proposals			2	Internal Email		
3	Reference Check (Past Performances Data)			3	Internal Memoranda		
4	Proposals						
5	Technical Evaluation (TEO)						
6	Price Evaluation						
7	Combined Scoring Documentation						
	<b>PART III SELECTION DECISION DOCUMENTATION</b>				<b>PART VI CLOSEOUT</b>		
1	NCS Check (Disqualifying conditions)			1	Goods/Services Accepted		
2	Eligibility Certification (≥ \$25,000)			2	Final Payment		
3	Background Investigation Results (for on site personnel or if required)			3	POS Documentation (Screen 19)		
4	Unsuccessful Offeror Letters			4	Contractor Performance Evaluation Form (must be completed within 30 days of contract completion) ≥\$50,000		
5	Debriefing Documentation						
6	POS Entry						

# FDIC FORMAL CONTRACTING FILE CHECKLIST

PR No.:	Descriptions Of Services:	RFQ/RFP No.:
Program Office:	Program Office Representative/ Ext:	Contract No.:
Contract Award Date:	Contract Specialist:	Oversight Manager (OM):
		OM Extension:
Contractor:	Point of Contact (POC):	POC Phone No:
<input type="checkbox"/> Corporate <input type="checkbox"/> Corporate Liquidator <input type="checkbox"/> Receivership		
<input type="checkbox"/> Contract <input type="checkbox"/> Basic Ordering Agreement <input type="checkbox"/> Task Order		

**INSTRUCTIONS:**      *Check below as appropriate. (If not applicable, check N/A)*

ITEM #		IN	N/A
<b>PART I - SOLICITATION DOCUMENTATION</b>			
1	Requirements Package/Expenditure Authority		
2	Contract Milestone Schedule		
3	Source Selection Plan		
4	Solicitation List/MWOB and SDB Status		
5	NCS Check of Firms on Solicitation List		
6	Legal Review (> \$100,000)		
7	ODEO Review (> \$100,000)		
8	RFP Package		
9	RFP Amendments		
10	Offerors Conference Documentation		
11	RFP Questions/Answers Documentation		
12	Proposal Submission List		
13	Proposals (Separate File with Evidence of Date/Time Stamped)		

<b>PART II - PROPOSAL EVALUATION DOCUMENTATION</b>			
1	TEP Written Instructions/Technical Criteria Sheets		
2	TEP Kick-Off Meeting Documentation		
3	TEP Confidentiality & Conflict of Interest Certifications		
4	TEP Members' Past Performance Questionnaire & CPMS Data Inquiry		
5	TEP Members' Evaluation Rating Sheets		
6	TEP Memorandum		
7	Price Proposal Scoring Documentation		
8	Combined Technical/Price Scoring Documentation		
9	Competitive Range Determination		
10	Clarifications Documentation		
11	Technical Discussions/Negotiations Documentation		
12	Best and Final Offer (BAFO) Requests		
13	BAFO Proposals (File with Original Proposals)		
14	Technical Evaluation of BAFO Proposals		
15	Addendum to TEP Memorandum		
16	BAFO Price Proposal Scoring Documentation		
17	Combined BAFO Technical/Price Scoring Documentation		

ITEM #		IN	N/A
<b>PART III – SELECTION DECISION DOCUMENTATION</b>			
1	Contractor Certification Form or documentation		
2	Background Investigation Request and Results		
3	Financial Capability Review		
4	NCS Check (Disqualifying Conditions)		
5	Pre-Award Survey		
6	Selection Recommendation Report		
7	Successful Offeror Proposal/BAFO Proposal		
8	Unsuccessful Offeror Letters		
9	Debriefing Documentation		
10	Protest Documentation		
11	Pre-award Correspondence		

<b>PART IV – CONTRACT AWARD DOCUMENTATION</b>			
1	Award Letter / Award Letter contingent upon Background Investigations		
2	Executed Contract		
3	Contract Modifications		
4	Insurance Certificates		
5	Post-Award Kick-Off Meeting (Internal)		
6	Contract Administration Plan		
7	Oversight Manager/Technical Monitor Letters		
8	OM/TM Notification to Contractor		
9	POS Entry		

<b>PART V – CONTRACTOR PERFORMANCE/ADMINISTRATION DOCUMENTATION</b>			
1	Contractor Reports		
2	Site Visit Documentation		
3	Contractor Progress Report		
4	Deliverable Inspection and Acceptance Documentation		
5	Contractor Performance Evaluation Form (C.P.E.F.) $\geq$ \$50,000		
6	Subcontracting Plan		
7	Quarterly Subcontracting Activity Report		
8	Invoices & Invoice Log		
9	Claims Material/Documentation		
10	Key Personnel Changes/ Background Investigations		
11	Letter to Exercise Option		

<b>PART VI – CORRESPONDENCE &amp; CLOSEOUT</b>			
1	Post Award Correspondence		
2	Internal Emails		
3	Closeout Checklist		
4	Acceptance of Deliverables		
5	Final Payment Documentation		
6	Other Closeout Documentation		
7	C.P.E.F. (must be completed within 30 days of contract completion)		

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 366

RIN 3064-AC29

Minimum Standards of Integrity and Fitness for an **FDIC** Contractor

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Final rule.

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**SUMMARY:** The Federal Deposit Insurance Corporation (**FDIC**) is issuing this rule which governs conflicts of interest, ethical responsibilities, and use of confidential information by independent contractors seeking to do business with the **FDIC**. This rule ensures that any individual who is performing, directly or indirectly, any function or service on behalf of the **FDIC** meets minimum standards of integrity and fitness. It also prohibits certain persons from performing any service on behalf of the **FDIC**. This rule makes four changes from the interim final rule that the **FDIC** published on May 15, 2002. These changes are described below in Section II of the Supplementary Information.

**EFFECTIVE DATE:** December 20, 2002.

**FOR FURTHER INFORMATION CONTACT:** Martin A. Blumenthal, Counsel, (202) 736-0359, Peter M. Somerville, Counsel, (202) 736-0110, or Thomas E. Nixon, Senior Attorney, (202) 898-8766, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. These are not toll-free numbers.

### **SUPPLEMENTARY INFORMATION:**

#### **I. Introduction**

##### **A. Overview**

This rule sets forth integrity and fitness provisions for **FDIC** contractors in three areas. The first area regards those persons from whom the **FDIC** is prohibited from entering into a contract. The second area identifies integrity and fitness responsibilities for independent contractors. These include conflicts of interest, minimum standards of ethical responsibility, confidential information, and information that contractors must disclose to the **FDIC**. The last area regards a contractor's expectations, rights and obligations. These include what advice and determinations the **FDIC** will provide a contractor, reconsiderations and reviews of those determinations, and the possible consequences a person may face for violating the provisions of this rule.

##### **B. Authority**

The statutory authorities for adopting this rule are our general rulemaking authority found at section 9 (Tenth) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1819 (Tenth); and sections 12(f)(3) and (4) of the FDI Act, 12 U.S.C. 1822(f)(3) and (4). Section 19 of the Resolution Trust Corporation Completion Act (RTCCA), Public Law 103-204, 107 Stat. 2369 (1993), required the addition of section 12(f) to the FDI Act.

We may establish other integrity and fitness policies where we determine such policies are required by law or appropriate to maintain the integrity of our programs. Any such policies may be independent of, in conjunction with, or in addition to the restrictions set forth in this rule.

We may also, temporarily or permanently, suspend this rule or exempt a person from compliance with any part of this rule for good cause shown, in order to protect our interests or to provide an orderly transfer of services to another person.

##### **C. Background**

The contractor integrity and fitness rules, based on statutory requirements, are regulatory tools the **FDIC** uses to assure that certain of its contractors meet minimum standards of competence, experience, integrity and fitness. See Federal Home Loan Bank Act, section 21A(p)(6), as added by section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101-73, 103 Stat. 183. This statute was enacted to ensure that no person who contributed to the failure of an insured depository institution could contract with the **FDIC** without disclosure and considerable scrutiny.

On June 24, 1994, we published a proposed rule applicable to independent contractors (59 FR 32661-32668), as required by section 12(f)(3) of the FDI Act, 12 U.S.C. 1822(f)(3). That rulemaking proposed standards governing conflicts of interest, ethical responsibilities, and use of confidential information. It also proposed procedures for

ensuring that independent contractors meet minimum standards for competence, experience, integrity, and fitness. We received six comment letters. After careful consideration of each comment and numerous changes that the Office of Government Ethics (OGE) requested, we made appropriate modifications to the proposal resulting in the reorganization and modification of some provisions.

On March 11, 1996, we adopted an interim final rule entitled, "Contractor Conflicts of Interest", (61 FR 9590), with the concurrence of OGE. We determined that an interim final rule was appropriate in order to allow interested parties to comment on the rule while providing prompt implementation of the rule to satisfy concerns relating to the merger of the RTC into the **FDIC**. We received only one comment on the interim final rule and it was non-substantive.

On May 15, 2002, we published an interim final rule requesting public comment. The interim rule represented a fundamental reconsideration of our obligations under the RTCCA. We received no public comments in response to our May 2002 interim final rule.

#### **II. Final Rule**

We are adopting the May 2002 interim final rule with four minor changes. First, in the interim final rule, Sec. 366.12(c) stated that contractors are required to disclose waste, fraud, abuse or corruption to us. We are adding to Sec. 366.12(c) a telephone number and an email

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address that can be used to make such reports to the **FDIC** Inspector General. Second, in the interim final rule, Sec. 366.12(d)(4) prohibited contractors from making impermissible gifts or entertainment to an **FDIC** employee. We are extending this prohibition to gifts made by **FDIC** contractors to other **FDIC** contractors, as well as **FDIC** employees. This is because there can be occasions in which **FDIC** contractors may make decisions on behalf of the **FDIC**. Third, in the interim final rule, Sec. 366.14(f) established retention requirements for information that **FDIC** contractors submit to the **FDIC** pursuant to this rule. The interim final rule broadly described the information that must be retained as any information that the contractor relies upon regarding their compliance with part 366. The final rule clarifies that information the contractor relies upon includes information that they prepare. Finally, because the May 2002 interim final rule was unclear as to which event triggers the three year retention period, we are adding the phrase "which ever occurs last" at the end of the sentence for further clarification. As a result, Sec. 366.12(f) will require contractors to retain any information they prepare or rely upon regarding the provisions of part 366 for a period of three years following termination or expiration and final payment of the related contract for services whichever occurs last.

### **III. Matters of Regulatory Procedure**

#### **A. Regulatory Flexibility Act**

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the **FDIC** certifies that the final rule will not have a significant economic impact on a substantial number of small entities. This rule, which finalizes the May 2002 interim final rule, imposes no new compliance burdens on small entities within the meaning of the Regulatory Flexibility Act.

Our May 2002 interim final rule noted that we were reviewing this rule pursuant to our responsibilities under section 610 of the Regulatory Flexibility Act and requested public comment about our review. A section 610 review requires us to consider how we could minimize the economic impact of the rule on small businesses while remaining consistent with the objectives of the statute that requires the rule. Our May 2002 interim rulemaking resulted from a careful consideration of how we could minimize the burden of the 1996 rule. Based on our review under section 610, we conclude that the May 2002 rule changes should successfully reduce burden on small businesses with whom we contract and that no further changes are necessary now.

#### **B. Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), we may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. We submitted two collections of information to OMB for review when we published the May 2002 interim final rule.

One collection is titled "Acquisition Services Information Requirements," and includes forms that we use to ensure compliance with our contractor integrity and fitness regulation and to make contracting decisions for contractors other than legal service providers. The May 2002 rule changed the definitions of some of the terms used on OMB approved contracting forms. Each of the changes reduced estimated burden on our contractors. OMB approved our changes to the information collection under control number 3064-0072, which will expire June 30, 2005.

The second collection is titled "Forms Relating to **FDIC** Outside Counsel Services" and includes forms we use to ensure compliance with our contractor integrity and fitness regulation, to make contracting decisions, and to control payments to law firms and legal support service providers. The May 2002 rulemaking affected the definition of terms on one of the 13 forms in that collection and reduced the estimated burden in completing the form. OMB approved our changes to the information collection under control number 3064-0122, which will expire June 30, 2005.

#### **C. The Treasury and General Government Appropriations Act, 1999--Assessment of Federal Regulations and Policies on Families**

We have determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and Government Appropriations Act, 1999, Public Law 105-277, 112 Stat. 2681 (1998).

#### **D. Small Business Regulatory Enforcement Fairness Act**

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104-121) provides generally for agencies to report rules to Congress for review. The reporting requirement is triggered when the **FDIC** issues a final rule as defined by the Administrative Procedure Act (APA) at 5 U.S.C. 551. Because the **FDIC** is issuing a final rule as defined by the APA, the **FDIC** will file the reports required by the SBREFA. The Office of Management and Budget has determined that this final rule does not constitute a "major rule" as defined by the SBREFA.

#### **List of Subjects in 12 CFR Part 366**

Contractor conflicts of interest, Government contracts, Reporting and recordkeeping requirement.

For the reasons set forth in the preamble, we hereby revise part 366 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

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

Sec.

366.0 Definitions.

366.1 What is the purpose of this part?

366.2 What is the scope of this part?

366.3 Who cannot perform contractual services for the **FDIC**?

366.4 When is there a pattern or practice of defalcation?

366.5 What causes a substantial loss to a federal deposit insurance fund?

366.6 How is my ownership or control determined?

366.7 Will the **FDIC** waive the prohibitions under Sec. 366.3?

366.8 Who can grant a waiver of a prohibition or conflict of interest?

366.9 What other requirements could prevent me from performing contractual services for the **FDIC**?

- 366.10 When would I have a conflict of interest?  
366.11 Will the **FDIC** waive a conflict of interest?  
366.12 What are the **FDIC**'s minimum standards of ethical responsibility?  
366.13 What is my obligation regarding confidential information?  
366.14 What information must I provide the **FDIC**?  
366.15 What advice or determinations will the **FDIC** provide me on the applicability of this part?  
366.16 When may I seek a reconsideration or review of an **FDIC** determination?  
366.17 What are the possible consequences for violating this part?

Authority: Section 9 (Tenth) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1819 (Tenth); sections 12(f)(3) and (4) of the FDI Act, 12 U.S.C. 1822(f)(3) and (4); and section 19 of Pub. L. 103-204, 107 Stat. 2369.

#### **Sec. 366.0 Definitions.**

As used in this part:

- (a) The word person refers to an individual, corporation, partnership, or other entity with a legally independent existence.
- (b) The terms we, our, and us refer to the Federal Deposit Insurance Corporation (**FDIC**), except when acting as conservator or operator of a bridge bank.
- (c) The terms I, me, my, mine, you, and yourself refer to a person who submits an offer to perform or performs, directly or indirectly, contractual services or functions on our behalf.
- (d) The phrase insured depository institution refers to any bank or savings association whose deposits are insured by the **FDIC**.

#### **Sec. 366.1 What is the purpose of this part?**

This part establishes the minimum standards of integrity and fitness that contractors, subcontractors, and employees of contractors and subcontractors must meet if they perform any service or function on our behalf. This part includes regulations governing conflicts of interest, ethical responsibility, and use of confidential information in accordance with section 12(f)(3) of the FDI Act, 12 U.S.C. 1822(f)(3), and the prohibitions and the requirements for submission of information in accordance with section 12(f)(4) of the FDI Act, 12 U.S.C. 1822(f)(4).

#### **Sec. 366.2 What is the scope of this part?**

- (a) This part applies to a person who submits an offer to perform or performs, directly or indirectly, a contractual service or function on our behalf.
- (b) This part does not apply to:
  - (1) An **FDIC** employee for the purposes of title 18, United States Code; or
  - (2) The **FDIC** when we operate an insured depository institution such as a bridge bank or conservatorship.

#### **Sec. 366.3 Who cannot perform contractual services for the FDIC?**

We will not enter into a contract with you to perform a service or function on our behalf, if you or any person that owns or controls you, or any entity you own or control:

- (a) Has a felony conviction;
- (b) Was removed from or is prohibited from participating in the affairs of an insured depository institution as a result of a federal banking agency final enforcement action;
- (c) Has a pattern or practice of defalcation; or
- (d) Is responsible for a substantial loss to a federal deposit insurance fund.

#### **Sec. 366.4 When is there a pattern or practice of defalcation?**

- (a) You have a pattern or practice of defalcation under Sec. 366.3(c) when you, any person that owns or controls you, or any entity you own or control has a legal responsibility for the payment on at least two obligations that are:
  - (1) To one or more insured depository institutions;
  - (2) More than 90 days delinquent in the payment of principal, interest, or a combination thereof; and
  - (3) More than \$50,000 each.
- (b) The following are examples of when you have or do not have a pattern or practice of defalcation. These examples are not inclusive.
  - (1) You have five loans at insured depository institutions. Three of them are 90 days past due. Two of the three loans have outstanding balances of more than \$50,000 each. You have a pattern or practice of defalcation.
  - (2) You have five loans at insured depository institutions. Two of them are 90 days past due. One of the two is with ABC Bank for \$170,000. The other one is with XYZ bank for \$60,000. You have a pattern or practice of defalcation.
  - (3) You have five loans at insured depository institutions. Three of them are 90 days past due. One of the three has an outstanding balance of more than \$50,000. The other two have outstanding balances of less than \$50,000. You do not have a pattern or practice of defalcation.
  - (4) You have five loans at insured depository institutions. Three of them have outstanding balances of more than \$50,000. Two of those three were 90 days past due but are now current. You do not have a pattern or practice of defalcation.

#### **Sec. 366.5 What causes a substantial loss to a federal deposit insurance fund?**

You cause a substantial loss to a federal deposit insurance fund under Sec. 366.3(d) when you, or any person that owns or controls you, or any entity you own or control has:

- (a) An obligation to us that is delinquent for 90 days or more and on which there is an outstanding balance of principal, interest, or a combination thereof of more than \$50,000;
- (b) An unpaid final judgment in our favor that is in excess of \$50,000, regardless of whether it becomes discharged in whole or in part in a bankruptcy proceeding;
- (c) A deficiency balance following foreclosure of collateral on an obligation owed to us that is in excess of \$50,000, regardless of whether it becomes discharged in whole or in part in a bankruptcy proceeding; or
- (d) A loss to us that is in excess of \$50,000 that we report on IRS Form 1099-C, Information Reporting for Discharge of Indebtedness.

**Sec. 366.6 How is my ownership or control determined?**

- (a) Your ownership or control is determined on a case-by-case basis. Your ownership or control depends on the specific facts of your situation and the particular industry and legal entity involved. You must provide documentation to us to use in determining your ownership or control.
- (b) The interest of a spouse or other family member in the same organization is imputed to you in determining your ownership or control.
- (c) The following are examples of when your ownership or control may or may not exist. These examples are not inclusive.
  - (1) You have control if you are the president or chief executive officer of an organization.
  - (2) You have ownership or control if you are a partner in a small law firm. You might not have ownership or control if you are a partner in a large national law firm.
  - (3) You have control if you are a general partner of a limited partnership. You have ownership or control if you have a limited partnership interest of 25 percent or more.
  - (4) You have ownership or control if you have the:
    - (i) Power to vote, directly or indirectly, 25% or more interest of any class of voting stock of a company;
    - (ii) Ability to direct in any manner the election of a majority of a company's directors or trustees; or
    - (iii) Ability to exercise a controlling influence over the company's management and policies.

**Sec. 366.7 Will the FDIC waive the prohibitions under Sec. 366.3?**

We may waive the prohibitions for entities other than individuals for good cause shown at our discretion when our need to contract for your services outweighs all relevant factors. The statute does not allow us to waive the prohibitions for individuals.

**Sec. 366.8 Who can grant a waiver of a prohibition or conflict of interest?**

The FDIC's Board of Directors delegates to the Chairman, or his designee, authority to issue waivers and implement procedures for part 366.

**Sec. 366.9 What other requirements could prevent me from performing contractual services for the FDIC?**

You must avoid a conflict of interest, be ethically responsible, and maintain confidential information as described in Sec. 366.10 through 366.13. You must also provide us with the information we require in Sec. 366.14. Failure to meet these requirements may prevent you from contracting with us.

**Sec. 366.10 When would I have a conflict of interest?**

- (a) You have a conflict of interest when you, any person that owns or controls you, or any entity you own or control:
  - (1) Has a personal, business, or financial interest or relationship that relates to the services you perform under the contract;
  - (2) Is a party to litigation against us, or represents a party that is;
  - (3) Submits an offer to acquire an asset from us for which services were performed during the past three years, unless the contract allows for the acquisition; or
  - (4) Engages in an activity that would cause us to question the integrity of the service you provided, are providing or offer to provide us, or impairs your independence.
- (b) The following are examples of a conflict of interest. These examples are not inclusive.
  - (1) You submit an offer to perform property management services for us and you own or manage a competing property.
  - (2) You audit a business under a contract with us and you or a partner in your firm has an ownership interest in that business.
  - (3) You perform loan services on a pool of loans we are selling, and you submit a bid to purchase one or more of the loans in the pool.
  - (4) You audit your own work or provide nonaudit services that are significant or material to the subject matter of the audit.

**Sec. 366.11 Will the FDIC waive a conflict of interest?**

- (a) We may waive a conflict of interest for good cause shown at our discretion when our need to contract for your services outweighs all relevant factors.
- (b) The following are examples of when we may grant you a waiver for a conflict of interest. These examples are not inclusive.
  - (1) We may grant a waiver to an outside counsel who has a representational conflict. We will weigh all relevant facts and circumstances in making our determination.
  - (2) We may grant a waiver to allow a contractor to acquire an asset from us who is providing or has provided services on that asset. We will consider whether granting the waiver will adversely affect the fairness of the sale, the type of services provided, and other facts and circumstances relevant to the sale in making our determination.

**Sec. 366.12 What are the FDIC's minimum standards of ethical responsibility?**

(a) You and any person who performs services for us must not provide preferential treatment to any person in your dealings with the public on our behalf.

(b) You must ensure that any person you employ to perform services for us is informed about their responsibilities under this part.

