Federal Deposit Insurance Corporation

Acquisition Procedures, Guidance and Information

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MODULE 1: GUIDING PRINCIPLES, AUTHORITY, ETHICS, AND CONTROLS

PGI Chapter 1.1 Guiding Principles

1.101 RESERVED

1.102 RESERVED

1.103 RESERVED

1.104 RESERVED

PGI Chapter 1.2 Authority

1.201 Scope

This chapter provides procedures, guidance and information on authority, applicability of federal statues, ethics, and other controls related to Federal Deposit Insurance Corporation (FDIC) acquisitions.

1.202 RESERVED

1.203 RESERVED

1.204 RESERVED

1.205 Modifications of Procurement Policy

The ASB Deputy Director, DOA, is authorized to approve one-time deviations to procurement policy. Such deviations are accomplished through the granting of a waiver, which is processed via email. A Contracting Officer prepares the request for waiver and must follow the format in the *Request for Waiver- Email Template* found at https://fdicnet.fdic.gov/content/doa/home/buying/acq-docs.html. The applicable Assistant Director must acknowledge his/her concurrence on the email and include any additional comments before submitting the request for waiver to the ASB Deputy Director for approval. Any approval or coordination required from other Divisions or Offices, or

waivers to other Directives, must be obtained prior to submission, and must be included in the waiver request.

1.206 RESERVED

1.207 RESERVED

1.208 Application of Federal Statutes to the FDIC Contracting Program

1.208(a) Overview

The federal statutes, regulations and executive orders described below apply to the FDIC contracting program and must be considered in the acquisition planning process. Not all laws apply to all contracts. Where a particular law applies only to a specific type of contract (e.g., some laws apply only to contracts for services), this is stated. If no such limitation is stated, the law applies to all types of contracts. Some laws apply only when FDIC is contracting in its corporate capacity and are so identified; otherwise, the laws apply to FDIC in all of its capacities. Lastly, the dollar thresholds that trigger the application of particular statutes, and the particular procedures for implementation of the requirements of the various statutes, are given.

1.208(b) RESERVED

1.208(c) Applicable Statutes and Executive Orders

(1) *Labor Laws:* Labor laws apply only to contracts that FDIC enters into in its corporate capacity.

- Service Contract Act (SCA) of 1965 – 41 USC §351 et seq.: Guidance and information on the SCA is provided at *Acquisition Policy Manual* (APM) 5.11 and *Procedures, Guidance and Information* (PGI) 5.11.
- Contract Work Hours and Safety Standards Act – 40 USC §3701 et seq.: Generally requires that contracts for the employment of laborers and mechanics provide for a forty (40) hour work week and for payment of overtime at a minimum of one and a half (1½) times the basic rate of pay for all hours worked in excess of forty (40) hours in a work week. It applies to contracts and subcontracts greater than $100,000 in value.
- Davis-Bacon Act – 40 USC §3141 et seq.: Guidance and information on the Davis-Bacon Act is provided at PGI 5.1104.
- 40 USC §3131 et seq. (formerly known as the Miller Act): Requires that contractors provide payment and performance bonds for construction contracts greater than $100,000 in value. It also requires a pledge of assets where the surety is an individual.

- The Walsh-Healey Public Contracts Act – 41 USC §35-45: Applies to contracts for the manufacture or furnishing of supplies (materials, supplies, articles, or equipment), performed within the United States or its territories. It requires these contracts to incorporate by reference the stipulations in federal law governing minimum wages, maximum work hours, child labor, convict labor, and safe and sanitary working conditions. It applies to contracts greater than $10,000 in value.

(2) *Socio-Economic Programs:*

- Buy American Act (BAA) – 41 USC §10a: The BAA requires FDIC to give preference to American-made goods when it procures goods for use in the United States.
- Trade Agreements Act (TAA) of 1979 – 19 USC §2501 et seq.: The TAA is the statutory authority for many of the trade agreements to which the United States is a party.

  In general, the BAA applies to contracts with a value greater than the micro-purchase threshold, currently $10,000, and applies to contracts entered into by FDIC in its corporate capacity only.

  Application of the BAA is waived when a free trade agreement (FTA) applies to the acquisition. FTAs apply to contracts for goods, services and construction at different dollar thresholds; they apply to FDIC when it contracts in its corporate capacity only.

  There is significant interplay between the BAA and the TAA; both need to be considered when planning an acquisition. See PGI 5.12 for a comprehensive discussion of the application of the BAA, the special procedures mandated by the TAA, the dollar thresholds and the exceptions to their application.
- Rehabilitation Act of 1973 – 29 USC §794d (commonly known as Section 508): Section 508 requires that electronic and information technology (EIT) developed, procured, maintained or used by the FDIC or its contractors be as accessible to persons with disabilities as it is to persons without disabilities. Acquisitions of EIT must comply with Section 508 and the regulations published by the Architectural and Transportation Barriers Compliance Board. The FDIC has adopted its own regulation on Section 508 in 12 CFR Part 352. Detailed procedures are set out at PGI 5.3.
- Javits-Wagner-O'Day Act (JWOD) – 41 USC §46 et seq.: JWOD applies to contracts for supplies and may apply to certain contracts for services. The JWOD program creates jobs and training opportunities for people who are blind or who have other severe disabilities. Its primary means of doing so is by requiring government agencies to purchase selected products and services from nonprofit agencies employing such individuals. The JWOD Program, also known as AbilityOne, maintains procurement lists of supplies and services available from groups participating in AbilityOne. FDIC is required to fill its procurement needs for items on AbilityOne's procurement lists from AbilityOne groups. Additional information may be found at APM 3.3 and PGI 3.3.

- Rehabilitation Act of 1973 – 29 USC §793: This act requires that contractors not discriminate against any employee or applicant qualified for a position because of any physical or mental disability. It also requires contractors to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled individuals without discrimination because of their disabilities. FDIC voluntarily complies with this statute.
- Executive Order 11246 – Equal Opportunity: This Executive Order prohibits discrimination by contractors in employment practices. It applies to all contracts with a value greater than $10,000.
- The FDIC Minority and Women Outreach Program for Contracting – 12 USC §1833e and 12 CFR Part 361: This program seeks to include minority and women-owned businesses (MWOBs) and small disadvantaged businesses (SDBs) in FDIC procurements. The Office of Minority and Women Inclusion manages this outreach program and works with the Acquisition Services Branch (ASB) to solicit MWOB and SDB firms. APM 2.105, 3.105, and 3.205 provide more information about FDIC's Socio-Economic Programs.
- Vietnam Era Veterans Rehabilitation Act of 1972 – 38 USC §4212: This act applies to contracts with a value greater than $100,000. It requires that contractors not discriminate against any employee or applicant qualified for a position because they are a disabled veteran or veteran of the Vietnam era. It also requires contractors to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veteran status.
- Executive Order 12564 (Drug Free Workplace): This executive order addresses drugs in the work place. It applies to FDIC contracts where the contractor is an individual or, if other than an individual, to contracts exceeding $100,000, by virtue of the FDIC policy of voluntary compliance with its mandates. For a contract where the contractor is an individual, the contractor must agree not to engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in the performance of the contract. For a contract exceeding $100,000, the contractor must agree to make a good faith effort to maintain a drug-free workplace.
- Federal Prison Industries (FPI) – 18 USC §4124: The FPI program directs federal departments and agencies to purchase prison-made products, subject to certain conditions, from the FPI (trade name UNICOR). It applies to contracts for goods of the classes listed in the Schedule of Products Made in Federal Penal and Correctional Institutions; see the FPI Schedule on the FPI website, http://www.unicor.gov. Goods valued at greater than $3,500 must be purchased on the FPI Schedule, when available, to FDIC requirements so long as the FPI prices do not exceed current market prices. Detailed procedures for complying with the FPI statute are found at PGI 3.304.
- Small Business Act – 15 USC §644e: This section of the Small Business Act deals with contract bundling. It applies to contracts entered into by

FDIC in its corporate capacity only. See APM 2.204 for the specifics of its application.

(3) *Privacy and Payment Laws:*

- Privacy Act of 1974 – 5 USC §552a: This section applies to FDIC contracts for the design, development or operation of a system of records on individuals, whether that system is automated or paper-based. FDIC Circular 1031.1, *Administration of the Privacy Act*, is the FDIC comprehensive statement of procedures on the subject. The circular is available at https://fdicnet.fdic.gov/content/dam/DOA/documents/rim/directives/1000/1031-1.doc. During acquisition planning, the Program Office must identify whether the Privacy Act applies to the proposed acquisition. Contractors must comply with the requirements of the Privacy Act and the contract must contain a clause describing the requirements imposed on the contractor.
- Prompt Payment Act – 31 USC §3901-05: This act applies to the FDIC only when it contracts in its corporate capacity. It requires the payment of interest on properly submitted invoices more than thirty (30) days past due.
- Assignment of Claims Act – 31 USC §3727: This act permits a contractor to assign claims for monies due to it from FDIC under a contract to a bank, trust company or other financing institution.

(4) *Ethics and Integrity Laws:*

- Anti-Kickback Act of 1986 – 41 USC §§51-58: This Act prohibits both the payment and acceptance of kickbacks. It also prohibits including of the cost of kickbacks in the price of a contract. It provides substantial penalties, both criminal and civil, for violations.
- Byrd Amendment – 31 USC §1352(b): This requirement limits the use of appropriated funds to influence, or attempt to influence, certain federal contracting and financial transactions. It applies to contracts greater than $100,000 in value, entered into by FDIC in its corporate capacity. An offeror must certify to compliance with the Byrd Amendment when it submits a bid.
- Copeland (Anti-Kickback) Act – 40 USC §3145 and 18 USC §874: This act applies to construction contracts greater than $2,000, using laborers and mechanics for construction, alteration or repair of FDIC buildings. It makes it unlawful to use threats or intimidation to induce a worker to give up part of the wages to which he is entitled.
- Federal Deposit Insurance Act – 12 USC 1822f (and the corresponding regulations -12 CFR Part 366): Establishes the minimum standards of contractor integrity and fitness FDIC requires of its service contractors. An offeror must certify to the standards of this act when it submits a proposal valued at $100,000 or greater.

(5) *Environmental Laws:* For construction contracts, FDIC complies with the provisions of the Clean Air Act (CAA) of 1990 – 42 USC 7401 et seq., (specifically 42 USC §7414) and the Clean Water Act - 33 USC §1251 et seq. (specifically 33 USC §1318). These acts cover the inspection and

monitoring of facilities related to the development of implementation plans and the monitoring of compliance with air and water quality standards.

For contracts for either goods or services associated with refrigeration equipment or air conditioning, or goods containing ozone-depleting substances, FDIC complies with the CAA of 1990 – 42 USC Sections 7671g (servicing of refrigeration and air conditioning equipment), 7671h (national program for recycling and emissions reduction) and 7671j (labeling of products containing ozone-depleting substances).

(6) *Information Security Law:* The Federal Information Security Management Act of 2002 – 44 USC §§3541-49 establishes a comprehensive program for the management of government information security. It applies to contracts for both goods and services involving information technology. It requires the FDIC to consider information security in its contract planning, to incorporate terms governing information security in its contracts, and to adequately oversee the information security practices of its contractors. Information regarding information security and protection of sensitive information is found at APM 5.1.

(7) *Tax Law:* The Federal Deposit Insurance Act – 12 USC § 1825. This act exempts FDIC from all federal, state and local taxes, except taxes on real property.

(8) *Office of Management and Budget* (*OMB)Approval under the Paperwork Reduction Act* - The Paperwork Reduction Act of 1980 - Pub. L. 96-511 requires Federal agencies to obtain approval from the OMB before collecting information from ten (10) or more members of the public. The information collection and recordkeeping requirements in the sections set out below have been approved by the OMB; the OMB Control Number 3064-0072 covers all FDIC procurement-related information collections, which are contained in the following PGI sections:

1.304
1.309(c)
3.210(b)
3.215(a)
5.203(c)
5.12
7.3.2-44 through -55
7.5.2-1 through -3
7.5.12-2, -4, -6 and -8.

1.209 Contracting Officer Authority

1.209(a) RESERVED

1.209(b) RESERVED

1.209(c) RESERVED

1.209(d) Contracting Officer Warrant Program

(1) *Warrant Levels:* Contracting Officers are delegated contracting authority for specified contracting dollar thresholds based on training and experience as follows:

- Level I Contracting Officer (Up to $100,000);
- Level II Contracting Officer (Up to $1,000,000);
- Level III Contracting Officer (Up to $5,000,000);
- Level IV Contracting Officer (Up to $10,000,000); and
- Level V Contracting Officer (Unlimited)

Contracting Officers may award contracts or modifications within their delegated authority. When determining the value of a contract action, the total includes the basic contract and all options. However, for contract modifications, the dollar threshold is not cumulative. For example, although a $25,000 modification may push total contract value above $100,000, a Level I Contracting Officer can still sign the modification, unless the modification increases the total value by more than fifteen (15) percent of the total contract value. In those cases, the modification must be signed by a Contracting Officer with authority for the new cumulative value.

(2) *Experience Requirements:* Table 1 shows Contracting Officer warrant levels with associated minimum business and contracting experience requirements for each. Contracting experience may also be used to partially satisfy the business experience requirements.

Table 1. Contracting Officer Warrant Level Experience Requirements

Level	Dollar Threshold	Business Experience	Contracting Experience
I	Not to exceed $100,000	4 Years	2 Years
II	Not to exceed $1,000,000	5 Years	3 Years
III	Not to exceed $5,000,000	6 Years	3 Years
IV	Not to exceed $10,000,000	7 Years	4 Years
V	Unlimited	8 Years	5 Years

- *Continuous Learning Requirements:* Contracting Officers must complete a minimum of forty (40) hours of continuous learning annually, or eighty (80) hours every two years, in order to maintain their Contracting Officer Appointment. Other ASB personnel in the 1102 job series must also meet the continuous learning requirement. Continuous learning may be in the form of training or may be earned by attending conferences, symposia, internal ASB workshops, and other events that offer topical presentations of value. Training: In order to satisfy the

continuous learning requirement, any training must enable the individual to: (1) demonstrate an in-depth functional knowledge of the laws, policies, procedures, and contracting methods that apply to FDIC contracts and to government contracts in general; and (2) effectively manage complex contracting actions. Examples of acceptable training subjects include:

- Negotiation techniques;
- Price analysis;
- Price evaluations;
- Contract terminations;
- Contract administration;
- Commercial and government contract law;
- Best value contracting;
- Contract claims;
- Incentive contracting;
- Performance-based contracting; and
- Oversight management.

- Additional Training Requirements:
  - Training must be directly related to the knowledge required for success in a position that has responsibility for contracts;
  - Training may be provided by FDIC or by FDIC-approved external organizations;
  - Web-based courses may be used to meet training requirements;
  - A course that addresses contract subject matter areas pertinent to ongoing FDIC contract work, in addition to courses prescribed in this section, may be acceptable in part, provided the number of hours of study for credit is readily identifiable;
  - Training hours must represent actual classroom hours, unless the training is from a web-based course; and
  - Courses satisfying these requirements that were completed prior to the effective date of the Contracting Officer Program are acceptable.

(3) *Identification of Contracting Officer Authority:* Contracting Officers must prominently display their certificates of appointment within their offices.

(4) *Updating the APS Warrant Table:* The Contracting Officer must provide a copy of any newly issued warrant, to include any increase or decrease in warrant level, to the APS Administrators by submitting a Tempo case with a copy of the warrant attached.

(5) *Continuing Professionalism:* All Contracting Officer appointments, regardless of level, must be reviewed annually by the ASB Deputy Director to ascertain that each Contracting Officer has maintained professional proficiency and otherwise remains qualified.

(6) *Waivers:* Waivers to the qualification requirements may be requested for individuals who, due to their extraordinary experience, or due to extraordinary circumstances, should be granted Contracting Officer authority. Requests must be submitted through the respective ASB Assistant Director to the ASB Deputy Director.

(7) *Interim Contracting Officer Appointments:* Ordinarily, individuals are not appointed as Contracting Officers if they do not meet the qualification criteria. However, when necessary, the ASB Deputy Director may grant an interim appointment to an individual who has not yet completed necessary training or education. Interim appointments ordinarily do not exceed six (6) months. Failure to successfully complete required training within the interim period normally results in the loss of appointment without prejudice. Circumstances beyond the control of the individual may allow the ASB Deputy Director to extend the interim appointment period.

(8) *Termination of Contracting Officer Appointments*: Termination of a Contracting Officer appointment is made in writing by the ASB Deputy Director, unless the Certificate of Appointment contains provisions for automatic termination. Terminations may be made for reasons such as reassignment or unsatisfactory performance. The termination must indicate the effective date of termination. Termination of employment automatically terminates a Contracting Officer's appointment. Terminations may not be made retroactively.

1.210 RESERVED

1.211 Unauthorized Contractual Commitments

1.211(a) Documentation - Contractor Activities

For ratification, the contractor must submit an invoice to the Contracting Officer for the unauthorized work and include documentation that describes:

(1) What work was performed;

(2) Why the work was performed;

(3) Where the work was performed;

(4) When the contractor was instructed to do the work; and

(5) Who instructed the contractor to do the work, and in what form were the instructions given (verbal or written), including a copy of any written authorization.

The ratification request must be rejected if the contractor cannot name the FDIC individual(s) or representative(s) who authorized the work. The contractor may file a claim for resolution.

If an FDIC employee directed the work, the Contracting Officer must evaluate the contractor’s submission to determine if it provides a legitimate basis for payment.

1.211(b) Program Office Activities Documentation

Before the execution of the ratification document, the office that directed the work must submit a written and signed statement to the Contracting Officer that includes:

(1) Identification of the employee who directed the contractor to perform the work;

(2) Statement of pertinent 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 shall obtain a benefit resulting from performance of the unauthorized commitment; and

(4) An approved procurement request.

The statement must be signed by the Program Office Deputy Director for ratification actions of $10,000 or less. For actions greater than $10,000, the statement must be signed by the Division/Office Director.

1.211(c) Ratification Approval

(1) *Contracting Officer Recommendation Report:* The Contracting Officer must prepare a written recommendation report documenting the findings of facts provided by the contractor and Program Office and providing a recommendation for either approving or denying the ratification action. When the Contracting Officer recommends approval, the recommendation report must affirm the goods and services are acceptable and the price is fair and reasonable. The Contracting Officer must obtain concurrence from the Contracting Law Unit before submitting the report for approval.

(2) *Recommendation Report Approval:* The Contracting Officer's recommendation report must be reviewed and approved by the respective Assistant Director for actions $10,000 or less. Only the ASB Deputy Director may approve actions greater than $10,000.

(3) *Ratification Denial and Approval:* If the ratification is denied, the Contracting Officer must provide the contractor with a letter disclosing the decision with a brief rationale. If the ratification is approved, the Contracting Officer must prepare a contract modification. This is applicable if the ratification occurs on a contract with a current period of performance. If the ratification occurs without a corresponding contract, a new contract must be issued.

(4) *Warrant Authority and Procurement Request Authority:* Ratification is permitted only within the Contracting Officer's warrant authority, and after any additional procurement request authority has been obtained. The specific dollar amount being ratified must be used for determining the required warrant level and proper procurement request authority.

(5) *Documentation:* The Contracting Officer must file all documentation supporting the approval or denial of a ratification action, including procurement request authority and contract modification or new contract, in the official contract file. The Contracting Officer must provide a copy of an approved or denied recommendation report to the ASB Assistant Director, Policy and Systems

Section.

1.212 RESERVED

1.213 Conduct of Business by Electronic Means

Electronic means is defined as the use of email, facsimile, or other generally accepted electronic means utilized for communication, correspondence or the transmission of electronic documents/artifacts, including electronic signatures. “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities; and “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

1.214 Supply Chain Risk Management

Supply chain risk management (SCRM) is the implementation of strategies to manage both every day and exceptional risks along the supply chain based on continuous risk assessment with the objective of reducing vulnerability and ensuring continuity. SCRM attempts to reduce supply-chain vulnerability via a coordinated holistic approach, involving all supply-chain stakeholders, which identifies and analyzes the risk of failure points within the supply chain.

1.214(a) Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab

(i) Definitions (as used in this subpart)

“Covered article” means any hardware, software, or service that–

(1) Is developed or provided by a covered entity;

(2) Includes any hardware, software, or service developed or provided in whole or in part by a covered entity; or

(3) Contains components using any hardware or software developed in whole or in part by a covered entity.

“Covered entity” means–

(1) Kaspersky Lab;

(2) Any successor entity to Kaspersky Lab;

(3) Any entity that controls, is controlled by, or is under common control with Kaspersky Lab;

or

(4) Any entity of which Kaspersky Lab has a majority ownership.

(ii) Prohibition

Section 1634 of Division A of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91) prohibits Government use on or after October 1, 2018, of any hardware, software, or services developed or provided, in whole or in part, by a covered entity.
Contractors are prohibited from—

(a) Providing any covered article that the FDIC will use on or after October 1, 2018;
and
(b) Using any covered article on or after October 1, 2018, in the development of data or
deliverables first produced in the performance of the contract.

(iii) Notification
When a contractor provides notification pursuant to clause 7.1.2-1, the contracting officer shall consult with OCISO or designee and Division/Program Office Director or designee for consideration.

1.214(b) Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(i) Definitions (as used in this subpart)
Covered foreign country means The People's Republic of China.
Covered telecommunications equipment or services means—
(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or
(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
Critical technology means—
(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;
(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled—

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or
(ii) For reasons relating to regional stability or surreptitious listening;
(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);
(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);
(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or
(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).
Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(ii) Prohibition

(a) Prohibited equipment, systems, or services. On or after August 13, 2019, FDIC is prohibited from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (b) of this section applies or the covered telecommunications equipment or services are covered by a waiver described in 1.214(b)(iv).

(b) Exceptions. This subpart does not prohibit FDIC from procuring or contractors from providing-

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) Contracting Officers. Contracting officers shall not procure or obtain, or extend or renew a contract (e.g., exercise an option) to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (b) of this section applies or the covered telecommunications equipment or services are covered by a waiver described in 1.214(b)(iv).

(d) Recording prohibitions in the System for Award Management (SAM).

(1) Prohibitions on purchases of products or services produced or provided by entities identified in paragraphs (1) and (2) of the definition of “covered telecommunications equipment or services” (including known subsidiaries or affiliates) at 1.214(b)(i) will be recorded in SAM.

(2) Prohibitions on purchases of products or services produced or provided by entities identified pursuant to paragraph (4) of the definition of “covered

telecommunications equipment or services" (including known subsidiaries or affiliates) at 1.214(b)(i) are recorded by the Department of Defense in SAM.

(iii) Procedures.

(a) Representations.

(1)(i) If the offeror selects "does not" in response to the provision at 7.3.2-76, the contracting officer may rely on the representation, unless the contracting officer has reason to question the representation. If the contracting officer has a reason to question the representation, the contracting officer shall consult with the OCISO or designee and Division/Program Office Director or designee for consideration.

(ii) If the offeror selects "does" in response to the provision at 7.3.2-76, the offeror must complete the representation at 7.3.2-77.

(2)(i) If the offeror selects "will not" in paragraph (d) of the provision at 7.3.2-77, the contracting officer may rely on the representation, unless the contracting officer has reason to question the representation. If the contracting officer has a reason to question the representation, the contracting officer shall consult with the OCISO or designee and Division/Program Office Director or designee for consideration.

(ii)If an offeror selects "will" in paragraph (d) of the provision at 7.3.2-77, the offeror must provide the information required by paragraph 7.3.2-77(e), and the contracting officer shall consult with OCISO or designee and Division/Program Office Director or designee for consideration.

(b)Reporting. If a contractor provides a report pursuant to paragraph (d) of the clause at 7.1.2-2, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, the contracting officer shall consult with OCISO or designee and Division/Program Office Director or designee for consideration.

(iv) Waivers.

(a) The Chairman of the FDIC or designee, may, on a one-time basis, waive the prohibition at 1.214(b) with respect to the FDIC entity (e.g., requirements office, contracting office) that requests such a waiver.

(1) The waiver may be provided, for a period not to extend beyond August 13, 2021, if the FDIC entity seeking the waiver submits to the Chairman of the FDIC or designee–

(i)A compelling justification for the additional time to implement the requirements under 1.214(b), as determined by the Chairman of the FDIC or designee; and

(ii)A full and complete laydown or description of the presences of covered telecommunications or video surveillance equipment or services in the relevant supply chain and a phase-out plan to eliminate such covered telecommunications or video surveillance equipment or services from the relevant systems.

1.215 Prescriptions for Provisions and Clauses for Authority

7.1.2-1 Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab – insert clause in all awards.

7.1.2-2 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment – insert clause in all awards.

7.3.2-76, Covered Telecommunications Equipment or Services-Representation - insert provision in all solicitations.

7.3.2-77, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment - insert provision in all solicitations.

PGI Chapter 1.3 Ethics

1.301 Scope

This chapter provides procedures, guidance and information as it relates to contractor and FDIC employee ethics.

1.302 RESERVED

1.303 Ethics Procedures

Contracting Officers and the Program Offices they support must comply with the procedures regarding ethics issues discussed in this chapter in the award of contracts for FDIC.

1.304 Minimum Standards of Contractor Integrity and Fitness

FDIC requires contractors and subcontractors to meet minimum standards of fitness and integrity in the areas of ethics, conflicts of interest, and the use of confidential information as per 12 CFR Part 366, which is available at http://www.access.gpo.gov/nara/cfr/waisidx_08/12cfr366_08.html. Authority for interpreting these standards has been delegated to the Executive Secretary (except for contracts with law firms, authority for which is delegated to the General Counsel).

The fitness and integrity standards apply to contractors who submit proposals for services. When services are being procured, the Contracting Officer must ensure that the FDIC *Integrity and Fitness* clause 7.3.2-46 is included in the request for proposal or request for quotation for services estimated to cost greater than $100,000. Contractors who submit proposals for goods, or who enter into contracts for goods with the FDIC, are not subject to the regulation.

Contracting Officers must review the representations for possible issues. If there are any questions regarding the application of Part 366, the Contracting Officer must consult with the ASB, Policy and Systems Section, and the Legal Division Contracting Law Unit (CLU).

1.304(a) 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 contract for which such information is required, or be in default with respect to any existing contract for which such information is required.

1.304(b) Post-award Contractor Data/Information Submission

During the term of the contract, the contractor must:

(1) Verify the required information for any employee, agent, or subcontractor who performs services under the contract for whom such information has not been previously verified, prior to such employee, agent, or

(2) subcontractor performing services under the contract; and

(3) Immediately notify FDIC if any of the information submitted was incorrect at the time of submission, or has subsequently become incorrect.

1.304(c) Retention of Information

A contractor must retain the information upon which it relied in preparing its integrity and fitness representations during the term of the contract, and for a period of three (3) years following the termination or expiration of the contract, and make such information available for review by FDIC upon request.

1.305 Disqualifying Conditions

The disqualifying conditions set out in 12 CFR Part 366 are fully described in APM 1.305. All firms submitting proposals for services with estimated costs greater than $100,000, must answer the questions directed at each of the qualifying conditions, as set forth in clause 7.3.2-46, and submit them in the proposal. By submitting a signed proposal, a contractor certifies to the absence of disqualifying conditions and conflicts of interest at the time it submits a proposal and that it will only retain employees and subcontractors who meet the requirements of Part 366.

Contractors with disqualifying conditions that arise prior to or after award are required to notify FDIC in writing within ten (10) calendar days. There are no waivers for disqualifying conditions.

1.306 Conflicts of Interest

FDIC does 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 the conflicts are waived by FDIC, or the conflicts or conditions are eliminated by the contractor.

1.306(a) Waivers

Conflicts-of-interest waivers may be granted only when the interest of FDIC in the contractor's participation outweigh the concern that a reasonable person may question the integrity of FDIC operations, taking into consideration all the relevant circumstances.

1.306(b) Referral

The Contracting Officer forwards all conflicts of interest issues to the CLU for review and determination.

1.307 Suspension and Exclusion of Contractors

The FDIC CLU may suspend or exclude contractors that violate the contractor fitness and integrity standards (12 CFR Part 366), as well as for other causes. Suspensions are immediate, but temporary. Exclusions are generally for a defined period of time.

Part 367 (12 CFR 367) 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.

Contractors suspended or excluded from contracting programs are prohibited from entering into any new contracts for the duration of the suspension or exclusion. Contracting Officers cannot solicit offers from, award contracts to, extend or modify existing contracts, award task orders under existing contracts, or consent to subcontracts with suspended or excluded contractors. Suspended or excluded contractors are also prohibited from conducting business with FDIC as agents or representatives of other contractors. If the Contracting Officer determines it is in the corporation's best interest to contract with a suspended or excluded contractor or subcontractor, a waiver must first be requested from the Legal Division permitting the award.

A suspension becomes effective immediately upon issuance of the notice. The Contracting Officer is responsible for checking the FDIC Debarred Vendors List on the ASB website at https://fdicnet.fdic.gov/content/doa/home/buying/debarred-vendors.html, and the System for Award Management at http://www.sam.gov to ensure that a contractor being considered for an award has not been suspended or excluded from performing services to FDIC.

1.308 RESERVED

1.309 Roles and Responsibilities – Contractor Integrity and Fitness Review

1.309(a) Contracting Officer

The Contracting Officer is responsible for reviewing integrity and fitness representations and certifications submitted by contractors and identifying eligibility issues. Generally, eligibility issues are identified:

(1) During the review of eligibility representations and certifications submitted by potential and current contractors in connection with a solicitation or modification of a contract;

(2) In a request for a waiver of a conflict of interest submitted by a contractor;

(3) In a request from a contractor to limit its representations and certifications in some manner; or

(4) From information derived from outside sources, such as other contractors or the media.

The Contracting Officer reviews the contractor's representations and certifications for completeness and to identify potential issues that could affect eligibility to serve as an FDIC contractor. Eligibility issues can be found where the representations and certifications (or an application):

(1) Reveal grounds for disqualification under Part 366;

(2) Are qualified in some manner or incomplete;

(3) Appear to be false; or

(4) Disclose a conflict of interest.

If the contractor's certifications are complete and no eligibility issue is identified, the contractor is eligible for possible contract modification or award. If the certification(s) are incomplete, the Contracting Officer obtains the missing information from the contractor. The Contracting Officer refers any eligibility issue to CLU as early as possible in the contracting process. When the Contracting Officer identifies a potential eligibility issue, the affected contractor is notified and a copy of the notification sent to CLU. When referring an eligibility issue to CLU, the Contracting Officer provides CLU with the solicitation and other relevant contract documents. If CLU requests additional documents from the potential contractor, the Contracting Officer obtains these, as well. After its review, CLU provides its comments and recommendation to the Contracting Officer for action.

1.309(b) Contracting Law Unit

Review of Certifications and Waivers: Upon referral by ASB, CLU reviews conflicts of interests raised by the representations and certifications submitted by a contractor recommended for an award. CLU issues a written decision of its determination for ASB.

CLU also prepares the cases for eligibility determination, waiver of conflicts of interest, appeal from final decisions, and other documents for the Corporation Ethics Committee (CEC), where CLU determines that a particular case is one that merits consideration. All cases presented to the CEC are reviewed by ASB prior to their submission.

1.309(c) Security and Emergency Preparedness Section

The Security and Emergency Preparedness Section (SEPS) conducts background checks on contractors, subcontractors, and contractor personnel at the request of the Contracting Officer or Oversight Managers. See policy in FDIC Circular 1610.2, which can be found at https://fdicnet.fdic.gov/content/dam/DOA/documents/rim/directives/1000/1610-2.doc. If SEPS identifies an eligibility issue or a conflict of interest, it refers the matter to the Contracting Officer who may then refer it to CLU.

1.309(d) Office of Inspector General

The Office of Inspector General (OIG) is responsible for investigating contractor misconduct and allegations of criminal conduct. Allegations may be made to the OIG directly, or may be made to, or come to the attention of, the Contracting Officer, others in ASB, or the CLU. ASB and CLU may refer allegations they receive to the OIG for investigation.

1.309(e) Corporation Ethics Committee

The delegated authority to waive a conflict of interest, if a contractor requests a waiver, rests both with the CEC and with the Assistant General Counsel of the Corporate and Legal Operations (AGC-CLO) Section of the Corporate Operations Branch of the Legal Division. Information on the Legal Division is available at http://fdic01.prod.fdic.gov/division/legal/directivespolicy/5250.2.html. Generally, the AGC-CLO (or designee) rules on waiver requests that are simple and straightforward; more complicated conflicts situations are referred to the CEC, in the first instance, for action on a request for waiver. Decisions by the AGC-CLO may be appealed to the CEC. Cases going to the CEC are prepared by the CLU and reviewed by the ASB prior to submission.

The CEC has the authority to reverse, stay, or uphold a final decision of the AGC-CLO. A request for reconsideration of a conflict of interest decision - be it a denial of waiver, a grant of waiver with conditions or other adverse determination - may be submitted, in writing, by the contractor or by the division or office for whose benefit the waiver decision is sought, and must be supported by evidence that substantiates the relief sought. The decision of the CEC is final and constitutes the final action of the corporation on the matter.

1.309(f) Office of Minority and Women Inclusion

The Contracting Officer notifies the Office of Minority and Women Inclusion of any adverse action(s), including intent to rescind the contract of, or to suspend and/or exclude a minority and women-owned business (MWOB) or small disadvantaged business (SDB) firm, joint venture with MWOB or SDB participation, and/or prime contractor with MWOB or SDB subcontractors.

See APM 1.309.

1.310 Roles and Responsibilities – Contractor Suspension and Exclusion

1.310(a) Legal Division, Contracting Law Unit

CLU is responsible for the overall administration of the Suspension and Exclusion regulations (12 CFR Part 367) with respect to all contractors, except law firms. CLU determines whether the actions or omissions of an independent contractor meet the standards for suspension or exclusion as defined in Part 367. The corporation's Ethics

Counselor (the FDIC Executive Secretary) is the deciding official in exclusion and suspension cases.

All reports of contractor misconduct that may support suspension or exclusion action under 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) are referred to CLU with a copy to the ASB, Policy and Systems Section. Where information provided to CLU establishes a reasonable belief that conduct warranting a suspension or exclusion may have occurred, CLU determines if further action is warranted, as discussed below. If CLU determines that the information provided does not support a reasonable belief of actionable misconduct, it prepares a memorandum closing the case and provides the OIG and the Policy and Systems Section with a copy of it. If actionable misconduct is determined, CLU prepares a notice to the contractor.

The following steps are taken by CLU to determine if a suspension or exclusion is warranted:

(1) CLU is responsible for reviewing the material submitted, including the administrative record, and determining whether that record and the evidence, measured against the applicable evidentiary standard, supports a suspension or exclusion. In cases where the evidence in the administrative record is insufficient, CLU identifies any additional information that may be required for an enforcement action and seeks to obtain the information, if it exists;

(2) In situations where exclusion is the appropriate action, CLU prepares a notice of possible cause to exclude, and sends it to the contractor. Where suspension is appropriate, either alone or in conjunction with exclusion, CLU prepares an appropriate notice of suspension together with a case supporting that action. Where CLU determines there is no legal basis to take action, it informs the Policy and Systems Section via memorandum; and

(3) Once notice has been given and a suspension or exclusion action has commenced, CLU undertakes all necessary contact with the contractor. In suspension and exclusion cases that go to hearing, CLU reviews the record and draft a case and proposed decision for the Ethics Counselor. If a contractor appeals the decision of the Ethics Counselor to the CEC, CLU prepares the case and decision for the CEC's consideration. In cases that are settled, CLU prepares appropriate settlement documents and advises ASB on the execution of the settlement documents.

1.310(b) Ethics Counselor and the Corporation Ethics Committee

The FDIC Executive Secretary is its designated Ethics Counselor. The Ethics Counselor decides all cases against contractors for suspension or exclusion from service to the FDIC. A contractor may appeal the Ethics Counselor's suspension or exclusion decision to the CEC. The CEC has authority to reverse, stay, or uphold a final decision.

1.310(c) Security and Preparedness Section

If a false certification or other matter that might warrant suspension or exclusion of a contractor is identified by SEPS during the background check it conducts, SEPS refers the matter to CLU with a copy to ASB.

1.310(d) Office of Inspector General

The OIG is responsible for investigating contractor misconduct. Allegations of contractor misconduct may be made to the OIG directly, or may be made to or come to the attention of the Contracting Officer, others in ASB, the Oversight Manager, others in the Program Office or the CLU. ASB, the Program Office and CLU may refer allegations they receive to the OIG for investigation. The OIG may provide CLU with audit or investigation reports involving contractor misconduct that might warrant a suspension or exclusion action. The OIG may also provide follow-up investigatory services that may be necessary to support a suspension or exclusion.

1.311 RESERVED

1.312 RESERVED

1.313 Post-Government Employment

The FDIC Legal Division Ethics Unit is the point of contact for matters involving post-government employment restrictions. In order for the Ethics Unit to evaluate and provide advice on any post-employment ethical matter, they must receive notification when any former FDIC employee or Resolution Trust Corporation (RTC) employee will perform on an FDIC contract or subcontract. Prior to the former FDIC employee commencing work, they must provide a certification regarding their ability to engage in post-government employment to the Contracting Officer. The certification is available at the FDIC website www.fdic.gov/buying/goods/acquisition/index.html . The Contracting Officer will forward the signed certification to the Ethics Unit.

If the Ethics Unit requires additional information, they shall contact the Contracting Officer and former employee. Any additional information submitted by the former employee must be submitted to the Contracting Officer, who will forward it to the Ethics Unit.

If the Ethics Unit determines the former employee is barred by the post-employment restrictions from performing on an FDIC contract or subcontract, the Ethics Unit shall notify the Contracting Officer. The Ethics Unit shall also identify the length of the prohibition (lifetime or two-year) and, for one or two-year prohibitions, the date of expiration. The Contracting Officer must inform the contractor and Oversight Manager of the prohibition. Upon being notified of the prohibition, the former employee must not commence working on the contract or subcontract.

1.314 Prescriptions for Provisions and Clauses for Ethics

7.1.3-1 Post-Government Employment Certification (Pre-Award) - insert provision in all solicitations.

7.1.3-2 Post-Government Employment Certification (Post-Award) - insert clause in all awards.

7.1.3-3 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights - insert clause in all awards that exceed $100,000, to include contracts, BPAs, BOAs, and all RBOAs.

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MODULE 2: ACQUISITION PLANNING AND COMPETITION

PGI Chapter 2.1 Acquisition Planning

2.101 Scope

This chapter provides procedures, guidance and information on acquisition planning.

2.102 RESERVED

2.103 Acquisition Planning Procedures

PGI 2.104 through 2.107 provide procedures that must be used by the Acquisition Team when planning procurements, preparing acquisition plans, and developing requirements packages.

2.104 Early Acquisition Planning

2.104(a) Early Communication

The ASB can be more effective in its mission when the Program Office provides sufficient advance notice of its requirements. Early communication by the Program Office enables ASB to view the requirement in a broad context, and thereby:

(1) Identify upcoming requirements and plan how to meet them;

(2) Schedule its workload so that contracting resources are available to support requests as they are received;

(3) Establish realistic lead-times and timely award schedules;

(4) Prevent contracting delays, by identifying and resolving potential conflicts of interest and other problems, before the solicitation process begins;

(5) Finalize statements of work (SOWs) or statements of objectives (SOO) and requirements packages and correct deficiencies; and

(6) Consolidate duplicative requirements for similar or affiliated services to achieve strategic sourcing benefits.

As soon as a requirement is identified, the Program Office should contact the appropriate ASB Assistant Director who assigns a contract specialist to help it develop its acquisition strategy

2.104(b) Milestone Schedule

To assist ASB and the Program Office in projecting timeframes for the start and completion of important acquisition activities, a Milestone Schedule is required for all solicitations, new awards, and competitive task orders at or above $250,000.00. A schedule is not required for direct or rotational task orders, or procurements supported with a Justification for Noncompetitive Procurement (JNCP). The Milestone Schedule Component, a part of the Automated Procurement System (APS), shall be used for the creation and tracking of relevant milestones.

2.104(c) Document Numbering and Action Type Designators

The Contracting Officer selects the solicitation and contract type designators based upon the circumstances unique to each acquisition. The designators allow for the viewing of document numbers to determine the type of document based on its assigned designator.

The following is the basic document numbering nomenclature:

Name:	**Location**		**Fiscal Yr.**		**Action Type**		**Serial Number**
Example:	CORHQ	**-**	13	**-**	S	**-**	0001

The following designators, and short descriptions, represent the available "Action Types":

Designator	**Description**
A	Blanket Purchase Agreement (BPA)
C	Contract
E	Construction Contract
F	GSA - Federal Supply Schedule Order
G	Basic Ordering Agreement (includes Receivership BOA)
H	Interagency Agreement
L	Consultant Agreement
P	Simplified Procurement Order
Q	Request for Quotation (RFQ)
R	Request for Proposal (RFP)
U	Utility Agreement
S	Software Licenses and Renewals
T	Conference Agreement
V	Inherited Bank Contract

Definitions of these actions types and usage are located in the table at Appendix E.

2.105 Market Research

2.105(a) Planned Procurement

For an anticipated procurement, the Program Office must first contact the Contracting Officer, who provides appropriate guidance to perform market research prior to a requisition being submitted.

2.105(b) Methods of Market Research

(1) Trade literature;
(2) Commercial brochures;
(3) Internet;
(4) Industry trade shows;
(5) Telephone contact;
(6) Other government agencies; and
(7) General Services Administration Federal Supply Schedules, available at http://www.gsa.gov/portal/content/197989

2.105(c) Guidance to Those Conducting Market Research

DO NOT:

(1) Indicate authority to make a purchase;
(2) Negotiate terms;
(3) Make commitment to buy;
(4) Disclose corporate or contractor proprietary information;
(5) Disclose procurement plans;
(6) Solicit written quotes; or
(7) Disclose cost or budget estimates.

The same general information must be made available to all contractors.

2.105(d) Market Surveillance

Market surveillance is a method of market research used by the Program Office and is an ongoing process of reviewing information about market trends, new developments, products, services, and technical features. The Program Office routinely performs market surveillance when there is no planned procurement action and without coordination with the Contracting Officer.

2.105(e) Contractor Meetings and Product Demonstrations

In order to obtain information about the goods and services in the commercial marketplace, the Program Office and Contracting Officer may:

(1) Conduct face-to-face meetings with contractors to discuss specific products and services to attain a better understanding of the available products and services;

(2) Have suppliers provide product demonstrations to better understand the functionality of the available products and services; and

(3) Have the contractor provide equipment, hardware, or software for testing or evaluation. The contractor and FDIC must sign a memorandum of understanding (MOU) before testing or evaluation. The Contracting Officer signs the document on behalf of FDIC. The MOU template is found on the ASB website at https://fdicnet.fdic.gov/content/dam/DOA/documents/buying/acquisitiondocuments/mouproducteval-demo-nov2013.docx. Legal review and approval of the MOU by the FDIC Contracting Law Unit is required, prior to signing, if the language is changed from how it appears in the template.

2.105(f) Market Research for Exercising Contract Options

This application of market research is a good business practice used to confirm that FDIC is receiving the most favored price and to ensure the option price is competitive. Such market research should be completed before required notification to the contractor of intent to exercise the option, and must be conducted by the Contracting Officer and Oversight Manager. The Contracting Officer is responsible for establishing the terms and conditions for all contracts and contract modifications. The Contracting Officer may use market research information to engage in negotiations with the contractor to reduce the option price or to establish modifications that extend the schedule.

2.106 Acquisition Plan Documentation

Written Acquisition Plans address one project. Modifications to contracts that are within the scope of the contract, and incorporate actions and values already discussed in an approved Acquisition Plan, do not require a new or revised Acquisition Plan.

While the Program Office and Contracting Officer jointly prepare the Acquisition Plan, the Contracting Officer is ultimately responsible for ensuring that the plan is completed and approved in accordance with Appendix B, *Approvals Memorandum and Matrices.*

The following requirements are applicable to the development of Acquisition Plans.

2.106(a) Acquisition Planning Under $1,000,000

Written Acquisition Plans are not required for actions under $1,000,000, but the Acquisition Team is still expected to do reasonable planning for these acquisitions.

2.106(b) Acquisition Plans for Requirements $1,000,000 or More

Written Acquisition Plans for actions of $1,000,000 or more must be prepared following the instructions below as applicable.

(1) *Background and Objectives:*

- Statement of the Requirement: Introduce the plan by a brief statement of the requirement.
- Background and Procurement History: Summarize the technical and contractual history of the acquisition. Discuss feasible acquisition alternatives, the impact of prior acquisitions on those alternatives, and any related in-house effort.
- Risks Associated with the Procurement: Discuss technical, cost, and schedule risks and describe efforts planned or underway to reduce risk and the consequences.
- Procurement Request Authority: State the Program Office's estimated cost for the acquisition and the rationale supporting it, including any independent government cost estimate.
- Delivery or Performance-Period Requirements: State the performance period anticipated to be included in the contract and the rationale for that determination.

(2) *Plan of Action:*

- Sources: Indicate the prospective sources that can meet the need. Include consideration of socioeconomic program contractors, and the impact of any bundling that might affect their participation in the acquisition. Describe all efforts that have been undertaken to identify additional sources and the results of these efforts.
- Competition: Describe how competition is to be sought, promoted, and sustained throughout the course of the acquisition. If reasonable competition is not contemplated, discuss the specific rationale for the use of a non-competitive procurement, and identify the source(s).
- Special Acquisition Considerations: Discuss any issues of particular importance to the acquisition not elsewhere addressed in the Acquisition Plan. Examples include: unique performance-based arrangements; use of options, special clauses; special solicitation provisions, federal laws, e.g., Service Contract Act, Section 508 requirements; or APM deviations required.
- Location of Performance: Discuss whether the requirement is to be

performed on- or off-site. Include any special considerations associated with the place of performance.

- Oversight Management: Discuss how the Oversight Manager and Technical Monitor are to oversee the project after contract award, including any reporting requirements.
- FDIC-Furnished Property: Indicate any property to be furnished to contractors by FDIC, including material and facilities, and discuss any associated considerations, such as its availability or the schedule for its acquisition.
- FDIC-Furnished Information: Discuss any FDIC information, such as manuals, drawings, and test data, to be provided to prospective offerors and contractors.
- Security Considerations: State that the acquisition complies with FDIC security directives. If directives are to be waived, explain the rationale for waiver. State the security risk level assigned to the requirement by the Division of Administration's (DOA's) Corporate Services Branch.
- Business Continuity Planning: Discuss the level of business continuity planning necessary for the acquisition. Address whether the contractor's services will be necessary in time of emergency and the level of service that will be required. Include any maintenance and testing requirement specific to business continuity, as well as any requirement that the contractor participate with FDIC in joint disaster planning exercises.
- Contract Administration: Describe how the contract is to be administered. In contracts for services, include how inspection and acceptance corresponding to the SOW or SOO performance criteria are to be enforced.
- Other Considerations: Discuss, as applicable, quality assurance requirements, special involvement by FDIC personnel, impacts related to procurement, and any other matters germane to the Acquisition Plan not covered elsewhere.
- Identification of Participants in Acquisition Plan Preparation: List the individuals who participated in preparing the Acquisition Plan, giving contact information for each.
- Contract Assessment Report: If the requirement is in excess of $5,000,000, state whether it has, or will be, reported in the Contract Assessment Report.

2.106(c) Acquisition Plan Approval

Approval levels for the plans are delineated in Appendix B, *Approvals Memorandum and Matrices.*

2.106(d) Changes to Approved Acquisition Plans

When it becomes necessary to revise an approved Acquisition Plan due to a significant change (e.g., scope, dollar value, contract strategy, or contract type), the Contracting Officer and Oversight Manager jointly prepare a statement that summarizes the changes. The original approval authority must approve the Acquisition Plan revision, unless the dollar value of the change or the new cumulative award value requires a higher level of approval.

2.107 Requirements Package

The Program Office develops the requirements package as described in APM 2.107 and as detailed below, using the requirements package checklist found on the ASB website at https://fdicnet.fdic.gov/content/dam/DOA/documents/buying/contractplanningguide/requirements_package_checklist.docx. A copy of the completed requirements package checklist must be filed in the official contract file.

2.107(a) Strategy Session

Program Offices are to engage in a strategy session with a Contracting Officer immediately upon recognizing the need for contract support. In this strategy session(s) the Contracting Officer advises the Program Office on the necessary contents of the requirements package.

2.107(b) Core Requirements Package Documentation

The core requirements package documents include:

(1) Approved New Financial Environment requisition;

(2) SOW or SOO; and

(3) Independent FDIC cost estimate.

(4) Contractor risk level determination, FDIC form 1600/17. See Directive 1610.2 at https://fdicnet.fdic.gov/content/dam/DOA/documents/rim/directives/1000/1610-2.doc.

(5) Checklist for Information Security & Privacy Provisions/Clauses – FDIC Form 3700/60 (Required for acquisitions that include any type of services). The checklist is available on the Forms webpage https://fdicnet.fdic.gov/content/doa/home/rim/forms/forms-3000.html.

If the contractor will have access to, collect, store, use, or share FDIC personally identifiable information, the FDIC system of records must be identified in the SOW or SOO. The Program Manager's Information Security Manager should be contacted to ensure any privacy related issues are appropriately addressed. See

https://fdicnet.fdic.gov/content/dit/home/itgovernance/itsecurityprivacy/divisionalismprogram/listofisms.html.
If contract services are deemed essential in the event of an emergency or business continuity event, the SOW or SOO must include:

(1) Business continuity requirements;

(2) Requirements that contractors flow emergency preparedness and continuity requirements to essential subcontracts; and

(3) Requirements for the contractor to have emergency plans for providing services to FDIC in the event of a disruption of normal operations, and participation in FDIC business continuity testing, training and exercises.

2.107(c) Additional Requirements Package Documentation

Based on any unique attributes of a requirement, the Contracting Officer must obtain additional information to supplement the core documents of an requirements package. Additional Items for consideration in completing the solicitation include:

(1) Section 508 Form; (see PGI 5.3);

(2) Proposal evaluation methodology; (see PGI 3.210)

(3) Technical Evaluation Panel members (see APM 3.207);

(4) Payment terms (how often to invoice, necessary supporting documentation, etc.) (see APM 5.13);

(5) Proposed payment incentives, if performance based contract is anticipated (see APM 5.7);

(6) Insurance requirements (see APM 5.805);

(7) Warranty requirements (see APM 5.10);

(8) Any other special contract provisions;

(9) Oral presentations; (see PGI 3.208(g))

(10) Offerors' conference; (see PGI 3.208(e))

(11) Site visits; (see PGI 6.408(d))

(12) Subcontracting (and any limitations) (see PGI 5.6); and

(13) Suggested sources. (see PGI 3.105 and 3.205)

2.108 RESERVED

PGI Chapter 2.2 Competition

2.201 Scope

This chapter provides procedures, guidance and information regarding the use of competition in FDIC acquisitions.

2.202 RESERVED

2.203 Competition Procedures

As a general rule, at least three competitive offers should be sought for all procurements over $10,000 (the current micro-purchase threshold). In circumstances where only two qualified sources can be identified, reasonable competition can be maintained by soliciting the two.

See APM 3.2 and PGI 3.2 for information on source selection and competitive range determinations.

2.204 RESERVED

2.205 RESERVED

2.206 Non-Competitive Acquisitions

2.206(a) Justification for Non-Competitive Acquisitions

Acceptable reasons for limiting competition may include, but are not limited to:

(1) Urgency (such as an unforeseen or uncontrollable event, but does not include poor planning);

(2) Only one source can meet the requirement. Examples include:

(i) Acquisitions which require special patent rights, copyrights or other proprietary information with a specific Contractor;

(ii) Highly specialized services which demand the expertise of a Contractor or individual with unique or unusual capabilities;

(iii) An existing Contractor offers the benefits of historical expertise or systems compatibility which other offerors cannot provide as cost-effectively or as timely, and;

(3) Source is mandated by law (cite applicable law).

2.206(b) Actions above $10,000 and Up to $100,000

The Contracting Officer must document, in a memorandum to file, any decision to acquire required goods or services on a non-competitive basis. The memorandum to file must include information that describes the goods or services to be acquired, the proposed dollar value of the procurement, and the rationale for awarding to a single source in lieu of conducting a competitive procurement. The memorandum to file must identify whether or not the contractor is Minority-Owned, Women-Owned, Small Disadvantaged Business, Veteran-Owned, Service Disabled Veteran Owned, etc. If Minority-Owned, it must also identify the contractor's ethnic/racial category from the following list: Asian-Pacific American, Subcontinent Asian (Asian-Indian) American, Black American, Hispanic American, Native American, and Other Than One of the Preceding. Such information regarding the Contractor's status must be completed using the "Solicitation List Template" found on the ASB website at https://fdicnet.fdic.gov/content/dam/DOA/documents/buying/acquisitiondocuments/solicitationlisttemplatejune2011.xls . The completed template must also be submitted to the ASB Policy and Systems Section. It must be submitted as soon as possible after award is made, but no later than the last day of the month in which the award was made.

This memorandum to file must be signed by a duly appointed Contracting Officer and placed in the official contract file prior to executing the contract/purchase order.

These procedures do not apply to transactions made with the purchase card. For guidance on non-competitive purchase card transactions, see the *FDIC Purchase Card (P-Card) Guide*, Appendix C.

2.206(c) Actions above $100,000

When non-competitive procedures are to be used for any action above $100,000, the Contracting Officer must document the decision, using a Justification for Non-Competitive Procurement (JNCP). (See JNCP template at https://fdicnet.fdic.gov/content/dam/DOA/documents/buying/acquisitiondocuments/jncptemplaterev_dec2013.doc).The extent and detail of the JNCP depends on the particular requirement, its complexity, and its potential dollar value, but in all cases must address the following:

(1) A description of the goods/services, including the requested period of performance, and a description of any options;

(2) The recommended source and applicable business location

(3) A description of the proposed contract action and any pertinent history;

(4) The estimated dollar value, as well as the basis for this estimate;

(5) A description of any market research conducted and the results of the research;

(6) The rationale for use of non-competitive procedures;

(7) Efforts to foster competition; and

(8) Inclusion in the Contract Assessment Report for actions valued at $5,000,000 and above.

2.206(d) Review and Approval of Non-Competitive Procurements

See Appendix B, *Approvals Memorandum and Matrices,* for review and approval requirements.

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MODULE 3: CONTRACTING METHODS AND TYPES

PGI Chapter 3.1 Simplified Procurement

3.101 Scope

This chapter provides procedures, guidance and information on the use of simplified procurement procedures by FDIC Contracting Officers and the Program Offices they support.

3.102 Definitions

Price Reasonableness – A determination by a Contracting Officer that a quoted price is fair and reasonable, based on a comparison of competitive quotations or offers, or other reasonable means including those specified in PGI 3.109(g).

3.103 Simplified Procurement Procedures

The Contracting Officer reviews the requisition and requirements package to determine whether the goods and services may be procured using simplified procedures, or whether another means of procurement is more appropriate. To do this, the Contracting Officer must first consider mandatory sources, e.g., Federal Prison Industries, and AbilityOne. The Contracting Officer may also consider General Services Administration (GSA) Federal Supply Schedules and other FDIC contracts as appropriate (see APM 3.3).

The Contracting Officer must also consider the statutory requirements addressed in APM and PGI Modules 1 and 5, (e.g., Service Contract Act, Davis-Bacon Act, Section 508, and Buy American Act) when developing the procurement strategy for the requirement. (see APM 1.208, PGI 1.208, APM 5 and PGI 5) The results of the reviews discussed above must be documented in the official contract file.

3.104 Competition in Simplified Procurements

Simplified procurements of $10,000 or less, (the current micro-purchase threshold), may be awarded to any contractor that can satisfy the requirement, and do not require competition. Contracting Officers are encouraged to rotate these procurements among qualified contractors, but it is not mandatory. However, rotation allows numerous contractors the opportunity to provide goods or services to the FDIC over time and, as the FDIC finds new sources, it broadens the contractor base. Contracting Officers must

use judgement to ensure the purchase amount is fair and reasonable and not out-of-line with the amount other commercial purchasers pay for the good or service. If the good or service is of a nature that a reasonable price is not evident (i.e., the price is not offered openly to the public, or the price is not similar to that of a comparable good or service for which its reasonable price is evident) the Contracting Office must document the file to explain why the price is still considered fair and reasonable and within the best interest of the FDIC to purchase from the selected contractor.

Simplified procurements above $10,000 must be competed, or the Program Office must provide justification as addressed at PGI 2.206, when requesting that non-competitive procedures be used.

3.105 Identifying Potential Sources

The Contracting Officer must develop a solicitation list and document in the official contract file how the list was generated. Firms that have been suspended or disbarred may not be solicited, and are not eligible for award. The solicitation list includes firms provided by the Program Office and the Office of Minority and Women Inclusion (OMWI), or any other sources at the Contracting Officer's discretion. The Contracting Officer must provide OMWI the opportunity to furnish a list of potential sources for actions greater than $100,000, and may do so for actions of $100,000 or less. When requesting sources from OMWI, the Contracting Officer provides OMWI the requirements package or, at a minimum, the statement of work (SOW) or statement of objectives (SOO), anticipated period of performance, and estimated dollar value. For actions estimated over $10,000 (the current micro-purchase threshold), the solicitation list must include at least three potential sources, if available. If adequate competition is not available, the Contracting Officer must document the results of the attempt to find sources in the official contract file.

The Contracting Officer must complete the "Solicitation List Template" found on the ASB website at https://fdicnet.fdic.gov/content/dam/DOA/documents/buying/acquisitiondocuments/solicitationlisttemplatejune2011.xls . The completed template must be emailed to the ASB Policy and Systems Section. It must be submitted as soon as possible after award is made, but no later than the last day of the month in which the award was made. A solicitation list is required for all non-task order awards, regardless of dollar value ($0 and above). This includes competitive and non-competitive awards including, but not limited to, contracts, purchase orders, BOAs/RBOAs/BPAs, 8(a) Business Development Program awards, and awards for conferences. The only exceptions are task orders, Interagency Agreements and information technology application services (ITAS) TBOAs.

For each acquisition, at least 33% of the companies solicited must be a Minority or Women Owned Business (MWOB). The Contracting Officer must obtain written approval from the ASB Assistant Director in the event it is determined that the 33% threshold cannot be achieved. The Contracting Officer has discretion to establish the

maximum number of sources required in connection with a particular procurement. In making this decision, the Contracting Officer may consider the following factors:

(1) Availability in the marketplace of the goods or services required;

(2) Information obtained from recent purchases of the same or similar item(s);

(3) Dollar value and urgency of the proposed procurement; and

(4) Past experience concerning prices for the goods or services required.

An FDIC tool that may be used to identify potential sources is the Contractor Resource List (CRL). The CRL is a repository of information on businesses who have expressed interest in providing goods or services to FDIC. It contains a description of each business' goods and services, along with their MWOB status and a link to their website. Contracting and Program Management personnel are encouraged to use the CRL database to the maximum extent practicable. To access to the CRL, an FDIC employee must first obtain a password by contacting the FDIC-CRL Help Desk at (877) 275-3342, or e-mail: procurementopportunities@fdic.gov. The link to the CRL and guidelines on its use may be found on webpage https://fdicnet.fdic.gov/content/doa/home/buying/applications/crl.html. Other tools that may be utilized to identify potential sources include the System for Award Management (SAM) at http://www.sam.gov, trade publications, internet search, GSA schedules, and the Federal Business Opportunities (FedBizOpps) website https://www.fbo.gov/. The Contracting Officer may post a request for information or the solicitation to FedBizOpps at https://www.fbo.gov/, when determined appropriate.

The Contracting Officer may add a firm to the solicitation list at any time prior to the proposal due date. The Contracting Officer need not extend the proposal due date to accommodate a request received late in the proposal preparation process.

With the exception of those solicitations posted on FedBizOpps, all firms submitting proposals must be on the solicitation list prior to receipt of proposals. The Contracting Officer may reject any proposals submitted by firms not on the list, and return the proposals to the offerors. The Contracting Officer may release the names of the solicited offerors to those on the solicitation list, upon request.

For requirements subject to the Trade Agreements Act addressed in APM 5.12 and PGI 5.12, a synopsis of the requirement must be posted to FedBizOpps in sufficient time to allow forty (40) days from the date of posting to receipt of quotations.

3.106 Request for Quotation

3.106(a) Oral Request for Quotation

To obtain oral quotations, the Contacting Officer calls the firms on the solicitation list, presents the requirements, and requests the firm's quotation. The Contracting Officer must document in the official contract file, the names of the firms contacted, the date solicited, and the prices and other terms and conditions quoted by each firm. The Contracting Officer may need to obtain from the selected firm completed background investigation forms or FDIC representations and certifications, or both, prior to award. The Contracting Officer has the discretion to obtain a written confirmation of the quotation before award.

3.106(b) Written Request for Quotation

The purpose of an RFQ is to provide potential offerors the information they need to respond to FDIC requirements. A written RFQ must address the following items, as required:

(1) Pricing schedule;

(2) Description of the requirement including the statement of objectives, statement of work, as appropriate;

(3) Delivery or performance information, including required delivery date or performance schedule, and place of performance;

(4) Contract clauses and provisions;

(5) Requirements for FDIC representations and certifications and background investigation questionnaires;

(6) Submission of the offeror's Data Universal Numbering System (DUNS) number;

(7) Quotation submission instructions (e.g., mail, email, limits on number of pages, format);

(8) Basis for award, including evaluation factors and sub-factors;

(9) Risk level determination; and

(10) North American Industrial Classification System (NAICS) code and Small Business size standard. NAICS is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. The solicitation and award must identify the appropriate six digit NAICS code. Contracting Officers must review and select the appropriate code for the acquisition from the 2007 NAICS manual, which may be found at the following website: http://www.census.gov/cgi-bin/sssd/naics/naicsrch?chart=2007. In addition, Contracting Officers must determine the appropriate Small Business size standard for the selected NAICS code, as specified by the Small Business Administration. The following website associates Small Business size standards with NAICS codes: http://www.sba.gov/content/table-small-business-size-standards

Contracting Officers must enter the NAICS code in APS when creating the solicitation and award. Also, in solicitations, Contracting Officers must fill in the Small Business size standard in provision 7.3.2-49, Small Business Representation.

If limited technical evaluations are performed, the Contracting Officer may also require the offeror to provide information such as the following:

(1) Statement of the firm's relevant experience, including past FDIC experience, with references;

(2) Statement of the firm's ability to meet the performance/schedule requirements;

(3) Proposed staffing with supplemental information, such as resumes or professional qualifications;

(4) Evidence of compliance with FDIC insurance requirements, or other licensing prerequisites; and

(5) Business or financial references.

3.106(c) Quotation Response Time

The Contracting Officer must provide the offeror with sufficient time to prepare a response to the RFQ.

3.106(d) Request for Quotation Reviews

The Contracting Officer must obtain any required reviews and approvals, as addressed in Appendix B*, Approvals Memorandum and Matrices*, prior to issuing the RFQ.

3.106(e) Distribution

The Contracting Officer distributes the RFQ to each firm on the solicitation list, using any available means, including:

(1) Email;

(2) United States mail;

(3) Overnight delivery;

(4) Posted to FedBizOpps (https://www.fbo.gov/) or a secure FDIC website; or

(5) Courier.

3.107 RESERVED

3.108 Receipt of Quotations

3.108(a) Receipt and Safeguarding

Electronic mail is the preferred method for receipt of quotations. Quotations may also be submitted by fax, United States mail, overnight delivery, or other normal means utilized by the offeror. For other than electronic mail or fax, all quotations must be submitted to the FDIC mailroom by the date and time specified in the RFQ. In the case of quotations provided by either email or fax, the date and time the quotation is received by FDIC is considered the official time of receipt.

For quotations delivered to the FDIC mailroom, the Contracting Officer must advise mailroom staff that quotations are expected, and provide them the RFQ number at least two business days prior to the due date. The mailroom staff is responsible for date and time stamping each quotation and promptly delivering the package to the Contracting Officer. The Contracting Officer is responsible for safeguarding, and preventing unauthorized disclosure of information in the quotation.

3.108(b) Record of Quotation Received

The Contracting Officer must create a written abstract of quotations received, including contractor name and address, prices, delivery requirements, and other pertinent data.

3.108(c) Quotations from Solicited Firms Only

The Contracting Officer only accepts quotations from offerors on the solicitation list.

3.108(d) Late Quotations

Quotations or amendments to quotations received after the designated date and time are late. The Contracting Officer must reject the quotation and notify the offeror that the quotation is being rejected. The Contracting Officer may accept a late quotation, with the approval of the respective the ASB Assistant Director, if it is in the best interest of FDIC.

3.109 Evaluation of Quotations

3.109(a) Pre-Evaluation Review

Prior to evaluation, the Contracting Officer performs an initial review of all quotations to ensure each complies with the RFQ. The Contracting Officer must also review the offerors' representations and certifications for compliance, as applicable.

3.109(b) Evaluation Factors

Only the evaluation factors and sub-factors stated in the RFQ may be used to evaluate quotes.

3.109(c) Oral Request for Quotation Evaluation

When the Contracting Officer uses an oral solicitation, the contract is awarded to the firm with the lowest evaluated price received in a responsive quotation. The Contracting Officer must document the selection decision and maintain written records of oral price quotations that clearly reflect that the award price is fair and reasonable.

3.109(d) Written Request for Quotation Evaluation

The Contracting Officer typically awards simplified procurements on a price-only basis, i.e., to the firm that is technically capable of performing the requirement and offers the lowest price for the requested goods or services. If limited technical evaluation is used, the Contracting Officer evaluates factors in addition to price, such as past performance, capacity, quality, and technical capability, if specified in the RFQ.

When evaluating quotes to determine which ones are technically acceptable, the Contracting Officer must evaluate these factors by using the following ratings:

(1) “Pass” – Firm meets the minimum requirement and is therefore considered for award, or

(2) “Fail” – Firm does not meet the minimum requirement and is not considered for award.

The Technical Evaluation Official (TEO) from the Program Office conducts the technical evaluation of the quotations and, once complete, submits the evaluation to the Contracting Officer for approval. The TEO conducts the same evaluation tasks for a simplified procurement as are performed by a Technical Evaluation Panel (TEP) and TEP Chairperson for formal contracting. The Contracting Officer has the discretion to convene a TEP, in lieu of having the technical evaluation done by a TEO, when warranted. A written summary of the technical evaluation must be included in the official contract file.

3.109(e) Best Value Evaluation Methods

In lieu of a price-only evaluation approach, the Contracting Officer may elect to use a best value approach. When using the best value methodology, the Contracting Officer evaluates all offerors' quotes, integrating past performance, key evaluation factors and sub-factors and price, to determine which quotation represents the best value to FDIC.

3.109(f) Past Performance Information

The Contracting Officer and the Program Office must use a contractor's past performance information in the evaluation process for all procurements of $100,000 or greater for commercial goods or commercial services. Past performance may be used at the discretion of the Contracting Officer for any other procurement. For simplified procurements, a review of the information in the FDIC Automated Procurement System Contractor Performance Component (CPC) database and the FDIC Contractor Performance Evaluation System is normally sufficient to determine if the firm's past performance is acceptable or not. If further information is required, the Contracting Officer may ask for references, generally no more than two (2) or three (3), as part of the quotation. The TEO then calls and verifies information.

3.109(g) Price Reasonableness Determination

The Contracting Officer's determination that a proposed price is reasonable is usually based on competitive quotations. If only one response is received, or the price variance between multiple responses reflects a lack of adequate competition, the Contracting Officer must use another method to determine that the price is fair and reasonable. These include:

(1) Comparison to commercial catalogs or published price lists;

(2) Comparison to established market prices;

(3) Comparison with prior purchases of same or similar goods/services

(4) Comparison to an independently prepared FDIC estimate, providing the basis for that estimate is valid; and

(5) Value analysis developed by the Contracting Officer/Program Office.

3.110 Contract Award

3.110(a) Pre-Award Reviews

The Contracting Officer must ensure the following reviews are accomplished prior to award of a simplified procurement. Documentation to support the reviews must be included in the official contract file.

(1) Excluded Parties and FDIC Debarred Vendors: The Contracting Officer must enter the name or DUNS number of the recommended awardee into the System for Award Management (SAM) at http://www.sam.gov and must review the FDIC Debarred Vendors List found at https://fdicnet.fdic.gov/content/doa/home/buying/debarred-vendors.html before contract award, regardless of dollar value. Award may not be made to a firm that is labeled with "Exclusion" in SAM or is on the FDIC Debarred Vendor list.

(2) *SAM Review*: The Contracting Officer must review the System for Award Management database found at http://www.sam.gov before contract award to ensure the recommended awardee is registered and to obtain its socioeconomic status. Award may not be made to a firm that is not registered in SAM, without approval of the respective ASB Assistant Director.

(3) *Vendor File Review*: The Contracting Officer must verify if the recommended awardee is listed in the FDIC Vendor File, which is maintained by the Division of Finance's Vendor File Maintenance Group (VFMG). If it is not, the Contracting Officer must obtain the firm's name, remit to address, tax identification (ID) number and DUNS number from the SAM database and send an email to VFMG, DC (email address as stated in Outlook) to request the firm to be added to the FDIC Vendor File. Below is a sample format of the email:

To: Vendor File Maintenance Group DC (Email address is in Outlook address book)
From: Contract Specialist's Name
Subject: Add Vendor – [Insert Vendor's Name]

Please add the following vendor to the vendor file in NFE:

Contractor Name
Street Address
City, State Zip Code
TAX ID #: _____
DUNS #: _____

I have verified that this vendor is registered in the SAM database but has not been added to NFE. If you have any questions, please contact [insert Contract Specialist's name] at x____.

Emails sent to VFMG by 3:00pm are processed the same day. Emails sent after 3:00pm are processed by 10:00am the next day. VFMG sends the Contracting Officer a confirmation email with the new vendor ID number when the firm has been added to the FDIC Vendor File. Award may not be made to a firm that is not in the FDIC Vendor File.

(4) *Representations and Certifications:* The Contracting Officer must review the information received through the representations and certifications to ensure that prospective awardees comply with applicable laws and directives and are eligible to do business with FDIC.

(5) *Background Investigations:* The Contracting Officer must obtain preliminary background investigation approval of the contractor and key personnel from Security and Emergency Preparedness Section, prior to award. This approval is required when the award exceeds $100,000 and is for services or at any dollar amount when contractor personnel or subcontractor personnel work on-site and have unescorted access to FDIC offices or facilities, or have access to FDIC networks/systems, or in any other contract where the Program Office has described a need for background investigations.

(6) *Financial Capability Review:* If the award exceeds $1,000,000, the Contracting Officer must conduct a financial capability review. The template for the financial capability review is available at https://fdicnet.fdic.gov/content/dam/DOA/documents/rim/forms/3000/3700-48.xls

(7) *Unpaid Federal Tax Liability:* No contract award is to be made to any corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. However, an exception may be granted, and the contract award may be made, when FDIC has considered suspension or debarment of the corporation and has determined this action is not necessary to protect the interests of the Government. The final decision as to whether or not FDIC should suspend or debar the contractor rests with FDIC Legal/Contract Law Unit.

For contract awards of $100,000 or less, in which the Contracting Officer has become aware that the corporation has an unpaid Federal tax liability; award must not be made unless FDIC has considered suspension or debarment of the corporation and has determined this action is not necessary to protect the interests of the Government.

For contract awards exceeding $100,000, Contracting Officers may rely on the "Representation by Corporations Regarding an Unpaid Delinquent Federal Tax Liability", which is submitted by the contractor in provision 7.3.2-67 and in Form 3700/04A.

3.110(b) Award Decision Documentation

The Contracting Officer must prepare a Price Evaluation Memorandum (PEM) documenting the procurement. The competitive nature, dollar value, and complexity of the requirement determine the detail that is necessary for the award decision document. At a minimum, the award decision document must include a determination of price reasonableness and the basis for award. PEM templates may be found on the ASB website at https://fdicnet.fdic.gov/content/dam/DOA/documents/buying/acquisitiondocuments/pemtemplaterev.doc.

3.110(c) Advance Authorization Letter

When advance authorization is approved by the respective ASB Assistant Director, the Contracting Officer may orally authorize the contractor to begin work, and then must issue an advance authorization letter confirming the authorization. Before an authorization is given, the contractor and the Contracting Officer must agree to the terms and conditions, price, and deliverables, normally through email and/or facsimile exchanges. The Contracting Officer must also ensure that purchase request authority for the total amount of the contract has been approved before the letter is issued.

3.110(d) Notification to Unsuccessful Offerors and Debriefings

Under simplified procurements, notification to unsuccessful offerors and debriefings are normally not provided, unless requested. If an offeror requests a notification or debriefing, the Contracting Officer provides them as set forth in PGI 3.216.

For procurements covered under the World Trade Organization-Government Procurement Agreement or other trade agreement, the Contracting Officer is required to post an award synopsis to FedBizOpps in sufficient time to permit its publication not later than sixty (60) days after award. Procedures for preparing the award synopsis are available on the ASB website at https://fdicnet.fdic.gov/content/dam/DOA/documents/buying/acquisitiondocuments/pemtemplaterev.doc.

3.111 Simplified Procurement Award Types

3.111(a) Simplified Procurement Orders

A simplified procurement order is a contract used with simplified procurements that defines the requirement, includes unit and extended price, quantity, due date, destination requirements, invoicing instructions, and applicable clauses, as required. As a rule, under simplified procurement orders, FDIC agrees to pay the stated price upon delivery of the goods or services by the contractor, and acceptance by the Program Office. When the simplified procurement order is over $100,000, or in any other case where it is desired to consummate a binding contract between the parties before the contractor undertakes performance, the Contracting Officer must obtain acceptance of the order in writing. Upon receipt of the contractor-signed simplified procurement order, the Contracting Officer signs it and returns a copy to the contractor.

3.111(b) Blanket Purchase Agreements

A blanket purchase agreement (BPA) is an agreement establishing FDIC rights to place orders for specific goods or services, and:

(1) Is not a contract because it does not obligate funds, nor does it obligate FDIC to place any call orders under it.

(2) Is designed to reduce administrative costs in accomplishing the procurement of reasonably known needs by eliminating what could be the costly issuance of individual purchase orders or contracts. The use of BPAs can result in ordering economies and reduced procurement lead-time.

(3) May be placed concurrently with more than one firm whenever practicable. If a BPA is awarded to more than one firm for the same products or services, all of the firms must be afforded an opportunity to submit a competitive quote for

subsequent orders, or a fair basis for rotational award of orders must be used.

(4) May be limited to the furnishing of individual items, groups or classes of goods or services, or it may be unlimited for all items that a firm is capable of furnishing and may include established unit prices. Individual orders must not go beyond the scope of goods and services in the BPA.

(5) Contains a statement that a contractor is obligated to furnish goods or services, described in general terms, if and when requested by authorized representatives during a specified period of time and within a stipulated aggregate amount, if one is negotiated.

(6) Identifies the authorized ordering officials. Ordering officials are limited to FDIC Contracting Officers and purchase card holders.

(7) Describes the method and types of orders that may be placed against the BPA. Orders are placed on a simplified procedures order and paid through normal invoicing and payment methods, or are ordered and paid through a purchase card. The BPA must state which method is to be used; the two may not be combined.

(8) Includes a statement that when orders issued against a BPA equal the stated total dollar limitation, if any, or when the BPA has reached its expiration date, no further orders can be placed against it.

(9) Includes a ceiling amount for each BPA award, which when all BPA awards are combined, the total does not exceed the requisition ceiling amount. (e.g., requisition is $200k: Vendor A BPA ceiling is $50k; Vendor B BPA ceiling is $75k; and Vendor C BPA ceiling is $75k). Any unequal award amounts must be documented with rationale in the SRR or PEM. A single requisition may be used for multiple BPA awards.

(10) The total award amount must not exceed the approved PEM or SRR amount.

3.111(c) Purchase Card

Policy and procedures for use of the purchase card and associated convenience checks by FDIC cardholders are found at Appendix C, *FDIC Purchase Card (P-Card) Guide*.

3.112 Prescriptions for Provisions and Clauses for Simplified Procurements

Contracting Officers must insert the following provisions and clauses as required:

7.3.1-1 Disposition of Submitted Material - insert provision in all solicitations.

7.3.1-2 System for Award Management (SAM) - insert provision in all solicitations.

7.3.1-3 Restriction on Disclosure of Information - insert provision in all solicitations.

7.3.1-4 Solicitation Requirements, Terms and Conditions - insert provision in all solicitations.

7.3.1-5 Price Only Evaluation Method - insert provision in solicitations when Best Value is not appropriate and award will be based only on price.

7.3.1-6 Identification and Delivery of Proposals - insert provision in all solicitations. Fill in the date and time and select the appropriate address for delivery of proposals.

7.3.1-7 Proprietary Information - insert provision in all solicitations.

7.3.1-8 Amendments, Extensions and Cancellations - insert provision in all solicitations.

7.3.1-9 Delivery Schedule - insert clause in all awards for goods.

7.3.1-10 Place of Delivery or Performance - insert clause in all awards.

7.3.1-11 Deliverables - insert clause in all awards.

7.3.1-12 Period of Performance - insert clause in all awards for services.

7.3.1-13 OIG Fraud Hotline - insert clause in all awards.

7.3.1-14 Order of Precedence - insert clause in all awards.

7.3.1-15 Governing Law - insert clause in all awards.

7.3.2-1 Description of Goods or Services - insert provision in all solicitations.

7.3.2-2 References to Time - insert provision in all solicitations.

7.3.2-3 Outreach Program: SDB, Minority-Owned and Women-Owned Business Concerns - insert provision in solicitations that will result in an award exceeding $100,000.

7.3.2-4 Site Visit - insert provision in solicitations when services will be performed on-site at FDIC and a site visit will be allowed prior to award.

7.3.2-5 Offerors' Conference - insert provision in solicitations when an offerors' conference will be held.

7.3.2-6 Questions Regarding Solicitation - insert provision in all solicitations.

7.3.2-7 Submission of Offers in the English Language and in U.S. Currency - insert provision in all solicitations.

7.3.2-8 Award of Contract – Competitive - insert provision in all solicitations which are competed.

7.3.2-9 General Proposal Instructions - insert provision in all solicitations.

7.3.2-10 General Proposal Instructions – Oral Presentation - insert provision when proposal evaluations will include the use of oral presentations.

7.3.2-11 Pricing Proposal (Firm-Fixed-Price) - insert provision in solicitations that will result in firm fixed priced contracts. For awards greater than $1,000,000, include paragraph (d).

7.3.2-12 Pricing Proposal (Time and Material or Labor Hour) - insert provision in solicitations for time and material or labor hour contracts. For awards greater than $1,000,000, include subparagraph (e).

7.3.2-13 Effective Period of Offer - insert provision in all solicitations.

7.3.2-14 Non-Responsive Proposals - insert provision in all solicitations.

7.3.2-15 Mission Capability - Proposal Instructions - insert provision in solicitations when mission capability will be evaluated. Include paragraphs (b), (c), and/or (d), when applicable.

7.3.2-16 Past Performance - Proposal Instructions - insert provision in solicitations when past performance information will be evaluated.

7.3.2-17 Best Value Evaluation Process - insert provision in solicitations when the evaluation is based on best value.

7.3.2-18 Evaluation of Mission Capability - insert provision in solicitations where mission capability will be evaluated.

7.3.2-19 RESERVED

7.3.2-20 Evaluation of Past Performance - insert provision in solicitations when past performance will be evaluated.

7.3.2-21 Description/Specifications/Work Statement - insert in awards where either a SOW or a SOO and PWS or another form of work statement is included as an attachment in Section J of the award document.

7.3.2-22 Evaluation of Pricing - insert provision in all solicitations. The provision may be tailored by the Contracting Officer to accommodate the contract type and pricing arrangement.

7.3.2-23 Evaluation of Financial Capability - insert provision in solicitations for contracts over $1,000,000.

7.3.2-24 Technical Approach - insert provision in solicitations when the submission of a technical approach is required (Use in conjunction with the provision 7.3.2-15, *Mission Capability – Proposal Instructions*).

7.3.2-25 Management Plan - insert provision in solicitations when the submission of a management plan is required. (Use in conjunction with the provision 7.3.2-15, *Mission Capability – Proposal Instructions*).

7.3.2-26 Key Personnel - insert provision in solicitations when information on Key Personnel is required. (Use in conjunction with the provision 7.3.2-15, *Mission Capability – Proposal Instructions*).

7.3.2-27 Oral Presentation - insert provision in solicitations when proposal evaluations will include the use of oral presentations. (Use in conjunction with 7.3.2-10, *General Instructions – Packaging the Proposal (Oral Presentation).*

7.3.2-28 Late Proposals, Modifications of Proposals, and Withdrawal of Proposals - insert provision in all solicitations.

7.3.2-29 Award - Best Value - insert provision in all solicitations in which award is based on best value.

7.3.2-30 Rejecting Proposals/Waiving Informalities - insert provision in all solicitations.

7.3.2-31 Pre-Award Site Visit - insert provision in solicitations where the Contracting Officer has decided a pre-award site-visit may be conducted.
7.3.2-32 Compliance with Presidential $1 Coin Act of 2005 - insert clause in contracts where the contractor is operating a business on federal premises.

7.3.2-33 Independent Contractors - insert clause in all awards.

7.3.2-34 Duty to Deliver or Perform - insert clause in all awards.

7.3.2-35 Calendar Days - insert clause in all awards.

7.3.2-36 Task Order - insert clause in all basic ordering agreements, receivership basic ordering agreements, and BPAs, where task orders will be issued. The Contracting Officer must choose a method for task order awards.

7.3.2-37 Audit of Records - insert clause in all awards that exceed $100,000.

7.3.2-38 Scope of Services – Task Orders - insert clause in all task order awards.

7.3.2-39 Incorporation of Terms and Conditions – Task Orders/Delivery Orders - insert clause in all task orders and delivery orders.

7.3.2.40 Change in Physical Location - insert clause in all awards.

7.3.2-41 FDIC Personnel - insert clause in all awards.

7.3.2-42 Contractor Personnel - insert clause in all awards.

7.3.2-43 Key Personnel - insert clause in all awards in which the Program Office has determined key personnel are required.

7.3.2-44 Representations of Contractor - insert clause in awards over $100,000.

7.3.2-45 Preamble to Contractor Representations and Certifications - insert provision in solicitations for awards over $100,000.

7.3.2-46 Integrity and Fitness Representations and Certifications - insert provision in solicitations for awards for services over $100,000.

7.3.2-47 Additional Information - Representations, Certifications and Other Statements of the Offeror - insert provision in solicitations for contracts that will exceed $100,000.

7.3.2-48 Certification of Registration in System for Award Management (SAM) - insert provision in solicitations for awards over $100,000.

7.3.2-49 Small Business Representation - insert provision in all solicitations.
7.3.2-50 Certificate of Independent Price Determination - insert provision in solicitations for awards over $100,000.

7.3.2-51 Contingent Fee Representation - insert provision in solicitations for awards over $100,000. This certification is not required for the acquisition of commercial items.

7.3.2-52 Equal Opportunity Certification - insert provision in solicitations for awards over $100,000.

7.3.2-53 Certification Regarding Fair Inclusion of Minorities and Women - insert provision in all solicitations for awards over $100,000, except Task Orders issued under FDIC BOAs/RBOAs/BPAs.

7.3.2-54 Cooperation with the Office of Inspector General - insert clause in all awards.

7.3.2-55 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions - insert provision in solicitations for awards over $100,000, when FDIC is acting in its corporate capacity.

7.3.2-56 Task Assignment Procedures - insert clause in contracts or task order when task assignments will be used. The Contracting Officer may tailor the clause, as necessary.

7.3.2-57 Public Release of Contract Award and Advertising and Publicity Information - insert clause in all awards.

7.3.2-58 Limitation on Use of Appropriated Funds to Influence Federal Contracting - insert clause in solicitations for contracts over $100,000, when FDIC is acting in its corporate capacity.

7.3.2-59 Warranty Concerning Contingent Fees - insert clause in all awards over $100,000, except for acquisition of commercial items.

7.3.2-60 Anti-Kickback Procedures - insert clause in awards over $100,000.

7.3.2-61 Drug-Free Workplace - insert clause in all awards of any value to an individual, and in all other awards over $100,000, except contracts for commercial items.

7.3.2-62 Equal Opportunity - insert clause in all awards over $10,000.

7.3.2-63 Affirmative Action for Workers with Disabilities - insert clause in all awards over $10,000.

7.3.2-64 Affirmative Action for Special Disabled Veterans and Vietnam Era Veterans - insert clause in all awards at or above $100,000.

7.3.2-65 Employment Reports on Special Disabled Veterans and Vietnam Era Veterans - insert clause in all awards at or above $100,000.

7.3.2-66 Ozone-Depleting Substances - insert clause in awards for supplies that may contain or be manufactured with ozone-depleting substances, or construction awards that may involve the use of ozone-depleting substances

7.3.2-67 Representation by Corporations Regarding an Unpaid Delinquent Federal Tax Liability - insert provision in all solicitations for awards over $100,000.

7.3.2-68 Refrigeration Equipment and Air Conditioners - insert clause in awards for services that include the maintenance, repair, or disposal of any equipment or appliance using ozone-depleting substances as a refrigerant, such as air conditioners, including motor vehicles, refrigerators, chillers, or freezers.

7.3.2-69 Joint and Several Liability - insert clause in all awards.

7.3.2-70 RESERVED

7.3.2-71 FDIC Contracting Capacity - BOAs/RBOAs/BPAs - insert in all awards for BOAs, RBOAs, or BPAs.

7.3.2-72 FDIC Contracting Capacity - Contracts/Task Orders/Delivery Orders - insert in all awards for contracts, task orders, or delivery orders.