(c) You must disclose to us waste, fraud, abuse or corruption. Contact the Inspector General at 1-800-964-FDIC or [Ighotline@fdic.gov](mailto:Ighotline@fdic.gov).

(d) You and any person who performs contract services to us must not:

(1) Accept or solicit for yourself or others any favor, gift, or other item of monetary value from any person who you reasonably believe is seeking an official action from you on our behalf, or has an interest that the performance or nonperformance of your duties to us may substantially affect;

(2) Use or allow the use of our property, except as specified in the contract;

(3) Make an unauthorized promise or commitment on our behalf; or

(4) Provide impermissible gifts or entertainment to an FDIC employee or other person providing services to us.

(e) The following are examples of when you are engaging in unethical behavior. These examples are not inclusive.

(1) Using government resources, including our Internet connection, to conduct any business that is unrelated to the performance of your contract with us.

(2) Submitting false invoices or claims, or making misleading or false statements.

(3) Committing us to forgive or restructure a debt or portion of a debt, unless we provide you with written authority to do so.

**Sec. 366.13 What is my obligation regarding confidential information?**

(a) Neither you nor any person who performs services on your behalf may use or disclose information obtained from us or a third party in connection with an FDIC contract, unless:

(1) The contract allows or we authorize the use or disclosure;

(2) The information is generally available to the general public; or

(3) We make the information available to the general public.

(b) The following are examples of when your use of confidential information is inappropriate. These examples are not inclusive.

(1) Disclosing information about an asset, such as internal asset valuations, appraisals or environmental reports, except as part of authorized due diligence materials, to a prospective asset purchaser.

(2) Disclosing a borrower's or guarantor's personal or financial information, such as a financial statement to an unauthorized party.

**Sec. 366.14 What information must I provide the FDIC?**

You must:

(a) Certify in writing that you can perform services for us under Sec. 366.3 and have no conflict of interest under Sec. 366.10(a).

(b) Submit a list and description of any instance during the preceding five years in which you, any person that owns or controls you, or any entity you own or control, defaulted on a material obligation to an insured depository institution. A default on a material obligation occurs when a loan or advance with an outstanding balance of more than \$50,000 is or was delinquent for 90 days or more.

(c) Notify us within 10 business days after you become aware that you, or any person you employ to perform services for us, are not in compliance with this part. Your notice must include a detailed description of the facts of the situation and how you intend to resolve the matter.

(d) Agree in writing that you will employ only persons who meet the requirements of this part to perform services on our behalf.

(e) Comply with any request from us for information.

(f) Retain any information you prepare or rely upon regarding the provisions of this part for a period of three years following termination or expiration and final payment of the related contract for services whichever occurs last.

**Sec. 366.15 What advice or determinations will the FDIC provide me on the applicability of this part?**

(a) We are available to you for consultation on those determinations you are responsible for making under this part, including those with respect to any person you employ or engage to perform services for us.

(b) We will determine if this part prohibits you from performing services for us prior to contract award, after contract award, and during the performance of a contract.

(c) We may determine what corrective action you must take.

(d) We may grant you a waiver for good cause shown where provided for under this part.

**Sec. 366.16 When may I seek a reconsideration or review of an FDIC determination?**

(a) You may seek reconsideration or review of our initial determination by sending a written request to the individual who issued you the initial decision.

(b) You must provide new information or explain a change in circumstances for our reconsideration of an initial decision. The individual who issued you the initial decision may either make a new determination or refer your request to a higher authority for review.

(c) You must provide an explanation of how you perceive that we misapplied this part that sets forth the legal or factual errors for our review of an initial decision.

**Sec. 366.17 What are the possible consequences for violating this part?**

Depending on the circumstances, violations of this part may result in rescission or termination of a contract, as well as administrative, civil, or criminal sanctions.

Dated in Washington, DC, this 12th day of November, 2002.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 02-29407 Filed 11-19-02; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR

Banks and Banking

CHAPTER III

FEDERAL DEPOSIT INSURANCE CORPORATION

SUBCHAPTER B -- REGULATIONS AND STATEMENTS OF GENERAL POLICY

PART 367 -- SUSPENSION AND EXCLUSION OF CONTRACTOR AND  
TERMINATION OF CONTRACTS

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**Sec.**

- 367.1 Authority, purpose, scope and application.
- 367.2 Definitions.
- 367.3 Appropriate officials.
- 367.4 [Reserved]
- 367.5 Exclusions.
- 367.6 Causes for exclusion.
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- 367.8 Causes for suspension.
- 367.9 Imputation of causes.
- 367.10 367.11 [Reserved]
- 367.12 Procedures.
- 367.13 Notices.
- 367.14 Responses.
- 367.15 Additional proceedings as to disputed material facts.
- 367.16 Ethics Counselor decisions.
- 367.17 Duration of suspensions and exclusions.
- 367.18 Abrogation of contracts.
- 367.19 Exceptions to suspensions and exclusions.
- 367.20 Review and reconsideration of Ethics Counselor decisions.

**Authority:** 12 U.S.C. 1822(f) (4) and (5).

**Source:** 61 FR 68560, Dec. 30, 1996, unless otherwise noted.

**§367.1 Authority, purpose, scope and application.**

(a) *Authority.* This part is adopted pursuant to section 12(f) (4) and (5) of the Federal Deposit Insurance Act, 12 U.S.C. 1822(f) (4) and (5), and the rule-making authority of the Federal Deposit Insurance Corporation (FDIC) found at 12 U.S.C. 1819. Other regulations implementing these statutory directives appear at 12 CFR part 366.

(b) *Purpose.* This part is designed to inform contractors and subcontractors (including their affiliated business entities, key employees and management officials) regarding their rights to notice and an opportunity to be heard on FDIC actions involving suspension and exclusion from contracting and rescission of existing contracts. This part is in addition to, and not in lieu of, any other statute or regulation that may apply to such contractual activities.

(c) *Scope.* This part applies to:

(1) Contractors, other than attorneys or law firms providing legal services, submitting offers to provide services or entering into contracts to provide services to the FDIC acting in any capacity; and

(2) Subcontractors entering into contracts to perform services under a proposed or existing contract with the FDIC.

(d) *Application.* (1) This part will apply to entities that become contractors, as defined in §367.2(f), on or after December 30, 1996. In addition, this part will apply to contractors as defined in §367.2(f) that are performing contracts on December 30, 1996.

(2) This part will also apply to actions initiated on or after December 30, 1996 regardless of the date of the cause giving rise to the actions.

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(3) Contracts entered into by the former Resolution Trust Corporation (RTC) that were transferred to the FDIC will be treated in the same manner as FDIC contracts under this part.

(4) RTC actions taken under the RTC regulations on or before December 31, 1995, will be honored as if taken by the FDIC. A contractor subject to an RTC exclusion or suspension will be precluded thereby from participation in the FDIC's contracting program unless that exclusion or suspension is modified or terminated under the provisions of this part.

### **§367.2 Definitions.**

(a) *Adequate evidence* means information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) *Affiliated business entity* means a company that is under the control of the contractor, is in control of the contractor, or is under common control with the contractor.

(c) *Civil judgment* means a judgment of a civil offense or liability by any court of competent jurisdiction in the United States.

(d) *Company* means any corporation, firm, partnership, society, joint venture, business trust, association, consortium or similar organization.

(e) *Conflict of interest* means a situation in which:

(1) A contractor; any management officials or affiliated business entities of a contractor; or any employees, agents, or subcontractors of a contractor who will perform services under a proposed or existing contract with the FDIC:

(i) Has one or more personal, business, or financial interests or relationships which would cause a reasonable individual with knowledge of the relevant facts to question the integrity or impartiality of those who are or will be acting under a proposed or existing FDIC contract;

(ii) Is an adverse party to the FDIC, RTC, the former Federal Savings and Loan Insurance Corporation (FSLIC), or their successors in a lawsuit; or

(iii) Has ever been suspended, excluded, or debarred from contracting with a federal entity or has ever had a contract with the FDIC, RTC, FSLIC or their successors rescinded or terminated prior to the contract's completion and which rescission or termination involved issues of conflicts of interest or ethical responsibilities; or

(2) Any other facts exist which the FDIC, in its sole discretion, determines may, through performance of a proposed or existing FDIC contract, provide a contractor with an unfair competitive advantage which favors the interests of the contractor or any person with whom the contractor has or is likely to have a personal or business relationship.

(f) *Contractor* means a person or company which has submitted an offer to perform services for the FDIC or has a contractual arrangement with the FDIC to perform services. For purposes of this part, contractor also includes:

(1) A contractor's affiliated business entities, key employees, and management officials of the contractor;

(2) Any subcontractor performing services for the FDIC and the management officials and key employees of such subcontractors; and

(3) Any entity or organization seeking to perform services for the FDIC as a minority or woman-owned business (MWOB).

(g) *Contract(s)* means agreement(s) between FDIC and a contractor, including, but not limited to, agreements identified as "Task Orders", for a contractor to provide services to FDIC. Contracts also mean contracts between a contractor and its subcontractor.

(h) *Control* means the power to vote, directly or indirectly, 25 percent or more of any class of the voting stock of a company; the ability to direct in any manner the election of a majority of a company's directors or trustees; or the ability to exercise a controlling influence over the company's management and policies. For purposes of this definition, a general partner of a limited partnership is presumed to be in control of that partnership.

(i) *Conviction* means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, and includes pleas of nolo contendere.

(j) *FDIC* means the Federal Deposit Insurance Corporation acting in its receivership and corporate capacities, and FDIC officials or committees acting under delegated authority.

(k) *Indictment* shall include an information or other filing by a competent authority charging a criminal offense.

(l) *Key employee* means an individual who participates personally and substantially in the negotiation of, performance of, and/or monitoring for compliance under a contract with the FDIC. Such participation is made through, but is not limited to, decision, approval, disapproval, recommendation, or the rendering of advice under the contract.

(m) *Management official* means any shareholder, employee or partner who controls a company and any individual who directs the day-to-day operations of a company. With respect to a partnership, all partners are deemed to be management officials unless the partnership is governed by a management or executive committee with responsibility for the day-to-day operations. In partnerships with such committees, management official means only those partners who are a member of such a committee.

(n) *Material fact* means one that is necessary to determine the outcome of an issue or case and without which the case could not be supported.

(o) *Offer* means a proposal or other written or oral offer to provide services to FDIC.

(p) *Pattern or practice of defalcation regarding obligations* means two or more instances in which a loan or advance from an insured depository institution:

(1) Is in default for ninety (90) or more days as to payment of principal, interest, or a combination thereof, and there remains a legal obligation to pay an amount in excess of \$50,000; or

(2) Where there has been a failure to comply with the terms of a loan or advance to such an extent that the collateral securing the loan or advance was foreclosed upon, resulting in a loss in excess of \$50,000 to the insured depository institution.

(q) *Preponderance of the evidence* means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(r) *Subcontractor* means an entity or organization that enters into a contract with an FDIC contractor or another subcontractor to perform services under a proposed or existing contract with the FDIC.

(s) *Substantial loss to federal deposit insurance funds* means:

(1) A loan or advance from an insured depository institution, which is currently owed to the FDIC, RTC, FSLIC or their successors, or the Bank Insurance Fund (BIF), the Savings Association Insurance Fund (SAIF), the FSLIC Reserve Fund (FRF), or funds that were maintained by the RTC for the benefit of insured depositors, that is or has ever been delinquent for ninety (90) or more days as to payment of principal, interest, or a combination thereof and on which there remains a legal obligation to pay an amount in excess of \$50,000;

(2) An obligation to pay an outstanding, unsatisfied, final judgment in excess of \$50,000 in favor of the FDIC, RTC, FSLIC, or their successors, or the BIF, the SAIF, the FRF or the funds that were maintained by the RTC for the benefit of insured depositors; or

(3) A loan or advance from an insured depository institution which is currently owed to the FDIC, RTC, FSLIC or their successors, or the BIF, the SAIF, the FRF or the funds that were maintained by the RTC for the benefit of insured depositors, where there has been a failure to comply with the terms to such an extent that the collateral securing the loan or advance was foreclosed upon, resulting in a loss in excess of \$50,000.

### **§367.3 Appropriate officials.**

(a) The *Ethics Counselor* is the Executive Secretary of the FDIC. The Ethics Counselor shall act as the official responsible for rendering suspension and exclusion decisions under this part. In addition to taking suspension and/or exclusion action under this part, the Ethics Counselor has authority to terminate exclusion and suspension proceedings. As used in this part, "Ethics Counselor" includes any official designated by the Ethics Counselor to act on the Ethics Counselor's behalf.

(b) The *Corporation Ethics Committee* is the Committee appointed by the Chairman of the FDIC, or Chairman's designee, which provides review of any suspension or exclusion decision rendered by the Ethics Counselor that is appealed by a contractor who has been suspended and/or excluded from FDIC contracting.

(c) Information concerning the possible existence of any cause for suspension or exclusion shall be reported to the Office of the Executive Secretary (Ethics Section). This part does not modify the responsibility to report allegations of fraud, waste and abuse, including but not limited to criminal violations, to the Office of Inspector General.

### **§367.4 [Reserved]**

### **§367.5 Exclusions.**

(a) The Ethics Counselor may exclude a contractor from the FDIC contracting program for any of the causes set forth in §367.6, using procedures established in this part.

(b) Exclusion is a serious action to be imposed when there exists a preponderance of the evidence that a contractor has violated one or more of the causes set forth in §367.6. Contractors excluded from FDIC contracting programs are prohibited from entering into any new contracts with FDIC for the duration of the period of exclusion as determined pursuant to this part. The FDIC shall not solicit offers from, award contracts to, extend or modify existing contracts, award task orders under existing contracts, or consent to subcontracts with such contractors. Excluded contractors are also prohibited from conducting business with FDIC as agents or representatives of other contractors. *Provided however*, that these limitations do not become effective upon the notification of the contractor that there is a possible cause to exclude under §367.13. Rather, they become effective only upon the Ethics Counselor's decision to exclude the contractor pursuant to §367.16. *Provided further*, that the causes for exclusion set forth in §367.6(a)(1) through (4) reflect statutorily established mandatory bars to contracting with the FDIC.

(c) Except when one or more of the statutorily established mandatory bars to contracting are shown to exist, the existence of a cause for exclusion does not necessarily require that the contractor be excluded; the seriousness of the contractor's acts or omissions and any mitigating or aggravating circumstances shall be considered in making any exclusion decision.

### **§367.6 Causes for exclusion.**

The FDIC may exclude a contractor, in accordance with the procedures set forth in this part, upon a finding that:

(a) The contractor has been convicted of any felony;

(b) The contractor has been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, or the FDIC or their successors;

(c) The contractor has demonstrated a pattern or practice of defalcation;

(d) The contractor has caused a substantial loss to Federal deposit insurance funds;

(e) The contractor has failed to disclose, pursuant to 12 CFR 366.6, a material fact to the FDIC;

(f) The contractor has failed to disclose any material adverse change in the representations and certifications provided to FDIC under 12 CFR 366.6;

(g) The contractor has miscertified its status as a minority and/or woman owned business (MWOB);

(h) The contractor has a conflict of interest that was not waived by the Ethics Counselor or designee;

(i) The contractor has been subject to a final enforcement action by any federal financial institution regulatory agency, or has stipulated to such action;



- (j) The contractor is debarred from participating in other federal programs;
- (k) The contractor has been convicted of, or subject to a civil judgment for:
  - (1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, or conspiracy to do the same;
  - (2) Violation of federal or state antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging, or conspiracy to do the same;
  - (3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstructing of justice, or conspiracy to do the same;
  - (4) Commission of any other offense indicating a breach of trust, dishonesty or lack of integrity, or conspiracy to do the same;
- (l) The contractor's performance under previous contract(s) with FDIC or RTC has resulted in:
  - (1) The FDIC or RTC declaring such contract(s) to be in default; or
  - (2) The termination of such contract(s) for poor performance; or
  - (3) A violation of the terms of a contract that would have resulted in a default or termination of the contract for poor performance if that violation had been discovered during the course of the contract; or
- (m) The contractor has engaged in any conduct:
  - (1) Indicating a breach of trust, dishonesty, or lack of integrity that seriously and directly affects its ability to meet standards of present responsibility required of an FDIC contractor; or
  - (2) So serious or compelling in nature that it adversely affects the ability of a contractor to meet the minimum ethical standards required by 12 CFR part 366.

**§367.7 Suspensions.**

- (a) The Ethics Counselor may suspend a contractor for any of the causes in §367.8 using the procedures established in this section.
- (b) Suspension is an action to be imposed when there exists adequate evidence of one or more of the causes set out in §367.8. This includes, but is not limited to, situations where immediate action is necessary to protect the integrity of the FDIC contracting program and/or the security of FDIC assets during the pendency of legal or investigative proceedings initiated by FDIC, any federal agency or any law enforcement authority.
- (c) The duration of any suspension action shall be for a temporary period pending the completion of an investigation and such other legal proceedings as may ensue.
- (d) A suspension shall become effective immediately upon issuance of the notice specified in §367.13(b).
- (e) Contractors suspended from FDIC contracting programs are prohibited from entering into any new contracts with the FDIC for the duration of the period of suspension. The FDIC shall not solicit offers from, award contracts to, extend or modify existing contracts, award task orders under existing contracts, or consent to subcontracts with such contractors. Suspended contractors are also prohibited from conducting business with FDIC as agents or representatives of other contractors.

**§367.8 Causes for suspension.**

- (a) Suspension may be imposed under the procedures set forth in this section upon adequate evidence:
  - (1) Of suspension by another federal agency;
  - (2) That a cause for exclusion under §367.6 may exist;
  - (3) Of the commission of any other offense indicating a breach of trust, dishonesty, or lack of integrity that seriously and directly affects the minimum ethical standards required of an FDIC contractor; or
  - (4) Of any other cause so serious or compelling in nature that it adversely affects the ability of a contractor to meet the minimal ethical standards required by 12 CFR part 366.
- (b) Indictment for any offense described in §367.6 is adequate evidence to suspend a contractor.
- (c) In assessing the adequacy of the evidence, FDIC will consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated and what inferences can reasonably be drawn as a result.

**§367.9 Imputation of causes.**

- (a) Where there is cause to suspend and/or exclude any affiliated business entity of the contractor, that conduct may be imputed to the contractor if the conduct occurred in connection with the affiliated business entity's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.
- (b) Where there is cause to suspend and/or exclude any contractor, that conduct may be imputed to any affiliated business entity, key employee, or management official of a contractor who participated in, knew of or had reason to know of the contractor's conduct.
- (c) Where there is cause to suspend and/or exclude a key employee or management official of a contractor, that cause may be imputed to the contractor if the conduct occurred in connection with the key employee or management official's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(d) Where there is cause to suspend and/or exclude one contractor participating in a joint venture or similar arrangement, that cause may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(e) Where there is cause to suspend and/or exclude a subcontractor, that cause may be imputed to the contractor for which the subcontractor performed services, if the conduct occurred for or on behalf of the contractor and with the contractor's knowledge, approval, or acquiescence. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

#### **§§367.10-367.11 [Reserved]**

#### **§367.12 Procedures.**

(a) FDIC shall process suspension and exclusion actions as informally as practicable, consistent with its policy of providing contractors with adequate information on the grounds that give rise to the proposed action and affording contractors with a reasonable opportunity to respond.

(b) For purposes of determining filing dates for the pleadings required by this part, including responses, notices of appeal, appeals and requests for reconsideration, the provisions relating to the construction of time limits in 12 CFR 308.12 will control.

#### **§367.13 Notices.**

(a) *Exclusions.* Before excluding a contractor, the FDIC shall send it a written notice of possible cause to exclude. Such notice shall include:

(1) Notification that exclusion for a specified period of time is being considered based on the specified cause(s) in §367.6 to be relied upon;

(2) Identification of the event(s), circumstance(s), or condition(s) that indicates that there is cause to believe a cause for exclusion exists, described in sufficient detail to put the contractor on notice of the conduct or transaction(s) upon which an exclusion proceeding is based;

(3) Notification that the contractor is not prohibited from contracting with the FDIC unless and until it is either suspended from FDIC contracting or the FDIC Ethics Counselor issues a decision excluding the contractor, *provided however*, in any case where the possible cause for exclusion would also be an impediment to the contractor's eligibility pursuant to 12 CFR part 366, the contractor's eligibility for any contract will be determined under that part; and

(4) Notification of the regulatory provisions governing the exclusion proceeding and the potential effect of a final exclusion decision.

(b) *Suspensions.* Before suspending a contractor, the FDIC shall send it notice, including:

(1) Notice that a suspension is being imposed based on specified causes in §367.8;

(2) Identification of the event(s), circumstance(s), or condition(s) that indicate that there is adequate evidence to believe a cause for suspension exists, described in sufficient detail to put the contractor on notice of the basis for the suspension, recognizing that the conduct of ongoing investigations and legal proceedings, including criminal proceedings, place limitations on the evidence that can be released;

(3) Notification that the suspension prohibits the contractor from contracting with the FDIC for a temporary period, pending the completion of an investigation or other legal proceedings; and

(4) Notification of the regulatory provisions governing the suspension proceeding.

(c) *Service of notices.* Notices will be sent to the contractor by first class mail, postage prepaid. For purposes of compliance with this section, notice shall be considered to have been received by the contractor if the notice is properly mailed to the last known address of such contractor. Whenever practical, a copy of the notice will also be transmitted to the contractor by facsimile. In the event the notice is not sent by facsimile, a copy will be sent by an overnight delivery service such as Express Mail or a commercial equivalent.

#### **§367.14 Responses.**

(a) The contractor will have 15 days from the date of the notice within which to respond.

(b) The response shall be in writing and may include: information and argument in opposition to the proposed exclusion and/or suspension, including any additional specific information pertaining to the possible causes for exclusion; and information and argument in mitigation of the proposed period of exclusion.

(c) The response may request a meeting with an FDIC official identified in the notice to permit the contractor to discuss issues of fact or law relating to the suspension and/or proposed exclusion or to otherwise resolve the pending matters.