7.3.2-73 Compliance with 12 CFR Part 366 and Application of 12 CFR Part 367 - insert in all awards.

PGI Chapter 3.2 Formal Contracting

3.201 Scope

This chapter provides procedures, guidance and information regarding the use of formal contracting by FDIC Contracting Officers and the Program Offices they support.

3.202 RESERVED

3.203 Formal Contracting Procedures

The Contracting Officer reviews the requisition and requirements package to determine whether the goods or services are to be procured using formal contracting procedures, or whether another means of procurement is more appropriate. To do this, the Contracting Officer must first consider mandatory sources, e.g., Federal Prison Industries, and AbilityOne. The Contracting Officer may also consider other available FDIC contracts, General Services Administration Federal Supply Schedule (FSS) contracts, or other federal agency contracts as appropriate (see PGI 3.3).

The Contracting Officer must also consider the statutory requirements addressed in APM 1.208 and PGI 1.208 and PGI 5 (for example, Service Contract Act, Davis-Bacon Act, Section 508, Buy American Act.) when developing the acquisition strategy for the requirement.

When it is determined that formal contracting is appropriate, use the procedures set forth below.

3.204 Competition in Formal Contracting

3.204(a) Competition

The Contracting Officer, in conjunction with the Program Office, analyzes the requirement in order to develop an acquisition strategy appropriate to the procurement. Through this process, the Contracting Officer strives to promote competition to the maximum extent possible. The Contracting Officer and the Program Office jointly determine whether the procurement will be accomplished on a competitive or non-competitive basis.

3.204(b) Non-Competitive Procurements

When competition cannot be obtained, and award is made on a non-competitive basis, a Justification for Non-Competitive Procurement (JNCP) is required. See PGI 2.206 for detailed information on preparing a JNCP. The following procedures are followed when using non-competitive procedures. The Contracting Officer requests a proposal directly from the approved source. The proposal is then evaluated both for technical and price considerations by the Program Office and Contracting Officer. The technical evaluation is documented by the Program Office and the Contracting Officer prepares the Price Evaluation Memorandum (PEM) found on the ASB website at https://fdicnet.fdic.gov/content/dam/DOA/documents/buying/acquisitiondocuments/pemtemplaterev.doc. These documents must be included in the official contract file. The PEM is tailored to the procurement, and must include, as applicable:

(1) A statement of the purpose of the procurement;

(2) A procurement history summary;

(3) A concise description of the procurement action;

(4) Realism and reasonableness determinations, as discussed below;

(5) Funding information; and

(6) A statement regarding inclusion in the Contract Assessment Report addressed at APM 6.3, if over $5,000,000.

(7) The PEM must identify whether or not the contractor is Minority-Owned, Women-Owned, Small Disadvantaged Business, Veteran-Owned, Service Disabled Veteran Owned, etc. If Minority-Owned, it must also identify the company's ethnic/racial category from the following list: Asian-Pacific American, Subcontinent Asian (Asian-Indian) American, Black American, Hispanic American, Native American, and Other Than One of the Preceding. Such information regarding the Contractor's status must be completed using the "Solicitation List Template" found on the ASB website at https://fdicnet.fdic.gov/content/dam/DOA/documents/buying/acquisitiondocuments/solicitationlisttemplatejune2011.xls. The completed template must also be submitted to the ASB Policy and Systems Section. It must be submitted as soon as possible after award is made, but no later than the last day of the month in which the award was made.

Price analysis must be conducted and summarized in the PEM. The analysis must include a summary of the contractor's proposal and related discussions covering labor, material, travel and any other cost categories. The Contracting Officer must make a determination of price reasonableness, using information regarding price realism provided by the Program Office and other information gained during analysis of the offeror's price proposal. The PEM must be approved in accordance with the approval levels found in the matrices at Appendix B, *Approvals Memorandum and Matrices*.

3.205 Identifying Potential Sources

The same information covered in PGI 3.105 (identifying potential sources for simplified procurements) applies to PGI 3.205 (identifying potential sources for formal acquisitions).

3.206 Source Selection Planning

Source selection planning is documented through development of a Source Selection Plan (SSP). The SSP is a confidential document and is not to be disclosed to the public; each page must be marked “Procurement Sensitive Information: Not for Public Disclosure.” The SSP template is available at https://fdicnet.fdic.gov/content/dam/DOA/documents/buying/acquisitiondocuments/ssptemplaterev.doc.

3.206(a) Source Selection Methodology

The Contracting Officer must tailor the selection process to the specific requirements and objectives of the acquisition. The source selection methodology must be detailed in the SSP. The Contracting Officer must draw on the advice of program, technical, legal, and policy personnel in the acquisition planning stage when determining the methodology that is to be used. Once the decision to compete an acquisition has been made, the Contracting Officer must determine which source selection methodology is appropriate. FDIC has two methods available: price only and best value.

Selecting among the price only or best value methods for source selection involves a determination of the relative importance of price to other factors. The method selected depends upon the complexity of the goods or services to be acquired, as well as the dollar value, and procurement lead-time.

(1) *Price Only Method*: The price-only method is generally used for non-complex, routine requirements. This method calls for the selection of the offeror whose proposal meets certain specifications (e.g., delivery dates or performance levels) and who offers the lowest price. Routine goods or services that fall within the facilities, information technology equipment, and training (manuals/courses) program areas are good examples of requirements that are candidates for this method. Under certain situations, the Contracting Officer and the Program Office may determine that limited "pass/fail" technical evaluation factors must be included, in addition to evaluating price and past performance. “Pass/Fail” evaluation ratings are based on whether the offeror meets the minimum technical requirements and can be considered for award.

(2) *Best Value Method*: The best value method is appropriate for acquisitions requiring innovative solutions or a high level of technical expertise. This method allows for the evaluation of technical factors in addition to price and past performance. This method provides flexibility in selection through tradeoffs

between price and non-price evaluation factors with the intent of awarding to the contractor that offers FDIC the best value for its money.

When using the best value approach, adjectival ratings are assigned to the technical factors, coupled with a confidence rating for past performance, and a determination of reasonableness, realism, and completeness for price. The use of color coding is the primary best value approach used by FDIC, however, other descriptive methods such as technical points may also be used to arrive at the adjectival rating. The color coded ratings and their definitions in Table 2.

Table 2. Color Coded Ratings for Best Value Method

Color	Rating	Definition
Blue	Exceptional	Exceeds specified minimum performance or capability requirements in a way beneficial to FDIC.
Green	Acceptable	Meets specified minimum performance or capability requirements necessary for acceptable contract performance.
Yellow	Marginal	Does not clearly meet some specified minimum performance or capability requirements necessary for acceptable performance, but any proposal inadequacies are correctable.
Red*	Unacceptable	Fails to meet specified minimum performance capability requirements.

* Proposals with an unacceptable rating are not awardable.

3.206(b) Establishing Evaluation Factors and Sub-Factors

Evaluation factors and sub-factors must be developed, based on the requirements of the procurement. These factors and sub-factors are used to evaluate the offerors' proposals and must be stated in the SSP and disclosed to potential offerors in the request for proposal (RFP). Evaluation factors and sub-factors must be chosen that require the offeror to provide evidence of its ability to perform. The factors and sub-factors that relate to the most critical aspects of the SOO or SOW must be predominant in the technical evaluation. The use of too many evaluation factors and sub-factors is undesirable and must be avoided because it can lead to an unintentional leveling of evaluation scores.

Whenever the color coded best value method is used as the source selection methodology, each sub-factor must be evaluated and receive a color rating. The Contracting Officer has the discretion to also "roll up" the sub-factor colors into a single color rating that is assigned to the factor. The Contracting Officer must consider the order of importance of each sub-factor when assigning the single color rating to the factor.

Contracting Officers must ensure that language in the RFP describing the factor and sub-factor evaluation process is an accurate depiction of what actually will be accomplished by the TEP.

3.207 Technical Evaluation Panel

Contracting Officers shall provide the selected TEP members with sufficient advance notice of the dates designated for proposal evaluation, and any changes to those dates. Contracting Officers shall invite OMWI to participate in all TEPs. OMWI may participate in any TEP, subject to their discretion and resource availability.

3.208 Request for Proposals

The RFP is the vehicle FDIC uses to give potential offerors all the information they need to submit a proposal. The Contracting Officer must carefully craft the RFP to clearly articulate to potential offerors FDIC requirements, proposal submission requirements, evaluation methodology and the selection criteria to be used.

3.208(a) Request for Proposal Content

The RFP must include, as applicable:

(1) Required date, time and place for submitting proposals;

(2) The period of time that the proposals must remain valid in order to allow FDIC to complete its evaluation (s), typically ninety (90) calendar days. However, the Contracting Officer has the discretion to specify a longer or shorter proposal acceptance period;

(3) Pricing schedule;

(4) Description of the requirement, including the SOO, SOW, as appropriate;

(5) Delivery or performance information, including required delivery date or performance schedule, and place of performance;

(6) Contract clauses and provisions;

(7) Proposal instructions, including submission instructions (e.g., mail, email, limits on number of pages, format);

(8) Basis for award, including evaluation factors and sub-factors; and

(9) Information required for evaluation, including items such as:

- Statement of the firm's ability to meet the performance/schedule requirements;
- Proposed staffing with supplemental information, such as resumes or professional qualifications;

- Compliance with FDIC insurance requirements or other licensing prerequisites; and
- Statement of the firm's relevant experience, including past FDIC experience, with references.

(10) North American Industrial Classification System (NAICS) code and Small Business size standard. NAICS is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. The solicitation and award must identify the appropriate six digit NAICS code. Contracting Officers must review and select the appropriate code for the acquisition from the 2007 NAICS manual, which may be found at the following website: http://www.census.gov/cgi-bin/sssd/naics/naicsrch?chart=2007. In addition, Contracting Officers must determine the appropriate Small Business size standard for the selected NAICS code, as specified by the Small Business Administration. The following website associates Small Business size standards with NAICS codes: http://www.sba.gov/content/table-small-business-size-standards
Contracting Officers must enter the NAICS code in APS when creating the solicitation and award. Also, in solicitations, Contracting Officers must fill in the Small Business size standard in provision 7.3.2-49, Small Business Representation.

3.208(b) Review of Request for Proposal

The Contracting Officer must obtain any required reviews and approvals, as addressed in APM 5.15 (legal review requirements), and Appendix B, *Approvals Memorandum and Matrices,* prior to issuing the RFP.

3.208(c) Response Time

The Contracting Officer must establish a due date and time that gives offerors sufficient time to respond to the RFP. The Contracting Officer may consider the complexity and/or dollar value of the contract and any unique characteristics to determine the appropriate response time.

3.208(d) Offeror Questions

During the solicitation process, interested firms must submit all questions in writing. The Contracting Officer must respond in a timely manner, using information obtained from the Program Office, OMWI, Legal, or other resources, as appropriate. The Contracting Officer must send the questions and FDIC responses to all firms on the solicitation list.

3.208(e) Offerors' Conference

The Contracting Officer and the Program Office must jointly determine the need for an offerors' conference, and site visit, if appropriate. Site visits may be used when offerors need to see the facility or resource in question in order to submit a proposal for the anticipated contract performance.

If it is determined that a conference is necessary, the Contracting Officer must ensure that:

(1) The timing is as early as possible in the process;

(2) The Program Office is represented to discuss the requirement; and

(3) The Contracting Officer is present to discuss solicitation and contract issues.

If there is a significant delay in scheduling the offerors' conference, the Contracting Officer must promptly issue an RFP amendment extending the due date for submission of proposals.

3.208(f) Solicitation Amendments

If the RFP must be amended, the Contracting Officer must send amendments to all firms in the competitive range, if one is established, and allow sufficient time to permit offerors to consider all changes. The Contracting Officer should request that each offeror confirm receipt of each amendment, either immediately after it is received, or with the offeror's proposal.

3.208(g) Oral Presentations

FDIC uses oral presentations, along with pricing and other written information, for the purpose of evaluating an offeror's understanding and capability to perform the requirements and to select the successful offeror. The Contracting Officer may require each offeror to submit all or part of its technical and management proposal through oral presentations. However, offerors must submit their pricing proposal, representations and certifications, any required background investigation forms, and a signed proposal cover sheet (including any exceptions to FDIC terms and conditions) in writing. The following illustrates the details of conducting oral presentations:

(1) Every Technical Evaluation Panel (TEP) member must attend all presentations, unless the ASB Deputy Director has approved the member's absence in writing, and the Contracting Officer has documented the file appropriately;

(2) FDIC does not discuss an offeror's strengths or weaknesses, nor conduct negotiations during the oral presentation;

(3) Changes to the oral presentation are not permitted after the stated due date for offerors' responses;

(4) FDIC reserves the right to videotape or otherwise record all presentations, including question and answer sessions. Copies of video taped presentations

or other recordings are not made available to individual offerors. The Contracting Officer must ensure that the offerors do not record their presentations using audio or videotape, or any other method/medium;

(5) Offerors' statements made during the oral presentations do not become a part of any contract resulting from the RFP, unless FDIC and an offeror agree to make such information a part of the contract. When an oral presentation includes information that the parties intend to include in the contract as material terms or conditions, the information must be put in writing. Incorporation by reference of oral statements is not permitted;

(6) Oral presentations are intended to demonstrate the offerors' understanding of the FDIC requirement and the offerors' capability. Therefore, the Contracting Officer must specify in the solicitation the topics that must be addressed by the offerors during the oral presentation;

(7) If the offeror will be engaged in a question-and-answer session during the oral presentation, the Contracting Officer must specify such in the solicitation. FDIC evaluators must focus their questions on the offeror's understanding of the requirement, and its capabilities;

(8) No cost or price information should be discussed in the oral presentation or during any question and answer sessions; and

(9) The Contracting Officer must also address the following in the solicitation:

- Role and/or qualifications of the presenters;
- Anticipated dates and location for the oral presentations;
- The media to be used for the presentation (PowerPoint or equivalent software);
- The number of paper copies and electronic copies to be submitted; and
- Time limits for the presentation and question-and-answer session.

3.209 Receipt of Proposals

Proposals may be submitted by electronic mail, United States mail, overnight delivery, or other means specified in the RFP. For other than electronic mail, the FDIC mailroom is the official receipt point for all RFPs.

3.209(a) Due Date

In the case of proposals received electronically, the date and time of the e-mail is considered the official time of receipt of the proposal. For proposals delivered to the FDIC mailroom, the Contracting Officer must advise the mailroom staff that proposals are expected, and provide them the RFP number at least two (2) days prior to the required due date. The mailroom staff is responsible for date and time stamping each proposal and delivering the package to the Contracting Officer.

3.209(b) RESERVED

3.209(c) RESERVED

3.209(d) Non-Responsive Proposals

Examples of reasons a proposal may be deemed non-responsive include, but are not limited to:

(1) The offeror is debarred or suspended;

(2) The offeror's proposal does not comply with the specified RFP instructions;

(3) The proposed delivery date is later than the required delivery date specified in the RFP;

(4) The proposal does not comply with FDIC or other government standards specified in the RFP;

(5) The proposed price is determined to be grossly unrealistic; or

(6) The proposal acceptance period does not comply with the RFP.

3.209(e) Solicitation Cancellation

When a Program Office requests the cancellation of a solicitation, it must provide the Contracting Officer with the rationale for the cancellation and also cancel the requisition in the New Financial Environment. The Contracting Officer must document the official contract file with the reason for the cancellation.

3.210 Proposal Evaluation

Proposal evaluation is an assessment of the proposal and the offeror's ability to perform the prospective contract successfully. Proposal evaluation encompasses an evaluation of the mission (technical) capabilities of the offerors, past performance, price analysis, and evaluation of any additional elements, for example Section 508 compliance. Further information follows on key evaluation areas.

During evaluation, the Contracting Officer must monitor the proposal acceptance period defined in the RFP and submitted in the proposals and request extensions as necessary.

3.210(a) Mission Capability (Technical) Evaluation

The TEP evaluates each proposal individually, based on the instructions and evaluation factors provided in the SSP and RFP. The TEP does not evaluate proposals against each other. Generally, evaluators take the following steps in the evaluation process:

(1) Review each proposal for organization and contents;

(2) Analyze each proposal section provided by the Contracting Officer using the evaluation factors, corresponding standards, and any proposal instructions; and

(3) Document the review of each proposal section with ratings and written narratives, describing both strengths and weaknesses and analyzing their relative importance to the requirement.

3.210(b) Past Performance Evaluation

The Contracting Officer receives the completed past performance questionnaires from other government agencies and commercial entities and provides them to the TEP along with each offeror's proposal. The TEP may contact the individuals who completed the questionnaires and any other references in order to obtain clarification on comments or to ask follow-up questions.

The Contracting Officer must search the FDIC Automated Procurement System Contractor Performance Component database and the Contractor Performance Evaluation System (in SharePoint), and provide the TEP with any recent/relevant performance evaluation forms for the contractor whose performance is being evaluated.

The Contracting Officer may also obtain additional past performance information from the Past Performance Information Retrieval System (PPIRS), available at http://www.ppirs.gov/. Contracting Officers may request a user account on the PPIRS website.

The TEP conducts a structured past performance evaluation that examines an offeror's relevant present and past performance record to determine its ability to perform as proposed. The past performance evaluation considers demonstrated accomplishment of the services outlined in the SOO or SOW, to include the experience and capabilities of the contractor and its key personnel, and the offeror's overall performance record.

Offerors without a record of relevant past performance, or for whom information on past performance is not available, are not evaluated favorably or unfavorably on past performance and, as a result, receive a "neutral/unknown confidence" rating for the past performance factor. More recent and more relevant performance has a greater impact on the past performance confidence assessment than less recent or relevant effort(s). Likewise, a more relevant past performance record may receive a higher confidence rating and may be considered more favorable than a less relevant record of favorable performance. Past performance information for subcontractors or team members is valued in proportion to the amount of work they are expected to perform.
A relevancy rating is assigned using the definitions specified in Table 3 below:

Table 3. Relevancy Rating

RATING	DEFINITION
Highly Relevant	The magnitude of the effort and the complexities on this contract are essentially what the solicitation requires.
Relevant	Some dissimilarities in magnitude of the effort and/or complexities exist on this contract, but it contains most of what the solicitation requires.
Not Relevent	Performance on this contract contains relatively no similarities to the performance required by this solicitation.

A past performance confidence assessment rating is assigned using the definitions specified in Table 4.

Table 4. Past Performance Confidence Assessment Rating

RATING	DEFINITION
Exceptional/High Confidence	Based on the offeror's performance record, essentially no uncertainty exists that the offeror will successfully perform the required effort.
Very Good/Significant Confidence	Based on the offeror's performance record, little uncertainty exists that the offeror will successfully perform the required effort.
Satisfactory/ Confidence	Based on the offeror's performance record, some uncertainty exists that the offeror will successfully perform the required effort.
Neutral/Unknown Confidence	No performance record identifiable.
Marginal/Little Confidence	Based on the offeror's performance record, substantial uncertainty exists that the offeror will successfully perform the required effort. Changes to the offeror's existing processes may be necessary in order to achieve contract requirements.
Unsatisfactory/No Confidence	Based on the offeror's performance record, extreme uncertainty exists that the offeror will successfully perform the required effort.

3.210(c) Price Evaluation

Price evaluation includes a determination of price reasonableness and price realism.

(1) *Price Reasonableness:* The preferred method of determining price reasonableness is through effective competition. The requirement for seeking competition is satisfied when:

- Two or more responsive offerors, competing independently, submit proposals that satisfy the FDIC requirement, and award is made to the offeror whose proposal represents the best value; or
- Only one proposal is received, but the Contracting Officer can reasonably conclude that the proposal was submitted with the expectation of competition.

In the absence of competition, or when only one proposal is received in a competitive environment, the following methods may be used to determine price reasonableness:

- Compare proposed prices with prices for same or similar goods or services in comparable quantities acquired under previous or existing contracts, when the original prices were determined fair and reasonable;
- Compare proposed prices with competitive published catalogs or lists, including FSS pricing, published market prices or commodities, similar indices, and discount or rebate arrangements;
- Compare proposed prices with the FDIC independent cost estimate when the basis for the cost estimate is known; or
- Compare set prices required by law or regulations.

(2) *Price Realism:* The TEP evaluates price proposals to determine whether the proposed price for the work is realistic. A realistic price is one that reflects a clear understanding of the requirement and is consistent with the offeror's technical proposal. The elements of a price proposal can provide insight into an offeror's understanding of the requirement. If an offeror's total proposed price either greatly exceeds or falls far short of the Program Office estimate for the requirement, the offeror's understanding of what is required must be questioned. The TEP review and determination includes the appropriateness of:

- The number and qualifications of personnel to be assigned to the various aspects of the proposed work;
- Proposed labor rates or proposed material fees; and
- The price, amount, and necessity of travel.

If the TEP cannot perform the price realism duties, the TEP Chairperson performs this function. The TEP Chairperson includes price realism analysis in the TEP report discussed in section 3.214, or in a written memorandum to the Contracting Officer.

3.210(d) Technical Evaluation Panel Briefing

Prior to distributing the proposals to the TEP, the Contracting Officer briefs the TEP members on their roles and responsibilities and on their obligations to safeguard the proposals in their possession in order to prevent unauthorized disclosure. The Contracting Officer must ensure the TEP members sign the required *Confidentiality Agreement* and *Conflict of Interest Certification* (see APM 3.207(c)).

The Contracting Officer must provide detailed written and verbal instructions on the mechanics of evaluating each proposal, and a copy of the SSP, RFP, any RFP amendments. The briefing agenda typically includes, but is not limited to:

(1) Evaluators' responsibility for protecting contracting information, including documentation requirements and use of the standard protective marking statement "Procurement Sensitive Information – Not for Public Disclosure" on all proposal evaluation documents;

(2) Identification of the proposals received;

(3) The schedule for completing the evaluation;

(4) Key solicitation terms and conditions and significant SOW contents;

(5) The process the TEP follows in its review;

(6) Any proposal format requirements;

(7) Instructions for requesting clarifications;

(8) Evaluation factors and their corresponding standards;

(9) The past performance evaluation process; and

(10) The TEP consensus process.

Upon completion of the briefing, the Contracting Officer provides the TEP with copies of the proposals. Usually, the Contracting Officer does not provide the TEP with the price proposals until after the TEP has completed its technical evaluation. However, the Contracting Officer may, with the approval of the respective ASB Assistant Director, provide the price proposals to the TEP at the same time as it is given the technical proposals, if appropriate for the acquisition.

3.211 Communications with Offerors

The Contracting Officer communicates with offerors through two different levels of exchange, clarifications and discussions. The level of exchange is determined by the degree of interaction necessary for the Contracting Officer to make the award.

3.211(a) Clarification of Proposals

Clarifications are limited exchanges between FDIC and offerors that do not result in a change to the offeror’s proposal or price. Rather, a clarification simply explains an area of a proposal that is ambiguous, for example, conflicting statements in the proposal; or is otherwise unclear, such as a clerical error. In this level of exchange, the Contracting Officer requests in writing that the offeror(s) clarify certain aspects of proposals or resolve minor or clerical errors.

During the evaluation process, if TEP members need clarification on any part of a proposal, the TEP Chairperson may request it from the Contracting Officer. Only the

Contracting Officer has the authority to request clarification from an offeror, and the Contracting Officer must request clarification in writing. Contracting Officers must instruct the offeror to provide supplemental information of a strictly explanatory nature. An offeror must provide the clarification in writing, but may not change any part of the proposal as a result of the clarification request. If the offeror provides information that changes the contents of its proposal, the Contracting Officer can disregard the changes, eliminate the proposal from further consideration, or waive the matter as a minor informality, if that is the case. All clarifications must be documented in the official contract file.

3.211(b) Discussions

Following the initial evaluation of the proposal, if there is no one successful offeror, the Contracting Officer must determine which offerors are within the competitive range. Technical and/or price discussions must be held with each offeror in the competitive range. Discussions are negotiations between the offeror and FDIC. The discussions enhance FDIC understanding of the proposal, allow reasonable interpretation of the proposal, and facilitate the evaluation process.

Discussions are tailored to each offeror’s proposal, and must be conducted by the Contracting Officer. The primary objective of discussions is to maximize the ability of FDIC to obtain best value, based on the requirement and the evaluation factors set forth in the solicitation.

Before holding discussions, the Contracting Officer normally meets with members of the TEP to review the findings. During this meeting, the Contracting Officer must determine what information to provide to, and request from, offerors in the competitive range concerning their proposals.

With the assistance and participation of the TEP, the Contracting Officer conducts the discussions, face-to-face, telephonically, or in writing, and may include technical, price, or other issues. The Contracting Officer must control the discussions to ensure they are conducted fairly. Discussions are not a general question-and-answer period for each offeror; rather, the Contracting Officer must ask specific questions to clarify uncertainties in the proposal.

During discussions, the Contracting Officer must:

(1) Advise the offeror of deficiencies in its proposal based upon the TEP's evaluations;

(2) Attempt to resolve any uncertainties concerning the offeror's proposal;

(3) Identify and resolve suspected mistakes by calling them to the offeror's attention without disclosing information on other offerors' proposals or the evaluation process;

(4) As appropriate, inform an offeror that FDIC considers its price to be too high, or

too low; and.

(5) Discuss adverse past performance information to which the offeror has not previously had an opportunity to comment.

During discussions the Contracting Officer must ensure that FDIC personnel do not:

(1) Help an offeror bring up a proposal to the level of other proposals through successive discussion opportunities (see *Limits on Communications* at PGI 3.211(c) below;

(2) Indicate to an offeror that a price must be met to obtain further consideration; or

(3) Furnish information about other offerors' proposed prices.

After discussions are completed, offerors are given the opportunity to revise or clarify their proposals through submission of a best and final offer (BAFO).

3.211(c) Limits on Communications

FDIC personnel involved in any acquisition must not engage in conduct that:

(1) Favors one offeror over another;

(2) Helps an offeror bring up a proposal to the level of other proposals through successive discussion opportunities;

(3) Reveals an offeror’s technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would reveal one offeror’s intellectual property to another offeror;

(4) Reveals an offeror’s price or indicates to an offeror that a price must be met to obtain further consideration;

(5) Reveals the names of individuals providing reference information about an offeror’s past performance; or

(6) Knowingly furnishes source selection information.

3.212 RESERVED

3.213 Best and Final Offers

After discussions are concluded, the Contracting Officer must solicit BAFOs from all offerors in the competitive range. A BAFO template is provided on the ASB website at https://fdicnet.fdic.gov/content/dam/DOA/documents/buying/acquisitiondocuments/bafo-template.doc. The request includes:

(1) Notice that the Contracting Officer has concluded discussions;

(2) Notice of the opportunity to submit BAFOs by revising price proposals, technical proposals, or other terms and conditions of the original proposals; and

(3) A due date and time that allows a reasonable opportunity for submission of a written BAFO.

After the Contracting Officer has received and reviewed the BAFO submissions, the TEP reconvenes to evaluate them. The TEP follows the same process used to evaluate the original offers, including a TEP consensus meeting and a price realism determination after the technical evaluation. However, the TEP only considers the changes resulting from the BAFO. For any changes that affect the technical evaluation, the TEP members complete a *TEP Evaluation Rating Form* found on the ASB website (https://fdicnet.fdic.gov/content/dam/DOA/documents/buying/acquisitiondocuments/tep-ratingform.doc) that addresses any changes to the offers made by the BAFOs The TEP Chairperson documents the BAFO evaluation results in a TEP addendum.

3.214 Documenting the Source Selection Decision

3.214(a) Technical Evaluation Panel Report

(1) *Technical Evaluation Panel Consensus*

The goal for the TEP is to reach consensus on the merits of each proposal, relative to the evaluation factors. After the individual TEP members have completed and documented their evaluations of each proposal, using a *TEP Evaluation/Rating Form* found on the ASB website (https://fdicnet.fdic.gov/content/dam/DOA/documents/buying/acquisitiondocuments/tep-ratingform.doc), the TEP discusses the strengths and weaknesses of each proposal. The TEP must attempt to achieve a consensus rating for each evaluation factor using a rational, agreed upon method, e.g., thorough discussion. If the TEP cannot reach a consensus rating, the TEP Chairperson decides the rating.

(2) *Technical Evaluation Panel Report*

The TEP Chairperson provides the Contracting Officer a report which documents the panel's position on each offeror's technical proposal and past performance if part of the evaluation. This report includes:

- An analysis of the proposals, including an assessment of each offeror's ability to accomplish the technical requirements and, for acquisitions requiring a Subcontracting Plan, an assessment of each offeror's Subcontracting Plan;
- An analysis of the strengths and weaknesses and their magnitude by evaluation factor and sub-factor. Whenever the color-coded best value method is used as the source selection methodology, and the Mission

Capability factor includes the use of sub-factors, the narrative in the TEP Report must identify the evaluation and assignment of colors to each sub-factor. If the Contracting Officer also required the TEP to assign a color to the overall Mission Capability factor, it too must be identified and addressed in the TEP Report;

- A consensus narrative statement summarizing the strengths and weaknesses of each proposal and the basis for the consensus;
- Protective marking statement, "Procurement Sensitive Information - Not for Public Disclosure" on each page; and
- A price realism analysis (see PGI 3.210(c)(2)). If performed after submission of the TEP Report, the TEP must provide a separate memorandum to the Contracting Officer.
- Signature of all TEP members.

Templates for preparation of the TEP report may be found on the ASB website at https://fdicnet.fdic.gov/content/dam/DOA/documents/buying/acquisitiondocuments/tep-reporttemplate.doc. The TEP Chairperson provides the completed past performance questionnaires, the TEP Report, and technical evaluation rating forms (both individual and consensus evaluation rating forms) to support the evaluation to the Contracting Officer for inclusion in the official contract file.

(3) *Review of Technical Evaluation Panel Report*

The Contracting Officer must review the TEP Report and evaluation rating forms to ensure that the TEP evaluated all proposals impartially, and in accordance with the evaluation factors listed in the solicitation. The Contracting Officer must advise the TEP Chairperson of any deficiencies in, or necessary changes to, the TEP Report. After reviewing the TEP Report, the Contracting Officer must provide the offerors' price proposals to the TEP for review, if they were not provided at the initiation of the TEP evaluation process.

3.214(b) Selection Recommendation Report

Both the Contracting Officer and the TEP Chairperson sign the Selection Recommendation Report (SRR) which includes:

(1) Purpose;

(2) Background;

(3) Solicitation planning and evaluation references;

(4) TEP organization structure;

(5) Chronology of events;

(6) Solicitation list, including the identification of offerors that proposed and those that are recommended for award. The list must identify each offeror's status as

to whether or not they are Minority-Owned, Women-Owned, Small Disadvantaged Business, Veteran-Owned, Service Disabled Veteran Owned, etc. For Minority-Owned, also include identification of a contractor's ethnic/racial category from the following list: Asian-Pacific American, Subcontinent Asian (Asian-Indian) American, Black American, Hispanic American, Native American, and Other Than One of the Preceding. The solicitation list must be completed using the "Solicitation List Template" found on the ASB website at https://fdicnet.fdic.gov/content/dam/DOA/documents/buying/acquisitiondocuments/solicitationlisttemplatejune2011.xls. This completed list must also be submitted to the ASB Policy and Systems Section. It must be submitted as soon as possible after award is made, but no later than the last day of the month in which the award was made;

(7) Summary of proposal responses;

(8) Evaluation methodology;

(9) Summary of initial proposal evaluation results;

(10) Summary of BAFO evaluation results;

(11) Summary-Integrated best value decision;

(12) Pre-award verifications (see PGI 3.215(a);

(13) Recommendation; and

(14) Approval.

A template for preparation of the SRR may be found on the ASB website at https://fdicnet.fdic.gov/content/dam/DOA/documents/buying/acquisitiondocuments/srrtemplaterev.docx.

3.215 Contract Award

3.215(a) Pre-Award Reviews

The Contracting Officer must ensure the following reviews are accomplished prior to developing the SRR and executing the contract. Documentation to support the reviews must be included in the official contract file.

(1) Excluded Parties and FDIC Debarred Vendors: The Contracting Officer must enter the name or DUNS number of the recommended awardee into the System for Award Management (SAM) at http://www.sam.gov and must review the FDIC Debarred Vendors List found at https://fdicnet.fdic.gov/content/doa/home/buying/debarred-vendors.html before contract award, regardless of dollar value. Award may not be made to a firm that is labeled with "Exclusion" in SAM or is on the FDIC Debarred Vendor list.

(2) SAM Review: The Contracting Officer must review the System for Award Management database found at http://www.sam.gov before contract award to

ensure the recommended awardee is registered and to obtain its socioeconomic status. Award may not be made to a firm that is not registered in SAM, without approval of the respective ASB Assistant Director.

(3) Vendor File Review: The Contracting Officer must verify if the recommended awardee is listed in the FDIC Vendor File, which is maintained by the Division of Finance's Vendor File Maintenance Group (VFMG). If it is not, the Contracting Officer must obtain the firm's name, remit to address, tax identification (ID) number and DUNS number from the SAM database and send an email to VFMG, DC (email address as stated in Outlook) to request the firm to be added to the FDIC Vendor File. Below is a sample format of the email:

> To: Vendor File Maintenance Group DC (Email address is in Outlook address book)
> From: Contract Specialist's Name
> Subject: Add Vendor – [Insert Vendor's Name]
>
> Please add the following vendor to the vendor file in NFE:
>
> Contractor Name
> Street Address
> City, State Zip Code
> TAX ID #: _____
> DUNS #: _____
>
> I have verified that this vendor is registered in the SAM database but has not been added to NFE. If you have any questions, please contact [insert Contract Specialist's name] at x____.

Emails sent to VFMG by 3:00pm are processed the same day. Emails sent after 3:00pm are processed by 10:00am the next day. VFMG sends the Contracting Officer a confirmation email with the new vendor ID number when the firm has been added to the FDIC Vendor File. Award may not be made to a firm that is not in the FDIC Vendor File.

Once the firm is added to the Vendor File by VFMG, the APS Vendor Job will run overnight in order to integrate the newly added vendor from NFE to the APS database for selection.

(4) *Contractor Representations and Certifications*: The Contracting Officer must review the information received through the *FDIC Contractor Representations and Certifications* to ensure that offerors comply with applicable laws and directives.

(5) *Integrity and Fitness Representations and Certifications*: The Contracting Officer must review the information received through the *FDIC Integrity and*

(6) *Fitness Representations and Certifications* to ensure that offerors are eligible to do business with FDIC.

(7) *Background Investigations*: The Contracting Officer must obtain preliminary

background investigation approval of the contractor and key personnel from the Security and Emergency Preparedness Section, prior to award. This approval is required when the award exceeds $100,000 and is for services; or at any dollar amount when contractor personnel or subcontractor personnel work on-site and have unescorted access to FDIC offices or facilities, or have access to FDIC networks/systems, or in any other contract where the Program Office has described a need for background investigations.

(8) *Financial Capability Review*: If the award will exceed $1,000,000, the Contracting Officer must conduct a financial capability review. A template is available at https://fdicnet.fdic.gov/content/dam/DOA/documents/rim/forms/3000/3700-48.xls

(9) *Peer/Supervisory Review*: Before the award of any contract action, (including modifications, task orders, and task assignments, etc.) valued at $1,000,000 or higher, or the award of any BOA, RBOA, or BPA, the Contracting Officer shall submit the award file for Peer/Supervisory Review.

This review will include:

- Verification that all calculations used in developing price evaluations are correct;
- Verification that all statements related to price evaluation and best value determinations are adequately supported in the contract file; and
- Verification that APM/PGI policy and procedures have been followed.

The review may be accomplished by peers or supervisors, at the discretion of the respective ASB Assistant Director. The review may be documented by email or memorandum from the reviewer to the assigned contracting officer confirming that the review has been accomplished. The email or other evidence of review should be filed in Part III (Selection) of the official contract file for new contract awards, or in the folder with other supporting documentation for modifications, task orders, or task assignments.

(9) *Unpaid Federal Tax Liability*: No contract award is to be made to any corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. However, an exception may be granted, and the contract award may be made, when FDIC has considered suspension or debarment of the corporation and has determined this action is not necessary to protect the interests of the Government. The final decision as to whether or not FDIC should suspend or debar the contractor rests with FDIC Legal/Contract Law Unit.

For contract awards of $100,000 or less, in which the Contracting Officer has become aware that the corporation has an unpaid Federal tax liability; award must not be made unless FDIC has considered suspension or debarment of

the corporation and has determined this action is not necessary to protect the interests of the Government.
For contract awards exceeding $100,000, Contracting Officers may rely on the "Representation by Corporations Regarding an Unpaid Delinquent Federal Tax Liability", which is submitted by the contractor in provision 7.3.2-67 and in Form 3700/04A.

3.215(b) Selection Recommendation Report Approval

Once the Contracting Officer has completed the SRR, it is forwarded for appropriate review and approval in accordance with Appendix B, *Approvals Memorandum and Matrices*.

3.215(c) Award Process

Once the award decision is approved, the Contracting Officer notifies the successful offeror via email or in writing.

The Contracting Officer must prepare the contract, incorporating the successful offeror's name and address, key personnel information, compensation ceilings and any other information necessary to complete the award document. The Contracting Officer sends the original of the contract to the contractor, who signs and returns it. After executing the contract, the Contracting Officer sends a copy to the contractor and retains the original for the official contract file.

The Contracting Officer must upload the contract into CEFile and provide CEFile access to the designated Oversight Manager and any designated Technical Monitors so they can view the contract and maintain their Oversight Manager file.

3.215(d) Notice to Proceed – Advance Authorization Letter

Usually, the Contracting Officer has the fully executed contract in place before a contractor commences work. An advance authorization letter may be used in limited circumstances, primarily in the case of urgent or emergency requirements as addressed in chapters 3.4 and 3.5. However, in some cases (with the prior approval of the respective ASB Assistant Director) the Contracting Officer may grant a notice to proceed before the execution date, with supporting documentation. In such cases, the Contracting Officer can orally authorize a contractor to begin performing before a contract is fully executed. The Contracting Officer must immediately issue an advance authorization letter authorizing the contractor to commence work, (The advance authorization letter template is available at https://fdicnet.fdic.gov/content/dam/DOA/documents/buying/acquisitiondocuments/advanceauthorizationletter.doc). Before providing oral authorization, the contractor and FDIC must agree to the terms and conditions, price, and deliverables. The Contracting Officer also must ensure that the Program Office has provided an approved requisition with

procurement authority in the total amount of the contract. Further details on use of an advance authorization letter are found in APM 3.4, APM 3.5, PGI 3.4 and PGI 3.5.

3.216 Notification to Unsuccessful Offerors and Debriefings

3.216(a) Notification to Unsuccessful Offerors

The notice contains the identity of the successful offeror, the total price of the successful proposal and procedures for requesting a debriefing, if a technical evaluation was conducted. A *Notification to Unsuccessful Offerors* template is found on the ASB website at https://fdicnet.fdic.gov/content/dam/DOA/documents/buying/acquisitiondocuments/unsuccessfulofferorletter53013.pdf.

3.216(b) Debriefings

Debriefings are offered to unsuccessful offerors when technical proposals are evaluated as part of the proposal evaluation and award process (includes contracts, basic ordering agreements (BOAs), task orders, and purchase orders). Unsuccessful offerors must request a debriefing in writing within fifteen (15) calendar days after the offeror is notified of the contract award. Debriefings may also be provided to successful offerors upon request. Debriefings may be held either by telephone or in person, within a reasonable time, generally within thirty (30) calendar days.

(1) *Responsibilities:* The Contracting Officer is responsible for assembling information and coordinating the debriefing with the offeror and the TEP Chairperson or other TEP members. However, the Contracting Officer does have the discretion to allow other participants, such as an offeror's subcontractor and counsel to attend. When requested by the Contracting Officer, Contracting Law Unit participates in the debriefing. OMWI is given an opportunity to participate when debriefings are given to minority or women-owned businesses and small disadvantaged businesses. TEP personnel should be available for debriefing consultations, before the debriefing. The Contracting Officer must retain a record of debriefing conferences in the official contract file.

(2) *Discussion Items:* The Contracting Officer introduces all FDIC participants, explains their respective roles in the selection and award process, and manages the flow of the meeting.

- Required Discussion Items:
  - Evaluation Structure: An overview of the evaluation structure/process, including the procedural aspects of the technical and price assessment, the technical evaluation criteria, and price proposal.

    - Weaknesses in the Proposal - Future Improvement: It is essential that debriefers provide useful information that helps the offeror produce a more competitive proposal in response to future solicitations. For example, if an offeror's proposed prices were so much higher than most other offerors' prices that they precluded any real chance of selection, debriefers could stress a general need to trim proposal prices - without stating any particular price that might be considered "competitive" or "reasonable." On the other hand, if the offeror's proposal lacked technical merit, debriefers can identify the general areas of weakness, but should refrain from making a point-by-point comparison of all elements considered.
- Optional Discussion Items: When the Contracting Officer considers it appropriate, other items such as the following may be discussed:
    - General Ranking: The offerors ranking in general terms, such as within "the top third" or "bottom half" of the offerors. It is important to concentrate on the relative nature of the rating system. Debriefers should emphasize that a low rating does not necessarily mean that an offeror is not qualified to perform the required services but, rather, that the contractor was not perceived to be overall as strong as the successful offeror. It is not appropriate to discuss either the specific ratings or the price proposals of other offerors. However, the Contracting Officer may disclose the awardee’s price;
    - Number of sources solicited;
    - Number of proposals received;
    - Perceived strengths in the firm's proposal;
    - Procedures for requesting information under the Freedom of Information Act, if requested; and
    - Procedures for filing an official protest, if requested.
- Unauthorized Discussion Items: These items must not be discussed or disclosed to the firm being debriefed:
    - The number of offerors included in the competitive range or requested to submit BAFOs;
    - The details of the assessment of the firm being debriefed, or the firm's specific ranking;
    - Any other offeror's assessment or ranking;
    - The successful offeror’s proposal;
    - Copies of any technical or price evaluation sheets, reports, or any other written information produced by the TEP or the Contracting Officer during the evaluation process; and
    - Information relating to the other offerors, including proprietary information.

3.217 Contract Types and Pricing Arrangements

3.217(a) Contract Types

The contract types discussed in the following paragraphs represent those used most frequently by FDIC Contracting Officers. Any of the contract types discussed in this paragraph may utilize any combination of the pricing arrangements addressed in 3.217(d) below, as may be appropriate for the procurement.

(1) *Contract:* A contract is used when the scope of work can be described by stating a definite goal or target or specifying specific goods. A contract normally requires the contractor to complete and deliver the specified end goods *(*e.g.*,* office supplies) or services, or may be issued for a specific level of effort during the contract period. A contract must not be used to issue task orders.

(2) *Basic Ordering Agreement:* A BOA is not a contract. It is a written instrument of understanding negotiated between the FDIC and a contractor for future delivery of as yet unspecified quantities of goods or services. A BOA becomes a binding contract when a task order is issued. A BOA must contain the following:

- Terms and conditions that apply to the basic BOA and any task orders issued against it;
- A statement that the contractor is obligated to furnish goods or services, described in general terms, if and when requested by authorized representatives during a specified period of time;
- A statement that the FDIC is not obligated to place any orders under the BOA;
- Identification of the point at which each order becomes a binding commitment, e.g., issuance of the order, acceptance of the order in a specified manner, or failure to reject the order within a specified number of days;
- Procedures for placing orders under the BOA, including:
    - The method(s) for pricing orders under the BOA, if unit prices are not included in the basic agreement;
    - How proposals will be solicited;
    - How proposals will be evaluated; and
    - How task orders will be issued.
- A statement that orders may only be placed by warranted ASB Contracting Officers;
- A statement that no further orders may be placed against the BOA when it has reached its expiration date;
- A ceiling amount, which represents the total not-to-exceed dollar amount of all task orders which may be issued under the BOA;

- Includes a ceiling amount for each BOA award, which when all BOA awards are combined, the total does not exceed the requisition ceiling amount. (e.g., requisition is $8 million: Vendor A BOA ceiling is $4 million; Vendor B BOA ceiling is $2 million; and Vendor C BOA ceiling is $2 million). Any unequal award amounts must be documented with rationale in the SRR or PEM. A single requisition may be used for multiple BOA awards; and
- The total award amount must not exceed the approved PEM or SRR amount.

The scope of BOA may be limited to the furnishing of individual items, groups or classes of goods or services, or it may be unlimited for all items that a firm is capable of furnishing. A BOA may include established unit prices and/or labor categories and labor rates. A BOA must not state or imply any commitment by FDIC to place future orders with the contractor, nor may it be used in any manner to restrict competition. Any and all goods/services must be authorized by issuance of task orders. There is no mechanism in a BOA to authorize and pay for work under the BOA itself.

Often it is in the best interest of FDIC to establish BOAs with more than one contractor. Having BOAs with multiple qualified and capable contractors reduces administrative lead time for acquiring the good/service once the specific requirement generates; ensures FDIC will have sufficient support to meet its requirements; and allows for competition when issuing task orders, thereby providing FDIC with the best value. When it is not feasible to establish multiple BOAs due to the uniqueness of the requirement or other reasons, the Contracting Officer must include the reason for establishing a single BOA for the required goods or services in the official contract file.

The solicitation and selection of one or more contractors to receive a BOA may be based on either competitive procedures (see PGI 2.203) or non-competitive procedures (see PGI 2.206). When non-competitive procedures are used, all of the contractors selected to receive a BOA may be identified in a single memorandum to file (for BOAs less than $100,000) or a single JNCP (for BOAs equal to or greater than $100,000).

The procurement request authority must be based on the total estimated value of the requirement, regardless of how many BOAs may be awarded. The ceiling amount on any of the BOAs must not exceed the dollar value of the procurement request authority approved initially, or as subsequently increased. Throughout the performance period of the BOAs, the Program Office and Contracting Officer must monitor the dollar value of all task orders issued among the BOAs to ensure their combined amounts do not exceed the procurement request authority dollar value.

The Contracting Officer must establish the procedures for awarding task orders under the BOA in consultation with the Program Office. The procedures must be stated in both the solicitation for the BOA, and in the BOA itself. The Contracting Officer must ensure that all task orders are issued in accordance with the ordering procedures included in the BOA. The ordering procedures may include, but are not limited to, full or limited competition with all BOA contractors, or a form of rotation among the BOA contractors. Unless the BOA

contains procedures for issuing a task order by rotation, any non-competitive task order issued under a BOA must be justified in accordance with PGI 2.206.

Each BOA must be reviewed annually before the anniversary of its effective date and revised as necessary to conform to the requirements of the APM. A BOA may be changed only by modifying the agreement itself and not by modifying individual task orders issued under it. Modifying a BOA does not retroactively affect the task orders previously issued under it.

(3) *Receivership Basic Ordering Agreement:* A receivership basic ordering agreement (RBOA) is used to expedite the acquisition of goods and/or services in support of failing or failed financial institutions and their subsidiaries. An RBOA is similar to a BOA in all respects except the following:

- It is limited to awards in support of the Division of Resolutions and Receiverships (DRR) as it conducts pre- and post-closing activities of failing or failed financial institutions, prepares for and performs the duties of receiver in the pre- or post-closing period, or deals with related subsidiaries.
- It does not contain a ceiling amount. Because the amount of goods and/or services to be acquired during the period of an RBOA depends on the size and number of financial institution closings, as well as on existing levels of current asset sales, it is virtually impossible for DRR to accurately forecast a ceiling amount applicable to the RBOA(s). Furthermore, having an inaccurate ceiling amount for the RBOA(s) could result in the repeated need to increase the ceiling amount; thereby extending the time before new task orders could be issued. Hence, an RBOA does not contain a ceiling amount. Instead, dollar value ceiling controls are established at the task order level, versus the RBOA level, allowing DRR the ability to formulate requirements and resultant cost estimates as needs become better defined.
- The dollar value of the procurement request authority is zero, for the same reason addressed above as to why an RBOA does not contain a ceiling amount. Whether there are one or multiple RBOAs, a zero (0) dollar purchase requisition must be created for every RBOA.
- RBOAs and task orders issued under RBOAs may also be used with the expedited and emergency contracting procedures addressed at PGI 3.5.

3.217(b) Task Orders

Orders for the acquisition of goods or services, issued under a BOA or an RBOA are known as task orders. Only warranted ASB Contracting Officers may issue task orders. Task orders issued under either a BOA or RBOA are entered into in the same capacity as the respective BOA or RBOA, unless multiple capacities are authorized in the BOA or RBOA.

Although task orders may also include the ordering of goods, the term delivery order is typically used when the order is only for goods. Nevertheless, the following guidance on task orders applies regardless of whether the order is for goods or services. The goods

or services to be acquired on the task order must be within the scope of the work identified in the ordering agreement. The issuance of a task order must be in compliance with the procedures identified in the BOA or RBOA. The delivery of goods and the performance of services, ordered in a task order, must be completed during the period of the ordering agreement.

The issuance of a task order creates a contract. It contains a unique task order number, negotiated price, performance period/delivery schedule, requirements document, and contractually binding signatures. The requirement document is usually in the form of either a SOW or performance work statement (PWS). Invoicing, payments, closeout, and (if necessary) terminations, are accomplished at the task order level.

The following documents, as applicable, are required to be processed for each task order, subject the dollar thresholds and approval levels identified in the February 20, 2007 letter "Revised Procurement-Related Delegations and Re-Delegations of Authority Limits" and Appendix B, *Approvals Memorandum and Matrices*.

(1) Purchase requisition;

(2) Acquisition Plan;

(3) Source Selection Plan;

(4) Justification for Non-Competitive Procurement;

(5) Solicitation; and

(6) SRR or PEM.

Legal review of the acquisition plan, solicitation, and task order award document are subject to the approval levels identified in APM 5.15, *Legal Review of Acquisition Documents and Contract Actions*, and Appendix B, *Approvals Memorandum and Matrices*. Task orders over $5,000,000, must be reported separately in the Contract Assessment Report. Modifications to task orders are subject to the same approvals and documentation requirements as modifications to contracts (see PGI 6.5).

When task orders are awarded based on competition among contractors, the source selection process may be streamlined from that identified in APM 3.206 *Source Selection Planning*. However, prior to issuing the request for task order proposal, the streamlining efforts must be approved by the respective ASB Assistant Director and documented in the official contract file.

Examples of a streamlined source selection process include:

(1) Instead of using color-coding or points in the evaluation of the offerors' technical proposals, summarize the findings so as to highlight the magnitude of strengths of weaknesses. These findings are then considered along with price and past performance (if applicable) when determining the best value;

(2) After receipt of initial proposals, selecting the contractor whose proposal offers

the best value and negotiating changes to the requirements documents and price with only the selected contractor; and

(3) Rotating awards.

3.217(c) Task Assignments

When it is necessary to authorize work under a contract or task order, at various times throughout the period of performance on an as-needed-basis, the vehicle for authorizing such work is a task assignment. Task assignments involve work within the scope of the SOW for the contract or task order for which the specific requirement is not determined until after contract or task order award. The task assignment is therefore a subset of the contract or task order. The task assignment must be incorporated into the contract or task order by bilateral modification. The modification may or may not involve the addition of line items. It is recommended the task assignment be assigned a unique number (such as TA 08-01)for administrative purposes. This number is not an addition to the contract or task order number, but provides a numerical identification mechanism for FDIC and the contractor to keep track of the various task assignments.

The scope of work associated with any task assignment must be within the scope of the SOW of the contract or task order. The period of performance for any task assignment must not exceed that of the contract or task order, and the total dollar amount of task assignments must not exceed the ceiling amount of the contract or task order. Procedures for requesting a proposal, negotiating, and issuing the task assignment must be identified in the contract or task order. Because invoices must be submitted at the contract or task order level, the procedures must identify whether separate invoices are required for each task assignment.

Only Contracting Officers have the authority to issue task assignments and this authority must not be delegated.

Task assignments do not require an Acquisition Plan, Source Selection Plan, or JNCP. However, a purchase requisition must be approved at the appropriate level for the dollar value of the task assignment, prior to issuing the task assignment. A PEM is not required for a task assignment. However, a determination of price reasonableness must be documented by the Contracting Officer in a memorandum to the official contract file. In making the determination, the Contracting Officer must verify that the negotiated task assignment dollar amount is based on the appropriate skill mix (labor categories and number of labor hours), which are applied to either previously negotiated labor rates or labor rates adequately supported in the task assignment proposal, along with reasonable costs for any material or travel. Legal review is not required for the request for task assignment, the task assignment, or the modification incorporating the task assignment into the contract or task order.

3.217(d) Pricing Arrangements

Any of the pricing arrangements discussed below may be utilized with any of the contract types in PGI 3.217(a). As part of acquisition planning, the Contracting Officer, in coordination with the Program Office, selects the pricing arrangement most suitable to the procurement. The most suitable pricing arrangement may be a hybrid utilizing more than one type of pricing arrangement, when appropriate. For instance, a contract may include both firm fixed price (FFP) and labor hour line items, and may further include cost reimbursable items, where contractors are reimbursed for actual costs for goods or services provided under the contract. In any of the three categories discussed below, the price or hourly rate includes all basic costs of performance, including overhead, general and administrative expenses, profit, and any other specific costs negotiated with the contractor.

(1) *Firm Fixed Price:* A FFP contract, which best utilizes the basic profit motive of business enterprise, is appropriate when the risk involved is minimal or can be predicted with an acceptable degree of certainty. Under a FFP contract, FDIC pays the contractor a predetermined price for successfully performing the work. This arrangement represents the least risk for FDIC in that the contract has a predetermined total price at the time of contract award and is not subject to adjustment during contract performance. Accordingly, a FFP arrangement places the maximum risk upon the contractor to manage costs and resulting profit or loss. It provides maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties. FDIC normally issues payment upon delivery and acceptance of the goods or services. Successful use of this arrangement requires a clear definition of requirements in the SOW and realistic estimates of work to be performed. Firm fixed prices include any and all of the contractor's costs and expenses, direct and indirect, as well as any profit, fee or any markups of any nature.

(2) *Fixed Unit Prices:* A fixed unit price pricing arrangement is one in which FDIC pays the contractor agreed-upon fixed unit prices for specified goods or services. Contractor's fixed unit prices include any and all of contractor's costs and expenses, direct and indirect, as well as any profit, fee, or any markups of any nature. Fixed unit prices may be appropriate for requirements such as training courses, office supplies, etc.

(3) *Time and Materials:* Time and materials (T&M) pricing arrangements provide primarily for the procurement of labor services on the basis of direct labor hours at specified fixed hourly labor rates, plus the cost of necessary materials. FDIC uses these contracts when it is difficult to provide a detailed SOW or to estimate the price or duration of time required for performance. With a T&M pricing arrangement, FDIC compensates the contractor at the hourly rates specified in the contract for actual productive work hours exclusive of travel time, vacation, holiday, sick leave and other absences. The hourly rates include any and all wages, overhead, general and administrative expenses and profit or fee. The Contracting Officer may authorize reimbursement of material handling expenses in the contract. Any material handling expenses must be properly applied to direct material (excluding travel, overhead, or any other allocation). If subcontracting is approved under the contract, the Contracting Officer must approve subcontractor hourly rates in addition to the prime’s hourly rates. Subcontractor mark-ups may be permitted, if approved in advance

by the Contracting Officer.

(4) *Labor Hours:* A labor hour contract is similar to a T&M contract, except that FDIC does not require the contractor to provide materials during performance. As noted under T&M pricing, FDIC compensates the contractor at the hourly rates specified in the contract for actual productive work hours exclusive of travel time, vacation, holiday, sick leave and other absences. The hourly rates include any and all wages, overhead, general and administrative expenses and profit or fee. If subcontracting is approved under the contract, the Contracting Officer must approve subcontractor hourly rates in addition to the prime's hourly rates. Subcontractor mark-ups may be permitted, if approved in advance by the Contracting Officer.

(5) *Additional Considerations: A*ny of the contract types and pricing arrangements discussed above may include additional requirements that impact the total price paid to the contractor. These include features such as:

- Cost reimbursable items: These are items (goods or services) that are required for performance of the contract, but would not normally be included in a contractor's fixed price or hourly rate. Therefore, the Contracting Officer includes language in the contract to permit reimbursement of the items on an actual cost basis. A description of the cost reimbursable items must be identified in the contract. The contractor must also submit supporting documentation, such as receipts, with their invoice to show actual costs incurred.
- Incentives: As discussed in PGI 5.7, contracts may include incentives, such as award term and other applicable performance or delivery incentives negotiated by the Contracting Officer.

3.218 Prescriptions for Clauses and Provisions for Formal Contracting

7.3.1-1 Disposition of Submitted Material - insert provision in all solicitations.

7.3.1-2 System for Award Management (SAM) - insert provision in all solicitations.

7.3.1-3 Restriction on Disclosure of Information - insert provision in all solicitations.

7.3.1-4 Solicitation Requirements, Terms and Conditions - insert provision in all solicitations.

7.3.1-5 Price Only Evaluation Method - insert provision in solicitations when Best Value is not appropriate and award will be based only on price.

7.3.1-6 Identification and Delivery of Proposals - insert provision in all solicitations. Fill in the date and time and select the appropriate address for delivery of proposals.

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7.3.1-7 Proprietary Information - insert provision in all solicitations.

7.3.1-8 Amendments, Extensions and Cancellations - insert provision in all solicitations.

7.3.1-9 Delivery Schedule - insert clause in all awards for goods.

7.3.1-10 Place of Delivery or Performance - insert clause in all awards.

7.3.1-11 Deliverables - insert clause in all awards.

7.3.1-12 Period of Performance - insert clause in all awards for services.

7.3.1-13 OIG Fraud Hotline - insert clause in all awards.

7.3.1-14 Order of Precedence - insert clause in all awards.

7.3.1-15 Governing Law - insert clause in all awards.

7.3.2-1 Description of Goods or Services - insert provision in all solicitations.

7.3.2-2 References to Time - insert provision in all solicitations.

7.3.2-3 Outreach Program: SDB, Minority-Owned and Women-Owned Business Concerns - insert provision in solicitations that will result in an award exceeding $100,000.

7.3.2-4 Site Visit - insert provision in solicitations when services will be performed on-site at FDIC and a site visit will be allowed prior to award.

7.3.2-5 Offerors' Conference - insert provision in solicitations when an offerors' conference will be held.

7.3.2-6 Questions Regarding Solicitation - insert provision in all solicitations.

7.3.2-7 Submission of Offers in the English Language and in U.S. Currency - insert provision in all solicitations.

7.3.2-8 Award of Contract – Competitive - insert provision in all solicitations which are competed.

7.3.2-9 General Proposal Instructions - insert provision in all solicitations.

7.3.2-10 General Proposal Instructions – Oral Presentation - insert provision when proposal evaluations will include the use of oral presentations.

7.3.2-11 Pricing Proposal (Firm-Fixed-Price) - insert provision in solicitations that will result in firm fixed priced contracts. For awards greater than $1,000,000, include paragraph (d).

7.3.2-12 Pricing Proposal (Time and Material or Labor Hour) - insert provision in solicitations for time and material or labor hour contracts. For awards greater than $1,000,000, include subparagraph (e).

7.3.2-13 Effective Period of Offer - insert provision in all solicitations.

7.3.2-14 Non-Responsive Proposals - insert provision in all solicitations.

7.3.2-15 Mission Capability - Proposal Instructions - insert provision in solicitations when mission capability will be evaluated. Include paragraphs (b), (c), and/or (d), when applicable.

7.3.2-16 Past Performance - Proposal Instructions - insert provision in solicitations when past performance information will be evaluated.

7.3.2-17 Best Value Evaluation Process - insert provision in solicitations when the evaluation is based on best value.

7.3.2-18 Evaluation of Mission Capability - insert provision in solicitations where mission capability will be evaluated.

7.3.2-19 RESERVED
7.3.2-20 Evaluation of Past Performance - insert provision in solicitations when past performance will be evaluated.

7.3.2-21 Description/Specifications/Work Statement - insert in awards where either a SOW or a SOO and PWS or another form of work statement is included as an attachment in Section J of the award document.

7.3.2-22 Evaluation of Pricing - insert provision in all solicitations. The provision may be tailored by the Contracting Officer to accommodate the contract type and pricing arrangement.

7.3.2-23 Evaluation of Financial Capability - insert provision in solicitations for contracts over $1,000,000.

7.3.2-24 Technical Approach - insert provision in solicitations when the submission of a technical approach is required (Use in conjunction with the provision 7.3.2-15, *Mission Capability – Proposal Instructions*).

7.3.2-25 Management Plan - insert provision in solicitations when the submission of a management plan is required. (Use in conjunction with the provision 7.3.2-15, *Mission Capability – Proposal Instructions*).

7.3.2-26 Key Personnel - insert provision in solicitations when information on Key Personnel is required. (Use in conjunction with the provision 7.3.2-15, *Mission Capability – Proposal Instructions*).

7.3.2-27 Oral Presentation - insert provision in solicitations when proposal evaluations will include the use of oral presentations. (Use in conjunction with 7.3.2-10, *General Instructions – Packaging the Proposal (Oral Presentation).*

7.3.2-28 Late Proposals, Modifications of Proposals, and Withdrawal of Proposals - insert provision in all solicitations.

7.3.2-29 Award - Best Value - insert provision in all solicitations in which award is based on best value.

7.3.2-30 Rejecting Proposals/Waiving Informalities - insert provision in all solicitations.

7.3.2-31 Pre-Award Site Visit - insert provision in solicitations where the Contracting Officer has decided a pre-award site-visit may be conducted.

7.3.2-32 Compliance with Presidential $1 Coin Act of 2005 - insert clause in contracts where the contractor is operating a business on federal premises.

7.3.2-33 Independent Contractors - insert clause in all awards.

7.3.2-34 Duty to Deliver or Perform - insert clause in all awards.

7.3.2-35 Calendar Days - insert clause in all awards.

7.3.2-36 Task Order - insert clause in all basic ordering agreements, receivership basic ordering agreements, and BPAs, where task orders will be issued. The Contracting Officer must choose a method for task order awards.

7.3.2-37 Audit of Records - insert clause in all awards that exceed $100,000.

7.3.2-38 Scope of Services – Task Orders - insert clause in all task order awards.

7.3.2-39 Incorporation of Terms and Conditions – Task Orders/Delivery Orders - insert clause in all task orders and delivery orders.

7.3.2.40 Change in Physical Location - insert clause in all awards.

7.3.2-41 FDIC Personnel - insert clause in all awards.

7.3.2-42 Contractor Personnel - insert clause in all awards.

7.3.2-43 Key Personnel - insert clause in all awards in which the Program Office has determined key personnel are required.

7.3.2-44 Representations of Contractor - insert clause in awards over $100,000.

7.3.2-45 Preamble to Contractor Representations and Certifications - insert provision in solicitations for awards over $100,000.

7.3.2-46 Integrity and Fitness Representations and Certifications - insert provision in solicitations for awards for services over $100,000.

7.3.2-47 Additional Information - Representations, Certifications and Other Statements of the Offeror - insert provision in solicitations for contracts that will exceed $100,000.

7.3.2-48 Certification of Registration in System for Award Management (SAM) - insert provision in solicitations for awards over $100,000.

7.3.2-49 Small Business Representation - insert provision in all solicitations.
7.3.2-50 Certificate of Independent Price Determination - insert provision in solicitations for awards over $100,000.

7.3.2-51 Contingent Fee Representation - insert provision in solicitations for awards over $100,000. This certification is not required for the acquisition of commercial items.

7.3.2-52 Equal Opportunity Certification - insert provision in solicitations for awards over $100,000.

7.3.2-53 Certification Regarding Fair Inclusion of Minorities and Women - insert provision in all solicitations for awards over $100,000, except Task Orders issued under FDIC BOAs/RBOAs/BPAs.

7.3.2-54 Cooperation with the Office of Inspector General - insert clause in all awards

7.3.2-55 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions - insert provision in solicitations for awards over $100,000, when FDIC is acting in its corporate capacity.

7.3.2-56 Task Assignment Procedures - insert clause in contracts or task order when task assignments will be used. The Contracting Officer may tailor the clause, as necessary.

7.3.2-57 Public Release of Contract Award and Advertising and Publicity Information - insert clause in all awards.

7.3.2-58 Limitation on Use of Appropriated Funds to Influence Federal Contracting - insert clause in solicitations for contracts over $100,000, when FDIC is acting in its corporate capacity.

7.3.2-59 Warranty Concerning Contingent Fees - insert clause in all awards over $100,000 except for acquisition of commercial items .

7.3.2-60 Anti-Kickback Procedures - insert clause in awards over $100,000.

7.3.2-61 Drug-Free Workplace - insert clause in all awards of any value to an individual, and in all other awards over $100,000, except contracts for commercial items.

7.3.2-62 Equal Opportunity - insert clause in all awards over $10,000.

7.3.2-63 Affirmative Action for Workers with Disabilities - insert clause in all awards over $10,000.

7.3.2-64 Affirmative Action for Special Disabled Veterans and Vietnam Era Veterans - insert clause in all awards at or above $100,000.

7.3.2-65 Employment Reports on Special Disabled Veterans and Vietnam Era Veterans - insert clause in all awards at or above $100,000.

7.3.2-66 Ozone-Depleting Substances - insert clause in awards for supplies that may contain or be manufactured with ozone-depleting substances, or construction awards that may involve the use of ozone-depleting substances.

7.3.2-67 Representation by Corporations Regarding an Unpaid Delinquent Federal Tax Liability - -insert provision in all solicitations for awards over $100,000.

7.3.2-68 Refrigeration Equipment and Air Conditioners - insert clause in awards for services that include the maintenance, repair, or disposal of any equipment or appliance

using ozone-depleting substances as a refrigerant, such as air conditioners, including motor vehicles, refrigerators, chillers, or freezers.

7.3.2-69 Joint and Several Liability - insert clause in all awards.

7.3.2-70 Legal Representation - insert clause in RBOAs and other receivership contracts where the Legal Division (the branch/section that supports DRR) gives a contractor limited delegated authority to handle legal matters arising out of assets being managed under the RBOA or other receivership contract.

7.3.2-71 FDIC Contracting Capacity - BOAs/RBOAs/BPAs - insert in all awards for BOAs, RBOAs, or BPAs.

7.3.2-72 FDIC Contracting Capacity - Contracts/Task Orders/Delivery Orders - insert in all awards for contracts, task orders, or delivery orders.

7.3.2-73 Compliance with 12 CFR Part 366 and Application of 12 CFR Part 367 - insert in all awards.

PGI Chapter 3.3 Other Contracting Methods

3.301 Scope

This chapter provides procedures, guidance and information on the use of mandatory sources (Federal Prison Industries [FPI] and AbilityOne), and awards under General Services Administration (GSA) Federal Supply Schedules (FSS).

3.302 RESERVED

3.303 Other Contracting Methods Procedures

Contracting Officers and the Program Offices they support must comply with the other contracting methods procedures discussed in this chapter.

PGI 3.303(a) Contracting Under the 8(a) Business Development Program

FDIC has entered into a Partnership Agreement with the U.S. Small Business Administration (SBA) which allows FDIC to participate in the 8(a) Business Development (BD) Program. The 8(a) BD Program promotes the development of small business concerns owned and controlled by socially and economically disadvantaged individuals so that such concerns can compete in the mainstream of the American economy. The Partnership Agreement delegates SBA's contract execution functions to the FDIC, sets forth the delegation of authority, and establishes the procedures for processing the award of 8(a) contract requirements.

Contracting Officers are not required to consider every acquisition as a candidate for the 8(a) BD program. Instead, an acquisition may be considered as a candidate for the 8(a) BD program when the Contracting Officer and program office determine it is within its best interest of FDIC. Once the decision has been made to contract under the 8(a) BD program, Contracting Officers must comply with the terms and conditions of the Partnering Agreement, which can be found on the following webpage: https://fdicnet.fdic.gov/content/dam/DOA/documents/buying/acquisitiondocuments/fdicsbaexecutedpa.pdf. This includes competitive and non-competitive acquisitions and the awarding of contracts, modifications, options and purchase orders under the provisions of Section 8(a) of the Small Business Act as implemented by the Federal Acquisition Regulation (FAR) Subpart 19.8 and the SBA's 8(a) BD program regulations.

The objectives of the Partnership Agreement are as follows:

A. To delineate the responsibilities as they relate to the oversight, monitoring and compliance with procurement laws and regulations governing 8(a) contracts between SBA and the FDIC;
B. To establish the procedures for offer and acceptance between SBA and the FDIC;
C. To establish that SBA will respond to an offering letter within five (5) working days if the contract is valued at more than the simplified acquisition threshold and within two days of receipt if the contract is valued at or below the simplified acquisition thresholds. See 13 C.F.R. § 124.503(a)(3);
D. To emphasize that although SBA delegates the authority to sign contracts on its behalf, it remains the prime contractor on all 8(a) contracts awards, modifications, options and purchase orders, and must receive copies of all contracts and subsequent modifications;
E. To eliminate SBA's review of contracts and purchase orders executed under the authority of this PA; and
F. To establish uniform policies and procedures regarding application of contracts and purchase orders to the 8(a) contracting process.

The Partnership Agreement identifies the responsibilities of both the SBA and the FDIC, in addition to information on contract execution. One of the responsibilities of the SBA is to provide training to FDIC Contracting Officers on the SBA's 8(a) BD program and various aspects of the Partnering Agreement.

The Partnering Agreement requires FDIC to comply with FAR Subpart 19.8. This includes FAR 19.811-3 which identifies five (5) clauses and the prescriptions for their use. The five clauses are as follows:

52.219-11 Special 8(a) Contracting Conditions
52.219-12 Special 8(a) Subcontract Conditions
52.219-14 Limitations on Subcontracting
52.219-17 Section 8(a) Award
52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns

All five of the FAR clauses are included in FDIC clause 7.3.3-3, Applicable FAR 8(a) Clauses. However, except for clause 52.219-14, Limitations on Subcontracting, not all apply to every acquisition. One or more of the other remaining FAR clauses must also be included in clause 7.3.3-3, the choice of which depends on whether the acquisition is sole source or competitive. Contracting Officers must follow the guidance in the prescriptions of FAR 19.811-3 in order to select and incorporate the appropriate FAR clauses. Therefore, clause 7.3.3-3 is required in all solicitations and awards issued under the 8(a) BD program but must be edited by the Contracting Officer to delete the FAR clauses that do not apply.

Another FDIC clause that is required in all solicitations and awards issued under the 8(a) BD program is clause 7.3.3-4, Contract Execution – 8(a) Business Development Program. This clause includes the requirements of the Partnership Agreement and

FAR Subpart 19.8 as they pertain to contract execution. The Partnership Agreement requires that the award document identify the SBA as the prime contractor, even though the 8(a) contractor's name is listed as the contractor in block 17a of the award cover page. In addition, the award document must identify the SBA district office. FAR 19.811-1(b)(1) requires, for sole source acquisitions, the award state that the authority for use of other than full and open competition is 41 U.S.C. 253(c)(5).

3.304 Purchases from Mandatory Sources

3.304(a) Contracting with Federal Prison Industries

(1) *Market Research:* Before purchasing goods listed in the FPI schedule, the Contracting Officer and Program Office conduct market research to determine whether the FPI product is comparable to goods available from the private sector and best meets FDIC needs in terms of price, quality, and time of delivery.

(2) *Comparability Determination:* The Contracting Officer, with input from the Program Office, must prepare a written memorandum to file that includes supporting rationale explaining the assessment of price, quality, and time of delivery based on the results of the market research that compared the FPI item to supplies available from the private sector. The Contracting Officer must file the comparability determination in the official contract file.

(3) *Ordering from Federal Prison Industries:* If the FPI goods and services meet FDIC requirements, the Contracting Officer purchases them from FPI following the ordering procedures at http://www.unicor.gov. Purchases may be made using the purchase card (P-Card), or the Contracting Officer may issue a delivery order to FPI. The Contracting Officer must ensure that prices charged by FPI are fair market prices. The price reasonableness techniques addressed in PGI 3.109(g) may be utilized to assist in that determination.

(4) *Waivers for Comparable Items:* If the Contracting Officer and Program Office determine that an FPI product is otherwise comparable to products available from the private sector, but the FPI product does not meet FDIC critical standards, or is not satisfactory for some other reason, the Contracting Officer must request a waiver in accordance with the procedures at http://www.unicor.gov.

(5) *Ordering FPI Goods from Other Sources* If the FPI item is not comparable in one or more of the areas of price, quality, and time of delivery, the Contracting Officer may acquire the item from any available source, using established contracting procedures.

3.304(b) AbilityOne (formerly Javits-Wagner-O'Day Act) Program

The goods and services provided by AbilityOne are listed on the Procurement List available at http://www.abilityone.gov/. The Committee for Purchase from People Who Are Blind or Severely Disabled determines which supplies and services must be purchased and their price. The website also provides ordering procedures.

(1) *AbilityOne Products:* AbilityOne products are available directly through AbilityOne at http://www.jwod.com or through authorized distributors using Internet-based, telephone, or fax ordering or at a Javits-Wagner-O'Day Act (JWOD) retail location. Orders may be placed and paid through P-Card or through the issuance of a delivery order by the Contracting Officer.

(2) *AbilityOne Services:* The AbilityOne Program offers a wide range of services. These services are added to the Procurement List individually with the involvement and cooperation of the Contracting Officer, at which time AbilityOne becomes a mandatory source for that service for FDIC. The Contracting Officer negotiates with, and awards, the delivery order directly to the non-profit agency providing the service.

(3) *Prices:* Prices for items available on the Procurement List are considered to be fair market prices. If a price seems exceptionally high, the Contracting Officer must contact the central nonprofit agency directly to discuss a price revision.

(4) *Purchase Exceptions:* Prior to purchasing goods or services on the Procurement List from commercial sources, the Contracting Officer must request and receive a purchase exception from the designated central nonprofit agency. Exceptions must be requested in writing, and must state why the AbilityOne goods or services do not satisfy FDIC requirements. Exceptions are only granted when the AbilityOne agency cannot provide the goods or services within the time required, and commercial sources can provide them significantly sooner in the quantities required; or the quantity requested cannot be produced or provided economically by the AbilityOne participating agency.

When a purchase exception is granted, the Contracting Officer must initiate purchase action within fifteen (15) days following the date of the exception, and provide a copy of the solicitation to the AbilityOne participating agency when it is issued.

(5) *Awards to contractors to provide goods or services that are on the AbilityOne Procurement List:* The Contracting Officer must research the Procurement List on the AbilityOne website to identify the goods or services that are available for purchase from AbilityOne central nonprofit agencies. The Contracting Officer must then list these goods or services in the contract award as items that must be purchased from AbilityOne sources (unless a purchase exception, as described in (4) above applies).

3.305 Federal Supply Schedule Contracts

The Contracting Officer may place orders against GSA FSS contracts to meet FDIC requirements. The following sections provide procedures for use of FSS contracts and contractor selection.

3.305(a) Federal Supply Schedule Program

The GSA directs and manages the FSS program, whereby the GSA schedule contracting office issues FSS contracts for use by all federal entities. This program provides a simplified process for obtaining commonly used commercial goods or commercial services at prices associated with volume buying. GSA establishes indefinite delivery contracts (including requirements contracts) with commercial firms to provide goods and services at stated prices for given periods of time. Information on GSA schedules may be found at www.gsaadvantage.gov.

GSA schedule contracts require all schedule contractors to publish an Authorized *Federal Supply Schedule Pricelist* (pricelist). The pricelist contains all supplies and services offered by a schedule contractor. In addition, each pricelist contains the pricing and the terms and conditions pertaining to each special item number (a group of generically similar, but not identical, supplies or services that are intended to serve the same general purpose or function) that is on schedule. The schedule contractor is required to provide one copy of its pricelist to any ordering activity upon request.

3.305(b) Pricing

Goods available on FSS are listed at fixed prices. Services offered on the schedule are priced either at hourly rates, or at a fixed price for performance of a specific task, e.g., installation, maintenance, or repair. GSA has already determined the prices of supplies and fixed-price services, and rates for services offered at hourly rates, under schedule contracts to be fair and reasonable. Therefore, the Contracting Officer is not required to make a separate determination of fair and reasonable pricing. By placing an order against a schedule contract using the following procedures, the Contracting Officer is concluding that the order represents the best value and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc.) to meet FDIC needs. The Contracting Officer may seek additional discounts at any time before placing an order against a FSS contract.

3.305(c) Federal Supply Schedule Ordering Procedures

(1) *Orders for Goods or Services Which Do Not Require a Statement of Work (SOW):* The Contracting Officer places orders with the schedule contractor that provides the goods or services that represent the best value and selects the delivery and other options available under the schedule that meet FDIC needs. In order to select the contract that provides the best value for FDIC, the

Contracting Officer reviews available information about the goods or service offered under FSS contracts by surveying at least three schedule contractors through the GSA Advantage! online shopping service, or by reviewing the catalogs or pricelists of at least three schedule contractors. When selecting the goods or services representing the best value, the Contracting Officer may consider:

- Special features of the goods or services required for effective performance;
- Trade-in considerations;
- Probable life of the item selected, as compared with that of a comparable item;
- Warranty considerations;
- Maintenance availability;
- Past performance; and
- Environmental and energy efficiency considerations.

Each schedule has an established maximum order threshold which represents the point where it is advantageous to seek a price reduction. Before placing an order that is over the maximum order threshold, the Contracting Officer must:

- Review additional schedule contractors' catalogs or pricelists, or use the GSA Advantage online shopping service to review pricing;
- Seek price reductions from the schedule contractor (s) appearing to provide the best value (considering price and other factors); and
- Place the order with the schedule contractor that provides the best value.

If the contractors do not offer further price reductions, the Contracting Officer may still place an order, if determined to be in the best interest of FDIC.

(2) *Ordering Procedures for Services Requiring a SOW or Priced on a Labor Hour Basis:* When purchasing services requiring a SOW under FSS contracts, the Contracting Officer provides a request for quotation (RFQ), which includes a SOW and evaluation criteria (e.g., experience and past performance), to at least three schedule contractors that offer services that meet FDIC needs. The RFQ may be posted to GSA's electronic RFQ system, e-Buy, or may be issued by other means. Services may be firm fixed price (FFP), or priced with hourly rates (labor hours). The Contracting Officer generally requests firm fixed prices when appropriate.

Before placing an order that is over the maximum order threshold, the Contracting Officer must provide the RFQ (including the SOW and evaluation criteria) to additional schedule contractors that offer services that meet the needs of the ordering activity. When determining the appropriate number of additional schedule contractors, the Contracting Officer may consider, among other factors, the complexity, scope and estimated value of the requirement, and the market search results. The Contracting Officer must also seek price reductions from schedule contractors. The Contracting Officer must provide the RFQ for services requiring a SOW to any schedule contractor who requests a copy of it.

The Contracting Officer and Program Office evaluate all responses received using the evaluation criteria provided to the schedule contractors. The evaluation must consider the level of effort and the mix of labor proposed to perform the specific task being ordered. The Contracting Officer must evaluate the total proposed price and place the order with the schedule contractor that represents the best value.

3.305(d) Documentation Requirements

The Contracting Officer prepares a Price Evaluation Memorandum for FSS awards, including at a minimum, and as applicable:

(1) The schedule contracts considered, noting the contractor from which the service was purchased;

(2) A description of the service purchased;

(3) The amount paid;

(4) The evaluation methodology used in selecting the contractor to receive the order;

(5) The rationale for any tradeoffs in making the selection;

(6) Price analysis and the basis for determining the best value for FDIC; and

(7) The rationale for selection of pricing mechanism (FFP or labor hour).

3.305(e) Price Reductions

In addition to seeking price reductions before placing an order exceeding the maximum order threshold, there may be other reasons to request a price reduction. For example, the Contracting Officer should seek a price reduction when the goods or services are available elsewhere at a lower price. Schedule contractors are not required to pass on to all schedule users a price reduction extended only to an individual ordering activity for a specific order

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3.305(f) Limited Sources Justification

When the Program Office requests the Contracting Officer to consider less than the number of schedule contractors discussed in PGI 3.305(c), or when limiting price comparisons to FSS contractors selling a specific brand-name item, the Program Office must provide a written justification, in accordance with APM 2.206 and PGI 2.206, to the Contracting Officer demonstrating why the comparison should be limited, or why FDIC requires a specific brand name item.

3.305(g) Order Placement

The Contracting Officer places orders directly with the schedule contractor in accordance with the terms and conditions of the pricelists, using an FDIC FSS delivery order. Only those clauses unique to FDIC may be added to the delivery order.

3.305(h) Combining Schedule and Non-Schedule Items on the Same Order

For administrative convenience, the Contracting Officer may add items not on the GSA FSS schedule to a GSA schedule order only if:

(1) Normal procurement procedures for the non-schedule item/service have been followed (competition, Justification for Non-Competitive Procurement, etc);

(2) The FDIC Contracting Officer has determined the prices for the items not on the GSA schedule contract fair and reasonable;

(3) The items are clearly labeled on the order as items not on the GSA contract (open-market); and

(4) All clauses applicable to items not on the GSA schedule contract are included in the order.

3.306 Prescriptions for Clauses and Provisions for Other Contracting Methods

Contracting Officers must insert the following provisions and clauses as required:

7.3.3-1 Copy of Contractor's General Services Administration Schedule Contract - insert provision in solicitations for orders against GSA Schedules.

7.3.3-2 Contractor Use of AbilityOne - Mandatory Source of Goods or Services insert clause in awards for goods or services where some of the goods or services to be procured are on the AbilityOne Procurement List (maintained by the Committee for Purchase from People Who are Blind or Severely Disabled), a mandatory source of procurement for the FDIC.

7.3.3-3 Applicable FAR 8(a) Clauses - insert clause in all solicitations and awards issued under the 8(a) Business Development Program

7.3.3-4 Contract Execution - 8(a) Business Development Program -insert clause in all solicitations and awards issued under the 8(a) Business Development Program.

PGI Chapter 3.4 Contracting in Support of Potential Financial Institution Failures

3.401 Scope

This chapter provides the roles, responsibilities and authorities of FDIC Contracting Officers and other officials who support the FDIC Division of Resolutions and Receiverships (DRR) as it plans for the resolution of a financial institution that may fail, conducts the resolution upon the closing, or performs the duties of receiver in the immediate post-closing period. It provides contracting procedures, guidance and information necessary to award contracts more quickly, in support of the related DRR efforts.

3.402 RESERVED

3.403 Contracting in Support of Potential Financial Institution Failures Procedures

Contracting Officers and the Program Offices they support must comply with the procedures regarding contracting in support of potential financial institution failures discussed in this chapter in the award of contracts for FDIC.

3.404 Notification

When the need for contracting in support of possible financial institution failures is identified, the DRR Director, or designee, notifies the ASB Deputy Director, Division of Administration (DOA), or designee, usually via e-mail or memorandum, of the potential closing of a financial institution and that immediate contractor support is required. The notification must include the following information to the extent that it is available at the time of notification:

(1) Justification of the need for expedited or emergency contracting procedures;
(2) Timeline for the closing;
(3) Types of services required;
(4) Estimated period of performance;
(5) Anticipated location(s) of performance;
(6) Total estimated cost; and
(7) Explanation as to why only one firm is to be solicited, if such is the case.

3.405 Use of Existing Contracts and Purchase Cards/Convenience Checks

Immediately upon notice from DRR of the need for contracting in support of failing or failed financial institutions, DRR and ASB must first jointly review existing contracts and use them to the extent practicable. They should also consider purchase card (P-Card) and convenience check options, to determine if these meet all or part of the current need for goods and services.

3.405(a) Existing Contracts Review

The review of existing contracts may include:

(1) Types of contracts available and their scope in reference to the goods and services required;

(2) Ordering procedures under existing contracts;

(3) Verification that background investigations have been completed, if required;

(4) Potential organizational conflicts of interest;

(5) Verification that information technology security requirements have been met, if applicable;

(6) Pricing structures;

(7) History/references/experience with the firm(s); and

(8) Other relevant information.

3.405(b) Purchase Card and Convenience Check Use

The DRR, ASB, and other supporting divisions or offices are to use the P-Card and convenience checks, when appropriate, to procure required goods or services in support of an anticipated financial institution failure. P-Card and convenience check procedures are found in Appendix C, *FDIC Purchase Card (P-Card) Guide.*

3.406 Expedited Contracting Procedures

The anticipated failure of a financial institution may require goods and services be delivered quickly, but may not meet the definition of an emergency. These circumstances would still allow for a competitive contracting process to be conducted. Nevertheless, certain parts of the contracting process may need to be modified or suspended to meet DRR's needs within the timeframe of a particular closing. Under these circumstances, expedited contracting procedures may be followed. Specific procedures are detailed in PGI 3.408.

3.407 Emergency Contracting Procedures

Emergency contracting procedures are designed to allow the Contracting Officer maximum flexibility to immediately make critical awards in support of DRR efforts. These procedures allow ASB to suspend any contracting procedures that hinder a rapid and effective response to a financial crisis, particularly documentation requirements. These procedures differ from expedited contracting procedures in that:

(1) Competition is not required and Justification for Non-Competitive Procurement (JNCP) requirements are suspended for the immediate crisis period;

(2) Quotes can be obtained by phone, regardless of dollar value, but should be followed up by either an email or fax confirmation for later filing in the official contract file; and

(3) Technical proposals may be provided orally, but should be followed up by either an email or fax confirmation for subsequent filing in the official contract file.

3.408 Contracting Procedures Applicable to both Expedited and Emergency Contracting

3.408(a) Requirements Package

In lieu of a formal requirements package, the Contracting Officer may accept an email or a brief memorandum from DRR describing the contracting need, in addition to the approved purchase request.

3.408(b) Market Research

If DRR and ASB determine that no existing contracts meet the needs of a particular situation because the current contractors lack either the capacity or experience required, then ASB and DRR review previous market research and conduct new market research, as necessary, to identify firms that can potentially perform the work. Those firms must be quickly contacted by ASB and DRR to see if they can provide the required goods or services. The goal is to identify a contractor(s) and quickly move to a mini-competition or sole source award, as the timeline and other circumstances of the particular closing permit.