(1) Any such meetings between a contractor and FDIC shall take such form as the FDIC deems appropriate.

(2) In cases of suspensions, no meeting will be held where a representative of the Department of Justice has advised in writing that the substantial interests of the Government would be prejudiced by such a meeting and the Ethics Counselor determines that a suspension is based on the same facts as pending or contemplated legal proceedings referenced by the representative of the Department of Justice.

(d) Failure to respond to the notice shall be deemed an admission of the existence of the cause(s) for suspension and/or exclusion set forth in the notice and an acceptance of the period of exclusion proposed therein. In such circumstances, the FDIC may proceed to a final decision without further proceedings.

(e) Where a contractor has received more than one notice, the FDIC may consolidate the pending proceedings, including the scheduling of any meetings, in accordance with this section.

#### **§367.15 Additional proceedings as to disputed material facts.**

(a) In actions not based upon a conviction or civil judgment, if the Ethics Counselor finds that the contractor's submission raises a genuine dispute over facts material to the proposed suspension and/or exclusion, the contractor shall be afforded an opportunity to appear (with counsel, if desired), submit documentary evidence, present witnesses, and confront any witnesses the FDIC presents.

(b) The Ethics Counselor may refer disputed material facts to another official for analysis and recommendation.

(c) If requested, a transcribed record of any additional proceedings shall be made available at cost to the contractor.

#### **§367.16 Ethics Counselor decisions.**

(a) Standard of proof:

(1) An exclusion must be based on a finding that the cause(s) for exclusion is established by a preponderance of the evidence in the administrative record of the case; and

(2) A suspension must be based on a finding that the cause(s) for suspension is established by adequate evidence in the administrative record of the case.

(b) The administrative record consists of the portion of any information, reports, documents or other evidence identified and relied upon in the Notice of Possible Cause to Exclude, the Notice of Suspension and/or supplemental notices, if any, together with any material portions of the contractor's response. When additional proceedings are necessary to determine disputed material facts, the Ethics Counselor shall base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.

(c) In actions based upon a conviction, judgment, a final enforcement action by a federal financial institution regulatory agency, or in which all facts and circumstances material to the exclusion action have been finally adjudicated in another forum, the Ethics Counselor may exclude a contractor without regard to the procedures set out in §§367.13 and 367.14. Any such decisions will be subject to the review and reconsideration provisions of §367.20.

(d) *Notice of decisions.* Contractors shall be given prompt notice of the Ethics Counselor's decision in the manner described in §367.13(c). If the Ethics Counselor suspends a contractor or imposes a period of exclusion, the decision shall:

(1) Set forth the cause(s) for suspension and/or exclusion included in the notice that were found by a preponderance of the evidence with reference to the administrative record support for that finding;

(2) Set forth the effect of the exclusion action and the effective dates of that action;

(3) Refer the contractor to its procedural rights of review and reconsideration under §367.20; and

(4) Inform the contractor that a copy of the exclusion decision shall be placed in the FDIC Public Reading Room.

(e) If the FDIC Ethics Counselor decides that a period of exclusion is not warranted, the Notice of Possible Cause to Exclude may be withdrawn or the proceeding may be otherwise terminated. A decision to terminate an exclusion proceeding may include the imposition of appropriate conditions on the contractor in their future dealings with the FDIC.

#### **§367.17 Duration of suspensions and exclusions.**

(a) *Suspensions.* (1) Suspensions shall be for a temporary period pending the completion of an investigation or other legal or exclusion proceedings.

(2) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless a representative of the Department of Justice requests its extension in writing. In such cases, the suspension may be extended for an additional six months. In no event may a suspension be imposed for more than 18 months, unless such proceedings have been initiated within that period.

(3) FDIC shall notify the Department of Justice of an impending termination of a suspension at least 30 days before the 12-month period expires to give the Department of Justice an opportunity to request an extension.

(4) The time limitations for suspension in this section may be waived by the affected contractor.

(b) *Exclusions.* (1) Exclusions shall be for a period commensurate with the seriousness of the cause(s) after due consideration of mitigating evidence presented by the contractor.

(2) If a suspension precedes an exclusion, the suspension period shall be considered in determining the exclusion period.

(3) Exclusion for causes other than the mandatory bars in 12 CFR 366.4(a) generally should not exceed three years, but where circumstances warrant, a longer period of exclusion may be imposed.

(4) The Ethics Counselor may extend an existing exclusion for an additional period if the Ethics Counselor determines that an extension is necessary to protect the integrity of the FDIC contracting program and the public interest. However, an exclusion may not be extended solely on the basis of the facts and circumstances upon which the initial exclusion action was based. The standards and procedures in this part shall be applied in any proceeding to extend an exclusion.

#### **§367.18 Abrogation of contracts.**

(a) The FDIC may, in its discretion, rescind or terminate any contract in existence at the time a contractor is suspended or excluded.

(b) Any contract not rescinded or terminated shall continue in force in accordance with the terms thereof.

(c) The right to rescind or terminate a contract in existence is cumulative and in addition to any other remedies or rights the FDIC may have under the terms of the contract, at law, or otherwise.

**§367.19 Exceptions to suspensions and exclusions.**

(a) Exceptions to the effects of suspensions and exclusions may be available in unique circumstances, where there are compelling reasons to utilize a particular contractor for a specific task. Requests for such exceptions may be submitted only by the FDIC program office requesting the contract services.

(b) In the case of the modification or extension of an existing contract, the Ethics Counselor may except such a contracting action from the effects of suspension and/or exclusion upon a determination, in writing, that a compelling reason exists for utilization of the contractor in the particular instance. The Ethics Counselor's authority under this section shall not be delegated to any lower official.

(c) In the case of new contracts, the Corporation Ethics Committee may except a particular new contract from the effects of suspension and/or exclusion upon a determination in writing that a compelling reason exists for utilization of the contractor in the particular instance.

**§367.20 Review and reconsideration of Ethics Counselor decisions.**

(a) *Review.* (1) A suspended and/or excluded contractor may appeal the exclusion decision to the Corporation Ethics Committee.

(2) In order to avail itself of the right to appeal, a suspended and/or excluded contractor must file a written notice of intent to appeal within 5 days of the Ethics Counselor's decision.

(3) The appeal shall be filed in writing within 30 days of the decision.

(4) The Corporation Ethics Committee, at its discretion and after determining that it is in the best interests of the FDIC, may stay the effect of the suspension and/or exclusion pending conclusion of its review of the matter.

(b) *Reconsideration.* (1) A suspended and/or excluded contractor may submit a request to the Ethics Counselor to reconsider the suspension and/or exclusion decision, reduce the period of exclusion or terminate the suspension and/or exclusion.

(2) Such requests shall be in writing and supported by documentation that the requested action is justified by:

(i) Reversal of the conviction or civil judgment upon which the suspension and/or exclusion was based;

(ii) Newly discovered material evidence;

(iii) Bona fide change in ownership or management;

(iv) Elimination of other causes for which the suspension and/or exclusion was imposed; or

(v) Other reasons the FDIC Ethics Counselor deems appropriate.

(3) A request for reconsideration based on the reversal of the conviction or civil judgment may be filed at any time.

(4) Requests for reconsideration based on other grounds may only be filed during the period commencing 60 days after the Ethics Counselor's decision imposing the suspension and/or exclusion. Only one such request may be filed in any twelve month period.

(5) The Ethics Counselor's decision on a request for reconsideration is subject to the review procedure set forth in paragraph (a) of this section.







**SECTION VI – MODIFICATIONS (Continued)**


**SECTION VII – OPTIONS EXERCISED**

OPTION NUMBER	OPTION TERM	NOTICE OF EXERCISE TO CONTRACTOR	CUMULATIVE CEILING TOTAL
Option No. 1			
Option No. 2			
Option No. 3			

**SECTION VIII – PERFORMANCE EVALUATION REPORT (FORM 3700/24)**

REPORTING PERIOD	DUE DATE	DATE DELIVERED	DATE SENT TO CONTACTOR	DATE RECEIVED FROM CONTRACTOR
Base Period				
Option No. 1, if necessary				
Option No. 2, if necessary				
Option No. 3, if necessary				

**SECTION IX – CLAIMS**

DATE RECEIVED	AMOUNT CLAIMED	REASON FOR CLAIM	RESULT

**SECTION X – CONTRACT CLOSEOUT**

CATEGORY	ANTICIPATED DATE	ACTUAL DATE
All Deliverables Accepted		
FDIC Property Returned		
FDIC Records Returned		
Final Payment		
Release Obtained		
Contract File Complete		
File Archives		



**SECTION XI – OVERSIGHT MANAGER APPOINTMENT**

NAME	DATE	LETTER <i>(Place an "X" in the appropriate block.)</i>		FILES TRANSFERRED <i>(Place an "X" in the appropriate box.)</i>		DATE
		YES	NO	YES	NO	

Additional Comments

Name and Signature of Oversight Manager *(Please print and sign)*

Date Received by Oversight Manager

# OVERSIGHT MANAGER FILE CHECKLIST

RFP No.:	Description of Services:	Contract No.:	
Program Office:	Program Office Representative:	Program Office Report No.:	
Contract Award Date:	Contract Specialist:	Oversight Manager (OM):	OM Extension:
Contractor:		Point of Contact (POC):	POC Phone No.:
<input type="checkbox"/> CORPORATE <input type="checkbox"/> CORPORATE LIQUIDATOR <input type="checkbox"/> RECEIVERSHIP			
<input type="checkbox"/> CONTRACT <input type="checkbox"/> BASIC ORDERING AGREEMENT <input type="checkbox"/> TASK ORDER			

**INSTRUCTIONS:** Check below as appropriate. (if not applicable, check N/A)

ITEM #		IN	N/A
	<b>PART I – Contract Award Documentation</b>		
1	Executed Contract		
2	Executed Contract Modifications		
3	Insurance Certificates (specialized)		
4	Contractor's Proposal		
5	Contract Administration Plan		
6	Oversight Manager / Technical Monitor Letters		
7	OM/TM Notification to Contractor		

	<b>PART II – Contractor Performance / Administration Documentation</b>		
1	Contractor Reports		
2	Site Visit Documentation		
3	Performance Documentation / Evaluations		
4	Deliverable Inspection and Acceptance Documentation		
5	Contractor Performance Evaluation Form ( <i>see APM, 7.G.4.a.</i> )		
6	Subcontracting Plan		
7	Quarterly Subcontracting Activity Report		
8	Expenditure Authority/Invoices & Invoice Log		
9	Invoice Review Checklist		
10	Claims Material / Documentation		

	<b>PART III – Correspondence and Closeout</b>		
1	Post Award Correspondence		
2	Internal Emails		
3	Acceptance of Deliverables		
4	Pre-Exit Clearance Record for Contractors (3700/25)		
5	Final Payment Documentation		
6	Closeout Checklist		
7	Other Documentation ( <i>e.g., issues and problems</i> )		

**Federal Deposit Insurance Corporation  
APPRAISAL SERVICES INFORMATION**

**SECTION I - ASSIGNMENT AND PROPERTY IDENTIFICATION**

ASSET NAME

ADDRESS

CITY

STATE

ZIP CODE

COUNTY

LAMIS NUMBER

ASSESSOR'S PARCEL NUMBER

OWNER

TELEPHONE NUMBER (Including Area Code)  
( )

PROPERTY MANAGER OR CONTACT

COMPANY

TELEPHONE NUMBER (Including Area Code)  
( )

BROKER

COMPANY

TELEPHONE NUMBER (Including Area Code)  
( )

**A. SINGLE FAMILY RESIDENCE/1-4 MEMBER FAMILY** (Complete this section only if Appraisal Service is for Single Family Residence.)

INTEREST TO BE APPRAISED:       Fee Simple       Leased Fee       Leasehold       Undivided %  
 OCCUPANCY STATUS:       Yes       No       Owner       Tenant

BUILDING SIZE (SF)

LOT SIZE

**ADDITIONAL IMPROVEMENTS:**

Required Attachments:

- Title Commitment/Legal Description
- Lease (If Lease Fee or Leasehold)

Additional Attachments:

- Survey
- Repair Estimates
- Environmental Studies
- Other \_\_\_\_\_

**B. VACANT LAND** (Complete this section only if Appraisal Service is for Vacant Land.)

INTEREST TO BE APPLIED:       Fee Simple       Leased Fee       Leasehold       Undivided %

ZONING/USE

SUBDIVIDED

ACREAGE

VALUE PARCELS:       Single       Bulk       Both

NUMBER OF LOTS/PARCELS

**ADDITIONAL IMPROVEMENTS**

Required Attachments:

- Title Commitment/Legal Description
- If Subdivided, Legal Description of Individual Parcels

Additional Attachments:

- Survey
- Location Map
- Land Use Plan
- Environmental Studies
- Known or Suspected Land Use Restrictions
- Other \_\_\_\_\_

**C. IMPROVED COMMERCIAL PROPERTIES** (Complete this section only if Appraisal Service is for Improved Commercial Properties.)

INTEREST TO BE APPRAISED:  Fee Simple  Leased Fee  Leasehold  Undivided %  
 OCCUPANCY STATUS:  Yes  No  Owner  Tenant

PERCENT OCCUPIED	BUILDING SIZE (SF):	NUMBER OF TENANTS	STORIES	LAND SIZE
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FF&E:  Yes  No  Include  Do not Include

**ADDITIONAL IMPROVEMENTS**

Required Attachments:

- Title Commitment/Legal Description
- Current and Previous Year End Income/Expense Statement
- Lease(s) if Leased Fee or Leasehold or Rent Roll including all lease terms

Additional Attachments:

- As Built Survey
- Building Plans
- Repair Estimates
- Engineering Studies
- Environmental Studies
- ADA Compliance Study
- Other \_\_\_\_\_

**SECTION II – ACQUISITION PROCESS INFORMATION**

TECHNICAL EVALUATION CRITERIA (Not required if award is to be made on the basis of price only.)

PREVIOUS APPRAISAL DATA (NOTE: If two separate appraisals were previously ordered, add both appraisers.)

Last Appraised By: \_\_\_\_\_

SUGGESTED SOURCES (Complete if specific sources are requested to receive the solicitation.)

1.	NAME OF VENDOR	
	ADDRESS (Include City, State, and ZIP Code)	
2.	NAME OF VENDOR	
	ADDRESS (Include City, State, and ZIP Code)	
3.	NAME OF VENDOR	
	ADDRESS (Include City, State, and ZIP Code)	
4.	NAME OF VENDOR	
	ADDRESS (Include City, State, and ZIP Code)	
5.	NAME OF VENDOR	
	ADDRESS (Include City, State, and ZIP Code)	
6.	NAME OF VENDOR	
	ADDRESS (Include City, State, and ZIP Code)	

COST ESTIMATE (Required): \_\_\_\_\_

COMPLETED BY (Name of Account Officer)	DATE
--	------

Federal Deposit Insurance Corporation  
**CONTRACTOR PAST PERFORMANCE RFP REFERENCE CHECK  
 QUESTIONNAIRE**

**ESTIMATED REPORTING BURDEN**

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Assistant Executive Secretary (Administration), OES, Room F-4001, FDIC, Washington, D.C. 20429; and to the Office of Management and Budget, Paperwork Reduction Project (3064-0072), Washington, D.C. 20503.

**SECTION I – REFERENCE CHECK ON**

NAME OF CONTRACTOR \_\_\_\_\_

**SECTION II – FDIC RFP NO**

FDIC RFP NO.: \_\_\_\_\_

**SECTION III – REFERENCE INFORMATION**

COMPANY NAME \_\_\_\_\_

REFERENCE OBTAINED BY *(TEP MEMBER NAME)* \_\_\_\_\_

NAME OF INDIVIDUAL PROVIDING REFERENCE *(Please print or type)* \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

**SECTION IV – BACKGROUND**

The contract for which this contractor is being considered is for the following services: *(To be completed by the Contract Specialist)*

*DESCRIPTION OF CONTRACT: (Limit 5 Lines)*

**SECTION V – PERFORMANCE RATINGS**

Ask each reference to answer the following questions with a rating that is based on objective measurable performance indicators to the maximum extent possible. Commentary to support rating shall be noted on page 3.

For the following performance indicators, assign each area a rating. Indicate the answer by circling the appropriate number within each group rating of Unsatisfactory (0/1), Poor (2/3/4), Satisfactory (5/6), Very Good (7/8), or Outstanding (9/10). Use the attached Rating Guidelines as guidance in making these evaluations. Use "N/A" if reference does not have information to make a determination.

QUALITY OF PRODUCT OR SERVICE		UNSATISFACTORY	POOR	SATISFACTORY	VERY GOOD	OUTSTANDING
1. COMPLIANCE WITH CONTRACT REQUIREMENTS/STATEMENT OF WORK	RATING	0/1	2/3/4	5/6	7/8	9/10 N/A
.....						
2. TIMELINESS AND ACCURACY OF REPORTS	RATING	0/1	2/3/4	5/6	7/8	9/10 N/A
.....						
3. CAPABILITY/EFFECTIVENESS OF PERSONNEL	RATING	0/1	2/3/4	5/6	7/8	9/10 N/A
.....						
<b>COST CONTROL</b>						
1. RECORD OF CONTROLLING COST	RATING	0/1	2/3/4	5/6	7/8	9/10 N/A
.....						
2. CURRENT, ACCURATE, AND COMPLETE BILLINGS	RATING	0/1	2/3/4	5/6	7/8	9/10 N/A
.....						
<b>TIMELINESS OF PERFORMANCE</b>						
1. ADHERENCE TO SCHEDULE	RATING	0/1	2/3/4	5/6	7/8	9/10 N/A
.....						
2. RESPONSIVE TO TECHNICAL DIRECTION	RATING	0/1	2/3/4	5/6	7/8	9/10 N/A
.....						

<b>BUSINESS RELATIONS</b>		<b>UNSATISFACTORY</b>	<b>POOR</b>	<b>SATISFACTORY</b>	<b>VERY GOOD</b>	<b>OUTSTANDING</b>
1. EFFECTIVE MANAGEMENT, INCLUDING MANAGEMENT OF SUBCONTRACTORS	<b>RATING</b>	0/1	2/3/4	5/6	7/8	9/10 N/A
.....						
2. REASONABLE/COOPERATIVE BEHAVIOR	<b>RATING</b>	0/1	2/3/4	5/6	7/8	9/10 N/A
.....						
3. RESPONSIVE TO REQUESTS/PROBLEMS	<b>RATING</b>	0/1	2/3/4	5/6	7/8	9/10 N/A

**SUMMARY RATING:** (Add the ratings above and divide by the number of areas rated.)

**CUSTOMER SATISFACTION** (Circle Yes or No)

1. THE CONTRACTOR IS COMMITTED TO CUSTOMER SATISFACTION. .... **YES** **NO**
2. WOULD YOU HIRE THIS FIRM AGAIN? ..... **YES** **NO**

**ADDITIONAL COMMENTS**

**ADDITIONAL COMMENTS**

**RATINGS GUIDELINES**

<b>CRITERIA:</b>	<b>QUALITY OF PRODUCT OR SERVICE</b>	<b>COST CONTROL</b>	<b>TIMELINESS OF PERFORMANCE</b>	<b>BUSINESS RELATIONS</b>
	<ul style="list-style-type: none"> <li>- Compliance with contract requirements/Statement of Work</li> <li>- Timely and accuracy of reports</li> <li>- Capability and effectiveness of personnel</li> <li>- Technical excellence</li> </ul>	<ul style="list-style-type: none"> <li>- Record of controlling costs</li> <li>- Current, accurate, and complete billings</li> <li>- Relationship of the negotiated costs to actuals</li> <li>- Cost efficiencies</li> </ul>	<ul style="list-style-type: none"> <li>- Met interim milestones</li> <li>- Reliability</li> <li>- Responsive to technical direction</li> <li>- Completed on time including wrap-up and contract administration</li> <li>- Met delivery schedules</li> <li>- No liquidated damages assessed</li> </ul>	<ul style="list-style-type: none"> <li>- Effective management, including subcontracts</li> <li>- Reasonable/cooperative behavior</li> <li>- Responsive to contract requirements</li> <li>- Notification of problems</li> <li>- Flexibility</li> <li>- Pro-active vs reactive</li> </ul>
0/1 - UNSATISFACTORY	Contractor is not in compliance and is jeopardizing the achievement of contract objectives.	Contractor is unable to manage costs effectively.	Contractor delays are jeopardizing performance of contract objectives.	Response to inquiries, technical/service/administrative issues is not effective.
2/3/4 - POOR	Major problems have been encountered.	Contractor is having major difficulty in managing costs effectively.	Contractor is having major difficulty meeting milestones and delivery schedules.	Response to inquiries, technical/service/administrative issues is marginally effective.
5/6 - SATISFACTORY	Minor inefficiencies/errors have been identified.	Contractor is usually effective in managing costs.	Contractor is usually effective in meeting milestones and delivery schedules.	Response to inquiries, technical/service/administrative issues is usually effective.
7/8 - VERY GOOD	Contractor is in compliance with contract requirements and/or delivers quality products/services.	Contractor is effective in managing cost and submits current, accurate, and complete billings.	Contractor is effective in meeting milestones and delivery schedules.	Response to inquiries, technical/service/administrative issues is effective.
9/10 - OUTSTANDING	The contractor has demonstrated an outstanding performance level in any of the above four categories that justifies adding points to the score. It is expected that this rating will be used in those rare circumstances when contractor performance clearly exceeds the performance level described as "Very Good."			

Federal Deposit Insurance Corporation  
**PRE-EXIT CLEARANCE RECORD FOR CONTRACTORS**

**INSTRUCTIONS:** This form must be completed and submitted at least one week prior to the last day the contract is in effect. It is the responsibility of the Oversight Manager to take the necessary steps to ensure that proper clearance is secured. The Oversight Manager will obtain clearance from each appropriate office listed below.