3.408(c) Competition

In expedited contracting procedures, time may allow for the Contracting Officer to use competition to meet DRR's need for goods and services in a particular resolution or closing. The use of competition is at the Contracting Officer's discretion, after full coordination with the DRR Program Office and a careful review of the timeframes for

performance or delivery. In the event competition is not obtained when using expedited contracting procedures, DRR prepares a JNCP for the Contracting Officer's approval. The JNCP may initially be signed by the Oversight Manager and the Contracting Officer. However, see PGI 3.411 below for further documentation requirements. Under emergency procedures, the preparation of the JNCP may be suspended until after the immediate crisis is past.

3.408(d) Basis for Award

An award under expedited or emergency procedures is generally made based on price only or on limited technical criteria and price.

3.408(e) Contractor Qualification Requirements

Once a firm has been identified to perform the work, the Contracting Officer must conduct the following checks to determine if the contractor meets FDIC contracting requirements:

(1) Before contract award, determine if the offeror is suspended or debarred from doing business with FDIC or the federal government by checking the FDIC Debarred Vendors List, FDIC Division of Administration: Debarred Vendors, found at https://fdicnet.fdic.gov/content/doa/home/buying/debarred-vendors.html, and the System for Award Management (SAM), found at http://www.sam.gov. Award may not be made to a firm that is on the FDIC Debarred Vendor list or is labelled with "Exclusion" in SAM.

(2) Verify the contractor is registered in the System for Award Management found at http://www.sam.gov. If not, determine if the contractor can be registered in a timely manner, or if payment should be made outside the New Financial Environment by using a FDIC P-Card or payment authorization voucher.

(3) Check the FDIC Automated Procurement System Contractor Performance Component (CPC) database and the Contractor Performance Evaluation System to quickly assess the contractor's record of successful performance in order to determine if there are any significant performance issues to consider before awarding a contract.

3.408(f) Access to FDIC Facilities, Networks, or Systems

In instances where the contractor is to be either given access to FDIC facilities or networks/systems, or the contract is for services which exceed $100,000, the Contracting Officer must notify the DOA Security and Emergency Preparedness Section (SEPS). SEPS must conduct expedited fitness and integrity checks, background investigations and credit checks on the contractor and key personnel after receipt of the relevant security information. This requirement applies to contracts entered into in the corporate capacity prior to the closing of a failed financial institution; it does not apply to contracts entered into by the receiver in the

immediate post-closing period (the first ninety (90) days of the receivership).

3.408(g) Waiver of Pre- and Post Award Documents and Reviews

The Contracting Officer may waive the preparation of an Acquisition Plan or Contract Management Plan, financial capability review, the review of the request for proposal by Legal, and other reviews not required by law or statue as indicated in the APM and PGI, as deemed necessary to ensure a timely contract award.

3.408(h) Contractor Commitment

When time permits, the Contracting Officer should obtain the contractor's commitment to perform the required work by requesting a written/electronic proposal from the contractor(s). Award would then be made to the successful contractor through a formal written contract.

If the urgency of the requirement does not allow time to request and receive a written/electronic proposal from the contractor, and an advance authorization letter will be issued, the Contracting Officer must contact the contractor and secure its commitment to:

(1) Perform the contract;

(2) Review and negotiate contract documents;

(3) Agree to a not-to-exceed ceiling amount and period of performance;

(4) Provide names and resumes of key personnel, if required;

(5) Complete the following certifications, if required:

- *FDIC Contractor Representations and Certifications* (FDIC 3700/04A); and
- *FDIC Integrity and Fitness Representations and Certifications* (FDIC 3700/12)

(6) Complete the following background investigations forms, if required:

- *Background Investigation Questionnaire for Contract Personnel and Subcontractors* (FDIC 1600/4), and
- *Notice and Authorization Pertaining to Consumer Reports* (FDIC 1600/10);

(7) Identify potential organizational conflicts of interest, if any;

(8) Execute confidentiality agreement(s); and

(9) Identify other issues, such as indemnification and liability concerns.

3.409 Advance Authorization Letter

When there is insufficient time to prepare a formal contract, the Contracting Officer has the authority to issue an advance authorization letter prior to final contract execution. A not-to-exceed price must be determined before the selected contractor begins work.

Once the Contracting Officer confirms that the selected contractor is committed to performing the required work in the specified timeframes, the Contracting Officer then:

(1) Prepares and sends an unsigned advance authorization letter to the contractor, along with integrity and fitness representations and certifications, contractor representations and certifications, background investigation forms and confidentiality agreements for authorized representatives of the contractor, subcontractors and consultants to sign, along with the personnel of the contractor, subcontractors and consultants. The advance authorization letter, at a minimum, must:

- Describe the work to be performed,
- Include a defined period of performance,
- Include a not-to-exceed price,
- Include a milestone schedule for finalizing negotiations and executing a formal contract, and
- Identify the points of contact within the contractor's firm and the FDIC Program Office.

(2) The selected contractor must sign and return the advance authorization letter. Upon receipt of the contractor-signed advance authorization letter, the Contracting Officer submits the background investigation forms to DOA SEPS to conduct expedited background checks of the company and key personnel. Based on review of the certifications submitted, the Contracting Officer determines if any ethics or organizational conflicts of interest exist. If they do, a request for review is forwarded by the Contracting Officer to the designated FDIC ethics official to determine if a waiver can be issued. In addition, the Contracting Officer forwards any legal issues raised by the contractor to the Contracting Law Unit (CLU) for review.

(3) The Contracting Officer then executes and distributes the advance authorization letter authorizing the contractor to commence work, following receipt of clearances from the DOA SEPS and the designated ethics official, if required, and consultation with CLU on any outstanding legal issues.

3.410 The Formal Contract

A final formal contract should be negotiated and executed within sixty (60) calendar days of issuance of the advance authorization letter, if one is utilized. During this time, DRR must submit a final requirements package to ASB, including an amended purchase request if required, a detailed statement of work and final FDIC cost estimate.

The Contracting Officer uses the final requirements package to draft a formal contract and negotiates with the contractor to finalize the terms, conditions and prices. CLU assists the Contracting Officer in resolving legal issues during negotiations with the contractor, and reviews the draft formal contract before it is sent to the contractor.

3.411 File Documentation

The Contracting Officer must retain copies of all documents involved in awarding contracts under an expedited or emergency process, and must fully document the official contract file after the contract(s) are in place and the immediate crisis is past. Documentation includes a Price Evaluation Memorandum documenting any price/performance negotiations. Normally all contract documentation should be fully completed in no more than sixty (60) calendar days from the issuance of the advance authorization letter, or when an advance authorization letter is not issued, within sixty (60) calendar days of contract award.

PGI Chapter 3.5 Contracting in Emergency Situations

3.501 Scope

This chapter provides procedures, guidance, and information for FDIC Contracting Officers and other officials to use when contracts must be awarded in emergency situations.

3.502 RESERVED

3.503 Contracting in Emergency Situations Procedures

Contracting Officers and the Program Offices they support must comply with the procedures regarding contracting in emergency situations discussed in this chapter in the award of contracts for FDIC.

3.504 Planning for Contracting in Emergency Situations

Contract planning for emergency situations includes special provisions for the temporary suspension of APM policies or procedures. Other features include:

(1) Developing and maintaining a list of legal authorities governing emergency situations;

(2) Training ASB personnel on operating in emergency situations,

(3) Increasing selected Certificate of Appointment limits and purchase card (P-Card) limits;

(4) Providing materials, equipment, software and support to Contracting Officers;

(5) Developing and maintaining a centralized list of existing contracts, and filling any voids by awarding basic ordering agreements for goods or services not covered by existing contracts; and

(6) Identifying the types and quantities of goods and services that might be required in different emergency situations.

ASB may monitor the Emergency Response Community of Practice website at https://acc.dau.mil/emergencyresponse to stay informed of federal policies and procedures, best practices, training resources and other information on emergency response contracting.

The ASB Assistant Directors for the Corporate Contracting Section and Information Technology Contracting Section, in coordination with client divisions, annually review

existing FDIC, General Services Administration (GSA) and other agency contracts to determine which contracts might meet the needs of various emergency situation scenarios. This review includes:

(1) The type of contracts available and their scope, with reference to the goods and services that may be needed in various emergency situations;

(7) Ordering procedures under existing contracts;

(8) Potential organizational conflicts of interest;

(9) Whether background investigations have been completed, if required;

(10) Existing information technology security procedures involved;

(11) Pricing structures;

(12) Past performance history; and

(13) Other relevant information.

The results of the review must be reported promptly to the Security and Emergency Preparedness Section (SEPS) for inclusion in the Business Continuity Plan.

3.505 Notification of Emergency

Upon notification of an emergency situation, the Contracting Officer may use any of the following steps, as required, to make awards:

(1) Review actual requirements identified as part of the emergency situation declaration;

(2) Match the identified requirements to existing FDIC, GSA and other agency contracts for placing immediate orders;

(3) Determine if requirements can be procured using P-Card procedures;

(4) Determine if requirements can be procured using simplified acquisition procedures;

(5) Use oral requests for proposals if appropriate;

(6) Conduct procurements using limited competition based on unusual and compelling urgency; and

(7) Award an advance authorization letter to initiate contractor performance.

3.506 Modified Procedures and Authorities

In order to expedite essential procurements during emergency situations, certain approval thresholds are expanded and certain procurement policies/procedures are waived or temporarily suspended. These include:

3.506(a) Expanded Thresholds

(1) The simplified acquisition threshold is increased to $250,000, or $10,000,000 for commercial goods or commercial services; and

(2) The ASB Assistant Director, Policy and Systems Section, has authorized and pre-positioned an appropriate number of higher limit P-Cards and convenience checks among selected FDIC Contracting Officers and Program Office officials for use explicitly in case of emergency situations. These pre-positioned card accounts are activated upon card issuance, but are not used until an emergency situation arises. During the early stages of any emergency situation, ASB reassess the need for additional P-Card/convenience check flexibility and works closely with the issuing bank to meet additional demands.

3.506(b) Waivers

(1) Acquisition planning requirements are waived;

(2) Pre-solicitation review requirements by the Contracting Law Unit (CLU) and the Office of Minority and Women Inclusion are waived; and

(3) Competition requirements up to the (increased) simplified procurement threshold are waived.

3.506(c) Suspension of Procurement Policies/Procedures

During the period of the emergency situation:

(1) File documentation requirements for non-competitive actions, including Justifications for Non-Competitive Procurements, are suspended. Documentation of all actions must be completed as time permits during the emergency situation or immediately after it ends;

(2) Formal Selection Recommendation Report requirements are suspended and replaced by abbreviated documentation of selection recommendation decisions. The abbreviated decision documentation may be approved electronically;

(3) Registration in the System for Award Management and electronic funds transfer requirements are suspended if payment will be made by P-Card or payment authorization voucher;

(4) Overtime for time and materials or labor hour contracts may be approved retroactively; and

(5) Bid guarantee requirements are suspended.

3.507 Advance Authorization Letter

The Contracting Officer has the authority to issue an advance authorization letter prior to final contract execution, when there is insufficient time to prepare a contract. A not-to-exceed ceiling amount must be determined before the selected contractor begins work.

The Contracting Officer confirms that the selected contractor is committed to performing the required work in the specified timeframes and then:

(1) Prepares and sends an unsigned advance authorization letter to the contractor, along with integrity and fitness representations and certifications, contractor representations and certifications, background investigation forms and confidentiality agreements for authorized representatives of the contractor, subcontractors and consultants to sign, along with the personnel of the contractor, subcontractors and consultants. The advance authorization letter, at a minimum, must:

- Describe the work to be performed;
- Include a defined period of performance;
- Include a not-to-exceed ceiling amount;
- Include a milestone schedule for finalizing negotiations and executing a formal contract; and
- Identify the points of contact within the contractor's firm and the FDIC Program Office.

(2) The selected contractor must sign and return the advance authorization letter. Upon receipt of the contractor-signed advance authorization letter, the Contracting Officer submits the background investigation forms to the Division of Administration (DOA) SEPS to conduct expedited background checks of the company and key personnel. Based on review of the certifications submitted, the Contracting Officer determines if any ethics or organizational conflict of interest exist. If they do, the Contracting Officer forwards a request for review to the designated FDIC ethics official to determine if a waiver can be issued. In addition, the Contracting Officer forwards any legal issues raised by the contractor to CLU for review.

(3) The Contracting Officer then executes and distributes the advance authorization letter authorizing the contractor to commence work following receipt of clearances from the DOA SEPS and the designated ethics official, if required, and consultation with CLU on any outstanding legal issues.

(4) The Contracting Officer negotiates with the Contractor to finalize the terms, conditions and prices. CLU assists the Contracting Officer in resolving legal issues during negotiations and reviews the draft final contract before it is sent to the contractor.

3.508 Short Term Manual Operations

In emergency situations that involve electrical, electronic or communications outages; the financial system (i.e., NFE), and the procurement system (i.e., APS) may become and remain temporarily inoperable. In order to ensure FDIC continues to operate as normally as possible, Contracting Officers, Oversight Managers and Technical Monitors, etc., perform largely the same as under full operational capabilities. Hard-copy forms must be used and “walked through” the process for all process steps not explicitly waived or suspended. Hard-copy procurement requests, as an example, must concisely describe the requirement, cite specific funds and be signed and dated by an authorized program official. Contracting Officers must maintain a record of all emergency situation contracting and P-Card actions using requisitioning, contract, and purchase card logs.

3.509 Emergency Contracting Kits

Emergency Contracting Kits must be located away from FDIC main offices, in a secure and readily accessible location. A contracting kit includes:

(1) Office supplies (paper, pens, calculators, etc.);

(2) Current inventory of telephone, facsimile numbers, and email addresses of select officials and individuals, and the websites of select organizations;

(3) FDIC tax-exempt number, 53-0185558;

(4) Hard (paper) copy of all common procurement forms and templates, including procurement request forms and award documents;

(5) Purchase orders and blank log forms;

(6) Compact disc (CD) copy of all current FDIC procurement policies, procedures, forms and templates;

(7) Laptop computer, portable printer and facsimile machine with all necessary software and procurement-related forms loaded on the laptop hard drive, as well as telecommunications software for operation from remote locations; and

(8) Information on previously-identified FDIC or GSA contracts for ordering emergency goods and services.

Additionally, each Contracting Officer is provided a CD copy of all current FDIC procurement policies, procedures, forms and templates, to permit them to work at other off-site locations.

3.510 RESERVED

3.511 Documenting Contracting Actions

FDIC Contracting Officers and other officials must make every effort to fully document the contract or P-Card file for each action processed during the period of the emergency situation. At a minimum, the documentation includes:

(1) An approved purchase request and any available requirements package or equivalent;

(2) A brief memorandum that identifies:

- The specific action as a requirement in an emergency situation;
- The solicitation or contractor selection process applied; and
- The rationale for the award decision, including orders against existing contracts or a modification of an existing contract.

(3) The actual award or modification document;

(4) Delivery/acceptance reports and any discrepancy reports;

(5) Payment records; and

(6) Any other records of the transaction.

3.512 Restoring Normal Operations

Restoring normal operations includes:

(1) Reinstating all polices procedures and approval thresholds that were expanded, waived, or suspended during the emergency situation;

(2) Ensuring that all contracts and required documentation are collected and filed in the official contract file;

(3) Reconciling emergency situation procurement records with financial and other records,

(4) Identifying and resolving any situations requiring ratification of unauthorized procurements;

(5) Refining the inventory of existing contracts for use in emergency situations;

(6) Updating the list of goods and services that may be needed in future emergency situations; and

(7) Collecting and recording “lessons learned” from all stakeholders to enhance FDIC future emergency response capabilities.

3.513 Prescriptions for Clauses and Provisions for Contracting in Emergency Situations

Contracting Officers must insert the following provisions and clauses as required:

7.3.5-1 Emergency Preparedness - insert clause in awards when the Program Office has determined the requirement to be critical or essential to FDIC.

PGI Chapter 3.6 Receivership Contracting – Special Issues

3.601 Scope

This chapter provides procedures, guidance, and information for FDIC Contracting Officers and other officials regarding special issues that may arise in receivership contracting.

3.602 RESERVED

3.603 Receivership Contracting Procedures

Contracting Officers and the Program Offices they support must comply with the procedures regarding receivership contracting discussed in this chapter in the award of contracts for FDIC.

3.604 Subsidiary Contracting Procedures

A resolution of the Board of Directors of the subsidiary (resolution) and a Subsidiary Agency Agreement (SAA) between the receiver and the subsidiary are required. The resolution must authorize the FDIC to contract for goods and services on behalf of the subsidiary. The SAA identifies the services the receiver will provide, the assets it covers and the subsidiary's agreement to the use of third party contractors by the receiver.

The Division of Resolutions and Receiverships (DRR), as the Program Office, and the Contracting Officer follow the PGI in putting contracts in place for the benefit of a subsidiary under an SAA with the receiver.

3.604(a) Documentation

The Contracting Officer must obtain copies of the resolution and the SAA from the Oversight Manager and place them in the official contract file.

3.604(b) Contracting Capacity

When a contract for goods or services is entered into on behalf of a subsidiary under an SAA, the contract is entered into in the receivership capacity and signed by "FDIC as Receiver for (name of institution), as Agent for (name of subsidiary)."

3.604(c) Contract Type

A basic ordering agreement or receivership basic ordering agreement must be established for requirements that must accommodate payments being charged to multiple capacities (e.g., receivership and subsidiary). Individual task orders must be issued in the appropriate capacity to allow payments to be applied against the correct business unit in the New Financial Environment.

3.605 Contracts Entered into by Failed Financial Institutions

During the periods preceding and immediately following the closing of a failed financial institution, the Legal Division reviews all the contracts to which the failed financial institution was a party (those entered into prior to its failure). DRR, with the support of the Legal Division, decides which of these contracts it will repudiate and which it will retain. DRR must notify the Contracting Officer assigned to the closing of the contracts that the receiver intends to retain. The Contracting Officer, working with DRR, and consulting with the Contracting Law Unit as needed, seeks to negotiate, with the various contractors, a bilateral modification of each of the retained contracts to bring them into line with standard FDIC contract clauses. The extent to which a particular contract can be modified varies from contract to contract. At a minimum, the Contracting Officer must negotiate a modification of the invoicing and payment procedures under the contract to conform them to the FDIC contract payment process.

MODULE 4: SPECIAL CATEGORIES OF CONTRACTING

PGI Chapter 4.1 Performance-Based Acquisition

4.101 Scope

This chapter provides the procedures, guidance and information for use by FDIC Contracting Officers and Program Offices when using the performance-based acquisition (PBA) and performance-based management approach to awarding and managing contracts.

4.102 RESERVED

4.103 Performance-Based Acquisition Procedures

The PBA procedures addressed in this chapter do not replace the usual procurement practices addressed elsewhere in the APM and PGI, except in the areas specifically addressed below.

4.103(a) Getting Started

PBA differs from other types of acquisitions in that a PBA describes what needs to be done in terms of its objectives, i.e., what outcome or result is required. A PBA solicitation does not tell a prospective offeror *how* to do the work. This allows the contractor community to utilize its expertise to provide a solution that ensures results at the best possible price. It also enables FDIC to have measurable objectives. Contracting Officers and Oversight Managers must have tools, including positive and negative incentives, to ensure goals and performance standards (i.e., service or quality levels) are met. If a contractor does not meet FDIC goals, it may face reduced payment or contract termination. FDIC guidance related to incentives is provided at PGI 5.7.

There are a number of approaches that can be taken to establish a PBA. The Contracting Officer and the Program Office should work together to decide upon the best approach to be used, and to develop the required documentation. The following issues should be considered when establishing a PBA:

(1) *Use of a Statement of Objectives (SOO):* A SOO is a high-level summary of the objectives for the contract developed by the Program Office. Keeping this document at a high level allows contractors more flexibility. Though there is no mandatory format for a SOO, the following information should be included:

- Background or introduction (FDIC mission and program history);
- Purpose (specifically, what this contract/order is to accomplish; may include performance standards or objectives);
- Scope of work (what is included and what is not, at a high level);
- Place and period of performance; and
- Constraints (policies, procedures, regulations, information and personnel security requirements, etc.).

(2) *Use of a Performance Work Statement (PWS):* A PWS is very similar to a traditional statement of work. However, rather than FDIC telling the contractor how to perform the task, the contractor details what it will do to accomplish the stated objectives, and how it will do this. FDIC normally requires the offeror to submit the PWS as part of the proposal, and may require that the PWS be updated after contract award.

4.103(b) Getting Results

(1) *Quality Assurance Plan (QAP)/Quality Assurance Surveillance Plan (QASP):*There are two types of documents that define the method for determining whether or not the desired results are being achieved, the QAP and the QASP. Both documents can be written either by FDIC or the offeror. If written by the offeror, FDIC should review, and be prepared to negotiate necessary changes, prior to acceptance. If FDIC develops the documents, the Oversight Manager, the Technical Monitor and the Contracting Officer work together in doing so. The two documents are described below:

- QAP: The QAP is generally written by the offeror to delineate how the contractor intends to measure and monitor its performance.
- QASP: The QASP delineates how FDIC monitors the contractor's performance. The FDIC Acquisition Team uses a QASP to explain how it plans to "trust but verify" the contractor's reported performance metrics (also referred to as performance measures). The QASP may be written by FDIC; however, another approach is to ask the contractor to write both the QAP and the QASP for submission with the proposal, both of which are then reviewed, edited, if necessary, and approved by FDIC. If FDIC drafts the QASP, the Program Office must do so with assistance, as required, by the Contracting Officer.

  The QASP should map to the QAP, i.e., if the contractor is measuring the right things, FDIC should validate those same things to ensure service or quality levels have been met. The QASP becomes part of the awarded contract.

(2) *Existing Quality Standards:* Rather than inventing metrics or quality or performance standards, the Contracting Officer and Program Office should use existing commercial quality standards (identified during market research), such as International Standards Organization 9000 or the Software Engineering Institute's Capability Maturity Models.

(3) *Performance Metrics:* Performance metrics are used to track contractor progress towards meeting stated performance objectives. Before accepting the QASP, FDIC must validate that the performance metrics in the QASP align with the PWS and the overall objectives of the contract.

Performance monitoring includes verifying contractor-provided data; in-depth inspection and/or testing should be the exception and not the rule. When contractors propose the performance metrics and the QASP, these become true discriminators among the proposals in a best-value evaluation.

The rule of thumb is to include no more than three to four performance metrics per acquisition. Consider the following when drafting the metrics:

- Relate each metric directly to the objectives of the acquisition;
- Limit the metric to those that are truly important;
- Select the metric with some consideration of cost;
- Determine that the cost of measurement does not exceed the value of the information; and
- Use the more expensive means of measurement only for the most risky and mission-critical requirements.

(4) *Acceptable Surveillance Methods:* Acceptable surveillance methods include 100 percent inspection, random sampling, periodic inspection, and customer input:

- 100 percent inspection: Usually only used for infrequent tasks or tasks with stringent performance requirements, e.g., where safety or health is a concern;
- Random sampling: Usually the most appropriate method for recurring tasks. With random sampling, services are sampled to determine if the level of performance is acceptable;
- Periodic inspection: Sometimes called "planned sampling," consists of the evaluation of tasks selected on other than a100 percent or random basis. It may be appropriate for tasks that occur infrequently, and where 100 percent inspection is neither required nor practicable; and
- Customer input: Usually not a primary method, this is a valuable supplement to more systematic methods. For example, in a case where random sampling indicates unsatisfactory service, customer complaints can be used as substantiating evidence.

4.104 RESERVED

4.105 Additional Information on Performance-Based Acquisition/Management

More information on the PBA approach is available in the *Seven Steps to Performance-Based Acquisition* guide found at the Office of Federal Procurement Policy's PBA website, http://www.acquisition.gov/comp/seven_steps/home.html . The Seven Steps Library, found at this website, contains links to various agencies' guidance, training sources, sample documents, and a host of informational documents.

PGI Chapter 4.2 Acquisition of Information Technology

4.201 Scope

This chapter provides the additional procedures, guidance and information for Contracting Officers and others in acquiring information technology (IT) goods and services.

4.202 RESERVED

4.203 RESERVED

4.204 Earned Value Management

4.204(a) Earned Value Management

The sponsoring division, in conjunction with the DIT and the Contracting Officer, determines if a contract warrants the use of earned value management (EVM) based on the complexity, risk, dollar value, and visibility of the project. EVM is mandatory for actions subject to Capital Investment Review Committee review, currently $3,000,000. However, EVM may be used at lower dollar thresholds when determined appropriate. When it is determined that the use of EVM is appropriate, the principle objectives of the American National Standards Institute/Electronic Industries Alliance 748 (ANSI/EIA 748) Standard, *Earned Value Management Systems*, found at http://ocio.os.doc.gov/s/groups/public/@doc/@os/@ocio/@oitpp/documents/content/prod01_002422.pdf should be implemented for the project. Implementation of an EVM system for major projects includes:

(1) Inclusion of EVM requirements in FDIC solicitations for services, requests for proposals and the addition of appropriate EVM clauses to contracts that require the contractor to measure and report on work progress on major projects;

(2) Reviews of FDIC EVM policies and contractor EVM plans to ensure compliance with industry standard best business practices;

(3) Periodic reviews to ensure that the EVM program continues to meet the needs of FDIC and the guidelines established for its use; and

(4) Baseline reviews to analyze the impact of EVM on the final cost, schedule and performance by contractors on major projects.

4.204(b) Contracting Officer Responsibilities

The Contracting Officer must ensure that:

(1) Offerors without an ANSI/EIA 748 compliant system are not eliminated from consideration for contract award, but are required to submit a comprehensive EVM plan;

(2) Contractors are required to submit EVM monthly reports for those contracts for which EVM applies;

(3) EVM requirements are applied to subcontractors using the same rules applied to the prime contractor; and

(4) In conjunction with the Program Office, the adequacy of the proposed EVM plan is determined prior to contract award, when an offeror is required to provide an EVM plan as part of its proposal.

4.204 (c) Division of Information Technology, Program Management Office Responsibilities

The DIT Program Management Office (PMO) is a resource center for clients, executives, project managers and project team members engaged in the operation and oversight of IT projects. Its mission is to continuously improve the practice and results of IT program and project management. It serves as a FDIC resource for use of EVM on major IT projects. Information on EVM can be found at the PMO website found at https://fdicnet.fdic.gov/content/dit/home/itgovernance/frameworksmethodologies/earnedvaluemanagement.html.

4.205 Prescriptions for Provisions and Clauses for Information Technology Contracting

Contracting Officers must insert the following provisions and clauses as required:

7.4.2-1 Security and Privacy Compliance for IT Services - insert clause in all awards for services in which contractor or its subcontractors may develop or maintain IT applications or implement or operate other IT resources.

7.4.2-2 Off-site Processing and Storing of FDIC Information - insert clause in all awards in which FDIC information (electronic or paper form) may be processed or stored in a non-Federal System.

7.4.2-3 Data Connection - insert clause in all awards in which a data connection may be established between the FDIC network and the contractor located at a non-FDIC facility.

7.4.2-4 Privacy Requirements for External Web Applications and Content - insert clause in all awards in which the contractor may develop or maintain applications or content located on an FDIC-web site accessed by the public.

7.4.2-5 Basic Safeguarding of Covered Contractor Information Systems - insert clause in all awards when the FDIC Outsourced Solution Assessment Methodology (OSAM) Risk Level is rated 1 or 2.

7.4.2-6 NIST SP 800-171 Security Requirement - insert clause in all awards when the FDIC Outsourced Solution Assessment Methodology (OSAM) Risk Level is rated 3.

PGI Chapter 4.3 Construction Contracting

4.301 Scope

The acquisition of construction follows the policy outlined in APM 3.2, *Formal Contracting*, and applicable FDIC directives. This chapter provides procedures, guidance and information on those aspects of the process unique to contracting for the design and subsequent new construction of FDIC buildings or facilities.

4.302 Definitions

Architect-Engineer Services – Professional services of an architectural or engineering nature, as defined by applicable state law. State law requires these services be performed or approved by a registered architect or engineer. Such services are generally associated with the design or construction of real property.

Design – The process of defining the construction requirements (including the functional relationships and technical systems to be used, such as architectural, environmental, structural, electrical, mechanical, and fire protection), producing the technical specifications and drawings, and preparing the construction cost estimate.

Design-Bid-Build – Contracting for design and construction sequentially with two contracts and two contractors.

Design-Build – Combining design and construction in a single contract with one contractor.

Two-Phase Design-Build Selection Procedures – A selection method in which a limited number of offerors (normally five [5] or fewer) is selected during phase one of the selection process to submit detailed proposals for phase two of the selection process.

4.303 Construction Contracting Procedures

4.303(a) Use of the General Services Administration

Contracts for architect-engineer services and construction are very specialized and complex. The General Services Administration (GSA) provides support in the area of architect-engineer services and construction, including project management and the award and administration of these types of contracts. When practical, FDIC may choose to enter into an interagency agreement with GSA to obtain these services.

4.303(b) Construction Contracting Approach

If FDIC contracts directly for architect-engineer and construction services, the Contracting Officer and the Program Office must consider the following when determining the appropriate contracting approach:

(1) *Design-Bid-Build*: This approach requires two separate and distinct contracts; one for the design phase and the other for construction. When using the design-bid-build contracting method, the preferred pricing arrangement for the "design" phase of a construction project is firm fixed price (FFP). The "build" portion of a design-bid-build construction project should also be FFP. It may be priced:

- On a lump-sum basis (when a lump sum is paid for the total work or defined parts of the work);
- On a unit-price basis (when a unit price is paid for a specified quantity of work units); or
- Using a combination of the two methods.

(2) *Design-Build*: An innovative approach to contracting which ensures there is a single point of responsibility for both the design and construction of the project and does not result in the government being the integrator of the design and construction efforts.

- The contract pricing arrangement should be the method which best provides an equitable sharing of risks, and
- When using the design-build contracting method, the government team should also consider using a performance-based acquisition approach.

(3) *Two-Phase Design-Build*: A two-phase design-build selection procedure may be used when in the best interest of the government. Phase One is the initial competition among either construction firms with design capability or teams comprised of construction contractors and architect-engineers. Phase one evaluation factors should include:

- Technical approach (but not detailed design or technical information);
- Technical qualifications, such as:
  - Specialized experience and technical competence;
  - Capability to perform; and
  - Past performance of the offeror's team (including the architect-engineer and construction members).
- Other appropriate factors (excluding cost or price related factors, which are not permitted in phase one).

The evaluation of phase one proposals should result in a down-select to three to four of the most highly qualified offerors (not to exceed the maximum number specified in the solicitation).

Phase two of the competition is among only the down-selected firms and is a "full" competition, to include cost and potentially a most probable cost

assessment. The result of phase two is award to the offeror providing the best overall value to the government, after consideration of all evaluation factors. In a highly complex, highly subcontracted effort, the evaluation team may elect to conduct past performance assessments on the major subcontractors (typically, the mechanical, electrical and plumbing subcontractors) for each of the phase two offerors. A two phase design-build selection may be combined into a single solicitation if the Contracting Officer decides that this method is appropriate.

4.304 Prescriptions for Provisions and Clauses for Construction Contracting

Contracting Officers must insert the following provisions and clauses as required:

7.4.3-1 Commencement, Prosecution and Completion of Work - insert clause in all construction contracts.

7.4.3-2 Location(s) for Services - insert clause in all construction contracts.

7.4.3-3 Contractor's Project Manager - insert clause in all construction contracts.

7.4.3-4 Specifications and Drawings - insert clause in contracts over $100,000 for construction or dismantling, demolition, or removal of improvements. (Also, insert in contracts below $100,000, at Contracting Officer's discretion).

7.4.3-5 Differing Site Conditions - insert clause in contracts over $100,000 for construction or dismantling, demolition, or removal of improvements. (Also, insert in contracts at or below $100,000, at Contracting Officer's discretion).

7.4.3-6 Material and Workmanship - insert clause in all construction contracts.

7.4.3-7 Superintendence by Contractor - insert clause in contracts over $100,000 for construction or dismantling, demolition, or removal of improvements. (Also, insert in contracts at or below $100,000, at Contracting Officer's discretion).

7.4.3-8 Permits and Responsibilities - insert clause in contracts for construction or dismantling, demolition, or removal of improvements.

7.4.3-9 Conditions Affecting the Work - insert clause in contracts over $100,000 for construction or dismantling, demolition, or removal of improvements. (Also, insert in contracts at or below $100,000, at Contracting Officer's discretion).

7.4.3-10 Other Contracts - insert clause in contracts over $100,000 for construction or dismantling, demolition, or removal of improvements. (Also, insert in contracts at or below $100,000, at Contracting Officer's discretion).

7.4.3-11 Shop Drawings - insert clause in contracts over $100,000 for construction or dismantling, demolition, or removal of improvements. (Also, insert in contracts at or below $100,000, at Contracting Officer's discretion).

7.4.3-12 Use and Possession Prior to Completion - insert clause in contracts over $100,000 for construction or dismantling, demolition, or removal of improvements. (Also, insert in contracts at or below $100,000, at Contracting Officer's discretion).

7.4.3-13 Measurements - insert clause in all construction contracts.

7.4.3-14 Layout of Work - insert clause in construction contracts where there is a need for accurate work layout and site verification during work performance.

7.4.3-15 Availability and Use of Utility Services - insert clause in awards for construction or dismantling, demolition, or removal of improvements.

7.4.3-16 Use of Premises - insert clause in all construction contracts.

7.4.3-17 Operation and Storage Areas - insert clause in contracts over $100,000 for construction or dismantling, demolition, or removal of improvements. (Also, insert in contracts at or below $100,000, at Contracting Officer's discretion).

7.4.3-18 Heat - insert clause in all construction contracts.

7.4.3-19 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvement - insert clause in contracts over $100,000 for construction or dismantling, demolition, or removal of improvements. (Also, insert in contracts below $100,000, at Contracting Officer's discretion).

7.4.3-20 Health and Safety - insert clause in all construction awards.

7.4.3-21 Cleanup - insert clause in awards for construction or dismantling, demolition, or removal of improvements that are other than simplified procurements.

7.4.3-22 Use of Equipment by the FDIC - insert clause in construction awards.

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MODULE 5: GENERAL CONTRACTING REQUIREMENTS

PGI Chapter 5.1 Protection of Sensitive Information

5.101 Scope

This chapter provides the procedures, guidance and information to be used by FDIC Contracting Officers and others for properly dealing with issues of confidentiality and protecting information involved in the acquisition process and throughout the life of the contract.

5.102 RESERVED

5.103 Protection of Sensitive Information Procedures

Contracting Officers and the Program Offices they support must comply with the procedures regarding protection of sensitive information discussed in this chapter in the award of contracts for FDIC.

5.104 Sensitive Information and Confidentiality Agreements Procedures

5.104(a) Sensitive Information

As a part of acquisition planning, the Program Office identifies in the requirements package any sensitive information, including personally identifiable information, to be provided to offerors during the solicitation phase of procurement, or to be provided to or collected by the contractor following award. This includes sensitive information to be provided in electronic or paper form.

5.104(b) Contractor Confidentiality Agreement

The Contracting Officer provides the confidentiality agreements, (FDIC Form 3700/46, Confidentiality Agreement (for Contractors/Subcontractors/Consultants) and FDIC Form 3700/46A, Confidentiality Agreement (for Contractor/Subcontractor/Consultant Personnel)) (https://fdicnet.fdic.gov/content/doa/home/rim/forms.html) to the contractor, as an attachment to the contract. An authorized representative of the contractor, its subcontractors and consultants, and all personnel (key personnel and non-key personnel) who will have access to FDIC facilities, networks and/or information

systems, or sensitive information (whether in hardcopy or electronic form) must execute confidentiality agreements.

The 3700/46 forms executed by the contractor, subcontractors and consultants must be submitted at the time of award to the Contracting Officer, with the signed contract. They are also submitted to the Contracting Officer after award when a new subcontractor or consultant is being requested. It is acceptable for the 3700/46 forms to be executed by the contractor, subcontractors and consultants at the BOA/RBOA/BPA level, thereby being applicable to all task orders issued thereunder. The Contracting Officer files the executed 3700/46 forms in CEFile.

The 3700/46A forms executed by personnel must be submitted to FDIC no later than five (5) business days after starting performance and prior to receiving any sensitive information. The Contractor must submit the confidentiality forms signed by key personnel to the Contracting Officer and those signed by non-key personnel to the Oversight Manager. Key personnel and non-key personnel who are required to sign a confidentiality agreement, and do not sign, will not be permitted to perform work on the contract. It is acceptable for any key personnel or non-key personnel working on one or more task orders issued under a BOA/RBOA/BPA to sign and submit a single 3700/46A at the BOA/RBOA/BPA level, thereby being applicable to all task orders issued thereunder. The Contracting Officer files 3700/46A forms executed by key personnel in CEFile, whereas Oversight Managers file 3700/46A forms executed by non-key personnel in CEFile.

5.105 Application of the Privacy Act

5.105(a) FDIC Systems of Records

When processing new procurement actions where the contractor is required to design, develop, operate or maintain a system containing personal information to accomplish an FDIC function, the Program Office must complete a Privacy Threshold Analysis to determine if the system contains personally identifiable information and is considered a system of records subject to the Privacy Act of 1974. The Privacy Act requires a Privacy Impact Assessment when developing or buying an information technology system that contains personal information about members of the public. If the Program Office confirms that the services being performed are subject to the Privacy Act, the name of the system of records and privacy and security requirements must be provided to the Contracting Officer and identified in the contract.

5.105(b) Failure to Comply with the Privacy Act of 1974

Willful failure to comply with the Privacy Act of 1974, either through improper collection of information on individuals or disclosure of protected information, subjects FDIC personnel and contractor personnel to criminal penalties. In addition, FDIC can be sued for civil damages for failure to comply with the Privacy Act of 1974.

5.106 Protection of Contractor Proposals and Source Selection information

Information submitted by potential contractors in their proposals, and information generated by FDIC employees during the source selection process, is procurement sensitive. All persons involved in the source selection process are obligated to protect the confidentiality of this information. Throughout the source selection process, procurement officials must adhere to the commitment to safeguard procurement sensitive information. PGI 3.210(d) speaks to the responsibility of technical evaluators in protecting procurement-related information.

5.107 Freedom of Information Act

5.107(a) Reference Guide

The following list identifies the sources of policies and procedures for processing Freedom of Information Act (FOIA) requests at FDIC and provides links thereto:

(1) FDIC FOIA Service Center website - General FOIA information, http://www.fdic.gov/about/freedom/index.html.

(2) Executive Order (EO), *Improving Agency Disclosure of Information*, December 14, 2005, http://www.gpo.gov/fdsys/pkg/FR-2005-12-19/pdf/05-24255.pdf.

(3) FDIC Circular 1023.1, *Procedures for Processing Freedom of Information Act Requests*, April 18, 2006, https://fdicnet.fdic.gov/content/dam/DOA/documents/rim/directives/1000/1023-1.doc.

5.107(b) Designated Responsibilities

(1) *Legal Division*: FDIC has designated the General Counsel as its Chief FOIA Officer with corporate-wide responsibility for efficient and appropriate compliance with the FOIA. FDIC has delegated to the FDIC Legal Division FOIA-Privacy Act (FOIA-PA) Group responsibility for the day-to-day administration and operation of the FOIA program.

(2) *ASB*: ASB, Policy and Systems Section, responds to ASB-related FOIA requests received from the FOIA-PA Group with assistance from ASB Contracting Officers as necessary. ASB, Policy and Systems Section, is also responsible for retaining an administrative record of actions taken on FOIA requests in accordance with the provisions of FDIC Circular 1210.1, *FDIC Records Retention and Disposition Schedule*.

5.107(c) Freedom of Information Act Procedures

(1) *FOIA Submittal Procedures*: All FOIA requests are submitted in writing (this includes email) and sent directly to the FOIA-PA Group. The preferred method for submitting FOIA requests is electronically via the FDIC website, http://www.fdic.gov/about/freedom/index.html. Upon receiving a FOIA request related to contracting activity, the FOIA-PA Group catalogues it and refers it to the assigned FOIA contact within ASB, Policy and Systems Section, for further handling.

(2) *Timeframes for Responding to FOIA Requests*: FDIC responds to valid FOIA requests within twenty (20) business days of receipt. ASB typically has fifteen (15) business days to complete and submit its assigned FOIA information to the FOIA requestor or FOIA-PA Group. The actual number of days for ASB to respond depends on the date on which the official request is received from the FOIA-PA Group.

(3) *ASB Procedures for Compiling FOIA Responses*: ASB, Policy and Systems Section, reviews official contract files to compile the requested information to respond to FOIA requests. Before forwarding the FOIA material to the FOIA-PA Group, ASB, Policy and Systems Section, verifies with the designated Contracting Officer that the material is complete. If documents cannot be located in the official contract file, ASB, Policy and Systems Section, assigns the FOIA request to the respective ASB Assistant Director for handling.

5.108 Prescriptions for Provisions and Clauses

Contracting Officers must insert the following provisions and clauses as required:

7.5.1-1 Privacy Act - insert clause in all awards that require the design, development, or operation of a system of records on individuals.

7.5.1-2 Protecting Sensitive Information - insert clause in all awards in which the contractor, its personnel or its subcontractors may have access to FDIC facilities or systems, or otherwise may have access to FDIC sensitive information. Add the two versions of the confidentiality agreement as attachments to the contract when including this clause.

7.5.1-3 Access to FDIC Information Systems - insert clause in awards for services in which contractor personnel or subcontractor personnel may have access to FDIC network and/or information systems.

PGI Chapter 5.2 Security

5.201 Scope

This chapter provides the procedures, guidance and information for use by FDIC Contracting Officers and the Program Offices they support in dealing with security requirements on FDIC contracts.

5.202 Definitions

Background Investigation – A generic term that describes a check or checks which the Division of Administration's Security and Emergency Preparedness Section (SEPS) completes on contractors, subcontractors and contractor/subcontractor employees to ensure they meet minimum security and integrity and fitness standards as set forth by FDIC. These checks range from a fingerprint criminal records check by the Federal Bureau of Investigation, to checks of various online databases such as Lexis/Nexis, Dun and Bradstreet, and the System for Award Management, which can be found at http://www.sam.gov/. It also includes various types of background investigations conducted by the United States Office of Personnel Management (OPM) for the FDIC.

5.203 Contract Security Procedures

FDIC Circular 1610.2, available at https://fdicnet.fdic.gov/content/dam/DOA/documents/rim/directives/1000/1610-2.doc, describes FDIC security procedures for FDIC contractors and subcontractors.

5.203(a) Pre-Solicitation Requirements

The Program Office:

(1) Establishes the security risk levels by area of functional responsibility or labor category using the Risk Level Matrix (Attachment A to Circular 1610.2);

(2) Documents the results of the pre-solicitation risk level determination by using the *Contractor Risk Level Record* (Attachment B to 1610.2);

(3) Provides the results of the risk level determination to its Information Security Manager (ISM) for concurrence. A list of FDIC division-level ISMs is at https://fdicnet.fdic.gov/content/dit/home/itgovernance/itsecurityprivacy/divisionalismprogram/listofisms.html. The ISM provides concurrence/non-concurrence in accordance with Circular 1610.2 and electronically forwards the Contractor Risk Level Record to a representative of the Personnel

Security Unit (PSU), who provides final review and approval before signing and electronically forwarding to the Program Manager, Oversight Manager and ISM. The Program Manager or Oversight Manager will provide the completed form 1600/17 to the assigned Contracting Officer.

(4) Includes the approved risk level determination in the requirements package.

5.203(b) Solicitation Requirements

The Contracting Officer incorporates the risk level determination into the solicitation and contract. The solicitation package must include the following documents:

(1) Risk level designation;

(2) Background investigation forms;

(3) *Background Investigation Questionnaire for Contractors*, FDIC Form 1600/07 (https://fdicnet.fdic.gov/content/dam/DOA/documents/rim/forms/1000/1600-07.doc);

(4) *Background Investigation Questionnaire for Contractor Personnel and Subcontractors*, FDIC Form 1600/04 (https://fdicnet.fdic.gov/content/dam/DOA/documents/rim/forms/1000/1600-04.doc) (for contractor and subcontractor key personnel); and

(5) *Notice and Authorization Pertaining to Consumer Reports Pursuant to the Fair Credit Reporting Act of 1970*, FDIC Form 1600/10 (https://fdicnet.fdic.gov/content/dam/DOA/documents/rim/forms/1000/1600-10.doc) (for contractor and subcontractor key personnel).

5.203(c) Pre-award and Post-award Investigations

FDIC conducts pre-award and post-award investigations of contractor personnel in accordance with FDIC Circular 1610.2, *Personnel Security Policy and Procedures for FDIC Contractors*.

(1) *Preliminary Background Investigations:* Prior to award, the Contracting Officer requests SEPS to perform preliminary background investigations, including credit checks, on the apparent successful offeror and all key personnel. The Contracting Officer may not award the contract without notification from SEPS of satisfactory preliminary background investigation results.

If there is an urgent need for the contractor to begin performance, the Contracting Officer must obtain approval from the respective ASB Assistant Director to award the contract prior to completion of preliminary background investigations.

In the period immediately following contract award, all contractor personnel and subcontractor personnel who work on-site at, and have unescorted

access to, FDIC offices or facilities, or have access to FDIC networks/systems, must submit FDIC background investigation forms, undergo fingerprinting, and may be required to submit paperwork to initiate an OPM background investigation.

The contractor personnel and subcontractor personnel must not begin working on the contract until the fingerprint and the credit check processes have been completed and FDIC has rendered a favorable determination, and the paperwork for any further OPM background investigation has been submitted.

Background investigation and credit check authorization forms contain personally identifiable information (PII). These documents must not be made into electronic format nor submitted to SEPS in electronic format. Printed copies of the forms, along with the cover letter which requests SEPS perform the background investigation(s) and credit check(s), must be physically delivered to SEPS. The forms, and any other documents containing PII, must not be uploaded into CEFile. Only the cover page of the request to SEPS, along with the written response from SEPS (minus any PII), are to be uploaded into CEFile

(2) *Fingerprinting:* The Oversight Manager coordinates fingerprinting of contractor personnel with SEPS as necessary, immediately after contract award. SEPS processes the clearance applications and informs the Oversight Manager of the results.

(3) *Adverse Finding:* SEPS works with contractor employees to resolve any adverse findings discovered during their background investigation, keeping the Contracting Officer and Program Office informed of any delays. SEPS gives a contractor employee fourteen (14) days to respond with any information disputing the adverse finding. Unless the finding is resolved, the Contracting Officer requires the contractor to remove and replace the employee in question with an employee FDIC accepts. The replacement is at no additional expense to FDIC, and without relief from any contractual performance and delivery requirements.

(4) *Changes in Contractor Personnel:* The contractor must notify the Contracting Officer of any changes in key personnel assigned to the contract. For other than key personnel, the contractor notifies the Oversight Manager of any new contractor or subcontractor personnel assigned to the contract or any change in assignment of current personnel. FDIC performs the appropriate background investigations and fingerprint check for any new personnel. The Contracting Officer and the Oversight Manager have a continuing duty over the life of a contract to update security information as changes in contractor personnel occur, including their access to FDIC facilities and network/systems.

(5) *Updated Contractor Personnel Submittal:* In order to help ensure no contractor or subcontractor departures have been overlooked, the contractor is required to submit a current list of contractor and subcontractor personnel, including all key personnel, who are working under the award and for which a background investigation was required (i.e., contractor personnel or subcontractor personnel who completed FDIC Form 1600/04). The contractor must also include a list of all contractor and subcontractor personnel that have

been removed from the award since the previous quarterly report. The list of contractor and subcontractor personnel must be submitted to the Oversight Manager by the beginning of each quarter (January 1st, April 1st, July 1st, and October 1st) for the duration of the award.

5.203(d) Identification Badges

The Oversight Manager is responsible for coordinating with SEPS and the contractor to ensure the issuance of appropriate badges to contractor personnel, and the return of badges upon departure. The Oversight Manager must follow the procedures set forth in the FDIC Pre-Exit Clearance Procedures (Departing and Transferring Contractor Personnel) document found on the Division of Administration's Oversight Manager Tool Box webpage at: https://fdicnet.fdic.gov/content/doa/home/buying/oversightmanager-toolbox.html.

5.203(e) Termination of Access

The Oversight Manager must complete a pre-exit clearance on contractor personnel who have access to the FDIC's Network, or unescorted access to FDIC facilities/offices, or access to sensitive information, or on contractor personnel who had a background investigation completed on them by SEPS. To accomplish a pre-exit clearance for Contractor Personnel, the Oversight Manager must complete Form 3700/25, 'Pre-Exit Clearance/Transfer Record for Contractor Personnel', found on the FDIC Forms page, DOA: Forms Series - 3000 Services & Facilities, at https://fdicnet.fdic.gov/content/doa/home/rim/forms.html. The Oversight Manager must also follow all instructions set forth in the FDIC Pre-Exit Clearance Procedures (Departing and Transferring Contractor Personnel) document, found on the Division of Administration's Oversight Manager Tool Box webpage at: https://fdicnet.fdic.gov/content/doa/home/buying/oversightmanager-toolbox.html.

The FDIC Pre-Exit Clearance Procedures (Departing and Transferring Contractor Personnel) document is a comprehensive list of pre-exit clearance actions the Oversight Manager must follow to properly accomplish a contractor personnel's departure/transfer.

The Technical Monitor must notify the Oversight Manager immediately whenever they become aware that a contractor personnel is departing or transferring to another FDIC contract/task order.

5.204 Prescriptions for Provisions and Clauses

Contracting Officers must insert the following provisions and clauses as required:

7.5.2-1 Background Investigation Questionnaires -insert provision in all solicitations for contracts greater than $100,000 or in which any contractor personnel or

subcontractor personnel will be required to undergo a background investigation, namely when the contract requires they work on-site and have unescorted access to FDIC offices or facilities, or have access to FDIC networks/systems.

7.5.2-2 RESERVED

7.5.2-3 Background Investigations - insert clause in: (1) all awards for services over $100,000, (2) awards at any dollar amount when contractor personnel or subcontractor personnel will work on site and have unescorted access to FDIC offices or facilities, or have access to FDIC networks/systems, or (3) in any other contract where the Program Office has described a need for background investigations. (Use Alternate 1 when a waiver to FDIC Circular 1610.2 has been granted allowing the $100,000 threshold to apply separately to the value of the contract and the value of any subcontract.)

7.5.2-3 Alternative 1 – (Use Alternative 1 when a waiver to FDIC Circular 1610.2 has been granted allowing the $100,000 threshold to apply separately to the value of the contract and the value of any subcontract.)

7.5.2-4 Contractor Submittal of Current Personnel – insert clause in 1) awards at any dollar amount when contractor personnel or subcontractor personnel will work on-site and have unescorted access to FDIC offices or facilities, or have access to FDIC networks/systems, and/or have access to FDIC sensitive information, or 2) in any other award where the Program Office has described a need for background investigations (i.e., contractor or subcontractor personnel are required to complete FDIC Form 1600/04).

7.5.2-5 RESERVED

7.5.2-6 RESERVED

7.5.2-7 RESERVED

7.5.2-8 Risk Level Designation (Functional Responsibility) - insert the clause in awards for services when risk levels are based on the functional responsibilities that Contractor or subcontractor personal will perform. See Circular 1610.2 for the policy on use of risk level designation by functional responsibilities. Do not use both this clause and clause 7.5.2-10, Risk Level Designation (Labor Category), unless the award identifies the specific line items (or tasks, efforts, etc.) that are applicable to each clause. Contracting Officers must include in this clause the functional responsibilities and associated risk levels specified in the FDIC form 1600/17.

7.5.2-9 RESERVED

7.5.2-10 Risk Level Designation (Labor Category) - , insert the clause in awards for services when FDIC establishes the labor categories and designates risk levels for each labor category per the policy set out in Circular 1610.2. Do not use both this clause and

clause 7.5.2-8, Risk Level Designation – Functional Responsibility, unless the award identifies the specific line items (or tasks, efforts, etc.) that are applicable to each clause. Contracting Officers must include in this clause the labor categories and associated risk levels specified in the FDIC form 1600/17.

7.5.2-11 Identification/Access Badges - insert the clause in awards for services in which the contractor may work on-site at FDIC and require unescorted access to FDIC facilities.

7.5.2-12 Contractor Notification of Departing Personnel - insert clause in all awards where a Contractor or Subcontractor employee may be issued an FDIC badge, granted FDIC network access, or receive any of the following: FDIC property/equipment (including laptop or network access token), Personally Identifiable Information (PII), parking permits, office keys, access cards and/or building passes.

7.5.2-13 Use of FDIC Premises by Contractor Personnel - insert clause in all awards in which the contractor may access FDIC offices or facilities.

PGI Chapter 5.3 Compliance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d)

5.301 Scope

This chapter provides the procedures, guidance and information for the implementation of Section 508 of the Rehabilitation Act of 1973 (Section 508) in FDIC contracts that include information communication technology (ICT).

5.302 Definitions

Information and Communication Technology (ICT) - Information technology and other equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or transmission of electronic data and information, as well as any associated content.

5.303 Section 508 Compliance Procedures

The specific acquisition procedures and requirements implementing Section 508 are outlined on the FDIC's Section 508 Center of Excellence Website.

All FDIC contracts for ICT must conform to, and be compliant with, the applicable provisions of Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), as implemented by the following:

(1) Information and Communication Technology (ICT) Standards and Guidelines published by the Architectural and Transportation Barriers Compliance Board (Access Board) are found at 36 CFR Part 1194). https://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-ict-refresh/final-rule;

(2) FDIC regulation 12 CFR §352.5 - http://www.fdic.gov/regulations/laws/rules/2000-7400.html#2000part352.5; and

(3) FDIC Circular 2711.1, Information and Communication Technology (ICT) Accessibility Pursuant to Section 508 of the Rehabilitation Act of 1973, is the FDIC policy for implementation of Section 508. The circular is available at https://www.fdic.gov/about/diversity/pdf/2711-1.pdf.

5.304 Prescriptions for Provisions and Clauses

Contracting Officers must insert the following provisions and clauses as required:

7.5.3-1 Section 508, Information and Communication Technology (ICT) – insert clause in all awards. (When the clause is included in a BOA/RBOA/BPA, it need not be included in task orders issued thereunder.)

PGI Chapter 5.4 Intellectual Property

5.401 Scope

This chapter provides procedures, guidance and information on acquiring, protecting and using intellectual property, including inventions, patents and copyrighted material as part of the acquisition process.

5.402 RESERVED

5.403 Intellectual Property Rights Procedures

5.403(a) Acquisition of Intellectual Property Rights

Contracting Officers must consider the following relative to intellectual property rights in FDIC contracts.

(1) *Non-Impairment of Private Rights:* Any FDIC efforts directed toward competition must not improperly demand or use privately-developed intellectual property. FDIC complies with applicable laws and regulations regarding patents and intellectual property rights.

(2) *Commercial Application:* Consistent with its expressed policies, FDIC encourages the commercial application of data, copyrights and inventions made under its contracts.

(3) *Indemnification for Use of Intellectual Property*: Contracting Officers must include clauses providing indemnification for FDIC use of intellectual property obtained by a license or assignment from a contractor.

The Contracting Officer must fully coordinate with the Contracting Law Unit (CLU) on any solicitation involving intellectual property.

5.404 Rights in Data and Copyrights

FDIC acquires patent rights, rights in data, and copyrights in software only to the degree necessary to protect its interests. Those rights may include:

(1) Limited rights of use, such as nonexclusive licenses or use for a particular function or organization only;

(2) Restricted rights, generally for computer software, allow FDIC to use the software for the purpose stated in the contract, but does not allow

disclosure or distribution. Contracts must address the specifics when restricted rights are granted by the contractor;

(3) Unlimited rights of use for patents, data, copyrighted materials, and software. FDIC is granted the right to use, disclose, distribute, and copy materials/data as it sees fit; and

(4) Ownership rights in patents or copyrighted materials, such as when software or computer programs have been solely funded and developed exclusively for the use of FDIC, or when materials have been jointly developed by a contractor and FDIC employees.

Determinations to acquire limited or restricted rights must consider future competitions and the effect total program or project costs for FDIC. The Contracting Officers must fully coordinate with CLU on any solicitation involving rights in data and copyrights.

5.405 Prescriptions for Provisions and Clauses

Contracting Officers must insert the following provisions and clauses as required:

7.5.4-1 Authorization and Consent - insert clause in all construction contacts and any contracts involving the application of patentable business methods, such as online auction services.

7.5.4-2 Notice and Assistance Regarding Patent and Copyright Infringement - insert clause in all construction contracts; contracts in which original data is transferred or developed by a contractor for use by FDIC; contracts in which educational or training materials are developed by a contractor for the use by FDIC; and contracts involving the licensing of any intellectual property.

7.5.4-3 Patent Indemnity - insert clause in all construction contracts and any contract involving the application of patentable business methods, such as online auction services.

7.5.4-4 Patent Rights-Retention by the Contractor - insert clause in awards in which use of an invention developed by the contractor under the contract is a core component of the services provided by the contractor. This clause is to be used when patent rights are to be retained by the contractor instead of FDIC.

7.5.4-5 Patent Rights-Acquisition by the FDIC - insert clause in awards in which use of an invention developed by the contractor under the contract is a core component of the services provided by the contractor. This clause is to be used when patent rights are to be transferred to FDIC.

7.5.4-6 FDIC Rights in Data-General - insert clause in awards in which original data or software applications are transferred or developed by a contractor for use by FDIC; contracts in which educational or training materials are developed by a contractor for

use by FDIC; and contracts involving the licensing of any intellectual property by the contractor to FDIC.

7.5.4-7 Rights in Data-Special Works - insert clause in awards involving specially commissioned copyrightable works in which the contractor should not acquire any copyright in the works unless specifically approved by the Contracting Officer.

7.5.4-8 Rights in Data-Existing Works - insert clause in awards in which pre-existing copyrighted materials are used by the contractor in the performance of the contract.

7.5.4-9 Commercial Computer Software-Restricted Rights - insert clause in awards which include the acquisition of commercial computer software, except orders under the General Services Administration's Multiple Award Schedule.

PGI Chapter 5.5 Options

5.501 Scope

This chapter provides procedures, guidance and information on the use of options in FDIC awards.

5.502 RESERVED

5.503 Options Procedures

5.503(a) Establishing Options

When the Contracting Officer and Program Office determine to include an option(s) in a contract, the appropriate option provisions and clauses must be inserted in the solicitation and contract. The terms of the solicitation must address how FDIC evaluates options in the pre-award phase and exercises them after contract award.

The resulting contract must specify the limits on the purchase of additional goods or services or the overall duration of the term of the contract, including any extension. The contract also states the period within which the option may be exercised and requires a written notification of the intent to exercise the option to the contractor.

5.503(b) Exercising Options

The Contracting Officer may only exercise an option after:

(1) Receiving an approved procurement requisition from the Program Office, signifying that the requirement covered by the option fulfills an existing FDIC need, and making a written determination for the official contract file that exercise of the option:

- Is in accordance with the terms of the contract;
- Based on current market research; and
- Is the most advantageous method of fulfilling an FDIC need, price and other factors considered.

The Contracting Officer must provide written notice to the contractor of the intent to exercise the option at least sixty (60) days prior to expiration of the period of performance, unless a different time period is specified in the contract. A template for the notice of intent to exercise the option is available on the ASB website (https://fdicnet.fdic.gov/content/dam/DOA/documents/buying/acquisitiondocuments/notic

exerciseoptiontemplate.doc). The option exercise is accomplished through issuance of a unilateral modification. If written notice is not provided within the time period specified, the Contracting Officer may still exercise the option, with the contractor's agreement, using a bilateral modification. The modification to exercise the option must be issued before the current period of performance expires.

5.503(c) Options Not Exercised

The Contracting Officers must issue a unilateral modification whenever any remaining option(s), that extend period of performance or delivery dates, will not be exercised. The benefits from issuing this modification include:

1. Elimination of unnecessary Contractor Performance Evaluation (CPE) and removal of same from Contractor Performance Component (CPC) by CPC Administrator;
2. Accelerates close-out notifications;
3. Avoids inaccurate NFE and APS reporting;
4. Improves reliability for contract management purposes; and,
5. Lessens risk to FDIC since awards will not be active for payments to be incorrectly made.

The modification must be issued prior to the last date of the authorized performance period. It must state that no further option(s) will be exercised and identify the last date of the authorized performance period as the final expiration date. The Contracting Officer must also edit the award information in APS to revise the final expiration date accordingly.

5.504 Provisions and Clauses

Contracting Officers must insert the following provisions and clauses as required:

7.5.5-1 Option Period - insert clause in awards which include option periods.

7.5.5-2 Notice of Exercise of Option - insert clause in awards which include option periods.

PGI Chapter 5.6 Subcontracting

5.601 Scope

This chapter provides procedures, guidance and information related to subcontracting.

5.602 RESERVED

5.603 Subcontracting Procedures

5.603(a) RESERVED

5.603(b) RESERVED

5.603(c) Subcontracting Plan

Prior to issuing a solicitation, the Contracting Officer, with the support of the Oversight Manager (if necessary), must determine whether the majority of dollars in FDIC's estimated award value is for services (to be performed by the prime and/or subcontractors) or for goods and/or material (provided from the prime and/or subcontractor). If services will comprise the majority of the estimated award value, and the award value is over $500,000, the contractor must provide a subcontracting plan addressing any portion of the work proposed to be subcontracted. If goods and/or material will comprise the majority of the estimated FDIC award value, no subcontracting plan is required.

The contents of a subcontracting plan are detailed below:

(1) Name, Address, and Data Universal Numbering System (DUNS) number of the subcontractor, if the subcontractor has a DUNS number (Note: A subcontractor is considered to be any entity or person, other than an employee of the contractor, that will receive payment from the contractor and is a direct charge to the contract.);

(2) Summary of capabilities of the subcontractor;

(3) Description of roles of subcontractor key personnel;

(4) Estimated percentage of work to be performed by the subcontractor, based on dollars (i.e., dollars to be paid to subcontractor divided by the total award amount);

(5) Description of services to be performed or goods/material to be provided by the subcontractor;

(6) Minority or Women Owned Business (MWOB) designation of subcontractor, i.e., Women-Owned, Minority-Owned. Also, if Minority- Owned, the subcontractor's ethnic/racial category from the following list:

Asian-Pacific American
Subcontinent Asian (Asian-Indian) American
Black American
Hispanic American
Native American
Other than one of the preceding

(7) Designation of the subcontractor as a Small Business, Small Disadvantaged Business, Small Business Administration 8(a), Historically Underutilized Business Zone (HUBZone), Veteran Owned and/or Service Disabled Veteran Owned Business; and

(8) Rationale and the offeror's policy for subcontracting, including a description of how the subcontracting commitments will be met, including information on efforts undertaken by the Contractor to include subcontractors that are minority-owned, women-owned or small disadvantaged businesses.

The subcontracting plan must be attached to the award and not incorporated by reference.

5.603(d) Subcontracting Plan Evaluation

When evaluating the contractor's subcontracting plan, consider the following:

(1) Has the offeror adequately documented the rationale for subcontracting, including information on efforts undertaken by the Contractor to include subcontractors that are minority-owned, women-owned or small disadvantaged businesses?

(2) Is the proposed level of subcontracting appropriate for the requirements of the contract (that is, logically balanced on a technical basis)?

(3) Are the subcontractor's qualifications, resources and capabilities appropriate for the complexity of the work?

5.603(e) Approving Subcontractors after Award

The contractor's request to add or delete a subcontractor after award must include a new or revised subcontracting plan, when applicable, and any pertinent pricing information. Any revision to a subcontracting plan which decreases the level of participation for MWOB or SDB must be given tight scrutiny and only permitted if determined by the Contracting Officer to be in the best interest of FDIC. The Contracting

Officer reviews the request and forwards it, along with any comments, to the Oversight Manager for approval or disapproval. If approved, the Contracting Officer must issue a modification that includes the new or revised subcontracting plan as an attachment and updates the list of approved subcontractors in clause 7.5.6-4, *Approved Subcontractors and Consent to Subcontract*, so that the modification identifies a consolidated list of all approved subcontractors.

5.603(f) Subcontracting Plan Compliance

The subcontracting plan is considered a material part of the contract. The contractor's failure to comply with and make progress under the subcontracting plan may be considered a breach of contract. In addition, failure to achieve the stated subcontracting goals may result in the issuance of a cure notice or show cause letter for purposes of termination for default. It may also have a negative and adverse impact on the contractor's past performance record to be considered during proposal evaluation on future solicitations. Therefore, throughout contract performance, the Contracting Officer and Program Office must determine whether the contractor has made a good faith effort to comply with the subcontracting plan, consistent with the goals and objectives, reporting, and other aspects of the plan.

5.603(g) Subcontracting Reports

Prior to issuing a solicitation, the Contracting Officer, with the support of the Oversight Manager (if necessary), must determine whether the majority of dollars in FDIC's estimated award value is for services (to be performed by the prime and/or subcontractors) or for goods and/or material (provided from the prime and/or subcontractor). If services will comprise the majority of the estimated award value, subcontracting reporting is required and the award must include the applicable clause, 7.5.6-2, *Subcontracting Reporting*, or 7.5.6-3, *Subcontracting Reporting (BOAs/RBOAs/BPAs).* If goods and/or material will comprise the majority of the estimated award value, no subcontracting reporting is required. When subcontracting reporting is required, it applies to subcontracts for both services and goods/material.

The subcontracting report must include:

(1) Subcontractor's Name, Address, and DUNS number, if the subcontractor has a DUNS number. (Note: A subcontractor is considered to be any entity or person, other than an employee of the contractor, that will receive payment from the contractor and is a direct charge to the contract.);

(2) Subcontractor's type of business concern [Minority Owned (including ethnicity), Women Owned, Small Business, Small Disadvantaged Business, Small Business Administration 8(a), Historically Underutilized Business Zone (HUBZone), Veteran Owned and/or Service Disabled Veteran Owned Business];

(3) Estimated percentage of the work to be performed by the subcontractor, based on dollars (i.e., dollars to be paid to the subcontractor divided by the total award amount).. (Applicable only to awards with Subcontracting Plans.);

(4) Description of services to be performed or goods/material to be provided by subcontractor during the report period and dates, or range of dates, performance was accomplished;

(5) Compensation paid to subcontractor during reporting period;

(6) Total compensation paid to subcontractor cumulative to date (including all payments made from the effective date of the award).

The Contractor must provide the subcontracting report to FDIC using the FDIC Subcontracting Reporting System (SRS). The SRS is a web-based system that is accessible via the internet at https://www5.fdic.gov/SRSweb/srsE_Login.asp. Contractor may access a copy of the SRS User Guide in the "Miscellaneous" section of the following webpage: http://www.fdic.gov/buying/goods/acquisition/index.html.

The subcontracting report must be submitted within 15 days after the end of each quarter (i.e., by January 15th for the quarter ending December 31st, by April 15th for the quarter ending March 31st , by July 15th for the quarter ending June 30th and by October 15th for the quarter ending September 30th).

By the end of the month following each quarter, the Contracting Officer must use one or more WebFocus reports from the New Financial Environment (NFE) system to review subcontractor data submitted by contractors in SRS. The Contracting Officer reviews the contractor's payments to subcontractors and, when required, ensures appropriate efforts are being made by the contractor to comply with the subcontracting plan.

5.604 Prescriptions for Provisions and Clauses

Contracting Officers must insert the following provisions and clauses as required:

7.5.6-1 Prohibition on Subcontracting - insert provision in solicitations when subcontracting will not be permitted.

7.5.6-2 Subcontracting Reporting - insert in awards when subcontracting is approved.

7.5.6-3 Subcontracting Reporting (BOAs/RBOAs/BPAs) - insert clause in basic ordering agreements, receivership basic ordering agreements or blanket purchase agreements if subcontracting is approved.

7.5.6-4 Approved Subcontractors and Consent to Subcontract - insert clause in all awards.

7.5.6-4 Alternate 1 - insert in awards when a waiver to the APM requirement for approval of subcontractors has been granted for subcontracts valued at $100,000 and under.

7.5.6-5 Subcontracting Plan Compliance - insert clause in awards where subcontracting has been approved.

PGI Chapter 5.7 Incentive Contracting

5.701 Scope

This chapter provides procedures, guidance and information related to the use of incentive contracting by FDIC Contracting Officers and the Program Offices they support.

5.702 RESERVED

5.703 Incentive Contracting Procedures

5.703(a) Monetary Incentives

In labor hour and time and materials contracts, pre-determined monetary incentives may be used to motivate the contractor to:

(1) Control the amount of dollars incurred for labor and/or material;
(2) Increase technical performance; and/or
(3) Expedite delivery.

Because of the interdependency of these three goals, a contract that emphasizes only one of the goals may jeopardize control over the others. Therefore, when including pre-determined monetary incentives for multiple goals, the contract must include a constraint that operates to preclude rewarding a contractor for superior technical performance or delivery results when the incurred dollar amount of those results outweighs their value to FDIC.

In firm fixed price contracts, pre-determined monetary incentives are limited to motivating the contractor to increase technical performance, and/or expedite delivery. When pre-determined monetary incentives are used for technical performance or delivery, incentive increases must only be provided for achievement that surpasses the targets/goals, and incentive decreases are provided for to the extent that such

targets/goals are not met. The incentive increases or decreases are applied to the targets/goals rather than the minimum requirements.

The value of the purchase requisition must be based on the inclusion of the estimated maximum amount for any monetary incentives which may be paid under the resulting contract. The cost estimate developed by the Program Office must identify this amount separately from labor, material, travel, etc. The purchase requisition must be structured so that those approving it clearly understand they are also approving the use of the monetary incentive.

The purchase requisition must be accompanied by documentation (memorandum for the file) from the Program Office supporting the selection of the efforts subject to the incentive(s) and the dollar values assigned to the price additions or reductions. For example, if $10,000 is to be used as an annual incentive for a contractor performing certain services with zero defects, the memorandum to file must address the benefits FDIC receives from having zero defects and why $10,000 is an appropriate amount. Because the amount is often based on the subjective judgment of FDIC personnel, care should be taken to ensure the amount is neither trivial nor excessive. The goal is to establish an incentive amount sufficient enough to motivate the contractor to perform at a level higher than what it would have done without the incentive.

Upon receipt of the proposal(s) and completion of negotiations, the Program Office and Contracting Officer must determine, prior to award, the maximum dollar amount FDIC would owe the contractor, in the event the contractor earns all of the monetary incentives available on the contract. The contract must identify the value of the monetary incentive as a subset of the total contract ceiling amount, so that the contract clearly conveys:

(1) Contract ceiling amount for labor and/or material;

(2) Total monetary incentive amount that could potentially be earned by the contractor; and

(3) Total contract ceiling amount for the combination of the two.

The procedures for administratively processing the monetary incentive must be incorporated into the contract. The procedures must include an explanation of how and when the incentive amount is to be determined, the written means by which the Contracting Officer notifies the contractor of the results, and the process of invoicing for the price addition or price reduction. The invoice should clearly identify the amount of the addition or reduction, along with the performance period to which it applies.

Special attention must be given to the process of invoicing for a price reduction. The goal is to avoid, to the maximum extent possible, an overpay situation in which the contractor must send FDIC a check to accomplish the reduction in price. Instead, it is preferable to process the price reduction as an adjustment to the negotiated price (for

firm fixed price contracts) or to the incurred amount (for labor hour and time and material contracts).

Depending on how long it takes the FDIC to determine the amount of any increase or decrease, the contractor may not be able to submit the adjustment with the immediate invoice to which it applies. Therefore, it may be necessary for the Contracting Officer to include language in the contract for the withholding of money. The withhold amount is to be released upon the completion of the contract; after it is determined no reductions from contract price are owed to FDIC.

5.703(b) Contract Extension Incentive (Award Term)

The award term process can be administratively time-consuming. Factors that the Contracting Officer must consider before making a decision to use award term include the dollar value, complexity and criticality of the procurement; the availability of FDIC resources to monitor and evaluate performance; and the benefits expected to result from such oversight. Caution must be used to prevent a situation in which the award term administrative burden is out of proportion to the improvements expected in the quality of the contractor's performance. It should only be used when the expected results warrant the additional administrative/management effort.

The award term process is established contractually, prior to the start of performance, in a pre-determined Award Term Plan. The plan must include:

(1) Details of the award term process and include the roles of FDIC personnel (such as the Evaluation Monitors, the Award Term Review Board and the Term Determining Official [TDO]);

(2) Performance evaluation criteria;

(3) Award term period;

(4) Point scoring process; and

(5) Procedures for making future changes to the plan.

Based on the final score assigned by the TDO to the contractor's performance, along with the continued need for the services/products and the availability of funding, the contractor's performance period may be extended. However, prior to notifying the contractor, approval of any award term extension must be obtained from the respective ASB Assistant Director.

PGI Chapter 5.8 Bonds and Insurance

5.801 Scope

This chapter provides procedures, guidance and information on the use of bonds and insurance to protect the FDIC against financial losses under contracts.

5.802 RESERVED

5.803 Bonds and Insurance Procedures

The procedures in this chapter are to be used by FDIC Contracting Officers and the Program Offices they support when soliciting, awarding and managing contracts involving bonds and insurance.

5.804 Bonds

5.804(a) Payment and Performance Bonds

The Contracting Officer must request the Contracting Law Unit review of bonds for legal sufficiency after receipt. Bonds are normally not returned to the contractor, because they expire when the contract is completed. Contract completion, for purposes of the performance bond, includes the life of any guarantee required by the contract. However, where the bond is supported by a negotiable instrument, rather than by surety, the supporting instrument must be returned (or the amount reduced) upon completion of the contract (See PGI 5.804[c]). The Contracting Officer may reduce or eliminate the amount of bond coverage required during warranty periods, or when contract performance is substantially complete, if it would not adversely impact the subcontractors, suppliers, or FDIC.

5.804(b) RESERVED

5.804(c) Adequate Security in Lieu of Sureties

(1) *Types of Security:* The contractor may deposit any of the types of security listed in this section in lieu of furnishing corporate or individual sureties on performance and payment bonds. When any of those types of security are deposited, a statement must be incorporated in the bond form pledging the security. When the contractor pledges assets instead of providing a surety bond, the supplier must complete the bond form as principal, and the bond form must describe the assets pledged. Other forms of acceptable securities include:

- United States bonds or notes with a maturity date less than five years from the date of the contract, together with an agreement authorizing collection or sale in the event of default. The par value of the bonds or notes must be at least equal to the penal amount of the bond; and
- A certified check, cashier's check, bank draft, postal money order, or currency. The deposit must be at least equal to the penal amount of the surety bond, and payable solely to the order of FDIC.

(2) *Safeguarding*: The Contracting Officer must coordinate bond receipt with the FDIC Division of Finance (DOF), Cash Management, which safeguards payment or performance bonds during contract performance. Upon direction of the Contracting Officer, DOF returns the bond(s) to the contractor when the bond obligation has ceased. DOF maintains an inventory of all deposited bonds supporting FDIC contracts.

(3) *Contract Completion:* Upon contract completion, the contractor's funds must be returned as soon as possible, unless the Contracting Officer determines that part or all of the account is required to compensate FDIC for costs it incurs as a result of the contractor's delay, default, or failure to perform. In such a case, the entire account must be available to compensate FDIC.

5.804(d) Information and Notice to Sureties

The Contracting Officer has an obligation to keep sureties, subcontractors, and suppliers informed as to activities under the contract, as specified in the performance or payment bond.

5.805 Insurance

5.805(a) Insurance Requirements

The amount of coverage required is determined jointly by the Program Office and the Contracting Officer, based upon an analysis of the risk of loss involved in the contract. As a general rule of thumb, for contracts with a value of $100,000 or more, the policy limits per occurrence/incident should be: $100,000 for workers' compensation insurance, $5,000,000 for general liability insurance, and $1,000,000 for automobile liability insurance.

5.805(b) RESERVED

5.805(c) Evidence of Insurance

Unless otherwise granted an extension of time for submission by the Contracting Officer, the contractor must provide the Contracting Officer with certificates of insurance no later than ten (10) days after execution of the contract. The Contracting officer must ensure that the certificates:

(1) Are issued by the insurance company;

(2) State that the required insurance is currently in force;

(3) Contain a statement that the insurers give thirty (30) days advance notice of cancellation to the Contracting Officer; and

(4) Name FDIC as an additional insured on the contractor's comprehensive bodily injury and property damage liability insurance, and automobile public liability and property damage insurance policies for contracts with a value of $100,000 or more.

Should required insurance be cancelled, FDIC has the right to procure such insurance and the cost thereof is deducted from monies then due, or which thereafter become due, to the contractor. A contractor may carry any additional insurance it may deem necessary. The contractor is not relieved of any responsibility by the fact that the contractor carries insurance.

Other evidence of insurance the Contracting Officer may obtain from the Contractor includes a binder or a copy of the original insurance policy.

5.806 RESERVED

5.807 Prescriptions for Provisions and Clauses

Contracting Officers must insert the following provisions and clauses as required:

7.5.8-1 Liability Insurance - insert clause in all awards over $100,000.

7.5.8-2 Certificates of Insurance - insert clause in awards over $100,000.

7.5.8-3 Insurance for Equipment/Tools - insert clause in construction contracts and other contracts in which the contractor will use its equipment, tools, supplies, or materials on FDIC premises.

7.5.8-4 Notice to the FDIC on Damages - insert clause in awards over $100,000.

7.5.8-5 Cost of Insurance - insert clause in awards over $100,000.

7.5.8-6 Payment and/or Performance Bonds - insert clause in construction contracts valued at or above $100,000.

7.5.8-7 Fidelity Bond Coverage - insert clause in all awards when the program office informs the Contracting Officer that coverage is necessary.

7.5.8-8 RESERVED

7.5.8-9 Errors and Omissions Insurance - insert clause in awards when the program office informs the Contracting Officer that coverage is necessary.

7.5.8-10 RESERVED

7.5.8-11 Liability to Third Persons - insert clause in all awards.

7.5.8-12 Pledge of Assets - insert clause in all awards when an individual surety is required as a term of the contract.

PGI Chapter 5.9 Taxes

5.901 Scope

This chapter provides the procedures, guidance and information for FDIC Contracting Officers and Program Offices regarding federal, state and local taxes and duties.

5.902 RESERVED

5.903 Tax Procedures

5.903(a) Tax Exemption

The invoice a contractor presents to FDIC, for the goods or services it directly provides FDIC under its contract, is not subject to sales tax due to the tax-exempt status of FDIC. Any sales tax that is charged by a contractor on an invoice is to be deducted from the amount approved for payment. If a contractor needs proof of the tax-exempt status of FDIC, the Contracting Officer provides the contractor with the *State Sales Tax Exemption Certificate* found at http://fdic01/division/dof/financial/taxpolicy/state_certificates/index.html or a completed SF-1094, *U.S. Tax Exemption Form*.

When contractors purchase goods or services to use in performance of an FDIC contract, they generally have to pay the taxes assessed on the goods or services because they cannot claim tax-exempt status by virtue of the fact they are performing work for FDIC. Some jurisdictions may extend the FDIC tax-exemption to contractors, depending on the nature of the transaction. In that event, contractors should take advantage of all available exemptions. When there is a basis for claiming a tax exemption (the taxing authority has indicated a willingness to exempt the specific goods or services from tax), the Contracting Officer provides the forms addressed in the previous paragraph.

5.903(b) Legal Division, Contracts Law Unit Assistance

Issues related to the sales tax exempt status of FDIC are essentially legal in nature and can vary widely. The Contracting Law Unit (CLU) should be contacted for assistance with tax questions that arise related to a contract.

Questions as to how the tax law may affect offerors and contractors themselves are outside the purview of CLU. They should be referred to their own legal counsel, not to CLU.

5.904 Prescriptions for Provisions and Clauses

Contracting Officers must insert the following provisions and clauses as required:

7.5.9-1 FDIC Exempt from Federal, State, and Local Taxes - insert clause in all awards.

PGI Chapter 5.10 Warranties

5.1001 Scope

This chapter provides procedures, guidance and information on the use of warranties by FDIC Contracting Officers and the Program Offices they support.

5.1002 RESERVED

5.1003 Warranty Procedures

The Contracting Officer generally accepts standard commercial warranties, if there is no additional cost to FDIC. Custom, modified or extended warranties generally entail additional cost to FDIC and require analysis to determine if the warranty is in the best interest of FDIC.

5.1003(a) Warranty Planning

Planning is an essential step in obtaining an effective warranty and should begin early enough to address warranty requirements during the development of the item. Therefore, consideration of warranty provisions and their impact should be included within the acquisition planning process.

5.1003(b) Warranty Analysis

The analysis to determine whether to use a custom, modified or extended warranty should examine the goods or services total costs, both with and without a warranty. Where possible, a comparison should be made with the costs of obtaining and enforcing warranties for similar goods and services. The Contracting Officer should consider the criteria addressed in 5.1004 below when determining if a warranty is in the best interest of FDIC, and document the results of the analysis in the official contract file.

5.1004 Criteria for Use of Warranties

The Program Office and Contracting Officer must consider the following in their analysis:

5.1004(a) Nature and Use of the Goods or Services

This includes such factors as:

(1) Complexity and function;
(2) Degree of development;
(3) State of the art;
(4) End use;
(5) Difficulty in detecting defects before acceptance; and
(6) Potential harm to FDIC if the item is defective.

5.1004(b) Cost

Warranty costs arise from:

(1) The contractor's charge for accepting the deferred liability created by the warranty; and
(2) FDIC administration and enforcement of the warranty.

5.1004(c) Administration and Enforcement

The ability of FDIC to enforce the warranty is essential to the effectiveness of any warranty. The Program Office, after consultation with the Contracting Officer, must assure that an adequate administrative system for reporting defects exists or can be established. The adequacy of a reporting system may depend upon such factors as the:

(1) Nature and complexity of the item;
(2) Location and proposed use of the item;
(3) Storage time for the item;
(4) Distance of the customer from the source of the item;
(5) Difficulty in establishing existence of defects; and
(6) Difficulty in tracing responsibility for defects.

5.1004(d) Trade Practice

In many instances an item is customarily warranted in the trade, and as a result of that practice, the cost of an item to FDIC is the same whether or not a warranty is included. In those instances, it would be in the best interest of FDIC to include such a warranty.

5.1004(e) Reduced Quality Assurance Requirements

The contractor's charge for assumption of added liability may be partially, or completely, offset by reducing FDIC contract quality assurance requirements where the warranty provides adequate assurance of a satisfactory product.

5.1005 Custom Warranty Clauses

Custom warranty clauses will likely result in a higher contract price, where terms substantially differ from those typically offered by contractors. The Contracting Officer (in conjunction with the Program Office and the Contracting Law Unit, in analyzing whether a special warranty clause is appropriate, must consider the standard market practices for each commodity, as well as the costs and benefits to FDIC when making that decision. The decision to include a special warranty clause must be approved by the respective ASB Assistant Director.

5.1006 Warranty Implementation Procedures

Any contract that contains a warranty clause must include:

(1) Identification of the specific goods or services covered by the warranty;

(2) Implementation procedures, including warranty notification content and procedures,

(3) Identification of the individuals responsible for implementation of warranty provisions;

(4) Warranty period, including:

- What constitutes the start of the warranty period, e.g., delivery, acceptance, in-service date;
- The ending of the warranty, e.g., passing a test or demonstration, or operation without failure for a specified time period; and
- Circumstances requiring an extension of the warranty, e.g., extending the warranty period as a result of mass defect correction during warranty period;

(5) Responsibility for shipping or transportation costs;

(6) Conditions not covered by the warranty; and

(7) Any limitation on contractor liability.

5.1007 Notification of Deficiencies

The Oversight Manager must immediately notify the Contracting Officer and contractor of any deficiencies in material or workmanship of delivered items, and whether the contract contains a warranty or maintenance clause. In addition, the Oversight Manager must monitor response and repair times as stipulated in the contract.

5.1008 Prescriptions for Provisions and Clauses

Contracting Officers must insert the following provisions and clauses as required:

7.5.10-1 Warranty of Construction - insert clause in all construction awards.

7.5.10-2 Guarantees - insert clause in all construction awards.

PGI Chapter 5.11 Labor Laws - Service Contract Act and Davis Bacon Act

5.1101 Scope

This chapter provides the procedures, guidance and information to support FDIC Contracting Officers and other officials in implementing the Service Contract Act (SCA) of 1965 and the Davis-Bacon Act (DBA).

5.1102 Definitions

Wage Determination – A determination of minimum wages or fringe benefits made under sections 2(a) or 4(c) of the SCA (41 U.S.C. 351(a) or 353(c)) applicable to the employment in a given locality of one or more classes of service employees.

Additional definitions for terms associated with the SCA are detailed in 29 CFR Part 4 and 5, which is available at http://www.access.gpo.gov/nara/cfr/waisidx_06/29cfrv1_06.html.

5.1103 Service Contract Act Procedures

5.1103(a) Service Contract Act Application

The SCA prescribes wage rates and benefits by locality and through collective bargaining agreements. Examples of non-professional services subject to the SCA are:

(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.

5.1103(b) Service Contract Act Exemptions

There are a number of exemptions to the SCA's application, both in the statute and the regulations.

Statutory exemptions include:

(1) Contracts entered into by FDIC in its receivership capacity;

(2) Contracts for construction, alteration, or repair of public buildings or public works subject to the DBA;

(3) Contracts for supplies subject to the Walsh-Healey Public Contracts Act;

(4) Transportation contracts governed by published tariff rates;

(5) Contracts for telecommunications services subject to the Communications Act;

(6) Contracts for public utility and postal operations services; and

(7) Employment contracts for direct services to a federal agency by an individual or individuals.