1. Name of Contracting Employee <i>(Please print)</i>	2. Contract Number	3. Effective Date of Contract
4. Name of Contracting Firm	5. Name of Oversight Manager	6. Home Phone Number (     )
7. Contracting Firm Address <i>(Number, Street, City, State, and ZIP Code)</i>		

8. Type of Action *(Check applicable box)*

Contract Completion                       Other Specify \_\_\_\_\_

9. Office/Division	10. Designated Official's Signature, If Cleared	11. Date	12. Remarks
<b>A. OVERSIGHT MANAGER OR DESIGNEE</b>			
YES    NO    NA			
If no, explain under remarks.			
Office Equipment			
Publications/Manuals			
Property <i>(calculators, typewriters, etc.)</i>			
Other <i>(list)</i>			
<b>B. DIRM</b>			
Network/Software			
Users IDs			
Equipment <i>(pagers, cellular phones, etc.)</i>			
Other <i>(list)</i>			
<b>C. SECURITY MANAGEMENT SECTION OR FIELD FACILITY MANAGER</b>			
Parking Permits			
ID Badges			
Office Keys			
Access Cards			
Building Passes			
Other <i>(list)</i>			

13. Oversight Manager/Designee Certification *(Check one)*

I certify that all required levels of clearance  have been  have not been obtained.

Oversight Manger's Signature	Date
------------------------------	------

Remarks:

**PRIVACY ACT STATEMENT**

Collection of this information is authorized by section 9 of the Federal Deposit Insurance Act 12 (U.S.C. § 1819) and Executive Order 9397. The requested information will be used by FDIC personnel for clearing contractors separating from the Corporation and to ensure that all Corporation-owed property is returned to the FDIC. Disclosures of information on this form may be made to appropriate Federal or state agencies for enforcement if a violation or possible violation of civil or criminal law is discovered; to appropriate agencies or offices to the extent disclosure is necessary to carry out government-wide management, investigatory and adjudicatory functions; to the General Accounting Office for inspection by auditors; to a state of local licensing authority; and to a Congressional office in response to an inquiry made at the request of the individual. This information may also be disclosed in accordance with the other "routine uses of records" listed in the FDIC's Financial Information System, 30-64-0012. Your Social Security Number (SSN) is requested to ensure record accuracy. Completion of this form is voluntary, but failure to provide the requested information, including your SSN, may result in the delay of releasing the final payment on your contract with the FDIC.



# **FDIC Contractor Representations and Certifications**

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SUBMITTED BY:

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Contractor Name

# FDIC CONTRACTOR REPRESENTATIONS AND CERTIFICATIONS

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## **ESTIMATED REPORTING BURDEN**

Public reporting burden for this collection of information is estimated to average one-half hour per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Assistant Executive Secretary (Administration), OES, Room F-4001, Washington, D.C. 20429; and to the Office of Management and Budget, Paperwork Reduction Project (3064-0072), Washington, D.C. 20503.

## **PRIVACY ACT STATEMENT**

Collection of this information is authorized by the Federal Deposit Insurance Act, 12 U.S.C.) § 1819, 1821, and Executive Order 9397. This information will be primarily used to examine a contractor's compliance with FDIC contracting regulations for potential FDIC contract awards and the information provided may be disclosed to licensing authorities by the FDIC in so examining the contractor's compliance.

Information may also be disclosed to appropriate Federal, state, or local agencies for law enforcement purposes when a violation or possible violation of a civil or criminal law is apparent; to individuals involved in judicial or administrative proceedings; and to a Congressional office in response to an inquiry made at the individual's request. Information may also be disclosed in accordance with the other routine uses set forth in the FDIC's Financial Information System 30-64-0012. Furnishing the requested information, including your Social Security Number, is voluntary. However, failure to furnish all requested information may preclude you from receiving an FDIC contract.

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## FDIC CONTRACTOR REPRESENTATIONS AND CERTIFICATIONS

The following representations and certifications shall be executed by an official authorized to bind the offeror, and shall be returned with its proposal. These representations and certifications concern matters within the jurisdiction of an agency of the United States, and the making of a false, fictitious, or fraudulent statement may render the maker subject to prosecution under 18 United States Code (U.S.C.) § 1001, 1007, and 1014. For purposes of these representations and certifications, the Federal Deposit Insurance Corporation (FDIC) is considered an agency of the United States only with respect to its rights and remedies under 18 U.S.C. The offeror shall provide immediate written notice to the Contracting Officer, if, at any time prior to contract award, the offeror learns that one or more of the representations or certifications was erroneous when submitted or has become erroneous by reason of changed circumstances.

### 1. MINORITY AND WOMEN-OWNED BUSINESS REPRESENTATIONS

a.  It is,  it is not, a minority-owned business concern. A minority-owned business concern is defined as a firm in which at least 51% of the ownership and control is directly and unconditionally held by one or more minorities. A firm which is principally owned by another business entity or a trust (including employee stock ownership trusts) that is in turn owned and controlled by one or more minorities does not meet this definition. In the case of a firm which is a corporation, at least 51% of each class of voting stock outstanding, and 51% of the aggregate of all stock outstanding, must be unconditionally owned by one or more minorities. Additionally, the firm(s) management and daily business operations must be conducted by one or more of the qualifying minority owner(s). The minority individuals must have managerial experience of the extent and complexity needed to run the firm. A minority owner's unexercised right to cause a change in the control of management of the firm does not constitute minority control and management, regardless of how quickly or easily the right could be exercised.

b. If a minority-owned business, please check the appropriate box below indicating racial/ethnic category.

- American Indian/Alaska Native                       Asian     Black or African  
 Hispanic or Latino     Native Hawaiian or Other Pacific Islander

c.  It is,  it is not, a women-owned business. A women-owned business is defined as a firm in which at least 51% of the ownership and control is directly or unconditionally held by one or more women. A firm which is principally owned by another business entity or by a trust (including employee stock ownership trusts) that is in turn owned and controlled by one or more women does not meet this definition. In the case of a firm which is a corporation, at least 51% of each class of voting stock outstanding, and 51% of the aggregate of all stock outstanding, must be unconditionally owned by one or more women. Additionally, the firm(s) management and daily business operations must be conducted by one or more women. The women must have managerial experience of the extent and complexity needed to run the firm. A women owner's unexercised right to cause a change in control or management of the firm does not constitute minority control and management, regardless of how quickly or easily the right could be exercised.

d. If offeror is a minority or women-owned business, where did it hear about FDIC contracting opportunities.

- Convention/Procurement Fair     Minority and/or Women's Organization     Personal Contact  
 Current Solicitation                       Other (explain) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# FDIC CONTRACTOR REPRESENTATIONS AND CERTIFICATIONS

## 2. SMALL DISADVANTAGED BUSINESS CONCERN CERTIFICATION

[ ] It is, [ ] it is not, a small disadvantaged business concern that has been certified as a small disadvantaged business concern by the Small Business Administration, or [ ] it has filed an application with the Small Business Administration to be certified as a small disadvantaged business concern. A small disadvantaged business concern that has applied for but not yet received Small Business Administration certification may be entitled to treatment as a small disadvantaged business concern where certification can be obtained before the contract is awarded.

## 3. CERTIFICATE OF INDEPENDENT PRICE DETERMINATION

a. The offer certifies that:

- (1) The prices in this proposal have been arrived at independently, without, for the purposes of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer or (iii) the methods or factors used to calculate the prices offered;
- (2) The prices in this proposal have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before contract award unless otherwise required by law; and
- (3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit a proposal for the purpose of restricting competition.

b. Each signature on the proposal is considered to be a certification by the signatory that the signatory:

- (1) Is the person in the offeror's organization responsible within that organization for determining the prices being offered in this proposal, and that the signatory has not participated and will not participate in any action contrary to a.(1) through a.(3) above, or
- (2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs a.(1) through a.(3) above

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(insert full name of person(s) in the offeror's organization responsible or determining the prices offered in this proposal, and the title of his or her position in the offeror's organization);

(ii) As an authorized agent, certifies that the principals named in subdivision b.(2)(i) above have not participated, and will not participate I, in any action contrary to subparagraphs a.(1) through a.(3) above; and (iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs a.(1) through a.(3) above.

c. A proposal will not be considered for award where a.(1), a.(3) or b. above has been deleted or modified. If the offeror deleted or modifies a.(2) above, the offeror must furnish with its proposal a signed statement setting forth in detail the circumstances of the disclosure.

## FDIC CONTRACTOR REPRESENTATIONS AND CERTIFICATIONS

### 4. CONTINGENT FEE REPRESENTATION

Not applicable to proposals below \$100,000 or for the acquisition of commercial items.

The offeror represents that except for full-time bona fide employees working solely for the offeror, the offeror (a)  has,  has not, employed or retained any person or company to solicit or obtain this contract; and (b)  has,  has not, paid or agreed to pay any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract. The offeror agrees to provide information relating to this Representation as requested by the Contracting Officer when either (a) or (b) herein is answered affirmatively. As used herein, "bona fide employee" means a person, employed by an offeror or contractor and subject to the offeror's or the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain FDIC contracts, nor holds out as being able to obtain any FDIC contract or contracts through improper influence.

### 5. EQUAL OPPORTUNITY CERTIFICATION

a. Have you participated in any contractual agreement which contained the Equal Employment Opportunity provisions prescribed in Executive Order (E.O.) 11246?

Yes     No

b. Were you required pursuant to the rules and regulations of Equal Employment Opportunity (41 CFR 60-1) to file a compliance report as the result of such contractual agreement?

Yes     No

c. Did you file the necessary compliance report? (If "yes" answer questions d. and e.)

Yes     No

d. Name of agency requiring report. \_\_\_\_\_

e. When was report filed? \_\_\_\_\_

f. Has any action been required of you to improve your compliance posture?

Yes     No

g. Name and address of Government "Compliance Agency," if known

\_\_\_\_\_  
\_\_\_\_\_

h. What is your current employment? \_\_\_\_\_

i. Have you prepared a written affirmative action compliance program?

Yes     No

If "No," the reason for this is:

Offeror is an agency or instrumentality of state or local government.

Offeror employs less than 50 persons.

Offeror has not been awarded a Federal contract or subcontract since July 1, 1968.

## FDIC CONTRACTOR REPRESENTATIONS AND CERTIFICATIONS

j. Data on subcontractors. *(Use supplementary sheets where required.)*

### NAME OF SUBCONTRACTORS AND ADDRESSES

	(1)	(2)	(3)
	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes
	<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No
	(1)	(2)	(3)
	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes
	<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No

- (1) Previously held contracts subject to E.O. 11246.  
 (2) Previously filed certificate of nonsegregated facilities.  
 (3) Previously filed compliance report.

### 6. DUPLICATION OF COST

The offeror represents and certifies that any charges contemplated and included in its estimate of cost for performance are not duplicative of any charges against any other Government contract, subcontract, or other Government source.

### 7. CLEAN AIR AND WATER CERTIFICATION

*(Applicable if the offer exceeds \$100,000, or if the Contracting Officer has determined that orders under an indefinite quantity contract in any year will exceed \$100,000 or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. § 1857 c-8 (c) (1)), or the Federal Water Pollution Control Act (33 U.S.C. § 1819 (c)) and is listed by the Environmental Protection Agency (EPA), or is not otherwise exempt.)*

The offeror certifies as follows:

- a. Any facility to be utilized in the performance of this proposed contract [ ] has, [ ] has not, been listed on the EPA list of violating facilities.
- b. It will promptly notify the Contracting Officer, prior to award, of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that any facility which it proposes to use for the performance of the contract is under consideration to be listed on the EPA list of violating facilities.
- c. It will include substantially this certification, including this paragraph c., in every nonexempt subcontract.

## FDIC CONTRACTOR REPRESENTATIONS AND CERTIFICATIONS

### 8. CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

*Applicable to contracts exceeding \$100,000.*

a. The offeror certifies that, to the best of its knowledge and belief, the following statements are true:

- (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.

Yes       No

- (2) No nonappropriated funds (including profit or fee received under a covered Federal Transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the solicitation associated with this certification.

Yes       No

If the offeror has checked the "No" box at 9a. (2) above, indicating that any funds other than Federal appropriated funds (including profit or fee received under a covered Federal Transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, "Disclosure of Lobbying Activities" (available upon request) to the Contracting Officer.

- b. The offeror certifies that it will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
- c. Submission of this certification and disclosure, and when required, a completed OMB Standard Form LLL is a prerequisite for making or entering into this contract imposed by 31 U.S.C. § 1352. Any person who makes an expenditure prohibited under the contract provision entitled "Limitation on Payments to Influence Certain Federal Transactions" in the FDIC General Provisions, or who fails to file or amend the disclosure form to be filed or amended with this certification, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each failure.



## FDIC CONTRACTOR REPRESENTATIONS AND CERTIFICATIONS

### 9. SIGNATURE

By signature hereto, the offeror certifies that all of the representations and certifications contained in its proposal are complete and accurate as required by this solicitation, and that it is aware of the penalty prescribed in 18 U.S.C. § 1001 for making false statements in proposals. The offeror also agrees to notify the FDIC in writing, within 10 days, after discovering that it or any person performing services under an FDIC contract has any of the disqualifying conditions contained within the representations and certifications. Such notification shall contain a detailed description of the disqualifying condition and may include a statement of how the offeror intends to resolve such condition. Further, the offeror by signature hereto gives express authorization and consent to the FDIC for the FDIC to release information contained herein to licensing authorities in the FDIC's examination of the contractor's compliance with FDIC non-ethics contracting regulations.

SOLICITATION NUMBER		
NAME OF OFFEROR <i>(Please print or type)</i>	OFFEROR'S TAX IDENTIFICATION NUMBER (TIN)	
TITLE		
NAME OF OFFEROR'S FIRM	OFFEROR'S TELEPHONE NUMBER  (    )	
OFFICE ADDRESS		
CITY	STATE	ZIP CODE
SIGNATURE		DATE SIGNED

EQUAL EMPLOYMENT OPPORTUNITY

September 24, 1965

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Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

**PART I--NONDISCRIMINATION IN GOVERNMENT EMPLOYMENT**

SEC. 101.

It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all qualified persons, to prohibit discrimination in employment because of race, creed, color, or national origin, and to promote the full realization of equal employment opportunity through a positive, continuing program in each executive department and agency. The policy of equal opportunity applies to every aspect of Federal employment policy and practice.

SEC. 102.

The head of each executive department and agency shall establish and maintain a positive program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in Section 101.

SEC. 103.

The Civil Service Commission shall supervise and provide leadership and guidance in the conduct of equal employment opportunity programs for the civilian employees of and applications for employment within the executive departments and agencies and shall review agency program accomplishments periodically. In order to facilitate the achievement of a model program for equal employment opportunity in the Federal service, the Commission may consult from time to time with such individuals, groups, or organizations as may be of assistance in improving the Federal program and realizing the objectives of this Part.

SEC. 104.

The Civil Service Commission shall provide for the prompt, fair, and impartial consideration of all complaints of discrimination in Federal employment on the basis of race, creed, color, or national origin. Procedures for the consideration of complaints shall include at least one impartial review within the executive department or agency and shall provide for appeal to the Civil Service Commission.

SEC. 105.

The Civil Service Commission shall issue such regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities under this Part, and the head of each executive department and agency shall comply with the regulations, orders, and instructions issued by the Commission under this Part.

**PART II--NONDISCRIMINATION IN EMPLOYMENT BY GOVERNMENT CONTRACTORS AND SUBCONTRACTORS**

**SUBPART A--DUTIES OF THE SECRETARY OF LABOR**

SEC. 201.

The Secretary of Labor shall be responsible for the administration of Parts II and III of this Order and shall adopt such rules and regulations and issue such orders as he deems necessary and appropriate to achieve the purposes thereof.

**SUBPART B--CONTRACTORS' AGREEMENTS**

SEC. 202.

Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

"During the performance of this contract, the contractor agrees as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

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"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(7) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rule, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

#### SEC. 203.

(a) Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: Provided, That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the contracting agency as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

(d) The contracting agency or the Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, creed, or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this Order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the Order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Secretary of Labor may require.

#### SEC. 204.

The Secretary of Labor may, when he deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order. The Secretary of Labor may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the contract: Provided, That such an exemption will not interfere with or impede the effectuation of the purposes of this Order: And provided further, That in the absence of such an exemption all facilities shall be covered by the provisions of this Order.

## **SUBPART C--POWERS AND DUTIES OF THE SECRETARY OF LABOR AND THE CONTRACTING AGENCIES**

### **SEC. 205.**

Each contracting agency shall be primarily responsible for obtaining compliance with the rules, regulations, and orders of the Secretary of Labor with respect to contracts entered into by such agency or its contractors. All contracting agencies shall comply with the rules of the Secretary of Labor in discharging their primary responsibility for securing compliance with the provisions of contracts and otherwise with the terms of this Order and of the rules, regulations, and orders of the Secretary of Labor issued pursuant to this Order. They are directed to cooperate with the Secretary of Labor and to furnish the Secretary of Labor such information and assistance as he may require in the performance of his functions under this Order. They are further directed to appoint or designate, from among the agency's personnel, compliance officers. It shall be the duty of such officers to seek compliance with the objectives of this Order by conference, conciliation, mediation, or persuasion.

### **SEC. 206.**

(a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor, or initiate such investigation by the appropriate contracting agency, to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor and the investigating agency shall report to the Secretary of Labor any action taken or recommended.

(b) The Secretary of Labor may receive and investigate or cause to be investigated complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order. If this investigation is conducted for the Secretary of Labor by a contracting agency, that agency shall report to the Secretary what action has been taken or is recommended with regard to such complaints.

### **SEC. 207.**

The Secretary of Labor shall use his best efforts, directly and through contracting agencies, other interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 or other provision of Federal law.

### **SEC. 208.**

(a) The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

(b) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection (a) of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(a)(6) shall be made without affording the contractor an opportunity for a hearing.

## **SUBPART D--SANCTIONS AND PENALTIES**

### **SEC. 209.**

(a) In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary or the appropriate contracting agency may:

(1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.

(2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.

(3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964.

(4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.

(5) Cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with the non-discrimination provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the contracting agency.

(6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.

(b) Under rules and regulations prescribed by the Secretary of Labor, each contracting agency shall make reasonable efforts within a reasonable time limitation to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and

persuasion before proceedings shall be instituted under Subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under Subsection (a)(5) of this Section for failure of a contractor or subcontractor to comply with the contract provisions of this Order.

SEC. 210.

Any contracting agency taking any action authorized by this Subpart, whether on its own motion, or as directed by the Secretary of Labor, or under the rules and regulations of the Secretary, shall promptly notify the Secretary of such action. Whenever the Secretary of Labor makes a determination under this Section, he shall promptly notify the appropriate contracting agency of the action recommended. The agency shall take such action and shall report the results thereof to the Secretary of Labor within such time as the Secretary shall specify.

SEC. 211.

If the Secretary shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor or, if the Secretary so authorizes, to the contracting agency.

SEC. 212.

Whenever a contracting agency cancels or terminates a contract, or whenever a contractor has been debarred from further Government contracts, under Section 209(a)(6) because of noncompliance with the contract provisions with regard to nondiscrimination, the Secretary of Labor, or the contracting agency involved, shall promptly notify the Comptroller General of the United States. Any such debarment may be rescinded by the Secretary of Labor or by the contracting agency which imposed the sanction.

**SUBPART E--CERTIFICATES OF MERIT**

SEC. 213.

The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this Order.

SEC. 214.

Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

SEC. 215.

The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

**PART III--NONDISCRIMINATION PROVISIONS IN FEDERALLY ASSISTED CONSTRUCTION CONTRACTS**

SEC. 301.

Each executive department and agency which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 202 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the administering department or agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations, and relevant orders of the Secretary, (2) to obtain and to furnish to the administering department or agency and to the Secretary of Labor such information as they may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor or the administering department or agency pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

SEC. 302.

(a) "Construction contract" as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.

(c) The term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he becomes a recipient of such Federal assistance.

SEC. 303.

(a) Each administering department and agency shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor, and to furnish the Secretary such information and assistance as he may require in the performance of his functions under this Order.

(b) In the event an applicant fails and refuses to comply with his undertakings, the administering department or agency may take any or all of the following actions: (1) cancel, terminate, or suspend in whole or in part the agreement, contract, or other arrangement with such applicant with respect to which the failure and refusal occurred; (2) refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such applicant; and (3) refer the case to the Department of Justice for appropriate legal proceedings.

(c) Any action with respect to an applicant pursuant to Subsection (b) shall be taken in conformity with Section 602 of the Civil Rights Act of 1964 (and the regulations of the administering department or agency issued thereunder), to the extent applicable. In no case shall action be taken with respect to an applicant pursuant to Clause (1) or (2) of Subsection (b) without notice and opportunity for hearing before the administering department or agency.

SEC. 304.

Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: Provided, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof and the regulations of the administering department or agency issued thereunder.

**PART IV--MISCELLANEOUS**

SEC. 401.

The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order, except authority to promulgate rules and regulations of a general nature.

SEC. 402.

The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

SEC. 403.

(a) Executive Orders Nos. 10590 (January 19, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Civil Service Commission and the Secretary of Labor, as appropriate.

(b) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

SEC. 404.

The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

SEC. 405.

This Order shall become effective thirty days after the date of this Order.

LYNDON B. JOHNSON  
THE WHITE HOUSE,  
September 24, 1965.

Exec. Order No. 11246, 30 FR 12319, 1965 WL 7913 (Pres.)

**AMENDING EXECUTIVE ORDER NO 11246, RELATING TO EQUAL EMPLOYMENT OPPORTUNITY**

**October 13, 1967**

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It is the policy of the United States Government to provide equal opportunity in Federal employment and in employment by Federal contractors on the basis of merit and without discrimination because of race, color, religion, sex or national origin.

The Congress, by enacting Title VII of the Civil Rights Act of 1964, enunciated a national policy of equal employment opportunity in private employment, without discrimination because of race, color, religion, sex or national origin.

Executive Order No. 11246 [FN1] of September 24, 1965, carried forward a program of equal employment opportunity in Government employment, employment by Federal contractors and subcontractors and employment under Federally assisted construction contracts regardless of race, creed, color or national origin.

It is desirable that the equal employment opportunity programs provided for in Executive Order No. 11246 expressly embrace discrimination on account of sex.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered that Executive Order No. 11246 of September 24, 1965, be amended as follows:

(1) Section 101 of Part I, concerning nondiscrimination in Government employment, is revised to read as follows:

"SEC. 101. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all qualified persons, to prohibit discrimination in employment because of race, color, religion, sex or national origin, and to promote the full realization of equal employment opportunity through a positive, continuing program in each executive department and agency. The policy of equal opportunity applies to every aspect of Federal employment policy and practice."

(2) Section 104 of Part I is revised to read as follows:

"SEC. 104. The Civil Service Commission shall provide for the prompt, fair, and impartial consideration of all complaints of discrimination in Federal employment on the basis of race, color, religion, sex or national origin. Procedures for the consideration of complaints shall include at least one impartial review within the executive department or agency and shall provide for appeal to the Civil Service Commission."

(3) Paragraphs (1) and (2) of the quoted required contract provisions in section 202 of Part II, concerning nondiscrimination in employment by Government contractors and subcontractors, are revised to read as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin."

(4) Section 203(d) of Part II is revised to read as follows:

"d) The contracting agency or the Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Secretary of Labor may require."

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The amendments to Part I shall be effective 30 days after the date of this order. The amendments to Part II shall be effective one year after the date of this order.

Lyndon B. Johnson  
THE WHITE HOUSE,  
October 13, 1967.

FN1 30 F.R. 12319; 3 CFR, 1964-1965 Comp., p. 339  
Exec. Order No. 11375, 32 FR 14303, 1967 WL 7772 (Pres.)



**EQUAL EMPLOYMENT OPPORTUNITY IN THE FEDERAL GOVERNMENT**

**August 8, 1969**

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It has long been the policy of the United States Government to provide equal opportunity in Federal employment on the basis of merit and fitness and without discrimination because of race, color, religion, sex, or national origin. All recent Presidents have fully supported this policy, and have directed department and agency heads to adopt measures to make it a reality.

As a result, much has been accomplished through positive agency programs to assure equality of opportunity. Additional steps, however, are called for in order to strengthen and assure fully equal employment opportunity in the Federal Government.

NOW, THEREFORE, under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

SECTION 1.

It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal Government.

SECTION 2.

The head of each executive department and agency shall establish and maintain an affirmative program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in section 1. It is the responsibility of each department and agency head, to the maximum extent possible, to provide sufficient resources to administer such a program in a positive and effective manner; assure that recruitment activities reach all sources of job candidates; utilize to the fullest extent the present skills of each employee; provide the maximum feasible opportunity to employees to enhance their skills so they may perform at their highest potential and advance in accordance with their abilities; provide training and advice to managers and supervisors to assure their understanding and implementation of the policy expressed in this Order; assure participation at the local level with other employers, schools, and public or private groups in cooperative efforts to improve community conditions which affect employability; and provide for a system within the department or agency for periodically evaluating the effectiveness with which the policy of this Order is being carried out.

SECTION 3.

The Civil Service Commission shall provide leadership and guidance to departments and agencies in the conduct of equal employment opportunity programs for the civilian employees of and applicants for employment within the executive departments and agencies in order to assure that personnel operations in Government departments and agencies carry out the objective of equal opportunity for all persons. The Commission shall review and evaluate agency program operations periodically, obtain such reports from departments and agencies as it deems necessary, and report to the President as appropriate on overall progress. The Commission will consult from time to time with such individuals, groups, or organizations as may be of assistance in improving the Federal program and realizing the objectives of this Order.

SECTION 4.

The Civil Service Commission shall provide for the prompt, fair, and impartial consideration of all complaints of discrimination in Federal employment on the basis of race, color, religion, sex, or national origin. Agency systems shall provide access to counseling for employees who feel aggrieved and shall encourage the resolution of employee problems on an informal basis. Procedures for the consideration of complaints shall include at least one impartial review within the executive department or agency and shall provide for appeal to the Civil Service Commission.

SECTION 5.

The Civil Service Commission shall issue such regulations, orders, and instructions as it deems necessary and appropriate to carry out this Order and assure that the executive branch of the Government leads the way as an equal opportunity employer, and the head of each executive department and agency shall comply with the regulations, orders, and instructions issued by the Commission under this Order.

SECTION 6.

This Order applies (a) to military departments as defined in section 102 of title 5, United States Code, and executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code, and to the employees thereof (including employees paid from nonappropriated funds), and (b) to those portions of the legislative and judicial branches of the Federal Government and of the Government of the District of Columbia having positions in the competitive service and to the employees in those positions. This Order does not apply to aliens employed outside the limits of the United States.

SECTION 7.

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Part I of Executive Order No. 11246 of September 24, 1965, and those parts of Executive Order No. 11375 of October 13, 1967, which apply to Federal employment, are hereby superseded.

Richard Nixon  
THE WHITE HOUSE,  
August 8, 1969.

Exec. Order No. 11478, 34 FR 12985, 1969 WL 9664 (Pres.)

**Consolidation of Contract Compliance Functions for Equal Employment Opportunity**

**October 5, 1978**

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By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c), in order to provide for the transfer to the Department of Labor of certain contract compliance functions relating to equal employment opportunity, it is hereby ordered as follows:

**1-1. Transfer of Functions.**

1-101. The functions concerned with being primarily responsible for the enforcement of the equal employment opportunity provisions under Parts II and III of Executive Order No. 11246, as amended, are transferred or reassigned to the Secretary of Labor from the following agencies:

- a) Department of the Treasury.
- b) Department of Defense.
- c) Department of the Interior.
- d) Department of Commerce.
- e) Department of Health, Education, and Welfare.
- f) Department of Housing and Urban Development.
- g) Department of Transportation.
- h) Department of Energy.
- i) Environmental Protection Agency.
- j) General Services Administration.
- k) Small Business Administration.

1-102. The records, property, personnel and positions, and unexpended balances of appropriations or funds related to the functions transferred or reassigned by this Order, that are available and necessary to finance or discharge those functions, are transferred to the Secretary of Labor.

1-103. The Director of the Office of Management and Budget shall make such determinations, issue such orders, and take all actions necessary or appropriate to effectuate the transfers or reassignments provided by this Order, including the transfer of funds, records, property, and personnel.

**1-2. Conforming Amendments to Executive Order No. 11246.**

1-201(a). In order to reflect the transfer of enforcement responsibility to the Secretary of Labor, Section 201 of Executive Order No. 11246, as amended, is amended to read:

"Sec. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order."

(b) Paragraph (7) of the contract clauses specified in Section 202 of Executive Order No. 11246, as amended, is amended to read:

"(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

1-202. In subsection (c) of Section 203 of Executive Order No. 11246, as amended, delete "contracting agency" in the proviso and substitute "Secretary of Labor" therefor.

1-203. In both the beginning and end of subsection (d) of Section 203 of Executive Order No. 11246, as amended, delete "contracting agency or the" in the phrase "contracting agency or the Secretary."

1-204. Section 205 of Executive Order No. 11246, as amended, is amended by deleting the last two sentences, which dealt with agency designation of compliance officers, and revising the rest of that Section to read:

"Sec. 205. The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require."

1-205. In order to delete references to the contracting agencies conducting investigations, Section 206 of Executive Order No. 11246, as amended, is amended to read:

"Sec. 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.

"(b) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order."

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1-206. In Section 207 of Executive Order No. 11246, as amended, delete "contracting agencies, other" in the first sentence.

1-207. The introductory clause in Section 209(a) of Executive Order No. 11246, as amended, is amended by deleting "or the appropriate contracting agency" from "In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary or the appropriate contracting agency may:".

1-208. In paragraph (5) of Section 209(a) of Executive Order No. 11246, as amended, insert at the beginning the phrase "After consulting with the contracting agency, direct the contracting agency to", and at the end of paragraph (5) delete "contracting agency" and substitute therefor "Secretary of Labor" so that paragraph (5) is amended to read:

"(5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor."

1-209. In order to reflect the transfer from the agencies to the Secretary of Labor of the enforcement functions, substitute "Secretary of Labor" for "each contracting agency" in Section 209(b) of Executive Order No. 11246, as amended, so that Section 209(b) is amended to read:

"(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section."

1-210. In order to reflect the responsibility of the contracting agencies for prompt compliance with the directions of the Secretary of Labor, Sections 210 and 211 of Executive Order No. 11246, as amended, are amended to read:

"Sec. 210. Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.

"Sec. 211. If the Secretary of Labor shall so direct, contracting agencies shall not enter into contracts with any bidder of prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor."

1-211. Section 212 of Executive Order No. 11246, as amended, is amended to read:

"Sec. 212. When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States."

1-212. In order to reflect the transfer of enforcement responsibility to the Secretary of Labor, references to the administering department or agency are deleted in clauses (1), (2), and (3) of Section 301 of Executive Order No. 11246, as amended, and those clauses are amended to read:

"(1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order."

1-213. In order to reflect the transfer from the agencies to the Secretary of Labor of the enforcement functions "Secretary of Labor" shall be substituted for "administering department or agency" in Section 303 of Executive Order No. 11246, as amended, and Section 303 is amended to read:

"Sec. 303(a). The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.

"(b) In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.

"(c) In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing."

1-214. Section 401 of Executive Order No. 11246, as amended, is amended to read:

"Sec. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order."

### **1-3. General Provisions.**

1-301. The transfers or reassignments provided by Section 1-1 of this Order shall take effect at such time or times as the Director of the Office of Management and Budget shall determine. The Director shall ensure that all such transfers or reassignments take effect within 60 days.

1-302. The conforming amendments provided by Section 1-2 of this Order shall take effect on October 8, 1978; except that, with respect to those agencies identified in Section 1-101 of this Order, the conforming amendments shall be effective on the effective date of the transfer or reassignment of functions as specified pursuant to Section 1-301 of this Order.

JIMMY CARTER  
THE WHITE HOUSE,  
October 5, 1978.  
Exec. Order No. 12086, 43 FR 46501, 1978 WL 21943 (Pres.)

**TITLE 41--PUBLIC CONTRACTS AND PROPERTY MANAGEMENT**

**CHAPTER 60--OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, EQUAL EMPLOYMENT OPPORTUNITY,  
DEPARTMENT OF LABOR**

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**PART 60-1--OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS--Table of Contents**

**Subpart A--Preliminary Matters; Equal Opportunity Clause; Compliance Reports**

**Sec. 60-1.1 Purpose and application.**

The purpose of the regulations in this part is to achieve the aims of parts II, III, and IV of Executive Order 11246 for the promotion and insuring of equal opportunity for all persons, without regard to race, color, religion, sex, or national origin, employed or seeking employment with Government contractors or with contractors performing under federally assisted construction contracts. The regulations in this part apply to all contracting agencies of the Government and to contractors and subcontractors who perform under Government contracts, to the extent set forth in this part. The regulations in this part also apply to all agencies of the Government administering programs involving Federal financial assistance which may include a construction contract, and to all contractors and subcontractors performing under construction contracts which are related to any such programs. The procedures set forth in the regulations in this part govern all disputes relative to a contractor's compliance with his obligations under the equal opportunity clause regardless of whether or not his contract contains a "Disputes" clause. Failure of a contractor or applicant to comply with any provision of the regulations in this part shall be grounds for the imposition of any or all of the sanctions authorized by the order. The regulations in this part do not apply to any action taken to effect compliance with respect to employment practices subject to title VI of the Civil Rights Act of 1964. The rights and remedies of the Government hereunder are not exclusive and do not affect rights and remedies provided elsewhere by law, regulation, or contract; neither do the regulations limit the exercise by the Secretary or Government agencies of powers not herein specifically set forth, but granted to them by the order.

**Sec. 60-1.2 Administrative responsibility.**

The Deputy Assistant Secretary has been delegated authority and assigned responsibility for carrying out the responsibilities assigned to the Secretary under the Executive Order. All correspondence regarding the order should be directed to the Deputy Assistant Secretary, Office of Federal Contract Compliance Programs, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.  
[43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

**Sec. 60-1.3 Definitions.**

"Administering agency" means any department, agency and establishment in the executive branch of the Government, including any wholly owned Government corporation, which administers a program involving federally assisted construction contracts.

"Administrative law judge" means an administrative law judge appointed as provided in 5 U.S.C. 3105 and Subpart B of Part 930 of Title 5 of the Code of Federal Regulations (see 37 FR 16787) and qualified to preside at hearings under 5 U.S.C. 557.

"Agency" means any contracting or any administering agency of the Government.

"Applicant" means an applicant for Federal assistance involving a construction contract, or other participant in a program involving a construction contract as determined by regulation of an administering agency. The term also includes such persons after they become recipients of such Federal assistance.

"Compliance evaluation" means any one or combination of actions OFCCP may take to examine a Federal contractor or subcontractor's compliance with one or more of the requirements of Executive Order 11246.

"Construction work" means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

"Contract" means any Government contract or subcontract or any federally assisted construction contract or subcontract.

"Contracting agency" means any department, agency, establishment, or instrumentality in the executive branch of the Government, including any wholly owned Government corporation, which enters into contracts.

"Contractor" means, unless otherwise indicated, a prime contractor or subcontractor.

"Deputy Assistant Secretary" means the Deputy Assistant Secretary for Federal Contract Compliance, United States Department of Labor, or his or her designee.

"Equal opportunity clause" means the contract provisions set forth in Sec. 60-1.4 (a) or (b), as appropriate.

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"Federally assisted construction contract" means any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

"Government" means the government of the United States of America.

"Government contract" means any agreement or modification thereof between any contracting agency and any person for the purchase, sale or use of personal property or nonpersonal services. The term "personal property," as used in this section, includes supplies and contracts for the use of real property (such as lease arrangements), unless the contract for the use of real property itself constitutes real property (such as easements). The term "nonpersonal services" as used in this section includes, but is not limited to, the following services: Utilities, construction, transportation, research, insurance, and fund depository. The term Government contract does not include:

- (1) Agreements in which the parties stand in the relationship of employer and employee; and
- (2) Federally assisted construction contracts.

"Minority group" as used herein shall include, where appropriate, female employees and prospective female employees.

"Modification" means any alteration in the terms and conditions of a contract, including supplemental agreements, amendments, and extensions.

"Order," "Executive Order," or "Executive Order 11246" means parts II, III, and IV of the Executive Order 11246 dated September 24, 1965 (30 FR 12319), any Executive order amending such order, and any other Executive order superseding such order.

"Person" means any natural person, corporation, partnership, unincorporated association, State or local government, and any agency, instrumentality, or subdivision of such a government.

"Prime contractor" means any person holding a contract and, for the purposes of Subpart B of this part, any person who has held a contract subject to the order.

"Recruiting and training agency" means any person who refers workers to any contractor or subcontractor or who provides for employment by any contractor or subcontractor.

"Rules, regulations, and relevant orders of the Secretary of Labor" used in paragraph (4) of the equal opportunity clause means rules, regulations, and relevant orders of the Secretary of Labor or his designee issued pursuant to the order.

"Secretary" means the Secretary of Labor, U.S. Department of Labor, or his or her designee.

"Site of construction" means the general physical location of any building, highway, or other change or improvement to real property which is undergoing construction, rehabilitation, alteration, conversion, extension, demolition, or repair, and any temporary location or facility at which a contractor, subcontractor, or other participating party meets a demand or performs a function relating to the contract or subcontract.

"Subcontract" means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

- (1) For the purchase, sale or use of personal property or nonpersonal services which, in whole or in part, is necessary to the performance of any one or more contracts; or
- (2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken or assumed.

"Subcontractor" means any person holding a subcontract and, for the purposes of Subpart B of this part, any person who has held a subcontract subject to the order. The term "first-tier subcontractor" refers to a subcontractor holding a subcontract with a prime contractor.

"United States," as used herein, shall include the several States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Wake Island.  
[43 FR 49240, Oct. 20, 1978, as amended at 61 FR 19988, May 3, 1996; 62 FR 44188, Aug. 19, 1997; 62 FR 66971, Dec. 22, 1997]

#### **Sec. 60-1.4 Equal opportunity clause.**

(a) Government contracts. Except as otherwise provided, each contracting agency shall include the following equal opportunity clause contained in section 202 of the order in each of its Government contracts (and modifications thereof if not included in the original contract):

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) the contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(b) Federally assisted construction contracts. (1) Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.



The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions:

Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(c) Subcontracts. Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

(d) Incorporation by reference. The equal opportunity clause may be incorporated by reference in all Government contracts and subcontracts, including Government bills of lading, transportation requests, contracts for deposit of Government funds, and contracts for issuing and paying U.S. savings bonds and notes, and such other contracts and subcontracts as the Deputy Assistant Secretary may designate.

(e) Incorporation by operation of the order. By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order and the regulations in this part to include such a clause whether or not it is physically incorporated in such contracts and whether or not the contract between the agency and the contractor is written.

(f) Adaptation of language. Such necessary changes in language may be made in the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.  
[43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

#### **Sec. 60-1.5 Exemptions.**

(a) General--(1) Transactions of \$10,000 or under. Contracts and subcontracts not exceeding \$10,000, other than Government bills of lading, and other than contracts and subcontracts with depositories of Federal funds in any amount and with financial institutions which are issuing and paying agents for U.S. savings bonds and savings notes, are exempt from the requirements of the equal opportunity clause. In determining the applicability of this exemption to any federally assisted construction contract, or subcontract thereunder, the amount of such contract or subcontract rather than the amount of the Federal financial assistance shall govern. No agency, contractor, or subcontractor shall procure supplies or services in a manner so as to avoid applicability of the equal opportunity clause: Provided, that where a contractor has contracts or subcontracts with the Government in any 12-month period which have an aggregate total value (or can reasonably be expected to have an aggregate total value) exceeding \$10,000, the \$10,000 or under exemption does not apply, and the contracts are subject to the order and the regulations issued pursuant thereto regardless of whether any single contract exceeds \$10,000.

(2) Contracts and subcontracts for indefinite quantities. With respect to contracts and subcontracts for indefinite quantities (including, but not limited to, open end contracts, requirement-type contracts, Federal Supply Schedule contracts, "call-type" contracts, and purchase notice agreements), the equal opportunity clause shall be included unless the purchaser has reason to believe that the amount to be ordered in any year under such contract will not exceed \$10,000. The applicability of the equal opportunity clause shall be determined by the purchaser at the time of award for the first year, and annually thereafter for succeeding years, if any. Notwithstanding the above, the equal opportunity clause shall be applied to such contract whenever the amount of a single order exceeds \$10,000. Once the equal opportunity clause is determined to be applicable, the contract shall continue to be subject to such clause for its duration, regardless of the amounts ordered, or reasonably expected to be ordered in any year.

(3) Work outside the United States. Contracts and subcontracts are exempt from the requirements of the equal opportunity clause with regard to work performed outside the United States by employees who were not recruited within the United States.

(4) Contracts with State or local governments. The requirements of the equal opportunity clause in any contract or subcontract with a State or local government (or any agency, instrumentality or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract or subcontract. In addition, any agency, instrumentality or subdivision of such government, except for educational institutions and medical facilities, are exempt from the requirements of filing the annual compliance report provided for by

#### **Sec. 60-1.7(a)(1) and maintaining a written affirmative action compliance program prescribed by Sec. 60-1.40 and Part 60-2 of this chapter.**

(5) Contracts with certain educational institutions. It shall not be a violation of the equal opportunity clause for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion. The primary thrust of this provision is directed at religiously oriented church-related colleges and universities and should be so interpreted.

(6) Work on or near Indian reservations. It shall not be a violation of the equal opportunity clause for a construction or nonconstruction contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation. The use of the word "near" would include all that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day. Contractors or subcontractors extending such a preference shall not, however, discriminate among Indians on the basis of religion, sex, or tribal affiliation, and the use of such a preference shall not excuse a contractor from complying with the other requirements contained in this chapter.

(b) Specific contracts and facilities--(1) Specific contracts. The Deputy Assistant Secretary may exempt an agency or any person from requiring the inclusion of any or all of the equal opportunity clause in any specific contract or subcontract when he deems that special circumstances in the national interest so require. The Deputy Assistant Secretary may also exempt groups or categories of contracts or subcontracts of the same type where he finds it impracticable to act upon each request individually or where group exemptions will contribute to convenience in the administration of the order.

(2) Facilities not connected with contracts. The Deputy Assistant Secretary may exempt from the requirements of the equal opportunity clause any of a prime contractor's or subcontractor's facilities which he finds to be in all respects separate and distinct from activities of the prime contractor or subcontractor related to the performance of the contract or subcontract, provided that he also finds that such an exemption will not interfere with or impede the effectuation of the order.

(c) National security. Any requirement set forth in these regulations in this part shall not apply to any contract or subcontract whenever the head of an agency determines that such contract or subcontract is essential to the national security and that its award without complying with such requirement is necessary to the national security. Upon making such a determination, the head of the agency will notify the Deputy Assistant Secretary in writing within 30 days.

(d) Withdrawal of exemption. When any contract or subcontract is of a class exempted under this section, the Deputy Assistant Secretary may withdraw the exemption for a specific contract or subcontract or group of contracts or subcontracts when in his judgment such action is necessary or appropriate to achieve the purposes of the order. Such withdrawal shall not apply to contracts or subcontracts awarded prior to the withdrawal, except that in procurements entered into by formal advertising, or the various forms of restricted formal advertising, such withdrawal shall not apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of the bids.