Regulatory exemptions (found at 29 CFR Part 4) include:

(1) Bona fide executive, administrative, and professional positions. Professional positions are narrowly defined as the traditional professions, i.e., doctors, accountants, lawyers, and teachers (29 CFR 541);

(2) Certain computer-related professional positions. Exempt within this group are computer engineers, program designers and other persons who perform original, non-repetitive tasks; and

(3) Contracts for the maintenance, calibration, or repair of:

- Automated data processing equipment and office information or word processing equipment;
- Certain scientific and medical equipment; and
- Office or business machines not otherwise exempted, where the manufacturer or supplier of the equipment performs the services. (29 CFR 4.123(e)(i)).

The Contracting Law Unit should be contacted for further guidance on SCA exemptions.

5.1103(c) Service Contract Act Wage Determinations

(1) When the SCA applies to an acquisition, the Contracting Officer must seek a wage determination from the Department of Labor (DOL), Wage and Hour Division for each labor category that falls under the SCA. The wage determination must be obtained prior to:

- Issuing a request for proposal (RFP);
- Commencement of negotiations, if not obtained prior to issuance of the RFP;
- Exercise of option or contract extension;
- Changes in scope that significantly affect the labor requirements of the award; and
- The biennial anniversary date of a multi-year contract.

Guidelines for the application of the SCA and obtaining wage determinations are on the DOL SCA website at http://www.dol.gov/compliance/laws/comp-sca.htm.

(2) The Contracting Officer can obtain locality wage determinations using either of the following methods:

- Accessing the DOL Wage Determinations OnLine (WDOL) website at www.wdol.gov to select the wage determination that applies to the non-professional service categories in the procurement; or
- Submitting an e98, *Notice of Intention to Make a Service Contract and Response to Notice*, and describing the proposed contract and the occupations expected to be employed on the contract. The e98 is an option on the www.wdol.gov home page, and the system uses queries to walk the user through the process. The system assigns a unique serial number to the e98 linking it to the request. It also amends the response if the applicable wage determination is revised. It is important to provide the correct email address and other information requested on the e98 request.

(3) If there is no wage determination and the existing contract is being performed by service employees under an established collective bargaining agreement, and if the successor's contract is 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.

5.1103(d) Revised Service Contract Act Wage Determinations

The Contracting Officer is required to monitor revisions to wage determinations, and does so by signing up for the WDOL "Alert Service."

Any revision to a wage determination that is published in the WDOL SCA database prior to the date of award (or the date of a specified modification having the effect of a new award) is the effective wage rate for the contract. Any revision to a wage determination that is published in the WDOL SCA database after the date of award, but before work commences, does not establish the effective wage rate, provided that contract performance commences within thirty (30) days of the award date. However, if contract performance does not commence until thirty (30) days after award (or the specified

modification), then any revised wage determination published in the WDOL SCA database at least ten (10) days prior to the date work commences is the effective wage rate for the contract.

5.1103(e) Adding New Labor Categories

If it is discovered that the most current, applicable wage determination covering the appropriate locality, occupations, types of services and fringe benefit levels for the service(s) to be performed was not included in the contract, the Contracting Officer must ensure that the applicable wage determination is added to the contract through a modification.

5.1103(f) Modifications and Requests for Equitable Adjustment

Issuance of a new wage determination requires that the Contracting Officer issue a modification to formally incorporate the new or revised rates into the contract. Revised wage determinations are issued at the time of exercise of any options periods. A new wage determination must be requested and incorporated into the contract on the anniversary date of a two-year contract (at the end of the first year of performance) and each two-year anniversary of a multi-year contract.

When a 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, the Contracting Officer must give any request reasonable consideration.

As a general benchmark, the contractor's labor rates are only 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 is only increased by $.08. Labor rate adjustments apply only to direct labor costs and not to general and administrative and profit.

5.1103(g) FDIC Purchase Card Use

If a purchase subject to the SCA is made under the FDIC Purchase Card Program, the cardholder must obtain a wage determination and provide it to the contractor; see Appendix C, *FDIC Purchase Card (P-Card) Guide*.

5.1103(h) Contracts in Both Corporate Capacity and Receivership Capacity

For contracts entered into by FDIC acting in both its corporate capacity and its receivership capacity, the Contracting Officer must segregate the services and inform offerors that the SCA wage determination applies only to services performed for FDIC in its corporate capacity.

5.1104 Davis-Bacon Act Procedures

When the DBA applies to an acquisition, the Contracting Officer must seek a wage determination from the DOL, Wage and Hour Division for each labor category that falls under the DBA and provide it to potential offerors in the solicitation. Wage determinations are available on line at http://www.wdol.gov/.

5.1104(a) Davis-Bacon Act Application

The DOL is responsible for issuing wage determinations reflecting prevailing wages, including fringe benefits for workers who work on construction, alteration or repair of public buildings or public works. The wage determinations apply only to those laborers and mechanics employed by a contractor upon the site of the work; this includes drivers who transport materials or equipment used in the course of contract operations to or from the site. Determinations are issued for different types of construction, such as building, heavy, highway, and residential (referred to as rate schedules), and apply only to the types of construction designated in the determination.

5.1104(b) Exemptions

The DBA does not apply to:

(1) Construction work which is incidental to the furnishing of supplies, equipment, or services; or

(2) Work which is so merged with non-construction work it can't be segregated as a separate contractual requirement.

5.1104(c) Davis-Bacon Act Wage Determinations

The Contracting Officer must incorporate the appropriate wage determinations in solicitations and contracts and must designate the work to which each determination or part thereof applies. When exercising an option to extend the term of a contract, the Contracting Officer must select the most current wage determination(s) from the same schedule(s) as the wage determination(s) incorporated into the contract.

(1) *General Wage Determinations:* A general wage determination contains

prevailing wage rates for the types of construction designated in the determination, and is used in contracts performed within a specified geographical area. General wage determinations contain no expiration date and remain valid until modified, superseded, or canceled by the DOL. Once incorporated in a contract, a general wage determination normally remains effective for the life of the contract, unless the Contracting Officer exercises an option to extend the term of the contract. These determinations must be used whenever possible. They are issued at the discretion of the DOL either upon receipt of an agency request or on the DOL's own initiative.

General wage determinations are published on the WDOL website. General wage determinations are effective on the publication date of the wage determination or upon receipt of the wage determination by the contracting agency, whichever occurs first. Archived DBA general wage determinations that are no longer current may be accessed in the "Archived DB WD" database on WDOL for information purposes only. Contracting Officers may not use an archived wage determination in a contract action without obtaining prior approval of the DOL. To obtain prior approval, the DOL, Wage and Hour Division should be contacted using http://www.dol.gov/whd/.

(2) *Project Wage Determinations:* A project wage determination is issued at the specific request of a contracting agency. It is used only when no general wage determination applies, and is effective for one hundred eighty (180) calendar days from the date of the determination. However, if a determination expires before contract award, it may be possible to obtain an extension to the one hundred eighty (180)-day life of the determination. Once incorporated in a contract, a project wage determination remains effective for the life of the contract, unless the Contracting Officer exercises an option to extend the term of the contract, and the wage determination has been revised.

(3) With a general wage determination, or a project wage determination containing more than one rate schedule, the Contracting Officer must either include only the rate schedules that apply to the particular types of construction (building, heavy, highway, etc.) or include the entire wage determination and clearly indicate the parts of the work to which each rate schedule is applied. Inclusion by reference is not permitted.

5.1104(d) Revised Davis-Bacon Act Wage Determinations

Each time the Contracting Officer exercises an option to extend the term of a contract for construction, or a contract that includes substantial construction work that can be segregated from other work under the contract, the Contracting Officer must modify the contract to incorporate the most current wage determination.

5.1104(e) Modifications and Requests for Equitable Adjustment

When the new or revised wage determination is incorporated into the contract, the contractor is entitled to submit a request for equitable price adjustment. If the contractor

does not formally request an equitable adjustment, the Contracting Officer is not required to increase the contract price as a result of a revised wage determination. However, the Contracting Officer must give any request reasonable consideration.

5.1104(f) FDIC Purchase Card Use

If a purchase subject to the DBA is made under the FDIC Purchase Card Program, the cardholder must obtain a wage determination and provide it to the contractor; see Appendix C, *FDIC Purchase Card (P-Card) Guide*.

5.1105 Prescriptions for Provisions and Clauses

Contracting Officers must insert the following provisions and clauses as required:

7.5.11-1 Service Contract Act of 1965 - insert in service contracts over $2,500 entered into by FDIC in its corporate capacity where the principal purpose of the contract is to furnish services through "service employees," as defined in subparagraph (k) of the clause.

7.5.11-2 Davis Bacon Act - insert clause in awards over $ 2,000 for construction, alterations, or repair (including painting and decorating) of public buildings or public works within the United States.

7.5.11-3 Contract Work Hours and Safety Standards Act Overtime Compensation - insert clause in all construction contracts over $100,000, and any other contract over $100,000 where laborers and mechanics are used.

7.5.11-4 Payrolls and Basic Records - insert clause in all construction awards over $2,000.

7.5.11-5 Apprentices and Trainees - insert clause in all construction awards over $2,000.

7.5.11-6 Compliance with Copeland Act Requirements - insert clause in all construction awards over $2,000.

7.5.11-7 Subcontracts (Labor Standards) - insert clause in construction awards over $2,000.

7.5.11-8 Contract Termination – Debarment - insert clause in construction awards over $2,000.

7.5.11-9 Compliance with Davis-Bacon and Related Act Regulations - insert clause in construction awards over $2,000.

7.5.11-10 Disputes Concerning Labor Standards - insert clause in construction awards over $2,000.

7.5.11-11 Certification of Eligibility - insert clause in construction awards over $2,000.

7.5.11-12 Withholding of Funds - insert clause in construction awards over $ 2,000.

7.5.11-13 Notice to the FDIC of Labor Disputes - insert clause in all construction awards.

7.5.11-14 RESERVED

PGI Chapter 5.12 Buy American Act; Trade Agreements Act of 1979

5.1201 Scope

This chapter provides procedures, guidance and information for Contracting Officers and other officials in implementing the Buy American Act (BAA) and the Trade Agreements Act (TAA) of 1979, as well as the related agreements in FDIC acquisitions. The information in this chapter is intended to assist the Contracting Officer in determining the applicability of the BAA and TAA to an acquisition. It also provides links to additional relevant information that must be considered when (1) evaluating purchases under these acts, and (2) determining if there are other requirements, purchase restrictions or prohibitions that must be considered when acquiring foreign goods or services.

5.1202 Definitions

Component – An article, material, or supply incorporated directly into an end product.

Commercially available off-the-shelf (COTS) item – Means any item of supply (including construction material) that is a commercial item; sold in substantial quantities in the commercial marketplace; and offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and does not include bulk cargo, such as agricultural products and petroleum.

Construction Material – An article, material, or goods brought to the construction site by a contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material, regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the government are supplies, not construction material.

End Product – Those articles, materials, and supplies to be acquired for public use.

United States – The fifty (50) states of the United States, the District of Columbia, and outlying areas.

United States-Made End Product – An article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new

and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

World Trade Organization Government Procurement Agreement (WTO GPA) Country – Any of the following countries: Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, or the United Kingdom.

WTO GPA Country End Product – An article that:

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a goods contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Note: More definitions relating to the BAA and TAA may be found at 48 CFR Part 25 (http://www.access.gpo.gov/nara/cfr/waisidx_07/48cfr25_07.html).

5.1203 Buy American Act 41 USC §10a - 10d et seq Procedures

5.1203(a) Limiting Factors to Application of the Buy American Act

There are several factors that limit the application of the BAA to FDIC awards. These are:

(1) *Statutory Exceptions:*

- The FDIC Chairman finds this restriction would be “inconsistent with the public interest,” This exception applies when an agency has an agreement with a foreign government that provides a blanket exception to the BAA. This determination is made at the highest level of the corporation, and currently there are no public interest exceptions for the FDIC.
- The cost would be “unreasonable”, or
- The articles, materials, or supplies, either as end items or components, are not mined, produced, or manufactured in the United States in

sufficient and reasonably available commercial quantities and of a satisfactory quality.

(2) *Suspension of the BAA for Information Technology Commercial Items:* United States Government appropriations law, as enacted since 2004, suspends application of the BAA to the acquisition of information technology that is a commercial item. This exception is likely to continue into the foreseeable future.

(3) *Waiver of BAA Requirements:* Application of the BAA to an FDIC acquisition is waived when a Free Trade Agreement (FTA) applies to the acquisition (see discussion of the TAA of 1979 below).

5.1203(b) Contracting Officer Responsibilities

The Contracting Officer must document the official contract file when any of the following exceptions to the BAA apply, or other factors addressed above limit the applicability of the BAA to FDIC requirements:

(1) *Inconsistent with the Public Interest: W*hen determined that adherence to the BAA is inconsistent with the public interest, the determination must be signed by the FDIC Chairman. See 5.1203(a)(1) above for guidance.

(2) *Unreasonable Cost:* The Contracting Officer must evaluate the cost of offers using the procedures and evaluation factors discussed in the BAA Cost Reasonableness Evaluation Template found on the ASB website at https://fdicnet.fdic.gov/content/doa/home/buying/acq_docs.html;

(3) *Class or Individual Non-availability Determinations:* A determination has been made that certain items are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality to be considered United States made. This list is found at 48 CFR Part 25 (http://edocket.access.gpo.gov/cfr_2007/octqtr/48cfr25.104.htm). The Division of Administration Director may make an individual determination of non-availability on a case-by-case basis.

5.1204 Trade Agreements Act of 1979 – 19 USC 2501 et seq. Procedures

The WTO GPA and other FTAs (such as the North American Free Trade Agreement (NAFTA) and the Central American Free Trade Agreement (CAFTA)) apply to contracts for goods, services and construction and they apply to FDIC when it contracts in its corporate capacity only. The following information is intended to assist the Contracting Officer and Program Office in determining whether the TAA applies to a particular acquisition.

5.1204(a) Trade Agreements Act Exemptions

Certain methods of acquisition are exempt from application of the TAA. The exemptions are:

(1) Acquisitions set aside for small businesses;

(2) Acquisitions from Federal Prison Industries and acquisitions from nonprofit agencies employing people who are blind or severely disabled;

(3) Acquisitions not using full and open competition where the limitation of competition would preclude use of TAA procedures;

(4) Sole source acquisitions; or

(5) Acquisitions of arms, ammunition, or war materials; or national security or national defense purchases.

5.1204(b) Trade Agreements Act Dollar Thresholds

There are different dollar thresholds that trigger application of the WTO GPA and the other FTAs to the various types of contracts, and certain types of goods, services and construction are exempt from coverage (see Table 5).

Table 5. Trade Agreements Act Dollar Thresholds

Trade Agreement	Goods Contract (equal to or exceeding)	Service Contract (equal to or exceeding)	Construction Contract (equal to or exceeding)
WTO GPA	$180,000	$180,000	$6,932,000
FTAs			
Australia FTA	$80,317	$80,317	$6,932,000
Bahrain FTA	$180,000	$180,000	$10,441,216
CAFTA-DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	$80,317	$80,317	$6,932,000
Chile FTA	$80,317	$80,317	$6,932,000
Columbia FTA	$80,317	$80,317	$6,932,000
Korea FTA	$100,000	$100,000	$6,932,000
Morocco FTA	$180,000	$180,000	$6,932,000

Trade Agreement	Goods Contract (equal to or exceeding)	Service Contract (equal to or exceeding)	Construction Contract (equal to or exceeding)
NAFTA			
—Canada	$25,000	$80,317	$10,441,216
—Mexico	$80,317	$80,317	$10,441,216
Oman FTA	$180,000	$180,000	$10,441,216
Panama FTA	$180,000	$180,000	$6,932,000
Peru FTA	$180,000	$180,000	$6,932,000
Singapore FTA	$80,317	$80,317	$6,932,000
Israeli Trade Act	$50,000	—	—

Source: FAR Part 25.402

5.1204(c) Contracts for Goods

If the request for proposal (RFP) is for a goods contract, the Contracting Officer must determine if:

(1) The contract is above a dollar threshold that triggers the TAA; and

(2) The good is of a type covered by the TAA using the listing found on the ASB website at https://fdicnet.fdic.gov/content/doa/home/buying/acq_docs.html. Acquisitions of goods not found on this listing are excluded from coverage by the United States schedule of the WTO GPA or an FTA.

5.1204(d) Contracts for Services

If the RFP is for a service contract, the Contracting Officer must determine if:

(1) The contract is above a dollar threshold that triggers the TAA; and

(2) The particular service is covered by the TAA. Acquisitions of the services found in Table 6 are excluded from coverage by the United States schedule of the WTO GPA or an FTA as indicated in Table 6.

Table 6. Excluded Services

	THE SERVICE (FEDERAL SERVICE CODES FROM THE FEDERAL PROCUREMENT DATA SYSTEM PRODUCT/SERVICE CODE MANUAL ARE INDICATED IN PARENTHESES FOR SOME SERVICES.)	WTO GPA AND KOREA FTA	BAHRAIN, FTA, CAFTA-DR, CHILE FTA, COLOMBIA FTA, NAFTA, OMAN FTA, PANAMA FTA, AND PERU FTA	SINGAPORE FTA	AUSTRALIA AND MOROCCO FTA
(1)	All services purchased in support of military services overseas.	X	X	X	X
(2)	(i) Automatic data processing (ADP) telecommunications and transmission services (D304), except enhanced (*i.e.,* value-added) telecommunications services.	X	X		
	(ii) ADP teleprocessing and timesharing services (D305), telecommunications network management services (D316), automated news services, data services or other information services (D317), and other ADP and telecommunications services (D399).	X	X		
	(iii) Basic telecommunications network services (*i.e.,* voice telephone services, packet-switched data transmission services, circuit-switched data transmission services, telex services, telegraph services, facsimile services, and private leased circuit services, but not information services, as defined in 47 U.S.C. 153(24)).	*	*	X	X
(3)	Dredging.	X	X	X	X
(4)	(i) Operation and management contracts of certain government or privately owned facilities used for government purposes, including federally funded research and development centers.	X		X	
	(ii) Operation of all Department of Defense, Department of Energy, or the National Aeronautics and Space Administration facilities; and all government-owned research and development facilities or government-owned environmental laboratories.	**	X	**	X
(5)	Research and development.	X	X	X	X
(6)	Transportation services (including launching services, but not including travel agent services - V503).	X	X	X	X
(7)	Utility services.	X	X	X	X
(8)	Maintenance, repair, modification, rebuilding and installation of equipment related to ships (J019).		X		X
(9)	Non-nuclear ship repair (J998).		X		X

* Note 1. Acquisitions of the services listed at (2)(iii) of this table are a subset of the excluded services at (2)(i) and (ii), and are therefore not covered under the WTO GPA.

** Note 2. Acquisitions of the services listed at (4)(ii) of this table are a subset of the excluded services at (4)(i), and are therefore not covered under the WTO GPA.

Source: FAR 25.401

For services not found in the above table, consult the corresponding descriptions of services by class in the Central Product Classification (CPC) of the United Nations, Statistical Division to determine if the required services are listed (see http://unstats.un.org/unsd/cr/registry/regcst.asp?Cl=17). If the service is not in the CPC, this means that the service is not one that is covered by the TAA.

5.1204(e) Construction Materials and Services

If the RFP is for construction materials and services, the Contracting Officer must determine if:

(1) The contract is above a dollar threshold that triggers the TAA; and

(2) The particular services are covered by the TAA. Consult the following to assist in making this determination.

- Construction services category in the WTO GPA's Universal List of Services found on the ASB website at https://fdicnet.fdic.gov/content/doa/home/buying/acq_docs.html; and
- Corresponding descriptions of services by class in the CPC of the United Nations, Statistical Division found at http://unstats.un.org/unsd/cr/registry/regcst.asp?Cl=17.

If the services are not found in either listing, this means that the service is not one that is covered by the TAA.

5.1204(f) Trade Agreements Act Requirements for Solicitations

If the TAA applies to an acquisition, the Contracting Officer, among other things, must:

(1) Advise offerors in the RFP that the TAA applies to the acquisition;

(2) Post the solicitation on FedBizOpps and allow offerors forty (40) days to submit offers;

(3) Specify in the RFP that proposals must be submitted in the English language and using United States currency for quotations; and

(4) Notify unsuccessful offerors from WTO GPA countries and other FTA countries, who won the award and the amount of the winning offer.

5.1205 RESERVED

5.1206 Prescriptions for Provisions and Clauses

Contracting Officers must insert the following provisions and clauses as required:

7.5.12-1 Buy American – Supplies - insert clause 7.5.12-1*, Buy American - Supplies*, in all solicitations and awards [Corporate Capacity only] for supplies over $10,000 (micro purchase threshold) but not exceeding $25,000; and in solicitations and awards over $25,000 if neither of the clauses at 7.5.12-3 and 7.5.12-5 apply. Do not insert the clause if an exception to the Buy American statute applies (e.g., non-availability, public interest or information technology that is a commercial item).

7.5.12-2 Buy American Certificate - insert provision 7.5.12-2, *Buy American Certificate*, in solicitations containing the clause at 7.5.12-1.

7.5.12-3 Buy American -Free Trade Agreements-Israeli Trade Act - insert clause 7.5.12-3, *Buy American - Free Trade Agreements - Israeli Trade Act*, in all solicitations and awards [Corporate Capacity only] for supplies, or for services involving the furnishing of supplies, in which the acquisition value is $25,000 or more but is less than $180,000, **except** if the acquisition is for information technology that is a commercial item.

7.5.12-4 Buy American– Free Trade Agreements- Israeli Trade Act Certificate - insert provision 7.5.12-4, *Buy American - Free Trade Agreements - Israeli Trade Act Certificate*, in all solicitations containing the clause at 7.5.12-3.

7.5.12-5 Trade Agreements - insert clause 7.5.12-5, *Trade Agreements*, in all solicitations and awards [Corporate Capacity only] valued at $180,000 or more, if the acquisition is covered by the World Trade Organization-Government Procurement Agreement.

7.5.12-6 Trade Agreements Certificate - insert clause 7.5.12-6, *Trade Agreements Certificate*, in all solicitations containing the clause at 7.5.12-5.

7.5.12-7 Restrictions on Certain Foreign Purchases - insert in awards by FDIC in its corporate capacity, unless an exception applies.

PGI Chapter 5.13 Contract Payment

5.1301 Scope

This chapter provides procedures, guidance and information for Contracting Officers and other stakeholders concerning the approval and processing of contract payments.

5.1302 RESERVED

5.1303 Contract Payment Procedures

The following procedures apply to payments under FDIC contracts.

5.1303(a) RESERVED

5.1303(b) Performance-Based Payments

(1) *Establishing Performance Basis*: The basis for performance-based payments may be either specifically described events (e.g., milestones) or some measurable criterion of performance.

(2) *Payment Schedule and Amounts*: The Contracting Officer must establish a complete, fully-defined schedule of events or performance criteria, and payment amounts when negotiating contract terms. If a contract change significantly affects the event or performance criterion, the Contracting Officer must consider the need to adjust the payment schedule and amounts, and modify the contract appropriately.

5.1304 Invoices

5.1304(a) Submission of Invoices

Invoices must be prepared in strict accordance with Clause 7.5.13-13 *Content of Invoice* or the invoice is rejected. The preferred method for submission of invoices is electronic. The procedures for electronic invoice submission are contained in clause 7.5.13-14 *Electronic Invoice Preparation and Submission (CORHQ Business Unit) and* clause 7.5.13-15 *Electronic Invoice Preparation and Submission (CORFD/RECVR/SUBD).* However, for awards in support of Division of Insurance and Research (DIR) Center for Financial Research (CFR) Visiting Scholars, submission of invoices may be by fax or mail, as addressed in clause *7.5.13-8 Invoice Preparation and Submission (Center for Financial Research Visiting Scholars).*

5.1304(b) Proper Invoice

Division of Finance/Disbursement Operations Unit (DOF/DOU) and the Oversight Manager must perform an initial review of an invoice to determine if it is proper under the terms of the Prompt Payment Act (PPA). If the invoice does not comply with the requirements of the PPA, it must be returned within seven (7) days of receipt with the reasons why it is not a proper invoice. Both of the reviews discussed below must be completed within seven (7) days of receipt of the invoice by DOF/DOU.

(1) *DOF/DOU:* Prior to entering an invoice into the New Financial Environment (NFE), DOF/DOU ensures the invoice includes the basic information necessary to process a payment in NFE, as required by the PPA (e.g., contractor name, invoice number, contract number, and total amount due) (see PGI 5.1305). If it is not a proper invoice per the PPA, DOF/DOU must return the invoice to the contractor or, in the case of invoices submitted in support of DIR CFR Visiting Scholars, DOF/DOU must return the invoice to the Oversight Manager who will return it to the contractor.

(2) *Oversight Manager:* Once an invoice is entered into the NFE, the Oversight Manager must perform an initial review to ensure that all information or documentation required by the contract is included. An exception to this procedure applies to invoices submitted in support of CFR Visiting Scholars, whereby DIR will receive and review the invoice prior to it being submitted to DOF/DOU and entered into NFE. In this situation, DIR's initial review must also ensure the invoice includes the basic information necessary to process a payment in NFE, as required by the PPA (e.g., contractor name, invoice number, contract number, and total amount due). In either of the above situations, the Oversight Manager must return the invoice to the contractor if the invoice does not include the documentation required by the contract.

5.1304(c) Invoice Certification

The Oversight Manager is responsible for certifying invoices in NFE within the timeframes established by the PPA and DOF/AP, and:

(1) Ensuring that all charges contained on each invoice are within the contract terms and conditions;

(2) Reviewing documentation required by the contract to ensure that it adequately supports the invoice;

(3) Ensuring that the goods or services were delivered in an acceptable manner and comply with the statement of work and other technical requirements of the contract;

(4) Monitoring total payments to the contractor to ensure that they do not exceed the contract ceiling;

(5) Ensuring invoices comply with FDIC contractor travel reimbursement

guidelines, when travel is a reimbursable cost under the contract (see DOF Travel page at http://fdic01/division/dof/travel/regulartravel/appendices/apndx_J.html);

(6) Working with contractors to resolve issues; and

(7) Certifying invoices within the timeframes established by the PPA and DOF/AP.

5.1304(d) RESERVED

5.1304(e) Fixed Price Invoices

Under fixed price contracts, the FDIC pays agreed upon fixed amounts, and therefore review of supporting documentation, such as timesheets and, subcontractor invoices, is not required.

5.1304(f) Time and Material/Labor Hour Invoices

FDIC pays contractor costs that are allowable by the terms of the contract and are reasonable in nature and amount. In this regard, the contractor is compensated for actual productive work hours, exclusive of travel time, vacation, holiday, sick leave, or other absences. In addition, the contractor is compensated for other contract costs, including materials and travel that are delivered in accordance with the terms and conditions of the contract, and have been determined to be fair, reasonable, and necessary.

5.1304(g) Taxes

Guidance on taxes may be found at APM 5.9 and PGI 5.9.

5.1305 Prompt Payment Act

Payment must be based on receipt of a proper invoice and satisfactory contract performance. Generally, invoices must be paid within thirty (30) calendar days of receipt, unless the invoice is determined to be unacceptable. The 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.

5.1306 Prescriptions for Provisions and Clauses

Contracting Officers must insert the following provisions and clauses as required:

7.5.13-1 Method of Payment – Electronic Funds Transfer (EFT) - insert clause in all awards.

7.5.13-2 Method of Payment – Third Party - insert clause in awards where the Contracting Officer determines payments will be made by purchase card.

7.5.13-3 Payments Under Labor-Hour Awards - insert clause in labor hour awards.

7.5.13-4 Payments Under Time and Material Awards - insert clause in time and material awards.

7.5.13-5 Payment Under Fixed Price Awards - insert clause in awards where the Contractor is paid on a fixed price basis for goods or services.

7.5.13-6 Compensation Ceiling - Contract or Task Order - insert clause in awards for contracts or task orders using labor hour, time and material, and/or fixed-unit-price pricing arrangements.

7.5.13-7 Compensation Ceiling – BOA or BPA - insert clause in all BOA and BPA awards. Do not insert in RBOAs.

7.5.13-8 Invoice Preparation and Submission (Center for Financial Research – Visiting Scholars Program) - insert clause in awards issued to support the DIR Center for Financial Research-Visiting Scholars Program.

7.5.13-9 Travel Expenses (Non-Reimbursable) - insert clause for awards in which travel expenses will NOT be reimbursed.

7.5.13-10 Travel Expenses (Reimbursable) - insert clause in awards in which travel expenses will be reimbursed.

7.5.13-11 Fees and Expenses of Subcontractors - insert clause in awards where subcontractor fees and expenses WILL BE reimbursed.

7.5.13-12 Schedule for Invoicing - insert clause in all awards.

7.5.13-13 Content of Invoice - insert clause in all awards.

7.5.13-14 Electronic Invoice Preparation and Submission (CORHQ Business Unit) - insert clause in awards issued under CORHQ business unit.

7.5.13-15 Electronic Invoice Preparation and Submission (CORFD/RECVR/SUBSD) - insert clause in awards assigned a CORFD, RECVR, OR SUBSD business unit.

7.5.13-16 RESERVED

7.5.13-17 Right to Offset Contract Payment Against Delinquent Obligations - insert clause in all awards.

7.5.13-18 Prompt Payment - insert clause in awards by FDIC in its corporate capacity.

PGI Chapter 5.14 Protests, Claims, Disputes, and Appeals

5.1401 Scope

This chapter provides the procedures, guidance, and information on protests, claims and disputes, and their respective appeals processes. Information on solicitation protests and the related appeals is at 5.1403. Information on claims and disputes and the related appeals is at 5.1404.

5.1402 RESERVED

5.1403 Protest Procedures

5.1403(a) RESERVED

5.1403(b) Contracting Officer's Decision

Upon receiving a protest, the Contracting Officer promptly notifies the respective ASB Assistant Director and provides a copy of the protest. Within seven (7) business days after receiving the protest, the Contracting Officer:

(1) Reviews the protest;
(2) Collects all pertinent information;
(3) Prepares the decision; and
(4) Submits the decision to the Contracting Law Unit (CLU), the respective ASB Assistant Director and the ASB Deputy Director for concurrence.

After concurrence is received and within ten (10) business days from the date the protest was received, the Contracting Officer sends the decision to the protestor.

5.1403(c) Protest Appeal Process

(1) *Filing Requirements:* If the protestor disagrees with the Contracting Officer's decision, the protestor may file an appeal of the decision with the ASB Deputy Director.

The appeal must be based on the same facts and address the same issues submitted in the protest; the protestor cannot present new information or raise new issues in the appeal. The protestor submits copies of all documents pertinent to the protest, including the Contracting Officer's decision, with the appeal.

(2) *Contracting Officer's Report*: Within ten (10) business days following the ASB Deputy Director's receipt of the appeal, the Contracting Officer prepares a written report on the protest and submits it to the ASB Deputy

Director. The Contracting Officer's report contains:

- The Contracting Officer's statement of the relevant facts and the findings, determinations or conclusions;
- Documents relevant to the protest, such as:
  - The complete solicitation package and all amendments;
  - The protestor's proposal and the proposal(s) selected for award; and
  - The technical evaluation materials, price evaluation materials, the Selection Recommendation Report and similar documents.
- The status of the award, which addresses:
  - If the Contracting Officer has made an award, whether the contractor has begun performance or shipped or delivered the products or services; and
  - If the Contracting Officer has not made an award, when the Contracting Officer anticipates an award and the impact on FDIC operations if the Contracting Officer delays award until the review process is complete.
- A statement that the solicitation complied in all respects with the policies and procedures in the APM and PGI, or an explanation of any deviations from policies and procedures and the authority for the deviations;
- A CLU attorney's analysis of the legal merit of the protest; and
- Any other documents, statements, or materials that contain facts or findings that have a direct bearing on the award decision.

(3) *Deputy Director's Decision:* The ASB Deputy Director issues a decision on the protest within ten (10) business days following receipt of the Contracting Officer's report. The decision of the ASB Deputy Director is final.

5.1403(d) Protest and Appeals Procedures for Office of Inspector General Contracts

The protest and appeals procedures for Office of Inspector General (OIG) contracts are the same as described above with the following exceptions:

(1) The interested party files its appeal with the Counsel to the Inspector General;
(2) The Contracting Officer submits a written report on the protest to the Assistant Inspector General for Management and Congressional Relations;
(3) Counsel to the Inspector General performs the legal review of the protest and prepares the legal opinion of its merit; and
(4) The Assistant Inspector General for Management and Congressional Relations issues the decision on the protest within ten (10) business days

following receipt of the Contracting Officer's report. The decision of the Assistant Inspector General for Management and Congressional Relations is final.

5.1404 Claims, Disputes and Appeals Procedures

5.1404(a) RESERVED

5.1404(b) Contracting Officer's Decision

Upon receiving a claim, the Contracting Officer promptly notifies the respective ASB Assistant Director and provides a copy of the claim. Within seven (7) business days after receiving the claim, the Contracting Officer:

(1) Reviews the claim;

(2) Collects all pertinent information;

(3) Communicates with the contractor to resolve the claim;

(4) Prepares the final decision; and

(5) Submits the final decision to CLU, the respective ASB Assistant Director and the ASB Deputy Director for concurrence.

After concurrence is received and within sixty (60) days from the date the claim was received for corporate contracts and within one hundred eighty (180) days for receivership contracts, the Contracting Officer sends the final decision to the contractor.

5.1404(c) Claims Appeal Process

(1) *Filing Requirements:* If the contractor disagrees with the Contracting Officer's final decision, the contractor may file an appeal of the decision with the ASB Deputy Director.

The appeal must be based on the same facts and address the same issues submitted in the original claim; the contractor cannot present new information or raise new issues in the appeal. The contractor submits copies of all documents pertinent to the claim, including the Contracting Officer's final decision, with the appeal.

(2) *Contracting Officer's Report:* Within fifteen (15) days following the ASB Deputy Director receipt of the appeal, the Contracting Officer prepares a written report to the ASB Deputy Director on the claim. The report must have the concurrence of the respective ASB Assistant Director, and CLU. The Contracting Officer's report contains:

- The Contracting Officer's statement of the relevant facts and the findings, determinations or conclusions;

- Documents relevant to the claim, such as the awarded contract and all modifications, and the contractor's claim
- A CLU attorney's analysis of the legal merit of the claim; and
- Any other documents, statements, or materials that contain facts or findings that have a direct bearing on the claim.

(3) *ASB Deputy Director Decision:* The ASB Deputy Director issues a decision on the claim within fifteen (15) days following receipt of the Contracting Officer's report, unless the circumstances require additional time. The decision of the ASB Deputy Director is final.

If the final decision requires an equitable adjustment to the contract, the Contracting Officer coordinates with CLU and the contractor to agree to a modification or a settlement agreement.

5.1404(d) Claims and Disputes Procedures for Office of Inspector General Contracts

The claims and disputes procedures for OIG contracts are the same as described above with the following exceptions:

(1) The contractor submits its appeal of the Contracting Officer's decision to the Inspector General;

(2) The Contracting Officer sends the file and the decision to the Inspector General;

(3) The Inspector General or designee notifies the contractor of any extension of time required to render the decision;

(4) The Inspector General issues a decision on the claim within fifteen (15) days following receipt of the Contracting Officer's report, unless the circumstances require additional time. The decision of the Inspector General is final; and

(5) Counsel to the Inspector General prepares all legal analyses and settlement agreements.

5.1405 Prescriptions for Provisions and Clauses

Contracting Officers must insert the following provisions and clauses as required:

7.5.14-1 Disputes - insert clause in all awards.

7.5.14-2 Notice and Certification of Claims - insert clause in all awards.

PGI Chapter 5.15 Legal Review of Acquisition Documents and Contract Actions

5.1501 Scope

This chapter provides procedures, guidance and information on the legal review requirements for FDIC acquisition documents and actions.

5.1502 RESERVED

5.1503 Legal Review Procedures

Appendix F of the PGI is the Legal/Acquisition Participation Agreement. This Agreement establishes the standard operating procedures and defines the working relationship and interaction between ASB and the Contracts and Risk Management Unit (CRMU) of the Legal Division. The Agreement includes a list of the participant's responsibilities along with the actions and dollar thresholds that require Legal coordination.

MODULE 6: CONTRACT MANAGEMENT AND ADMINISTRATION

PGI Chapter 6.1 FDIC Automated Procurement System

6.101 Scope

This chapter provides procedures, guidance, and information for FDIC Contracting Officers and others regarding use of the FDIC Automated Procurement System (APS).

6.102 RESERVED

6.103 FDIC Automated Procurement System Procedures

6.103(a) Background

The APS is a commercial off-the-shelf software product that has been configured with minimal customization to automate the FDIC procurement process. APS is an integrated application that facilitates the creation of procurement-related documentation and provides the capability to monitor procurement activity through the procurement states of contract planning, solicitation, award, administration and closeout. The system has been integrated with the FDIC New Financial Environment to ensure proper internal controls and data sharing. APS ensures a standardized contract process and consistent contractual documents through various workflows, as well as a centralized clause library. Finally, APS, as the central repository for all contract data, provides enhanced management reporting functionality.

6.103(b) Automated Procurement System Procedures, Guidance and Information

The *APS User Guide* provides procedures, guidance, and information on the use of APS. Additional information is available on the APS website at https://aps.fdic.gov/suite/.

PGI Chapter 6.2 Contract File Management

6.201 Scope

This chapter provides procedures, guidance and information on the responsibilities of Contracting Officers and support staff, as well as Program Office personnel, in contract file management.

6.202 RESERVED

6.203 Contract File Management Procedures

6.203(a) Accessing CEFile

(1) *Requesting CEFile Access*: Guidance on requesting access to CEFile is provided in CEFile Job Aid No. 1, *How to Request Access to CEFile* (Access Request and Certification System (ARCS) Form Instructions*),* found at https://fdicnet.fdic.gov/content/dam/DOA/documents/buying/cefile/jobaid1.pdf.

(2) *Personnel Requiring CEFile Access:* CEFile access is provided to FDIC employees who require access to (1) maintain official contract files, (2) perform reviews of official contract files, or (3) perform other required procurement related functions, such as gather documents in response to Freedom of Information Act requests, etc. Table 7 below identifies the personnel within various divisions/offices that have a need to access CEFile to perform their responsibilities:

Table 7. Employees Requiring CEFile Access

Division/Office	Employees Requiring CEFile Access
Acquisition Services Branch (ASB)	- Contracting Officers - Policy and Systems Section Analysts - Special Assistant to the ASB Deputy Director - Administrative support staff
Program Offices	- Oversight Managers (OM) - Technical Monitors (TM) - Other program office personnel
Legal/Contract Law Unit	Counsel (Contracting Attorneys and Paralegals)
Office of Minority and Women Inclusion	Minority and Women-Owned Business Specialists
Division of Information Technology Information (DIT), Security and Privacy Staff	Privacy Specialists/Program Analysts
Office of Inspector General (OIG)	Audit Specialists

Division/Office	Employees Requiring CEFile Access
Division of Administration (DOA)/Management Services Branch and Division of Finance (DOF)/Corporate Management Control	Management Analysts

Individuals that submit ARCS request are requesting access to one (1) of the five (5) CEFile access groups. The groups are:

- ASB Contracting Officer;
- ASB Support;
- (Division Specific*) ACQ Oversight (Oversight Managers and Technical Monitors);
- (Division Specific*) ACQ Read and
- ACQ Auditor Read.

* Individuals in these groups will have access to all contracts within the specified division.

Each assess group has different privileges/rights associated with their use. The privileges/rights determine which function(s) the user may perform in the system and in the specific folder(s) to which they have access. For details on CEFile functionality please visit the CEFile Job Aid are located at https://fdicnet.fdic.gov/content/doa/home/buying/applications/cefile.html.

In limited circumstances, CEFile access may be granted to contractor employees, if access is required to perform their responsibilities under a contract

6.203(b) Locating Contract Files in CEFile

Guidance on locating contract files in CEFile is provided in CEFile Job Aid No. 2, *Locate Your Contract File,* found at https://fdicnet.fdic.gov/content/doa/home/buying/applications/cefile.html.

CEFile users can search for contract files using various data fields such as the contract number or contractor name. For best results, CEFile users should search for contracts using the contract number. If a contract cannot be located in CEFile, or if the contract number is not known, the CEFile user should contact the assigned Contracting Officer for assistance in locating the contract file.

6.203(c) Creating Official Contract Files in CEFile

Creating official contract files in CEFile is a function performed by Acquisition Services Branch Contracting Officers, ASB administrative staff and in some cases ASB

contractor support personnel. Guidance on establishing contract files in CEFile is provided in CEFile Job Aid B1, *Create a Request for Proposal (RFP) or Contract File in CEFile Using the RFP Number or Contract Number*, at https://fdicnet.fdic.gov/content/doa/home/buying/applications/cefile.html.

(1) *Creating RFP or Contract Files*: Contracting Officers must create the official file folder in CEFile after being assigned an approved requisition for processing. An official file must be created for each of the following:

- Purchase orders;
- Contracts;
- Multiple-award vehicles (e.g., basic ordering agreements (BOAs), blanket purchase agreements (BPAs), and receivership basic ordering agreements (RBOAs);
- Task orders awarded under single or multiple-award vehicles; and
- Delivery orders awarded against Federal Supply Schedule (FSS) contracts. Use the same language as in Module 4 (delivery order supplies, or delivery order for FSS contracts)

(2) *Multiple Awards*: Where a solicitation results in multiple awards (e.g., a BOA, BPA, or RBOA), a file must be created for the solicitation and also for each contract (i.e., BOA, BPA, or RBOA). In this case, the solicitation file serves as the 'master file' for all pre-award documentation and the other files are 'master contracts' for each individual BOA, BPA or RBOA.

6.203(d) File Folder Organization

Contracting Officers and Oversight Managers must organize and file contract documents in CEFile in accordance with the guidance set forth in CEFile Job Aid No. 5, *CEFile Documentation Checklist/Guidance,* found at https://fdicnet.fdic.gov/content/doa/home/buying/applications/cefile.html.

(1) *Folder Parts:* Contract files are created with the following standard three (3) - part folders:

- Part I: Pre-Award;
- Part II: Post-Award; and
- Part III: Oversight Manager (OM) File.

(2) ASB Contracting Officer and Administrative Support Staff File Management: The ASB staff is responsible for maintaining all file documentations in Part I and II of the file folder. The standard sub-folders are created by the system, the designated file folders are as follows:

a. Part I;

- Pre-solicitation Documentation
- RFP/RFQ/RTOP and Amendments

- Proposals and
- Evaluation Documents
  b. Part II;
- Contract and Modifications
- OM-TM Appointment Memo – The Automated Procurement System (APS) implemented the Oversight Managers Component (OMC) on December 14, 2012. APS is now the official repository for all OM/TM/TOOM appointment documentation.
- Other Contract Administration Documents.