[43 FR 49240, Oct. 20, 1978; 43 FR 51400, Nov. 3, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

#### **Sec. 60-1.6 [Reserved]**

#### **Sec. 60-1.7 Reports and other required information.**

(a) Requirements for prime contractors and subcontractors. (1) Each prime contractor and subcontractor shall file annually, on or before the September 30, complete and accurate reports on Standard Form 100 (EEO-1) promulgated jointly by the Office of Federal Contract Compliance Programs, the Equal Employment Opportunity Commission and Plans for Progress or such form as may hereafter be promulgated in its place if such prime contractor or subcontractor (i) is not exempt from the provisions of these regulations in accordance with Sec. 60-1.5; (ii) has 50 or more employees; (iii) is a prime contractor or first tier subcontractor; and (iv) has a contract, subcontract or purchase order amounting to \$50,000 or more or serves as a depository of Government funds in any amount, or is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes: Provided, That any subcontractor below the first tier which performs construction work at the site of construction shall be required to file such a report if it meets requirements of paragraphs (a)(1) (i), (ii), and (iv) of this section. (2) Each person required by Sec. 60-1.7(a)(1) to submit reports shall file such a report with the contracting or administering agency within 30 days after the award to him of a contract or subcontract, unless such person has submitted such a report within 12 months preceding the date of the award. Subsequent reports shall be submitted annually in accordance with Sec. 60-1.7(a)(1), or at such other intervals as the Deputy Assistant Secretary may require. The Deputy Assistant Secretary may extend the time for filing any report.

(3) The Deputy Assistant Secretary or the applicant, on their own motions, may require a contractor to keep employment or other records and to furnish, in the form requested, within reasonable limits, such information as the Deputy Assistant Secretary or the applicant deems necessary for the administration of the order.

(4) Failure to file timely, complete and accurate reports as required constitutes noncompliance with the prime contractor's or subcontractor's obligations under the equal opportunity clause and is ground for the imposition by the Deputy Assistant Secretary, an applicant, prime contractor or subcontractor, of any sanctions as authorized by the order and the regulations in this part.

(b) Requirements for bidders or prospective contractors--(1) Certification of compliance with Part 60-2: Affirmative Action Programs. Each agency shall require each bidder or prospective prime contractor and proposed subcontractor, where appropriate, to state in the bid or in writing at the outset of negotiations for the contract: (i) Whether it has developed and has on file at each establishment affirmative action programs pursuant to Part 60-2 of this chapter; (ii) whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; (iii) whether it has filed with the Joint Reporting Committee, the Deputy Assistant Secretary or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements.

(2) Additional information. A bidder or prospective prime contractor or proposed subcontractor shall be required to submit such information as the Deputy Assistant Secretary requests prior to the award of the contract or subcontract. When a determination has been made to award the contract or subcontract to a specific contractor, such contractor shall be required, prior to award, or after the award, or both, to furnish such other information as the applicant or the Deputy Assistant Secretary requests.

(c) Use of reports. Reports filed pursuant to this section shall be used only in connection with the administration of the order, the Civil Rights Act of 1964, or in furtherance of the purposes of the order and said Act.

[43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

**Sec. 60-1.8 Segregated facilities.**

To comply with its obligations under the Order, a contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensuring that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. This obligation extends to all contracts containing the equal opportunity clause regardless of the amount of the contract. The term "facilities," as used in this section, means waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, wash rooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees; Provided, That separate or single-user restrooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes. [62 FR 44189, Aug. 19, 1997]

**Sec. 60-1.9 Compliance by labor unions and by recruiting and training agencies.**

(a) Whenever compliance with the equal opportunity clause may necessitate a revision of a collective bargaining agreement the labor union or unions which are parties to such an agreement shall be given an adequate opportunity to present their views to the Deputy Assistant Secretary.

(b) The Deputy Assistant Secretary shall use his best efforts, directly and through agencies, contractors, subcontractors, applicants, State and local officials, public and private agencies, and all other available instrumentalities, to cause any labor union, recruiting and training agency or other representative of workers who are or may be engaged in work under contracts and subcontracts to cooperate with, and to comply in the implementation of, the purposes of the order.

(c) In order to effectuate the purposes of paragraph (a) of this section, the Deputy Assistant Secretary may hold hearings, public or private, with respect to the practices and policies of any such labor union or recruiting and training agency.

(d) The Deputy Assistant Secretary may notify any Federal, State, or local agency of his conclusions and recommendations with respect to any such labor organization or recruiting and training agency which in his judgment has failed to cooperate with himself, agencies, prime contractors, subcontractors, or applicants in carrying out the purposes of the order. The Deputy Assistant Secretary also may notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever he has reason to believe that the practices of any such labor organization or agency violates title VII of the Civil Rights Act of 1964 or other provisions of Federal law. [43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

**Sec. 60-1.10 Foreign government practices.**

Contractors shall not discriminate on the basis of race, color, religion, sex, or national origin when hiring or making employee assignments for work to be performed in the United States or abroad. Contractors are exempted from this obligation only when hiring persons outside the United States for work to be performed outside the United States (see 41 CFR 60-1.5(a)(3)). Therefore, a contractor hiring workers in the United States for either Federal or nonfederally connected work shall be in violation of Executive Order 11246, as amended, by refusing to employ or assign any person because of race, color, religion, sex, or national origin regardless of the policies of the country where the work is to be performed or for whom the work will be performed. Should any contractor be unable to acquire a visa of entry for any employee or potential employee to a country in which or with which it is doing business, and which refusal it believes is due to the race, color, religion, sex, or national origin of the employee or potential employee, the contractor must immediately notify the Department of State and the Deputy Assistant Secretary of such refusal. [43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

**Sec. 60-1.11 Payment or reimbursement of membership fees and other expenses to private clubs.**

(a)(1) A contractor which maintains a policy or practice of paying membership fees or other expenses for employee participation in private clubs or organizations shall ensure that the policy or practice is administered without regard to the race, color, religion, sex, or national origin of employees.

(2) Payment or reimbursement by contractors of membership fees and other expenses for participation by their employees in a private club or organization which bars, restricts or limits its membership on the basis of race, color, sex, religion, or national origin constitutes a violation of Executive Order 11246 except where the contractor can provide evidence that such restrictions or limitations do not abridge the promotional opportunities, status, compensation or other terms and conditions of employment of those of its employees barred from membership because of their race, color, religion, sex, or national origin. OFCCP shall provide the contractor with the opportunity to present evidence in defense of its actions.

(b) The contractor has the responsibility of determining whether the club or organization restricts membership on the basis of race, color, religion, sex, or national origin. The contractor may make separate determinations for different chapters of an organization, and where it does so, may limit any necessary corrective action to the particular chapters which observe discriminatory membership policies and practices. [46 FR 3896, Jan. 16, 1981]

Effective Date Note: At 46 FR 3896, Jan. 16, 1981, Sec. 60-1.11 was added. At 46 FR 18951, Mar. 27, 1981, the effective date was deferred until further notice.

**Sec. 60-1.12 Record retention.**

(a) General requirements. Any personnel or employment record made or kept by the contractor shall be preserved by the contractor for a period of not less than two years from the date of the making of the record or the personnel action involved, whichever occurs later. However, if the contractor has fewer than 150 employees or does not have a Government contract of at least \$150,000, the minimum record retention period shall be one year from the date of the making of the record or the personnel action involved, whichever occurs later. Such records include, but are not necessarily limited to, records pertaining to hiring, assignment, promotion, demotion, transfer, lay off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship, and other records having to do with requests for reasonable accommodation, the results of any physical examination, job advertisements and postings, applications and resumes, tests and test results, and interview notes. In

the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of not less than two years from the date of the termination, except that contractors that have fewer than 150 employees or that do not have a Government contract of at least \$150,000 shall keep such records for a period of not less than one year from the date of the termination. Where the contractor has received notice that a complaint of discrimination has been filed, that a compliance evaluation has been initiated, or that an enforcement action has been commenced, the contractor shall preserve all personnel records relevant to the complaint, compliance evaluation or enforcement action until final disposition of the complaint, compliance evaluation or enforcement action. The term "personnel records relevant to the complaint," for example, would include personnel or employment records relating to the complainant and to all other employees holding positions similar to that held or sought by the complainant and application forms or test papers submitted by unsuccessful applicants and by all other candidates for the same position as that for which the complainant unsuccessfully applied. Where a compliance evaluation has been initiated, all personnel and employment records described above are relevant until OFCCP makes a final disposition of the evaluation.

(b) Affirmative action programs. A contractor establishment required under Sec. 60-1.40 to develop a written affirmative action program (AAP) shall maintain its current AAP and documentation of good faith effort, and shall preserve its AAP and documentation of good faith effort for the immediately preceding AAP year, unless it was not then covered by the written AAP requirement.

(c) Failure to preserve records. Failure to preserve complete and accurate records as required by paragraphs (a) and (b) of this section constitutes noncompliance with the contractor's obligations under the Executive Order and this Part. Where the contractor has destroyed or failed to preserve records as required by this section, there may be a presumption that the information destroyed or not preserved would have been unfavorable to the contractor: Provided, That this presumption shall not apply where the contractor shows that the destruction or failure to preserve records results from the circumstances that are outside of the contractor's control.

(d) Effective date. The requirements of this section shall apply only to records made or kept on or after December 22, 1997. [62 FR 44189, Aug. 19, 1997, as amended at 62 FR 66971, Dec. 22, 1997]

#### **Sec. 60-1.21 Filing complaints.**

Complaints shall be filed within 180 days of the alleged violation unless the time for filing is extended by the Deputy Assistant Secretary for good cause shown. [43 FR 49240, Oct. 20, 1978; 43 FR 51400, Nov. 3, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

#### **Sec. 60-1.22 Where to file.**

Complaints may be filed with the OFCCP, 200 Constitution Avenue, NW., Washington, DC 20210, or with any OFCCP regional or area office.

#### **Sec. 60-1.23 Contents of complaint.**

(a) The complaint shall include the name, address, and telephone number of the complainant, the name and address of the contractor or subcontractor committing the alleged discrimination, a description of the acts considered to be discriminatory, and any other pertinent information which will assist in the investigation and resolution of the complaint. The complaint shall be signed by the complainant or his/her authorized representative. Complaints alleging class-type violations which do not identify the alleged discriminatee or discriminatees will be accepted, provided the other requirements of this paragraph are met.

(b) If a complaint contains incomplete information, OFCCP shall seek the needed information from the complainant. In the event such information is not furnished to the Deputy Assistant Secretary within 60 days of the date of such request, the case may be closed. [43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

#### **Sec. 60-1.24 Processing of matters.**

(a) Complaints. OFCCP may refer appropriate complaints to the Equal Employment Opportunity Commission (EEOC) for processing under Title VII of the Civil Rights Act of 1964, as amended, rather than processing under E.O. 11246 and the regulations in this chapter. Upon referring complaints to the EEOC, OFCCP shall promptly notify complainant(s) and the contractor of such referral.

(b) Complaint investigations. In conducting complaint investigations, OFCCP shall, as a minimum, conduct a thorough evaluation of the allegations of the complaint and shall be responsible for developing a complete case record. The case record should contain the name, address, and telephone number of each person interviewed, the interview statements, copies, transcripts, or summaries (where appropriate) of pertinent documents, a reference to at least one covered contract, and a narrative report of the investigation with references to exhibits and other evidence which relate to the alleged violations.

(c)(1) [Reserved]

(2) If any complaint investigation or compliance review indicates a violation of the equal opportunity clause, the matter should be resolved by informal means whenever possible. Such informal means may include the holding of a compliance conference.

(3) Where any complaint investigation or compliance review indicates a violation of the equal opportunity clause and the matter has not been resolved by informal means, the Deputy Assistant Secretary shall proceed in accordance with Sec. 60-1.26.

(4) When a prime contractor or subcontractor, without a hearing, shall have complied with the recommendations or orders of the Deputy Assistant Secretary and believes such recommendations or orders to be erroneous, he shall, upon filing a request therefor within ten days of such compliance, be afforded an opportunity for a hearing and review of the alleged erroneous action.

(5) For reasonable cause shown, the Deputy Assistant Secretary may reconsider or cause to be reconsidered any matter on his/her own motion or pursuant to a request.

(d) Reports to the Deputy Assistant Secretary. (1) With the exception of complaints which have been referred to EEOC, within 60 days from receipt of a complaint or within such additional time as may be allowed by the Deputy Assistant Secretary for good cause shown, the complaint shall be processed and the case record developed containing the following information:

(i) Name and address of the complainant;

(ii) Brief summary of findings, including a statement regarding the contractor's compliance or noncompliance with the requirements of the equal opportunity clause;

(iii) A statement of the disposition of the case, including any corrective action taken and any sanctions or penalties imposed or, whenever appropriate, the recommended corrective action and sanctions or penalties.

(2) A written report of every preaward compliance review required by this regulation or otherwise required by the Deputy Assistant Secretary, shall be developed and maintained.

(3) A written report of every other compliance review or any other matter processed involving an apparent violation of the equal opportunity clause shall be made. Such report shall contain a brief summary of the findings, including a statement of conclusions regarding the contractor's compliance or noncompliance with the requirements of the order, and a statement of the disposition of the case, including any corrective action taken or recommended and any sanctions or penalties imposed or recommended.

[43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

#### **Sec. 60-1.25 Assumption of jurisdiction by or referrals to the Deputy Assistant Secretary.**

The Deputy Assistant Secretary may inquire into the status of any matter pending before an agency. Where he considers it necessary or appropriate to the achievement of the purposes of the order, he may assume jurisdiction over the matter and proceed as provided herein. Whenever the Deputy Assistant Secretary assumes jurisdiction over any matter, or an agency refers any matter he may conduct, or have conducted, such investigations, hold such hearings, make such findings, issue such recommendations and directives, order such sanctions and penalties, and take such other action as may be necessary or appropriate to achieve the purposes of the order. The Deputy Assistant Secretary shall promptly notify the agency of any corrective action to be taken or any sanctions to be taken or any sanction to be imposed by the agency. The agency shall take such action, and report the results thereof to the Deputy Assistant Secretary within the time specified.

[43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

#### **Sec. 60-1.26 Enforcement proceedings.**

(a) General. (1) Violations of the Order, the equal opportunity clause, the regulations in this chapter, or applicable construction industry equal employment opportunity requirements, may result in the institution of administrative or judicial enforcement proceedings. Violations may be found based upon, inter alia, any of the following:

(i) The results of a complaint investigation;

(ii) The results of a compliance evaluation;

(iii) Analysis of an affirmative action program;

(iv) The results of an on-site review of the contractor's compliance with the Order and its implementing regulations;

(v) A contractor's refusal to submit an affirmative action program;

(vi) A contractor's refusal to allow an on-site compliance evaluation to be conducted;

(vii) A contractor's refusal to provide data for off-site review or analysis as required by the regulations in this chapter;

(viii) A contractor's refusal to establish, maintain and supply records or other information as required by the regulations in this chapter or applicable construction industry requirements;

(ix) A contractor's alteration or falsification of records and information required to be maintained by the regulations in this chapter; or

(x) Any substantial or material violation or the threat of a substantial or material violation of the contractual provisions of the Order, or of the rules or regulations in this chapter.

(2) OFCCP may seek back pay and other make whole relief for victims of discrimination identified during a complaint investigation or compliance evaluation. Such individuals need not have filed a complaint as a prerequisite to OFCCP seeking such relief on their behalf. Interest on back pay shall be calculated from the date of the loss and compounded quarterly at the percentage rate established by the Internal Revenue Service for the under-payment of taxes.

(b) Administrative enforcement. (1) OFCCP may refer matters to the Solicitor of Labor with a recommendation for the institution of administrative enforcement proceedings, which may be brought to enjoin violations, to seek appropriate relief, and to impose appropriate sanctions. The referral may be made when violations have not been corrected in accordance with the conciliation procedures in this chapter, or when OFCCP determines that referral for consideration of formal enforcement (rather than settlement) is appropriate. However, if a contractor refuses to submit an affirmative action program, or refuses to supply records or other requested information, or refuses to allow OFCCP access to its premises for an on-site review, and if conciliation efforts under this chapter are unsuccessful, OFCCP may immediately refer the matter to the Solicitor, notwithstanding other requirements of this chapter.

(2) Administrative enforcement proceedings shall be conducted under the control and supervision of the Solicitor of Labor and under the Rules of Practice for Administrative Proceedings to Enforce Equal Opportunity under Executive Order 11246 contained in part 60-30 of this chapter and the Rules of Evidence set out in the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges contained in 29 CFR part 18, subpart B: Provided, That a Final Administrative Order shall be issued within one year from the date of the issuance of the recommended findings, conclusions and decision of the Administrative Law Judge, or the submission of any exceptions and responses to exceptions to such decision (if any), whichever is later.

(c) Referrals to the Department of Justice. (1) The Deputy Assistant Secretary may refer matters to the Department of Justice with a recommendation for the institution of judicial enforcement proceedings. There are no procedural prerequisites to a referral to the Department of Justice. Such referrals may be accomplished without proceeding through the conciliation procedures in this chapter, and a referral may be made at any stage in the procedures under this chapter.

(2) Whenever a matter has been referred to the Department of Justice for consideration of judicial enforcement, the Attorney General may bring a civil action in the appropriate district court of the United States requesting a temporary restraining order, preliminary or permanent injunction (including relief against noncontractors, including labor unions, who seek to thwart the implementation of the Order and regulations), and an order for such additional sanctions or relief, including back pay, deemed necessary or appropriate to ensure the full enjoyment of the rights secured by the Order, or any of the above in this paragraph (c)(2).

(3) The Attorney General is authorized to conduct such investigation of the facts as he/she deem necessary or appropriate to carry out his/her responsibilities under the regulations in this chapter.

(4) Prior to the institution of any judicial proceedings, the Attorney General, on behalf of the Deputy Assistant Secretary, is authorized to make reasonable efforts to secure compliance with the contract provisions of the Order. The Attorney General may do so by providing the contractor and any other respondent with reasonable notice of his/her findings, his/her intent to file suit, and the actions he/she believes necessary to obtain compliance with the contract provisions of the Order without contested litigation, and by offering the contractor and any other respondent a reasonable opportunity for conference and conciliation, in an effort to obtain such compliance without contested litigation.

(5) As used in the regulations in this Part, the Attorney General shall mean the Attorney General, the Assistant Attorney General for Civil Rights, or any other person authorized by regulations or practice to act for the Attorney General with respect to the enforcement of equal employment opportunity laws, orders and regulations generally, or in a particular matter or case.

(6) The Deputy Assistant Secretary or his/her designee, and representatives of the Attorney General may consult from time to time to determine what investigations should be conducted to determine whether contractors or groups of contractors or other persons may be engaged in patterns or practices in violation of the Executive Order or these regulations, or of resistance to or interference with the full enjoyment of any of the rights secured by them, warranting judicial proceedings.

(d) Initiation of lawsuits by the Attorney General without referral from the Deputy Assistant Secretary. In addition to initiating lawsuits upon referral under this section, the Attorney General may, subject to approval by the Deputy Assistant Secretary, initiate independent investigations of contractors which he/she has reason to believe may be in violation of the Order or the rules and regulations issued pursuant thereto. If, upon completion of such an investigation, the Attorney General determines that the contractor has in fact violated the Order or the rules and regulations issued thereunder, he/she shall make reasonable efforts to secure compliance with the contract provisions of the Order. He/she may do so by providing the contractor and any other respondent with reasonable notice of the Department of Justice's findings, its intent to file suit, and the actions that the Attorney General believes are necessary to obtain compliance with the contract provisions of the Order without contested litigation, and by offering the contractor and any other respondent a reasonable opportunity for conference and conciliation in an effort to obtain such compliance without contested litigation. If these efforts are unsuccessful, the Attorney General may, upon approval by the Deputy Assistant Secretary, bring a civil action in the appropriate district court of the United States requesting a temporary restraining order, preliminary or permanent injunction, and an order for such additional sanctions or equitable relief, including back pay, deemed necessary or appropriate to ensure the full enjoyment of the rights secured by the Order or any of the above in this paragraph (d).

(e) To the extent applicable, this section and part 60-30 of this chapter shall govern proceedings resulting from any Deputy Assistant Secretary's determinations under Sec. 60-2.2(b) of this chapter.  
[62 FR 44190, Aug. 19, 1997, as amended at 62 FR 66971, Dec. 22, 1997]

#### **Sec. 60-1.27 Sanctions.**

(a) General. The sanctions described in subsections (1), (5), and (6) of section 209(a) of the Order may be exercised only by or with the approval of the Deputy Assistant Secretary. Referral of any matter arising under the Order to the Department of Justice or to the Equal Employment Opportunity Commission shall be made by the Deputy Assistant Secretary.

(b) Debarment. A contractor may be debarred from receiving future contracts or modifications or extensions of existing contracts, subject to reinstatement pursuant to Sec. 60-1.31, for any violation of Executive Order 11246 or the implementing rules, regulations and orders of the Secretary of Labor. Debarment may be imposed for an indefinite term or for a fixed minimum period of at least six months.  
[62 FR 44191, Aug. 19, 1997]

#### **Sec. 60-1.28 Show cause notices.**

When the Deputy Assistant Secretary has reasonable cause to believe that a contractor has violated the equal opportunity clause he may issue a notice requiring the contractor to show cause, within 30 days, why monitoring, enforcement proceedings or other appropriate action to ensure compliance should not be instituted.  
[43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

#### **Sec. 60-1.29 Preaward notices.**

(a) Preaward compliance reviews. Upon the request of the Deputy Assistant Secretary, agencies shall not enter into contracts or approve the entry into contracts or subcontracts with any bidder, prospective prime contractor, or proposed subcontractor named by the Deputy Assistant

Secretary until a preaward compliance review has been conducted and the Deputy Assistant Secretary or his designee has approved a determination that the bidder, prospective prime contractor or proposed subcontractor will be able to comply with the provisions of the equal opportunity clause.

(b) Other special preaward procedures. Upon the request of the Deputy Assistant Secretary, agencies shall not enter into contracts or approve the entry into subcontracts with any bidder; prospective prime contractor or proposed subcontractor specified by the Deputy Assistant Secretary until the agency has complied with the directions contained in the request.  
[43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

**Sec. 60-1.30 Notification of agencies.**

The Deputy Assistant Secretary shall ensure that the heads of all agencies are notified of any debarment taken against any contractor.  
[62 FR 44191, Aug. 19, 1997]

**Sec. 60-1.31 Reinstatement of ineligible contractors.**

A contractor debarred from further contracts for an indefinite period under the Order may request reinstatement in a letter filed with the Deputy Assistant Secretary at any time after the effective date of the debarment. A contractor debarred for a fixed period may request reinstatement in a letter filed with the Deputy Assistant Secretary 30 days prior to the expiration of the fixed debarment period, or at any time thereafter. The filing of a reinstatement request 30 days before a fixed debarment period ends will not result in early reinstatement. In connection with the reinstatement proceedings, all debarred contractors shall be required to show that they have established and will carry out employment policies and practices in compliance with the Order and implementing regulations. Before reaching a decision, the Deputy Assistant Secretary may conduct a compliance evaluation of the contractor and may require the contractor to supply additional information regarding the request for reinstatement. The Deputy Assistant Secretary shall issue a written decision on the request.  
[62 FR 44192, Aug. 19, 1997]

**Sec. 60-1.32 Intimidation and interference.**

(a) The contractor, subcontractor or applicant shall not harass, intimidate, threaten, coerce, or discriminate against any individual because the individual has engaged in or may engage in any of the following activities:

(1) Filing a complaint;

(2) Assisting or participating in any manner in an investigation, compliance evaluation, hearing, or any other activity related to the administration of the Order or any other Federal, state or local law requiring equal opportunity;

(3) Opposing any act or practice made unlawful by the Order or any other Federal, state or local law requiring equal opportunity; or

(4) Exercising any other right protected by the Order.

(b) The contractor, subcontractor or applicant shall ensure that all persons under its control do not engage in such harassment, intimidation, threats, coercion or discrimination. The sanctions and penalties contained in this part may be exercised by OFCCP against any contractor, subcontractor or applicant who violates this obligation.  
[62 FR 44192, Aug. 19, 1997]

**Sec. 60-1.33 Conciliation agreements.**

(a) If a compliance review, complaint investigation or other review by OFCCP or its representative indicates a material violation of the equal opportunity clause, and (1) if the contractor, subcontractor or bidder is willing to correct the violations and/or deficiencies, and (2) if OFCCP or its representative determines that settlement (rather than referral for consideration of formal enforcement) is appropriate, a written agreement shall be required. The agreement shall provide for such remedial action as may be necessary to correct the violations and/or deficiencies noted, including, where appropriate (but not necessarily limited to), remedies such as back pay and retroactive seniority.

(b) The term "conciliation agreement" does not include "letters of commitment" which are appropriate for resolving minor technical deficiencies.  
(E.O. 11246 (30 FR 12319) as amended by E.O. 11375 and 12086) [44 FR 77002, Dec. 28, 1979]

**Sec. 60-1.34 Violation of a conciliation agreement or letter of commitment.**

(a) When a conciliation agreement has been violated, the following procedures are applicable:

(1) A written notice shall be sent to the contractor setting forth the violations alleged and summarizing the supporting evidence. The contractor shall have 15 days from receipt of the notice to respond, except in those cases in which such a delay would result in irreparable injury to the employment rights of affected employees or applicants.

(2) During the 15-day period the contractor may demonstrate in writing that it has not violated its commitments.

(3) If the contractor is unable to demonstrate that it has not violated its commitments, or if the complaint alleges irreparable injury, enforcement proceedings may be initiated immediately without issuing a show cause notice or proceeding through any other requirement contained in this chapter.

(4) In any proceeding involving an alleged violation of a conciliation agreement OFCCP may seek enforcement of the agreement itself and shall not be required to present proof of the underlying violations resolved by the agreement.

(b) If the contractor has violated a letter of commitment, the matter shall be handled, where appropriate, pursuant to 41 CFR 60-2.2(c) or 60-4.8. The violation may be corrected through a conciliation agreement, or an enforcement proceeding may be initiated. (E.O. 11246 (30 FR 12319) as amended by EO 11375 and 12086) [44 FR 77002, Dec. 28, 1979, as amended at 62 FR 44192, Aug. 19, 1997]

#### **Sec. 60-1.40 Affirmative action compliance programs.**

(a) Requirements of programs. Each contractor who has 50 or more employees and (1) has a contract of \$50,000 or more; or (2) has Government bills of lading which in any 12-month period, total or can reasonably be expected to total \$50,000 or more; or (3) serves as a depository of Government funds in any amount; or (4) is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount, shall develop a written affirmative action compliance program for each of its establishments. Each contractor and subcontractor shall require each subcontractor who has 50 or more employees and (i) has a subcontract of \$50,000 or more; or (ii) has Government bills of lading which in any 12-month period, total or can reasonably be expected to total \$50,000 or more; or (iii) serves as a depository of Government funds in any amount; or (iv) is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount, to develop a written affirmative action compliance program for each of its establishments. A necessary prerequisite to the development of a satisfactory affirmative action program is the identification and analysis of problem areas inherent in minority employment and an evaluation of opportunities for utilization of minority group personnel. The contractor's program shall provide in detail for specific steps to guarantee equal employment opportunity keyed to the problems and needs of members of minority groups, including, when there are deficiencies, the development of specific goals and time tables for the prompt achievement of full and equal employment opportunity. Each contractor shall include in its affirmative action compliance program a table of job classifications. This table should include but need not be limited to job titles, principal duties (and auxiliary duties, if any), rates of pay, and where more than one rate of pay applied (because of length of time in the job or other factors), the applicable rates. The affirmative action compliance program shall be signed by an executive official of the contractor.

(b) Utilization evaluation. The evaluation of utilization of minority group personnel shall include the following:

(1) An analysis of minority group representation in all job categories.

(2) An analysis of hiring practices for the past year, including recruitment sources and testing, to determine whether equal employment opportunity is being afforded in all job categories.

(3) An analysis of upgrading, transfer and promotion for the past year to determine whether equal employment opportunity is being afforded.

(c) Maintenance of programs. Within 120 days from the commencement of the contract, each contractor shall maintain a copy of separate affirmative action compliance programs for each establishment, including evaluations of utilization of minority group personnel and the job classification tables, at each local office responsible for the personnel matters of such establishment. An affirmative action compliance program shall be part of the manpower and training plans for each new establishment and shall be developed and made available prior to the staffing of such establishment. A report of the results of such program shall be compiled annually and the program shall be updated at that time. This information shall be made available to representatives of the Deputy Assistant Secretary upon request and the contractor's affirmative action program and the result it produces shall be evaluated as part of compliance review activities.

[43 FR 49240, Oct. 20, 1978; 43 FR 51400, Nov. 3, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

#### **Sec. 60-1.41 Solicitations or advertisements for employees.**

In solicitations or advertisements for employees placed by or on behalf of a prime contractor or subcontractor, the requirements of paragraph (2) of the equal opportunity clause shall be satisfied whenever the prime contractor or subcontractor complies with any of the following:

(a) States expressly in the solicitations or advertising that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin;

(b) Uses display or other advertising, and the advertising includes an appropriate insignia prescribed by the Deputy Assistant Secretary. The use of the insignia is considered subject to the provisions of 18 U.S.C. 701;

(c) Uses a single advertisement, and the advertisement is grouped with other advertisements under a caption which clearly states that all employers in the group assure all qualified applicants equal consideration for employment without regard to race, color, religion, sex, or national origin;

(d) Uses a single advertisement in which appears in clearly distinguishable type the phrase "an equal opportunity employer."  
[43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

#### **Sec. 60-1.42 Notices to be posted.**

(a) Unless alternative notices are prescribed by the Deputy Assistant Secretary, the notices which contractors are required to post by paragraphs (1) and (3) of the equal opportunity clause in Sec. 60-1.4 will contain the following language and be provided by the contracting or administering agencies:

Equal Employment Opportunity is the Law--Discrimination is Prohibited by the Civil Rights Act of 1964 and by Executive Order No. 11246

Title VII of the Civil Rights Act of 1964--Administered by:

The Equal Employment Opportunity Commission

Prohibits discrimination because of Race, Color, Religion, Sex, or National Origin by Employers with 15 or more employees, by Labor Organizations, by Employment Agencies, and by Apprenticeship or Training Programs



Any person  
Who believes he or she has been discriminated against  
Should Contact

---

The Equal Employment Opportunity Commission  
1801 L Street NW., Washington, DC 20507

Executive Order No. 11246--Administered by:

The Office of Federal Contract Compliance Programs

Prohibits discrimination because of Race, Color, Religion, Sex, or National Origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

By all Federal Government Contractors and Subcontractors, and by Contractors Performing Work Under a Federally Assisted Construction Contract, regardless of the number of employees in either case.

Any person  
Who believes he or she has been discriminated against  
Should Contact

---

The Office of Federal Contract Compliance Programs  
U.S. Department of Labor, Washington, DC 20210

(b) The requirements of paragraph (3) of the equal opportunity clause will be satisfied whenever the prime contractor or subcontractor posts copies of the notification prescribed by or pursuant to paragraph (a) of this section in conspicuous places available to employees, applicants for employment, and representatives of each labor union or other organization representing his employees with which he has a collective-bargaining agreement or other contract or understanding.

[43 FR 49240, Oct. 20, 1978, as amended at 62 FR 44192, Aug. 19, 1997; 62 FR 66971, Dec. 22, 1997]

**Sec. 60-1.43 Access to records and site of employment.**

Each contractor shall permit access during normal business hours to its premises for the purpose of conducting on-site compliance evaluations and complaint investigations. Each contractor shall permit the inspecting and copying of such books and accounts and records, including computerized records, and other material as may be relevant to the matter under investigation and pertinent to compliance with the Order, and the rules and regulations promulgated pursuant thereto by the agency, or the Deputy Assistant Secretary. Information obtained in this manner shall be used only in connection with the administration of the Order, the Civil Rights Act of 1964 (as amended), and any other law that is or may be enforced in whole or in part by OFCCP.

[62 FR 44192, Aug. 19, 1997]

**Sec. 60-1.44 Rulings and interpretations.**

Rulings under or interpretations of the order or the regulations contained in this part shall be made by the Secretary or his designee.

**Sec. 60-1.45 Existing contracts and subcontracts.**

All contracts and subcontracts in effect prior to October 24, 1965, which are not subsequently modified shall be administered in accordance with the nondiscrimination provisions of any prior applicable Executive orders. Any contract or subcontract modified on or after October 24, 1965, shall be subject to Executive Order 11246. Complaints received by and violations coming to the attention of agencies regarding contracts and subcontracts which were subject to Executive Orders 10925 and 11114 shall be processed as if they were complaints regarding violations of this order.

**Sec. 60-1.46 Delegation of authority by the Deputy Assistant Secretary.**

The Deputy Assistant Secretary is authorized to redelegate the authority given to him by the regulations in this part. The authority redelegated by the Deputy Assistant Secretary pursuant to the regulations in this part shall be exercised under his general direction and control.

[43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

**Sec. 60-1.47 Effective date.**

The regulations contained in this part shall become effective July 1, 1968, for all contracts, the solicitations, invitations for bids, or requests for proposals which were sent by the Government or an applicant on or after said effective date, and for all negotiated contracts which have not been executed as of said effective date. Notwithstanding the foregoing, the regulations in this part shall become effective as to all contracts executed on and after the 120th day following said effective date. Subject to any prior approval of the Secretary, any agency may defer the effective date of the regulations in this part, for such period of time as the Secretary finds to be reasonably necessary. Contracts executed prior to the effective date of the regulations in this part shall be governed by the regulations promulgated by the former President's Committee on Equal Employment Opportunity which appear at 28 FR 9812, September 2, 1963, and at 28 FR 11305, October 23, 1963, the temporary regulations which appear at 30 FR 13441, October 22, 1965, and the orders at 31 FR 6881, May 10, 1966, and 32 FR 7439, May 19, 1967.



## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

Reporting Entity: \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_

# **FDIC Integrity and Fitness Representations and Certifications**

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SUBMITTED BY:

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Contractor Name

# FDIC INTEGRITY AND FITNESS REPRESENTATIONS AND CERTIFICATIONS

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## **ESTIMATED REPORTING BURDEN**

Public reporting burden for this collection of information is estimated to average one-hour per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Assistant Executive Secretary (Administration), OES, Room F-4001, FDIC, Washington, D.C. 20429; and to the Office of Management and Budget, Paperwork Reduction Project (3064-0072), Washington, D.C. 20503.

## **PRIVACY ACT STATEMENT**

Collection of this information is authorized by the Federal Deposit Insurance Act, 12 U.S.C. §§ 1891, 1821, and Executive Order 9397. This information will be primarily used to examine a contractor's eligibility for potential FDIC contract awards and the information provided may be disclosed to licensing authorities by the FDIC in examining the contractor's eligibility.

Information may also be disclosed to appropriate Federal, state, or local agencies for law enforcement purposes when a violation or possible violation of a civil or criminal law is apparent; to individuals involved in judicial or administrative proceedings; and to a Congressional office in response to an inquiry made at the individual's request. Information may also be disclosed in accordance with the other routine uses set forth in the FDIC's Financial Information System 30-64-0012. Furnishing the requested information, including your Social Security Number, is voluntary. However, failure to furnish all requested information may preclude you from receiving an FDIC contract.

## FDIC INTEGRITY AND FITNESS REPRESENTATIONS AND CERTIFICATIONS

### I. PREAMBLE

The following representations and eligibility certifications shall be executed by an official authorized to bind the contractor, and shall be returned with its proposal. These representations and certifications concern matters within the jurisdiction of an agency of the United States, and the making of a false, fictitious, or fraudulent certification may render the contractor and/or certifying official subject to prosecution under 18 United States Code (U.S.C.) § 1001, 1007, and 1014. For purposes of these certifications, the Federal Deposit Insurance Corporation (FDIC) is considered an agency of the United States only with respect to its rights and remedies under 18 U.S.C. The offeror shall provide notice to the Contracting Officer within 10 business days or at any time prior to contract award, if the contractor learns that one or more of these certifications was erroneous when submitted or has become erroneous by reason of changed circumstances. In addition, any such misrepresentations or miscertifications may render the contractor and/or the certifying official subject to administrative remedies by the FDIC, to include suspension and/or exclusion from contracting, or termination of contract, (12 CFR 366.16; 12 CFR Part 367).

### II. IDENTIFYING INFORMATION

#### 1. Type of Organization

The contractor operates as  an individual,  a State or local agency,  a partnership,  a joint venture,  a nonprofit organization,  an educational institution,  a corporation organized and existing under the laws of the state of \_\_\_\_\_.

#### 2. Parent Information

The contractor  is,  is not, owned or controlled by a parent company. If it is, complete the blanks below and include an organizational chart of parent company:

NAME OF PARENT COMPANY		TAXPAYER IDENTIFICATION NUMBER (TIN)	
ADDRESS			
CITY	STATE	ZIP CODE	



# FDIC INTEGRITY AND FITNESS REPRESENTATIONS AND CERTIFICATIONS

## 3. Joint Venture Information

The contractor [ ] is, [ ] is not, a joint venture. If contractor is a joint venture, complete the information below.

NAME OF JOINT VENTURE PARTNER		
JOINT VENTURE PARTNER'S TAXPAYER IDENTIFICATION NUMBER (TIN)		
JOINT VENTURE TAXPAYER IDENTIFICATION NUMBER (TIN) <i>(If different)</i>		
MAIN OFFICE ADDRESS		
CITY	STATE	ZIP CODE

Has a Joint Venture Agreement been executed? [ ] Yes, [ ] No *(If yes, attach Agreement.)*

## 4. Subcontractor Information

The contractor [ ] will, [ ] will not, use subcontractors in the performance of the contract. If it will, complete the information below.

NAME OF SUBCONTRACTOR	TAXPAYER IDENTIFICATION NUMBER (TIN)	
MAIN OFFICE ADDRESS		
CITY	STATE	ZIP CODE

NAME OF SUBCONTRACTOR	TAXPAYER IDENTIFICATION NUMBER (TIN)	
MAIN OFFICE ADDRESS		
CITY	STATE	ZIP CODE

NAME OF SUBCONTRACTOR	TAXPAYER IDENTIFICATION NUMBER (TIN)	
MAIN OFFICE ADDRESS		
CITY	STATE	ZIP CODE

*(If additional space is necessary, attach separate sheets.)*

# FDIC INTEGRITY AND FITNESS REPRESENTATIONS AND CERTIFICATIONS

## III. PART 366 INTEGRITY AND FITNESS

### 1. Unique Terms

Unique terms used in these representations and certifications are described in 12 CFR Part § 366, as follows:

- (a) **Conflict of interest** occurs when a contractor, any entity that owns or controls a contractor, or any entity the contractor owns or controls:
- (1) Has a personal, business, or financial interest or relationship that relates to the services performed under the contract; or
  - (2) Is a party to litigation against the FDIC, or represents a party that is; or
  - (3) Submits an offer to acquire an asset from FDIC for which services were performed during the past three years, unless the contract allows for the acquisition.
- (b) **Ownership or control:**
- (1) The president or chief executive officer has control of an organization.
  - (2) A partner in a small law firm has ownership or control. A partner in a large multinational law firm may not have ownership or control.
  - (3) A general partner of a limited partnership has control. Ownership or control exists when there is an interest of twenty five percent (25%) or more in a limited partnership.
  - (4) Ownership or control is evidenced by the:
    - (i) Power to vote, directly or indirectly, 25% or more interest of any class of voting stock of a company;
    - (ii) Ability to direct in any manner the election of a majority of a company's directors or trustees; or
    - (iii) Ability to exercise a controlling influence over the company's management and policies.
- (c) **Default on a material obligation** occurs when a loan or advance with an outstanding balance of more than \$50,000 is or was delinquent for ninety (90) days or more.
- (d) **FDIC-insured depository institution** includes any bank or savings association the deposits of which are insured by the FDIC.
- (e) **Management official** includes any shareholder, employee, or partner who controls a company and any individual who directs the day-to-day operations of a company. With respect to a partnership whose management committee or executive committee has responsibility for the day-to-day operations of the partnership, management official includes a member of such a committee but, if no such committee exists, management official includes each of the general partners.
- (f) **Pattern or practice of defalcation regarding obligations:**
- A pattern or practice of defalcation under 12 CFR section 366.3(c) exists when the contractor, any person that owns or controls the contractor, or any entity the contractor owns or controls has a legal responsibility for the payment on at least two obligations that are:
- (1) To one or more FDIC-insured depository institutions;
  - (2) More than ninety (90) days delinquent in the payment of principal, interest, or a combination thereof; and

# FDIC INTEGRITY AND FITNESS REPRESENTATIONS AND CERTIFICATIONS

## Unique Terms (Continued)

(3) More than \$50,000 each.

(g) **Person** includes an individual, corporation, partnership or other entity with a legally independent existence.

(h) **Substantial loss to Federal deposit insurance fund:**

A substantial loss to a Federal deposit insurance fund under 12 CFR section 366.3(d) exists when the contractor, or any person that owns or controls the contractor, or any entity the contractor owns or controls has:

(1) An obligation to us that is delinquent for ninety (90) days or more and on which there is an outstanding balance of principal, interest, or a combination thereof of more than \$50,000;

(2) An unpaid final judgment in our favor that is in excess of \$50,000, regardless of whether it becomes discharged in whole or in part in a bankruptcy proceeding;

(3) A deficiency balance following foreclosure of collateral on an obligation owed to us that is in excess of \$50,000, regardless of whether it becomes discharged in whole or in part in a bankruptcy proceeding; or

(4) A loss to us that is in excess of \$50,000 that we report on IRS Form 1099-C, Information Reporting for Discharge of Indebtedness.

## 2. Representations as to Eligibility (12 CFR 366.3)

To the best of the contractor's knowledge:

(a) Has the contractor been convicted of a felony?

Yes       No *(If yes, explain below.)*

(b) Has the contractor been removed from or prohibited from participating in the affairs of an FDIC-insured depository institution because of a Federal banking agency action?

Yes       No *(If yes, explain below.)*

(c) Has the contractor demonstrated a pattern or practice of defalcation regarding obligations?

Yes       No *(If yes, explain below.)*

## FDIC INTEGRITY AND FITNESS REPRESENTATIONS AND CERTIFICATIONS

(d) Is the contractor responsible for a substantial loss to a Federal deposit insurance fund?

Yes       No (*if yes, explain below.*)

As used herein, "pattern or practice of defalcation" is described in 12 CFR 366.4 and "a substantial loss to a Federal deposit insurance fund" is described in 12 CFR 366.5 both are reproduced in Part III of these representations and certifications for your convenience.

### 3. Representations as to Conflicts of Interest (12 CFR 366.9)

Answers to the following four (4) questions regarding conflicts of interest are provided for the contractor, its officers, directors, any management officials, any persons that own or control you or you own or control; and any employees, agents, or subcontractors who will perform services under the contract:

(a) Do any such person(s) have a personal, business, or financial interest or relationship that relates to the services you perform under the contract?

Yes       No (*if yes, explain below.*)

(b) Are any such person(s) a party to litigation against us, or represents a party that is?

Yes       No (*if yes, explain below.*)

(c) Are any such person(s) submitting an offer to acquire an asset from us for which services were performed during the past three years, unless the contract allows for the acquisition?

Yes       No (*if yes, explain below.*)

(d) Does the contractor recognize that it generally may not later purchase assets it will manage under this contract and performance of this contract may disqualify the contractor from follow-up work where information obtained in the performance of the contract gives the contractor an unfair competitive advantage?

Yes       No (*if no, explain below.*)

## FDIC INTEGRITY AND FITNESS REPRESENTATIONS AND CERTIFICATIONS

If the contractor cannot certify that there are no conflicts of interest, it may describe the circumstances of any conflicts and request a waiver in accordance with CFR 366.10 or propose a method for the elimination of the conflict.

### 4. Representations as to Defaults (CFR 366.13(b))

Has the contractor or any company under the contractor's control defaulted on a material obligation during the five (5) years proceeding the submission of this offer?

Yes  No (If yes, attach a description of all such instances.)

A "default on a material obligation" occurs when a loan or advance with an outstanding balance of more than \$50,000 is or was delinquent for ninety (90) days or more.

### 5. Representations as to Employees and Subcontractors (CFR 366.13(d))

Does the contractor agree that without a waiver, it will employ only persons who meet the requirements of 12 CFR part 366 to perform services on behalf of FDIC?

Yes  No (If no, explain below.)

## IV. SIGNATURE

By signature hereto, the offeror certifies that all of the representations and certifications contained in its proposal are complete and accurate as required by this solicitation, and that it is aware of the penalty prescribed in 18 U.S.C. § 1001 for making false statements in proposal. The contractor also agrees to notify the FDIC in writing within 10 days after discovering that it or any person performing services under an FDIC contract has any change for any answer contained within these representations and certifications. Such notification shall contain a detailed description of the condition and may include a statement of how the contractor intends to resolve such condition. Further, the offeror by signature hereto gives express authorization and consent to the FDIC for the FDIC to release information contained herein to licensing authorities in the examination of the contractor's eligibility for potential contract awards.

SOLICITATION NUMBER		
NAME OF CONTRACTOR (Please print or type)	CONTRACTOR'S TAX IDENTIFICATION NUMBER (TIN)	
TITLE	CONTRACTOR'S TELEPHONE NUMBER	
OFFICE ADDRESS		
CITY	STATE	ZIP CODE
SIGNATURE		DATE SIGNED

**[Sample Contract Closeout Letter to Contractor]**

**[FDIC LETTERHEAD]**

**[DATE]**

**[CONTRACTOR NAME AND ADDRESS]**

Subject: Final Closeout of Contract No. **[NUMBER]**

Dear **[NAME OF CONTRACTOR]**:

Our records indicate that all activities under the contract listed above have been completed and the contract is ready to be formally closed. Our records also show that you have received and accepted payment for all work performed.

According to our records, during the contract period you were given **[specify FDIC property, equipment, records, documents, software, hardware, manuals, user IDs, telephone connections, passes, ID badges, keys, passwords, etc., as applicable]**. By signing the attached, you certify that all of the items listed herein and/or provided by FDIC under the contract have been returned to FDIC in good condition, normal wear and tear excepted.

We have attached a form for your endorsement and written concurrence or to list any outstanding issues that would delay the proposed closeout of the contract. If we do not receive the attached endorsement form within ten (10) business days from the date of this letter, we will assume that you have complied with all contractual requirements and will proceed to closeout the contract. The FDIC will, if applicable, request a final invoice as the final step to effect closeout of the contract.

If you have any questions regarding this notification, please call me at **[TELEPHONE NUMBER]**.

Sincerely,

**[NAME OF CONTRACTING OFFICER]**

Contracting Officer

Attachment

**[CONTRACTOR NAME]**

Contract No. **[CONTRACT NUMBER]**

\_\_\_\_\_ To the best of our knowledge, all deliverables have been accepted by FDIC, and any and all claims against FDIC have been satisfactorily settled, and the contract may now be closed.

\_\_\_\_\_ To the best of our knowledge, all equipment and/or material furnished by FDIC under the subject contract have been returned to FDIC in good condition, normal wear and tear excepted.

\_\_\_\_\_ The contract listed above should not be closed for the following reason:

---

Signature

---

Title

---

Date

**DATE:** \_\_\_\_\_

**MEMORANDUM TO:** \_\_\_\_\_  
**Oversight Manager**

**FROM:** \_\_\_\_\_  
**Contracting Officer**

**SUBJECT:** \_\_\_\_\_

FDIC Contract No. \_\_\_\_\_

Contractor Name: \_\_\_\_\_

The Referenced Contract is ready to be officially closed. As Oversight Manager, please complete the attached form in order to complete the closeout and return to my attention via e-mail within 10 business days of the date of this memorandum. Please contact [NAME], Contracting Officer, at [PHONE NUMBER] if you have any questions.

Please respond to the following questions:

	YES	NO
1. Have all deliverables, including reports, been delivered to and accepted by FDIC? If NO, please explain.		
2. Have all funds due FDIC been collected (e.g., overpayment of invoices, funds due from collections by contractor, loan servicing fee adjustments, etc.)? If NO, please explain.		
3. Has DIRM confirmed that all property, software, hardware, equipment, and manuals have been returned? If NO, please explain.		
4. Has DIRM confirmed that all user IDs for all systems have been revoked, and that all telephone connections have been terminated? If NO, please explain.		



	YES	NO
5. Has the Security Management Section confirmed that all FDIC parking passes, identification badges, keys, and other passes been returned? If NO, please explain.		
6. Has the Pre-Exit Clearance Record for Contractors been signed by the contractor, placed in the O.M. file, and a copy supplied to the C.O.? If NO, please explain.		
7. Has the attached Performance Evaluation and Reporting Form been completed, placed in the O.M. file, and a copy supplied to the C.O.? If NO, please explain.		
8. Is this contract ready to be closed and the file completed? If NO, please explain.		
9. Has the Oversight Manager's file been submitted to the Contracting Officer for inclusion in the Official Contract File? If NO, please explain.		

\_\_\_\_\_  
Oversight Manager

\_\_\_\_\_  
Date

# PURCHASE ORDER AND SIMPLIFIED CONTRACT CLOSEOUT CHECKLIST

*Page 1 of 1*

Contractor:
-------------

Contract/Purchase Order No:		Contracting Officer:	
		Date Completed:	
Effective Date:		Total Payments:	
Program Office:		Date Closeout Completed:	
Oversight Manager:		Closeout Completed By:	

DESCRIPTION	Yes	No	N/A
1. The purchase order file contains the expenditure authority approval (signed procurement requisition, case or memorandum).			
2. The purchase order amount, including modifications if any, does not exceed the procurement requisition amount.			
3. Perform a payment verification and reconciliation. Any exceptions noted to the following items should be reviewed to determine requirements for administrative deviation or waiver.			
Verify that goods were received and accepted during the purchase order period of performance or as modified, if appropriate.			
Verify that payments made to the contractor do not exceed the procurement requisition or case expenditure approval amount, or as modified, if appropriate.			
Verify that any over or duplicate payments to the contractor have been recovered.			
Verify that all invoices have been paid and accounted for.			
4. POS data has been updated to reflect closed out status and actual performance period and amount of the contract.			
5. File is prepared for storage.			

<b>COMMENTS</b>
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<b>CONTRACTING OFFICER STATEMENT</b>
This contract is complete and closed.
<div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="border-top: 1px solid black; width: 45%;"></div> <div style="border-top: 1px solid black; width: 45%;"></div> </div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <span>Signature</span> <span>Date</span> </div>

# FORMAL CONTRACT CLOSEOUT CHECKLIST

Contractor:
-------------

Contract No:		Contracting Officer:	
Task Order No:		Date Completed:	
Effective Date:		Total Payments:	
Program Office:		Date Closeout Completed:	
Oversight Manager:		Closeout Completed By:	

DESCRIPTION	Yes	No	N/A
1. POS report showing contract is complete			
<b>NOTIFICATION</b>			
2. Memo to Oversight Manager, with copies to Legal, Ethics, ODEO, and OIG.			
3. Letter to Contractor.			
<b>CONTRACT FILE REVIEW</b>			
4. Review contract file to determine that, at a minimum, key contractual and solicitation documents are contained in the file checklist (reference APM, Exhibit XXIII, Contracting File Checklist).  If the Documents are not located in the files or are not properly executed, determine requirements for administrative deviation or waiver. Document findings in a file index.			
<b>PAYMENT VERIFICATION AND RECONCILIATION</b>			
5. Perform a payment verification and reconciliation. Any exceptions noted to the following items should be discussed with the contracting officer for possible administrative deviation or waiver.			
Verify that all invoiced work was performed during the contract period of performance, or as modified if appropriate.			
Verify that payments made to the contractor do not exceed the contract expenditure approval amount or, as modified if appropriate, and all payments due the contractor have been made.			
Verify that any over or duplicate payments to the contractor have been recovered.			
Verify that all invoices have been paid and accounted for.			



# MEMORANDUM OF UNDERSTANDING

BETWEEN

The Federal Deposit Insurance Corporation (FDIC)

And

\_\_\_\_\_ (Vendor)

## Article I. Purpose

Vendor is a company located at \_\_\_\_\_ and is in the business of \_\_\_\_\_. Specifically, the Vendor (Provide a brief description of the product and/or software that Vendor would like to test and/or demonstrate to the FDIC) (“Product”).

Vendor has approached the FDIC to allow it to demonstrate said Product at FDIC’s offices. The FDIC has agreed to a demonstration of the Product for a test period of \_\_\_\_\_ days (“test period”).

To accommodate the demonstration, testing, and review of the Product, the FDIC and Vendor are entering into this Memorandum of Understanding (MOU).

## Article II. Vendor Responsibilities

Vendor will ship the Product, at Vendor’s expense, to the FDIC’s offices located at \_\_\_\_\_. The Vendor will notify the FDIC one (1) week prior to the anticipated delivery date of the Product.

Upon arrival of the Product at the FDIC’s offices, Vendor will install the Product at the FDIC’s offices.

Vendor will provide training and written materials to FDIC personnel relating to the operation and usage of the Product. Vendor will also be available for questions from FDIC personnel regarding the Product during the test period.

After the first half of the test period, Vendor will contact the FDIC to insure that there are no problems with the Product.

Vendor shall not conduct or utilize this review by the FDIC for Product endorsement purposes.

### Article III. FDIC Responsibilities

The FDIC's participation in the demonstration of the Product does not constitute a commitment to purchase the Product before, during, or after the test period. If the Product is software, the use of the software for demonstration purposes does not bind the FDIC to the Vendor's software licensing agreement. However, FDIC shall abide by the Confidentiality Agreement set forth in Article V.

The FDIC is not liable for any loss, damage, or breakage that occurs to the Product during the shipping, installation, usage, or return of the Product to Vendor.

The FDIC shall not participate in or conduct any Product endorsements based upon the review of the Product for the Vendor.

Within five days prior to the end of the test period, the FDIC and Vendor may mutually agree in writing to extend the test period. All terms and conditions of the MOU shall remain in effect and applicable during the extension of the test period.

Upon completion of the test period and any extension thereof, the FDIC agrees within ten (10) working days to (dispose of and/or return the Product – please specify and indicate how the Product will be shipped back to Vendor) to Vendor. Vendor will incur all costs of shipping the Product.

### Article IV. Costs

All costs of shipping, installation, de-installation and the return of the Product shall be born by Vendor.

### Article V. Confidentiality Agreement

A Confidentiality Agreement is attached as Exhibit 1 and incorporated into the MOU.

### Article VI. Term and Termination of MOU

This MOU is effective upon signature by both FDIC and the Vendor and shall remain in force until the end of the test period, as extended, or sooner by mutual agreement of the parties hereto.

### Article VII. Entire Agreement

This MOU is the entire understanding of the parties. The terms contained in this MOU shall not be modified or amended except as agreed to by the parties hereto in writing.

Article VIII. Severability

If any provision of this MOU is held to be unenforceable, invalid or illegal by any court of competent jurisdiction, such unenforceable, invalid, or illegal provision shall not affect the remainder of the MOU.

Article IX. Governing Law

This MOU shall be construed in accordance with and governed by the laws of the United States and in the absence of controlling Federal Law, in accordance with the laws of the District of Columbia.

Article X. Survival

The provisions contained in this MOU which, by their terms, require performance after the expiration or termination of this MOU shall be enforceable notwithstanding the expiration or other termination of this MOU.

Article XI. Counterparts

This MOU may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

In witness whereof, each party has caused this instrument to be signed on its behalf by its duly authorized agents.

Federal Deposit Insurance Corporation

By: \_\_\_\_\_

Title: Contracting Officer

Date: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## Exhibit 1

### Confidentiality Agreement

This Confidentiality Agreement ("Agreement") is executed this \_\_\_\_\_ day of \_\_\_\_\_, 1999 by \_\_\_\_\_ ("Vendor") and Federal Deposit Insurance Corporation, acting in any capacity ("FDIC").

In consideration of the mutual promises set forth herein and other valuable considerations, Vendor and FDIC agree to the following:

1. Confidential Information. Vendor may provide FDIC with, or allow FDIC access to, certain information not generally known to the public regarding certain product and/or software that is being tested by the FDIC. All such information shall be known as "Confidential Information."
2. No Disclosure. Except as expressly permitted by Paragraph 3 below, FDIC shall not at any time disclose, permit the disclosure of, release, disseminate, or transfer, whether orally or by any other means, any part of such Confidential Information to any other person or entity whether corporate, governmental, or individual, without the express prior written consent of an authorized representative of Vendor. FDIC shall return any written Confidential Information, and all copies made of such items, to Vendor upon Vendor's request, but in any event no later than the date that FDIC has agreed to either return or dispose of the product and/or software pursuant to the Memorandum of Understanding dated \_\_\_\_\_ between Vendor and FDIC. FDIC hereby agrees that such Confidential Information and any documents provided may be used by FDIC only as authorized by Vendor. FDIC shall take reasonable measures to avoid any disclosure of any such Confidential Information to any unauthorized person by FDIC's employees, agents, or attorneys.
3. Permitted Disclosure. FDIC shall immediately notify Vendor of any court order or subpoena requiring disclosure of Confidential Information and shall cooperate with legal counsel for Vendor in the appeal or challenge of any such order or subpoena. FDIC may disclose Confidential Information required to be disclosed pursuant to court order or subpoena, but only after the FDIC has exhausted any lawful and timely appeal or challenge that the FDIC elects to file or make in connection with such court order or subpoena.
4. Applicable Law. This Agreement shall be governed by Federal law, and, to the extent that State law would apply under applicable Federal law, the laws of the District of Columbia.
5. Attorney's Fees. If any legal action or other proceeding of any kind is brought for the enforcement of this Agreement, or because of any alleged breach, default, or any other



dispute in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover all reasonable attorney's fees and other costs incurred in such action or proceedings, in addition to any relief to which it may be entitled.

6. Entire Agreement. This Agreement embodies the entire agreement between the parties in relation to the subject matter herein and supersedes all prior understandings or agreements, oral or written, between the parties hereto.

Federal Deposit Insurance Corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

(VENDOR)

By: \_\_\_\_\_

Title: \_\_\_\_\_

# SAMPLE

## OVERSIGHT MANAGEMENT Monitoring Plan

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### GENERAL INFORMATION

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CONTRACT/BASIC ORDER AGREEMENT/FSS SCHEDULE NO.	TASK ORDER/DELIVERY ORDER NUMBER
CONTRACTOR NAME	
CONTRACT DESCRIPTION	
CONTRACTING OFFICER	PROGRAM OFFICE
CONTRACTING SPECIALIST	AUTHORIZED EXPENDITURE (TOTAL) \$ _____
CONTRACT CEILING PRICE ( <i>Initial Period</i> )	Base Period \$ _____ 1st Option \$ _____ 2nd Option \$ _____ 3rd Option \$ _____
PERIOD OF PERFORMANCE	OPTION PERIODS CEILING PRICE 1 - _____ 2 - _____ 3 - _____
OPTION PERIODS (DATES)	1 - _____ 2 - _____ 3 - _____
POST AWARD CONFERENCE YES <input type="checkbox"/> NO <input type="checkbox"/>	CONFERENCE DATE
KEY PERSONNEL ASSIGNED YES <input type="checkbox"/> NO <input type="checkbox"/>	DATE
OVERSIGHT MANAGER	CONFIRMATION LETTER DATE
TECHNICAL MONITOR	CONFIRMATION LETTER DATE

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### SECTION I – FDIC DELIVERABLES

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*For additional deliverables, attach separate sheet.  
From FDIC to Contractor*

DELIVERABLE DESCRIPTION	DATE REQUIRED	DATE DELIVERED	ACCEPTANCE/ REJECTION AND DATE

**SECTION II – MEETINGS/PHONE CONFERENCES/COMMUNICATIONS**

*For additional meetings/phone conference/communication, attach separate sheet.*

TYPE	DATE	TOPIC	FOLLOW-UP

**SECTION III - SITE VISITS**

DATE	PURPOSE	RESULTS/FOLLOW-UP

**SECTION IV - STATUS REPORTS**

*From Contractor to FDIC*

REPORT DESCRIPTION (including drafts)	DATE REQUIRED	DATE RECEIVED	ACCEPTANCE/ REJECTION CRITERIA	ACCEPTANCE/ REJECTION TIMEFRAME	ACCEPTANCE/ REJECTION DATE

**SECTION V – SCHEDULED MILESTONES**

DATE	PLANNED MONITORING/OVERSIGHT ACTION	DATE COMPLETED

**SECTION VI – CONTRACTOR DELIVERABLES**

*For additional deliverables, attach separate sheet.*

*From Contractor to FDIC*

DELIVERABLE DESCRIPTION	DATE REQUIRED	DATE DELIVERED	DATE OF ACCEPTANCE/ REJECTION

**SECTION VII – PROBLEMS and FOLLOW-UP** *(For additional reports, attach separate sheet.)*

DATE NOTIFIED	DESCRIPTION AND RESPONSE	FOLLOW-UP

**SECTION VIII – INVOICES** (For additional invoices, attach separate sheet.)

INVOICE NUMBER	INVOICE AMOUNT	DATE RECEIVED	DATE ACCEPTED OR REJECTED	REMAINING AMOUNT	REASON FOR REJECTION

**SECTION IX – SUBCONTRACTOR MONTHLY ACTIVITY REPORTS**

CONTRACTOR NAME:

MO.	PERIOD OF REPORT	DESCRIPTION OF WORK	TOTAL COMPENSATION PAID – PERIOD & CUMUL.	MARKUP AS APPROVED	SDB PERCENT - GOAL & CMPL'D	SUB PERCENT - GOAL & CMPL'D	SPECIAL INSUR.	CERTIFICATION
JAN								
FEB								
MAR								
APR								
ETC.								

**SECTION X - MODIFICATIONS**

*Including Options*

MODIFICATION NUMBER	DESCRIPTION	FUNDING INCREMENT AMT. ADD/SUBTRACT	CUMULATIVE CEILING TOTAL

**SECTION XI - CHANGE IN OVERSIGHT MANAGER/ TECHNICAL MONITOR APPOINTMENT**

NAME:	OM/TM	LETTER YES/NO	DATE	FILES TRANSFERRED YES/NO	DATE:

**SECTION XI I- PERSONNEL CHANGES**

DEPARTING PERSONNEL – PRE-EXIT CLEARANCE COMPLETION DATE	“NEW” PERSONNEL – BACKGROUND INVESTIGATION INITIATED & FINGERPRINTING DATE

**SECTION XIII – PERSONNEL ACCESS CONFIRMATION** *(when contractor personnel have access to FDIC facilities, Security Management Section (SMS) requires confirmation of the continued need for access to the facilities every six months)*

NAME AND DIVISION/SECTION	ACCESS CONFIRMED DATE	ACCESS WITHDRAWN DATE

**SECTION XIV – SYSTEMS ACCESS & NETWORK ID CONFIRMATION** *(when contractor personnel have access to FDIC systems, FDIC requires confirmation of the continued need for access to the systems and confirmation that the FDIC Security Awareness Website has been reviewed within 5 days of receiving network ID and annually thereafter.)*

PART A - NAME AND DIVISION/SECTION	INITIAL CERTIFICATION	ANNUAL CERTIFICATION

**PART B - CONTRACTOR/SUBCONTRACTOR ANNUAL CONFIRMATION LETTER**

NAME	DATES RECEIVED

**SECTION XV - OPTIONS EXERCISED**

**NUMBER OF DAYS REQUIRED TO NOTIFY:**

OPTION NUMBER	OPTION TERM	NOTICE OF EXERCISE TO CONTRACTOR	CUMULATIVE CEILING TOTAL
Option No. 1			
Option No. 2			
Option No. 3			

**SECTION XVI - PERFORMANCE EVALUATION REPORT (FORM 3700/24)**

REPORTING PERIOD	DUE DATE	DATE DELIVERED	DATE SENT TO CONTRACTOR	DATE RECEIVED FROM CONTRACTOR
Base Period				
Option No. 1, if necessary				
Option No. 2, if necessary				
Option No. 3, if necessary				

**SECTION XVII - CLAIMS**

<b>DATE RECEIVED</b>	<b>AMOUNT CLAIMED</b>	<b>REASON FOR CLAIM</b>	<b>RESULT</b>

**SECTION XVIII - CONTRACT CLOSEOUT**

<b>CATEGORY</b>	<b>DATE</b>	<b>PROBLEMS/ISSUES</b>
All deliverables accepted		
FDIC property returned		
FDIC records returned		
FDIC access and logon IDs suspended		
Final payment processed		
Pre-Exit Clearance performed and submitted to SMS		
Performance Evaluation completed		
Oversight and Technical Monitor(s) files completed and combined		
Oversight file to Contracting Officer		

Dear Contractor:

SUBJECT: Tax Exempt Status  
Identification Number 53-0185558

The Federal Deposit Insurance Corporation was created by an Act of Congress, 12 U.S.C.A. 1811, effective June 16, 1933, as an instrumentality of the United States with certain governmental privileges.

The privileges, as addressed in 12 U.S.C.A. 1825, include that the Corporation, including its franchise, its capital, its reserves and surplus, and its income, shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority, except for real property.

In addition, the Corporation is an organization described and defined under Section 501(c)(1) of the Internal Revenue Code as being exempt from Federal income taxes.

The following is Section 15 of the Federal Deposit Insurance Act, codified as 12 U.S.C.1825:

“All notes, debentures, bonds or other such obligations issued by the Corporation shall be exempt, both as to principal and interest, from all taxation (except estate and inheritance taxes) now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority:

*Provided.* That interest upon or any income from any such obligations and gain from the sale or other disposition of such obligations shall not have any exemption, as such, and loss from the sale or other disposition of such obligations shall not have any special treatment, as such, under the Internal Revenue Code, or laws amendatory or supplementary thereto. **The Corporation, including its franchise, its capital reserves, and surplus, and its income, shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, country, municipality, or local taxing authority,** except that any real property of the Corporation shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.”

(Emphasis supplied)