ASB Contracting Officer and administrative support staff may create sub-folders under any of the folders to assist in the filing of pertinent documentation related to the performance of this contract. Guidance on creating sub-folders in CEFile is provided at CEFile Job Aid No. 4, *Create Sub-Folders in the OM File,* found at https://fdicnet.fdic.gov/content/doa/home/buying/applications/cefile.html.

(3) *Oversight Manager File:* The Oversight Manager file is located under Part III. The CEFile Oversight Manager file standard sub-folders are also created by the system, the designated file folders are as follows:

- Deliverables;
- Invoice Related Documents; Invoices-Oversight Manager Copies; (Note: As of October 29, 2009, Oversight Managers are no longer required to upload invoices into CEFile because NFE will be the system of record for Contractor invoices. However, the use of this sub-folder will continue to be appropriate for filing documentation and correspondence involving problems with invoice payments);
- Performance Documentation and
- Tracking Contractor Personnel-FDIC-Furnished Property.

Oversight Managers may also create sub-folders under any of the folders to assist in the filing of pertinent documentation related to the performance of this contract. Guidance on creating sub-folders in CEFile is provided at CEFile Job Aid No. 4, *Create Sub-Folders in the OM File,* found at https://fdicnet.fdic.gov/content/doa/home/buying/applications/cefile.html.

6.203(e) Filing Documents

Guidance on importing (or filing) documents in official contract files is provided in CEFile Job Aid No. 3, *How to Import A Document into CEFile,* at https://fdicnet.fdic.gov/content/doa/home/buying/applications/cefile.html.

(1) *Document Filing Requirements*: The official contract file must contain contract documentation from the point that an approved requisition is

received by ASB and assigned to a Contracting Officer for processing, through the closeout of the contract. The Contracting Officer must ensure that all pre-award documents are filed in the official contract file before contract award. Contracting Officers must also ensure all file documentation is contained in the official contract file before closing out the contract.

Throughout the contract, the Oversight Manager and Technical Monitors must maintain in the official contract file all pertinent documents related to contract oversight, including, but not limited to, problems with payment of invoices, performance documentation, deliverables, etc.

Documents containing personally identifiable information (PII), as defined in APM 5.102, must not be uploaded into CEFile.

(2) *Reports:* Contracting Officers may generate reports showing the contents of official contract files. Guidance on generating reports is provided in CEFile Job Aid D, *Generate PO/Contract Folder Contents Report,* at https://fdicnet.fdic.gov/content/doa/home/buying/applications/cefile.html.

6.203(f) Archiving Files

After contract closeout, the Contracting Officer must archive the official contract file by moving it to the Contract Closeout procurement folder in CEFile. Closed out contract files are permanently removed from CEFile, in accordance with FDIC Circular 1210.1, *FDIC Records Retention and Disposition Schedule,* found at https://fdicnet.fdic.gov/content/doa/home/rim.html.

6.203(g) File Reviews and Audits

Contracting Officers and Oversight Managers must periodically review the information in their respective files and ensure that all documentation is contained in the file. If documentation is missing, the Contracting Officer and/or Oversight Manager must take immediate steps to file the documents in the official contract file.

The FDIC ASB, Policy and Systems Section, will perform periodic post-award reviews of the official contract files to ensure compliance with the contract management policy. FDIC official contract files are also subject to review by the Office of the Inspector General, Government Accountability Office, and various divisions/offices within the corporation, including the DOA Management Support Branch, Division of Finance (DOF)/Corporate Management Control, and the DIT Information Security and Privacy Staff.

PGI Chapter 6.3 Contract Reporting

6.301 Scope

This chapter provides the procedures, guidance and information regarding contract reporting by the ASB.

6.302 RESERVED

6.303 Contract Reporting Procedures

6.303(a) Reserved

6.303(b) Contract Assessment Report

The Contracting Officer and Program Office are responsible for providing ASB, Policy and Systems Section, with information on any procurement action anticipated or awarded over $5,000,000 to be incorporated in the Contract Assessment Report.

6.303(c) Internal Revenue Service Report

The Contracting Officer or P-Card holder is responsible for collecting the data that ASB uses to prepare the Internal Revenue Service Report.

(1) The Contracting Officer must report quarterly to the ASB, Policy and Systems Section, any awards made with appropriated funds. The report contains awards of $25,000 or more. These contracts are usually contracts awarded for the Office of Inspector General.

(2) The P-Card holder is responsible for obtaining the following contractor information at the time of sale in order to complete the convenience check log:

- Check number;
- Transaction date;
- Transaction amount;
- Contractor’s legal name;
- location of where the transaction took place;
- Contractor mailing address;
- Contractor taxpayer identification number; and
- Description of purchase.

The cardholder must submit a copy of the convenience check log at the end of each billing cycle, to the Agency Program Coordinator who prepares a consolidated report for the Division of Finance, Managers, Receivables, Receipts and Vendor Maintenance Unit.

6.303(d) Contractor Return, Destruction and Retention of FDIC Information

(a) It is the Oversight Manager's responsibility to ensure all FDIC information that is required to be returned or destroyed by the contractor during the contract or at conclusion of the contract is accomplished.

(b) If the contractor has reason to retain FDIC information after conclusion of a contract, a notification of such must be sent in writing to the Contracting Officer in accordance with clause 7.6.3-2, Contractor Return, Destruction and Retention of FDIC Information. The Contracting Officer, Oversight Manager, and Records and Information Management Office, after consultation with the Legal Office, must reach agreement as to whether the retention request is valid.

(1) If not valid, the Contracting Officer must notify the contractor of such in writing.

(2) If valid, the Contracting Officer must process a bi-lateral modification identifying the period of retention for the FDIC information and the date in which the contractor shall return or destroy the FDIC and provide FDIC with a Certification of Sanitization. The contract expiration date is not changed as a result of FDIC information being retained after conclusion of the contract. However, contract closeout will not occur until after the retention period has ended; the FDIC information is returned or destroyed; and a Certification of Sanitization is received by FDIC. The Contracting Officer must immediately notify the ASB Policy and Systems Section of the retention, and provide details of the award, retention schedule, etc., as determined necessary by the ASB Policy and Systems Section. ASB Policy and Systems Section will maintain a list of all contracts for which retention of FDIC information after conclusion of contract is permitted. Sixty (60) days prior to a contract's final date of retention, ASB Policy and Systems Section will notify the appropriate ASB Assistant Director of such. The ASB Assistant Director will assign a Contracting Officer, who will contact the contractor and remind them of their impending obligation to return the FDIC information or provide FDIC with a Certification of Sanitization and ensure such actions are accomplished. Upon receipt of the Certification of Sanitization, the Contracting Officer will file it in CEFile and notify the ASB Policy and Systems Section. Upon the receipt of returned FDIC information that was retained by the contractor after contract conclusion, the Contracting Officer will notify the appropriate manager within the Program Office for which the contract was issued; forward them the returned FDIC information; and file a

memorandum in CEFile which identifies: when the FDIC information was returned by the contractor; who it was sent to in the Program Office; and the date it was sent to the Program Office. The Contracting Officer must then notify the ASB Policy and Systems Section that the FDIC information has been returned. The ASB Policy and Systems Section will update the retention list to indicate the FDIC information has been returned or a Certification of Sanitization has been received, and will notify the contractor closeout team so the contract may now be closed out.

6.304 Prescriptions for Provisions and Clauses

Contracting Officers must insert the following provisions and clauses as required:

7.6.3-1 Place of Manufacture - insert provision in solicitations (corporate capacity only) that are predominantly for the acquisition of manufactured end products, (i.e., the estimated value of the manufactured end products exceeds the estimated value of other items to be acquired as a result of the solicitation).

7.6.3-2 - Contractor Return, Destruction and Retention of FDIC Information - insert clause in awards that include any services.

PGI Chapter 6.4 Contract Administration and Oversight Management

6.401 Scope

This chapter provides the procedures, guidance and information on the responsibilities of FDIC Contracting Officers and Program Offices for proper and effective contract administration and oversight management.

6.402 Definitions

Contract or Task Order Ceiling – The dollar amount that may not be exceeded for a specific contract or task order.

Contract Oversight – The process of ensuring that the contractor delivers the goods, or performs the services, as required under the contract to fulfill the requirements and mission of the Program Office.

6.403 Contract Administration and Oversight Management Procedures

Contracting Officers and the Program Offices they support must comply with the procedures regarding contract administration and oversight management discussed in this chapter in the award of contracts for FDIC.

6.404 Contract Management Plan

The Oversight Manager, together with the Contracting Officer, must determine the level of oversight that is necessary to ensure the contractor makes satisfactory progress toward the successful completion of the contract. To assist in performing oversight activities for complex contracts for services, the Oversight Manager must work with the Contracting Officer to develop the Contract Management Plan (CMP). At a minimum, the CMP must be developed before the post-award conference, if one is to be held. A template for the CMP is included on the ASB website at https://fdicnet.fdic.gov/content/doa/home/buying/acq_docs.html. In situations where a CMP is prepared at the BOA/RBOA/PBA level instead of the task order level, the CMP must identify such and state that the same administrative approach will apply to all task orders because the statement of work requirements, risks, terms and conditions, etc., are all the same.

The Contracting Officer is responsible for ensuring that a signed copy of the CMP is included in the official contract file. In situations where a CMP is prepared at the BOA/RBOA/PBA level instead of the task order level, a copy of the CMP must be included in the official contract file for each task order to which it pertains. The plan must be updated, as appropriate, during performance to reflect any major changes to the contract or oversight plan. Revised copies must be redistributed based on original distribution. Oversight Managers may supplement the elements of the CMP, as needed.

6.405 Nomination and Appointment of Oversight Manager and Technical Monitor

The Program Office is responsible for identifying and nominating qualified individuals to represent their office in the capacity of Oversight Manager for all awards issued by ASB. In complex areas of performance, the Oversight Manager may find it appropriate to nominate one or more Technical Monitors. The duties of the Technical Monitor are a subset of the duties of the Oversight Manager, but the responsibility for oversight management remains with the Oversight Manager. Technical Monitors shall not be appointed at the BOA, RBOA, or BPA level.

6.405(a) Nomination of Oversight Manager and Technical Monitor

The Program Office must:

(1) Select qualified nominees for the roles of Oversight Manager and Technical Monitor(s);

(2) Ensure that the nominee has self-registered for the Contract Oversight Management certification in FDICLearn and accomplished the necessary Oversight Management training, as required in PGI section 6.405(d);

(3) Provide the Contracting Officer with the names of the nominee(s) in writing or by email. Optional nomination templates are found on the ASB website at https://fdicnet.fdic.gov/content/doa/home/buying/acq_docs.html. There is no requirement to upload nomination documentation into CEFile; and

(4) Ensure that the nominee has submitted Identity Access Management Requests (ARCS) to gain the appropriate access to the applications listed in the tables below so they will be able to complete their Oversight Manager or Technical Monitor duties:

ARCS Requests Required for Oversight Managers		
Application Name **Job Aid for Submitting ARCS Request**	**Access Level Required** **(to request in ARCS request)**	**Reason for Access**
New Financial Environment (NFE) NFE Job Aid: Request NFE Access Through ARCS ("Instruction for Submitting Request")	Oversight Manager	(1) To approve contractor invoices in NFE (2) To ensure the award data integrates from APS to NFE (so DOF can process contractor invoices) after the Contracting Officer makes the award in APS or issues a modification to change an Oversight Manager on an award.
ASB Procurement Gateway (ASB-PG) APS Job Aid No. 1: ASB Procurement Gateway Access and Removal ARCS Instructions	Oversight Manager (OMC, CPC user)	(1) To complete Oversight Manager Appointment Memoranda in the APS Oversight Manager Component (OMC) (2) To complete Contractor Performance Evaluations (CPEs) in the APS Contractor Performance Component (CPC)
CEFile-[Division Specific] CEFile Job Aid No. 1: How To Request Application Access to CEFile (ARCS Instructions)	CEFile [Division] Acq Oversight	(1) To view RFP/RFQ document in Part I (Pre-Award File) in CEFile [Read-Access] (2) To view contract documents in Part II (Post-Award File) in CEFile [Read-Access] (2) To import (file) documents in Part III (OM File) in CEFile [Write-Access]

ARCS Requests Required for Technical Monitors		
Application Name **Job Aid for Submitting ARCS Request**	**Access Level Required** **(to request in ARCS request)**	**Reason for Access**
ASB Procurement Gateway (ASB-PG) APS Job Aid No. 1: ASB Procurement Gateway Access and Removal ARCS Instructions	Technical Monitor (OMC user)	0To complete Technical Monitor Appointment Memoranda in the APS Oversight Manager Component (OMC)
CEFile-[Division Specific] CEFile Job Aid No. 1: How To Request Application Access to CEFile (ARCS Instructions)	CEFile [Division] Acq Oversight	(1) To view contract documents in Part II (Post-Award File) in CEFile [Read-Access] (2) To import (file) documents in Part III (OM File) in CEFile [Write-Access]

6.405(b) Appointment of Oversight Manager

The Contracting Officer appoints the Oversight Manager with the *Oversight Manager Appointment Memorandum*, which is issued through the Automated Procurement System (APS) Oversight Management Component (OMC).

The Contracting Officer must perform the following actions to appoint an Oversight Manager:

(1) View the Oversight Management Training Log list that is posted in OMC and verify that the nominated Oversight Manager has successfully completed the required level of Oversight Manager training, as required in PGI Section 6.405(d).

(2) Contact the nominated Oversight Manager and ask them to confirm that he/she previously submitted ARCS requests for access to NFE, ASB Procurement Gateway, and CEFile, as required by 6.405(a)(4), and that the ARCS requests were approved (fully completed). It is important for the nominated Oversight Manager to be provided access to NFE, ASB Procurement Gateway, and CEFile before the Contracting Officer awards a contract or issues a modification to change an Oversight Manager on an existing award.

(3) Initiate the Oversight Manager appointment task as follows:

- For New Awards: Immediately following award, access OMC and initiate the Oversight Manager appointment confirmation task. To complete the new appointment, follow the steps listed in Part A ("Appoint Oversight

Manager – New Award") of APS Job Aid 20: APS Oversight Management Component for Contracting Officers.

- The Contracting Officer must issue a modification to replace an Oversight Manager on an existing award in order to initiate the appointment of the new Oversight Manager. For guidance on completing a modification to replace the Oversight Manager on an existing award, and send the appointment confirmation task to the new Oversight Manager, follow instructions provided in Part B ("Appoint New Oversight Manager – Existing Signed & Final Award") of APS Job Aid 20: APS Oversight Management Component for Contracting Officers

(4) When the Contracting Officer initiates the Oversight Manager appointment confirmation task, the Oversight Manager receives an automated APS appointment email instructing them to log into APS to complete the appointment task. To assist the Oversight Manager in completing their OMC task of acknowledging their Oversight Manager responsibilities, the Contracting Officer may refer the individual the Contracting Officer may refer the individual to APS Job Aid 21: APS Oversight Management Component for OMs and TMs.

(5) Once the Oversight Manager completes their task in OMC, the Contracting Officer must complete the final step in the process within OMC which will generate an email that is sent to the Oversight Manager and the contractor. The email includes two attachments: a cover letter and appointment memorandum. A copy of the contractor cover letter and appointment memorandum are stored in OMC. There is no requirement to upload a copy to CEFile; OMC is the official repository for all appointment memoranda. When the Contracting Officer replaces an Oversight Manager on an existing award, after the modification is completed, the Oversight Manager and the contractor will receive an email notification stating the Oversight Manager has been removed from the award. There is no requirement to upload a copy of this notification to CEFile.

(6) After the award is made, or modification to change the Oversight Manager is completed, select the name of the Oversight Manager to be listed on the award in CEFile. Guidance on selecting the Oversight Manager in CEFile is provided in CEFile Job Aids B2, B3, B4, and B5, as applicable. The Contracting Officer must ensure the name of the Oversight Manager is available to select in the Oversight Manager dropdown box on the award in CEFile. If the Oversight Manager's name does not appear in the CEFile Oversight Manager dropdown box, instruct the individual to complete an ARCS request to gain access to CEFile. To assist the Oversight Manager in gaining access to CEFile, the Contracting Officer may refer the individual to CEFile Job Aid No. 1: How To Request Application Access to CEFile (ARCS Instructions).

6.405(c) Appointment of Technical Monitor(s)

The Contracting Officer appoints a Technical Monitor with a *Technical Monitor Appointment Memorandum*, which is issued through the Automated Procurement System (APS) Oversight Management Component (OMC).

The Contracting Officer must perform the following actions to appoint a Technical Monitor:

(1) View the Oversight Management Training Log list that is posted in OMC and verify that the nominated Technical Monitor has successfully completed the required level of Oversight Manager training, as required in PGI Section 6.405(d).

(2) In OMC, initiate the Technical Monitor appointment confirmation task. This can only be done after the Oversight Manager appointment confirmation task is initiated, as stated in PGI Section 6.405(b)(3). To complete a new Technical Monitor appointment, follow the steps listed in Part C ("Appointing a Technical Monitor") of APS Job Aid 20: APS Oversight Management Component for Contracting Officers. If a Technical Monitor is being changed (i.e., replaced with another Technical Monitor), follow the steps listed in Part E ("Changing a Technical Monitor") of APS Job Aid 20for this process, completed entirely within OMC. The Contracting Officer must ensure the Technical Monitor's name appears as a "Valid TM" in the OMC when completing the steps provided Part C or Part E of APS Job Aid 20. If the Technical Monitor's name appears as an "Invalid TM", instruct the individual to complete an ARCS request to be provided access to the "Technical Monitor (OMC user)" role within the ASB Procurement Gateway. Instructions for completing the ARCS request are provided in APS Job Aid 1: ASB Procurement Gateway Access and Removal ARCS Instructions.

(3) When the Contracting Officer initiates the Technical Monitor appointment confirmation task, the Technical Monitor receives an automated APS appointment email instructing them to log into APS to complete the appointment task. To assist the Technical Monitor in completing their OMC task of acknowledging their Technical Monitor responsibilities, the Contracting Officer may refer the individual to APS Job Aid 21: APS Oversight Management Component for OMs and TMs.

(4) Once the Technical Monitor completes their task in OMC, the Contracting Officer must complete the final step in the process within OMC which will generate an email that is sent to the Technical Monitor and the contractor. The email includes two attachments: a cover letter and appointment memorandum. A copy of the contractor cover letter and appointment memorandum are stored in the OMC. There is no requirement to upload a copy to CEFile; OMC is the official repository for all appointment memoranda.

(5) To remove a Technical Monitor on an existing award, follow the steps listed in Part F ("Removing a Technical Monitor") of APS Job Aid 20 for this process, completed entirely within OMC. Once the Contracting Officer

removes a Technical Monitor on an existing award, the Technical Monitor and the contractor will receive an email notification stating the Technical Monitor has been removed from the award. There is no requirement to upload a copy of this notification to CEFile.

6.405(d) Training Requirements for Oversight Managers and Technical Monitors

The FDIC Contract Oversight Management Training courses are online web-based training (WBT) courses on FDICLearn (a Corporate University application) and **must be taken in sequence***.

Employees who **have not taken any** Contract Oversight Management training course before June 9, 2020, must self-register for the training certification in FDICLearn before registering for or taking any level of Contract Oversight Management WBT training course.

Instructions for self-registering in the Contract Oversight Management certification are provided in FDICLearn Job Aid: 'How to Self-Register for Contract Oversight Management Certification', which can be found on the Division of Administration's Oversight Manager Tool Box webpage at: https://fdicnet.fdic.gov/content/doa/home/buying/oversightmanager-toolbox.html

Before Oversight Managers or Technical Monitors are nominated or appointed, they must have completed training up to the level that corresponds to the total value of the contract they will be assigned.

The following levels and courses constitute the FDIC Contract Oversight Management Certification Training Program

Level I Certification – Required for Oversight Managers and Technical Monitors who oversee contracts with a total contract value of < $100,000.

- Statement of Work (SOW) course, and
- Contract Oversight Management Level I course

Note: The SOW course may be taken before or after the Oversight Manager Level I course.

Level II Certification – Required for Oversight Managers and Technical Monitors who oversee contracts with a total contract value of ≥ $100,000 & < $1 Million.

- Contract Oversight Management Level II course and all requirements for Level I

Level III Certification – Required for Oversight Managers and Technical Monitors who oversee contracts with a total contract value of ≥ $1 Million and all RBOAs

- Contract Oversight Management Level III course and all requirements for Levels I and II

*Exceptions: FDIC employees who completed Oversight Manager classroom training during the period January 1, 2014 – April 30, 2016, are exempt from completing the Contract Oversight Management training courses in sequence; these employees are considered either Level I, II or III certified, based on the highest level Contract Oversight Management training course they completed. Also, FDIC employees who completed the FDIC's Basic Oversight Manager class or Advanced Oversight Manager class during the period January 1, 2011 – December 31, 2013, are considered Level I certified. The Basic and Advanced Oversight Manager classes were replaced by the courses included in the Contract Oversight Management Certification Training Program.

Oversight Manager Refresher Training** – To remain Level I, II, or III certified, FDIC employees must complete the FDIC's Contract Oversight Management Refresher Training course every three years from the date they were last certified. For example, if an employee received their Level I certification in May 2019, and their Level II certification in January 2020, the employee must complete the FDIC Contract Oversight Management Refresher Training course in January 2023 (three years after the date they were last certified).

** The FDIC Contract Oversight Management Refresher Training course is an online web-based training (WBT) course. Any employee who is scheduled to complete the FDIC Contract Oversight Management Refresher Training must register for, launch, and complete the WBT course in FDICLearn."

6.406 Post-Award Conference

When a post-award conference is determined to be necessary, the Contracting Officer must coordinate with the Oversight Manager and the contractor to schedule the conference, establish the agenda, and conduct and document the conference.

6.406(a) Establishing the Post-Award Conference

The Contracting Officer is responsible for convening and chairing the post-award conference, with the Oversight Manager generally leading the technical discussions. The Contracting Officer and the Oversight Manager must:

(1) Establish the time and place of the conference (must generally be held not later than one (1) week after award);

(2) Prepare the agenda;

(3) Invite appropriate personnel (Technical Monitors, the Contracting Law Unit (CLU), and other relevant personnel);

(4) Invite the contractor; and

(5) Schedule and conduct a preliminary conference with FDIC personnel to properly plan for the conference

6.406(b) Post-award Conference Agenda

The post-award conference must cover the following areas, as applicable:

(1) Roles of FDIC personnel in administration of the contract;

(2) Scope of the contract;

(3) Rights and obligations of both parties;

(4) Contract terms and conditions;

(5) Contract administration procedures;

(6) Technical requirements of the contract;

(7) Potential contract problem areas and their potential resolution;

(8) Changes in personnel;

(9) Invoicing requirements and FDIC invoice review, approval, and payment process;

(10) FDIC Contractor Performance Evaluation System

(11) Subcontracting, if applicable; and

- Contractor compliance with the quarterly subcontractor reporting requirement in the Subcontractor Reporting System (SRS);
- Contractor compliance with approved subcontracting plans or joint venture agreements;
- Contractor compliance with the flow down of contract security clauses to subcontractors;
- Procedure for adding subcontractors after award.

(12) Verification of insurance coverage, if required;

(13) Contractor eligibility and conflict of interest certifications;

(14) Contractor and subcontractor (if applicable) confidentiality agreements and confidential information;

(15) Contractor and subcontractor (if applicable) security and the process for obtaining contractor badges and access to FDIC sites and systems, as applicable;

(16) Information technology (IT) security, if applicable; and

- Screening requirements; and
- Contractor and subcontractor IT training.

(17) Site visits, if applicable.

6.407 Oversight Manager Responsibilities

The Oversight Manager ensures that the contractor delivers the required goods or performs the work according to the contract and the delivery schedule. Duties also include monitoring the expenditure of funds in relation to the contract or task order ceiling and approving invoices.

To prepare for oversight management, the Oversight Manager must review the entire contract, including the contractor's proposal, and understand the terms and conditions of the contract. By doing this, the Oversight Manager has the information needed to oversee contractor performance in a competent manner, including the roles and contractual obligations of all parties and other important terms of the contract, such as the compliance with performance milestones, inspection and acceptance of deliverables, and review and processing of contractor invoices.

The Oversight Manager must promptly notify the Contracting Officer in writing of any noncompliance, deviation in performance, or failure to make progress. The Oversight Manager must also provide timely notification to the Contracting Officer of any need for modification of the contract, and refer all questions regarding contract provisions to the Contracting Officer.

6.408 Monitoring Contract Performance

The Contracting Officer and Oversight Manager are jointly responsible for contract monitoring and oversight. The following paragraphs provide specific information for both the Contracting Officer and Oversight Manager in carrying out contract monitoring responsibilities.

6.408(a) Communication

As may be necessary, the Oversight Manager may provide direction to the contractor in performance matters that are within the scope of the contract as written. The Oversight Manager must be careful to avoid giving any direction that would result in a material change to the contract such as changes to pricing, period of performance, schedule, or other terms and conditions. The Oversight Manager must refer any questions of contract interpretation to the Contracting Officer.

Examples of appropriate communication include:

(1) Coordinating with the contractor on all technical matters of performance related to the contract, including giving technical guidance with respect to the statement of work, inspection, testing, and acceptance procedures;

(2) Discussing invoicing matters; and

(3) Providing the contractor with information, FDIC directives, relevant FDIC

policies, and other items necessary to successfully carry out its duties as required by the contract.

6.408(b) Maintaining Independent Status of Contractors

The Oversight Manager and Contracting Officer are obligated to avoid establishing an employer-employee relationship with contractor personnel that may result from improper contract oversight or administration, and to preserve the independent status of the contractor. Key precautions include:

(1) FDIC employees must not directly or indirectly supervise contractor employees;

(2) Contractor personnel work stations must be separated from FDIC personnel to the maximum extent practical;

(3) The Oversight Manager must ensure that contractor personnel wear badges on site, display appropriate office signs, or take some other measure to clearly identify themselves as contractor employees;

(4) Contractor employees must not be invited to attend regular staff meetings; and

(5) Contractor employees, in general, must not participate in services, or employee recreational activities (including office picnics and holiday parties) provided for the benefit of FDIC employees.

Oversight Managers must refer questions to the Contracting Officer who then seeks the advice of CLU, as necessary.

6.408(c) Contractor Personnel

(1) *Qualifications:* The Oversight Manager must monitor the contractor's assignment of personnel in relation to qualifications, as required by the contract. The Oversight Manager must ensure that:

- Contractor personnel possess the requisite experience and qualifications as required by the contract. This may be done through evaluation of an individual's resume and/or observation of an individual's performance; and
- Contractor personnel are assigned to and working under the appropriate contract labor categories, if contractor is being reimbursed on a time and materials or labor hour basis. This is done by consistently monitoring labor usage and review of invoices.

(2) *Facilities and Network Access:* As addressed in PGI 5.203(d), the Oversight Manager works with SEPS and the contractor to coordinate contractor personnel badging requirements. The Oversight Manager also coordinates with DIT to obtain information technology equipment and FDIC Network access for contractor personnel.

(3) *Pre-Exit Clearance:* As addressed in PGI 5.203(e), the Oversight Manager

must complete a pre-exit clearance on contractor personnel who have access to the FDIC's Network, or unescorted access to FDIC facilities/offices, or access to sensitive information, or on contractor personnel who had a background investigation completed on them by SEPS. To accomplish a pre-exit clearance for contractor personnel, the Oversight Manager must complete Form 3700/25, 'Pre-Exit Clearance/Transfer Record for Contractor Personnel', found on the FDIC Forms page, DOA: Forms Series - 3000 Services & Facilities, at: https://fdicnet.fdic.gov/content/doa/home/rim/forms.html. The Oversight Manager must also follow all instructions set forth in the FDIC Pre-Exit Clearance Procedures (Departing and Transferring Contractor Personnel) document found on the Division of Administration's Oversight Manager Tool Box webpage at: https://fdicnet.fdic.gov/content/doa/home/buying/oversightmanager-toolbox.html. The FDIC Pre-Exit Clearance Procedures (Departing and Transferring Contractor Personnel) document is a comprehensive list of pre-exit clearance actions the Oversight Manager must follow to properly accomplish a contractor personnel's departure/transfer.

(4) *Contractor Personnel/FDIC-Furnished Property Log':* The Oversight Manager must document the current list of contractor personnel assigned to the contract/task order and FDIC-Furnished Property provided to contractor personnel. The Oversight Manager's 'Contractor Personnel/FDIC-Furnished Property Log' must include the data provided on the template 'Contractor Personnel/FDIC-Furnished Property Log' that can be found on the Division of Administration's Oversight Manager Tool Box webpage at: https://fdicnet.fdic.gov/content/doa/home/buying/oversightmanager-toolbox.html. Guidance regarding the information to include on the 'Contractor Personnel/FDIC-Furnished Property Log' is provided in the FDIC Pre-Exit Clearance Procedures (Departing and Transferring Contractor Personnel) document found on the Division of Administration's Oversight Manager Tool Box webpage at: https://fdicnet.fdic.gov/content/doa/home/buying/oversightmanager-toolbox.html.

The Oversight Manager must update and file the 'Contractor Personnel/FDIC-Furnished Property Log' in the Oversight Manager File in CEFile under the sub-folder entitled, 'Tracking Contractor Personnel-FDIC-Furnished Property', immediately upon any changes to contractor personnel or FDIC-Furnished Property. It is important for the Oversight Manager to update the 'Contractor Personnel/FDIC-Furnished Property Log' timely and file it in CEFile to ensure at all times during the period of performance the Oversight Manager has an accurate listing of contractor personnel assigned to an award and property provided to the contractor.

6.408(d) Site Visits

The Oversight Manager may make site visits to perform inspections at contractor's facility to:

(1) Verify the contractor's performance against scheduled and reported

performance;

(2) Verify that the proper employees working on the contract are assigned to appropriate tasks;

(3) Determine the adequacy of contractor facilities and working conditions if an issue arises in contractor performance;

(4) Observe firsthand how the contractor operates; Ensure compliance with FDIC policies, procedures, and directives; and

(5) Follow up on any previously noted problems.

If the Oversight Manager determines site visits will be included as part of the contract monitoring process, the Contracting Officer must address site visits in the CMP and include site visits as a topic for discussion at the post-award conference.

Site visits should be planned and scheduled so as not to interfere or delay the contractor's performance. Additionally, the Oversight Manager must not take any action or make any representation during the site visit that would cause a change to the contract.

The Oversight Manager must conduct site visits where the contractor has connectivity access to the FDIC network from its facility.

6.408(e) Inspection and Acceptance

The Oversight Manager is responsible for inspection and acceptance under the contract.

(1) *Inspection:* The Oversight Manager is responsible for inspecting the contractor's work to ensure that it is in full compliance with contract requirements and the Quality Assurance Surveillance Plan under a performance-based contract, if applicable. The Oversight Manager must perform inspection within the time period prescribed in the contract.

(2) *Acceptance:* The Oversight Manager is responsible for acceptance of any goods or services delivered to FDIC. In executing this duty, the Oversight Manager must verify that the work performed is in accordance with the contract requirements. The Oversight Manager must document acceptance in the official contract file. This documentation is important because it provides evidence of contractor performance. It also supports the payment or rejection of invoices.

(3) *Nonconforming Goods or Services:* If the goods or services are nonconforming, the Oversight Manager can reject them and direct the contractor to correct the deficiencies within a reasonable time, at the contractor's expense. However, before doing so, the Oversight Manager must promptly consult with the Contracting Officer. Based upon the discussions with the Contracting Officer, the Oversight Manager must issue a written notification to the contractor describing the deficiencies and corrective action required. The Oversight Manager must provide a copy of the written notification to the

Contracting Officer. Depending on the severity of the deficiency, it may be appropriate for the Contracting Officer to issue the written notification. In certain circumstances, the Contracting Officer may also need to issue a modification to the contract. The Oversight Manager must not approve payment for nonconforming goods or services until the contractor corrects the deficiency.

The Oversight Manager must notify the Contracting Officer if the contractor does not correct the deficiencies or if correction cannot be accomplished within the terms and costs of the contract, and must reject the goods or services. The Contracting Officer confers with the Oversight Manager, and CLU as necessary, to determine if further action needs to be taken.

The Oversight Manager may only accept nonconforming goods or services when it is in the best interest of FDIC, the contractor has provided consideration, and the Contracting Officer and CLU have approved this action.

6.408(f) Contractor Performance Evaluation

Contracting Officers and Oversight Managers are responsible for evaluating contractor performance. Information on a contractor's performance is not only critical to subsequent source selections, it is also a primary means of reporting contractor performance data to management. Contractor performance evaluations must be completed annually, except as noted below, for each award, regardless of dollar value. *(Awards, as used in this section of the PGI, refer to contracts, task orders and other contracting actions where funds are expended. Therefore, evaluations are not required at the BOA, RBOA and BPA level, as funds are not expended at this level.)* The due date for evaluations is based upon the effective date of the award, as follows:

(1) For awards with a total period of performance (including options) of less than one year, a final evaluation is required to be completed within sixty (60) days following the expiration date (i.e., within 60 days following the last day of performance).

(2) For awards with a period of performance (including options) of one year or greater, annual evaluations are required in addition to a final evaluation. Annual evaluations must be completed within 60 days of the anniversary of the effective date of the award. An annual evaluation is not required if it is scheduled to occur within 3 months of the expiration date of award.

The Contractor Performance Component (CPC) of the Automated Procurement System (APS) initiates the annual and final performance evaluation process by sending a quick task e-mail notice to the Contracting Officer.

(1) The Contracting Officer will log into APS to access the CPC quick task, and verify the administrative details of the award, including the Oversight Manager name and email address, which has been pre-populated into Section I of the

automated FDIC *Contractor Performance Evaluation and Reporting Form (CPE&R Form).*

(2) The Contracting Officer will then select the “submit” button, which will initiate an email notification message to the Oversight Manager that there is a CPE&R Form in the Contractor Performance Component of APS requiring completion.

(3) The Oversight Manager must then log into APS to access the CPC and open the CPE&R Form. The Oversight Manager must complete the remainder of the form by providing ratings and comments, along with answers to questions regarding subcontractors, key personnel, customer satisfaction, etc. Once all mandatory and optional fields are completed, the Oversight Manager will select the “submit” button, which will prompt APS to send a quick task email notification to the Contracting Officer.

(4) The Contracting Officer must verify that the comments given the contractor support the ratings, and either send the CPE&R Form back to the Oversight Manager for revision, or send the form onward to the contractor via the CPC.

(5) The CPC transmits a generic email which contains the contract number pre-populated in the subject line and a PDF copy of the completed CPE&R Form. The generic email to the contractor explains the purpose of the evaluation and allows thirty (30) days for the contractor to concur, rebut, or appeal the evaluation. If the contractor does not reply within 30 days, the CPC will send an automatic quick task notification to the Contracting Officer.

(6) If the contractor rebuts/appeals the ratings/comments given by the Oversight Manager, the Contracting Officer will work with both parties and attempt to resolve the differences. If the Contracting Officer cannot resolve the differences, the Contracting Officer will upload all relevant documents (i.e., OM and contractor e-mails and any other supporting documents) into the CPC, include a summary describing the appeal, and submit the documents with the CPE&R Form to the respective ASB Assistant Director for review.

(7) The ASB Assistant Director will make a determination, document the decision in CPC, and electronically send back the form to the Contracting Officer. The ASB Assistant Director’s decision cannot be appealed.

(8) The Contracting Officer will make any necessary changes to the CPE&R Form, including any changes directed by the ASB Assistant Director, and finalize the form by selecting “Sign and Final.”

(9) The completed evaluation is automatically retained in the CPC. In addition, if the evaluation has been revised, a copy is automatically emailed to the contractor.

The Contracting Officer may also manually initiate interim evaluations within the APS CPC. Once initiated, the CPE&R Form will cycle automatically through the CPC in the same manner as annual and final evaluations.

The Contracting Officer is not required to upload the completed CPE&R Form into CEFile**.** The completed form will be maintained as a searchable document within the APS CPC.

The Contracting Officer is ***exempt*** from completing a contractor performance evaluation for the following categories of goods or services:

(1) Inter-Agency Agreements
(2) Parking garages
(3) Utilities
(4) Subscriptions, Publications, and Journals (when approved sole-source ***and*** no services are provided under the award)
(5) Cancellation fees (e.g., hotel or meeting room reservations)
(6) No contractor performance occurred during the reporting period
(7) Software licenses and renewals

If an award is determined to fall into one of the above exemption categories, the Contracting Officer must submit an APS TEMPO case requesting cancellation ***after*** the evaluation has automatically been initiated by CPC. Cancellations cannot be made in CPC prior to this time.

Although the above awards may be exempt, the Contracting Officer may elect to complete a contractor evaluation whenever it is determined to be beneficial to do so.

If the Contracting Officer determines a specific award outside of those listed above should not require a contractor performance evaluation either during a reporting period or the life of the award, a ***waiver*** may be requested. A waiver request must be submitted in accordance with PGI 1.205, Modifications of Procurement Policy. If the waiver approval is granted, the Contracting Officer must provide a copy to the APS administrators as an attachment to an APS TEMPO case, requesting cancellation of the CPE.

PGI 6.408(g) Verifying Fair Inclusion of Minorities and Women

As a means of verifying that a Contractor is demonstrating a good faith effort to ensure fair inclusion of minorities and women in its workforce and in the workforce of its subcontractors, OMWI may notify the Contracting Officer of the need to obtain fair inclusion documentation per clause 7.6.4-4, Fair Inclusion of Minorities and Women. This clause is required in awards over $100,000, including purchase orders, contracts, BOAs, RBOAs, BPAs, GSA Schedule orders and orders issued under other Government Wide Area Contracts (GWACs). The clause is not required in task orders issued under FDIC BOAs, RBOAs, and BPAs. OMWI has full discretion to determine

which Contractors must provide the necessary documentation and when they are to be contacted. Clause 7.6.4-4 does not identify the specific documentation needed to comply with the reporting requirements. Instead, the clause provides FDIC with the ability to determine, on a post-award basis, the type of documentation to be provided. Consequently, the notification from OMWI to the Contracting Officer must contain the specific documentation to be provided by the Contractor. The Contracting Officer will notify the Contractor in writing of the required documentation and the Contractor must provide it to FDIC within 10 business days, at no additional cost to the value of the award. Contracting Officers are responsible for ensuring the documentation is provided by the Contractor in a timely manner; must forward it to OMWI upon its receipt; and must upload it into CEFile.

Upon OMWI's review of the documentation, if it is determined the Contractor has failed to make a good faith effort to ensure fair inclusion of minorities and women in its workforce and in the workforce of its subcontractors, FDIC may terminate for default, refer the matter to the Office of Federal Contract Compliance Programs, or take other appropriate action.

If OMWI believes termination for default is considered appropriate, the Director of OMWI will provide such a recommendation to the Director of DOA. The Director of DOA has final decision authority.

6.409 Ratification of Unauthorized Contractual Commitments

Any action by an Oversight Manager, Technical Monitor, or others that causes the contractor to extend or expand the requirements of the contract and thus impact the price, schedule, quantities or quality of the deliverables, or change other substantive terms and conditions of the contract without the Contracting Officer's direction may be considered an unauthorized contractual commitment. Oversight Managers must be aware of, and guard against the potential of unauthorized contractual commitments and notify the Contracting Officer of any events that could result in such an action. Procedures for processing ratifications of unauthorized contractual commitment, including review and approval requirements are addressed at APM 1.211 and PGI 1.211.

6.410 Prescriptions for Provisions and Clauses

Contracting Officers must insert the following provisions and clauses as required:

7.6.4-1 Inspection and Acceptance - insert clause in all awards except construction contracts.

7.6.4-2 Inspection and Acceptance (Construction) - insert clause in all construction awards.

7.6.4-3 Risk of Loss or Damage - insert clause in all awards

7.6.4-4 Fair Inclusion of Minorities and Women – insert clause in all awards over $100,000, except Task Orders issued under FDIC BOAs/RBOAs/BPAs.

PGI Chapter 6.5 Contract Modifications

6.501 Scope

This chapter describes the procedures, guidance and information for use by FDIC Contracting Officers and Program Offices concerning contract modifications.

6.502 RESERVED

6.503 Contract Modification Procedures

Contract modifications are the result of necessary changes to the contract and may only be issued by the Contracting Officer. The need for modifications is typically identified by the Contracting Officer, Oversight Manager, or contractor. The Contracting Officer must evaluate the circumstances to determine if a modification is the appropriate action required on a contract. Prior to the issuance of the modification, the Contracting Officer and Oversight Manager must ensure that any required funding and approvals have been obtained, and the necessary documentation has been entered into the official contract file.

6.503(a) Modifications Increasing Contract Value

Prior to awarding a contract modification that increases the total value of a contract, the Contracting Officer must ensure the contract file contains an approved purchase requisition for the cumulative dollar amount of the contract, including all modifications. This cumulative amount represents the procurement request authority for the modification. Depending on the dollar value of the current contract and the dollar value of the modification, and whether the increase in value is due to in-scope versus out-of-scope work, approvals and documentation requirements must be accomplished before the issuance of the modification, as addressed in the February 20, 2007 letter, “Revised Procurement-Related Delegations and Re-Delegations of Authority Limits,” and the Approval Matrices, both found at Appendix B. Depending on the situation, documentation includes one or more of the following:

(1) Memorandum to file;

(2) Justification for Non-Competitive Procurement;

(3) Approval from the FDIC Board of Directors; and

(4) Price Evaluation Memorandum.

6.503(b) Modifications Increasing or Decreasing Period of Performance

Modifications to increase or decrease the contract schedule or period of performance may be issued if the Contracting Officer determines it is in the best interest of FDIC. If the contractor is the cause of the increase or decrease in contract schedule or period of performance, consideration may be obtained from the contractor when appropriate. Modifications which increase or decrease the contract schedule or period of performance must be issued bilaterally prior to the completion of the contract.

When the need exists to increase the performance period to continue providing contractual coverage while a replacement contract is being completed, the action is referred to as a bridge/interim modification. Appropriate acquisition planning and effective contract oversight should preclude the necessity for bridge/interim modifications. However, due to extenuating circumstances, bridge/interim modifications may be issued on an exception basis. Such modifications must be bilateral.

Depending on the dollar value of the current contract, the length of the current performance period, and the length of the desired increase in the period of performance, approvals and/or documentation requirements must be accomplished before the issuance of the modification, as addressed in the February 20, 2007 letter "Revised Procurement-Related Delegations and Re-Delegations of Authority Limits" and the Approvals Matrix, both found at Appendix B, *Approvals Memorandum and Matrix*. Depending on the situation, documentation includes one of the following:

(1) Memorandum to file; or

(2) Approval from the FDIC Board of Directors.

When the need exists to decrease the performance period, and both the Contracting Officer and contractor agree that a Termination for Convenience is unnecessary, a bilateral modification may be issued assigning a new final expiration date that reflects a date at least one day after the creation date of the modification. As long as the new final expiration date has not passed, the new date will trigger the final performance evaluation in CPC. If the value of the award is also being decreased, the Contracting Officer must verify the final expenditures with the contractor prior to issuing the modification to ensure the revised award amount is sufficient to cover any outstanding payments.

6.503(c) Modifications for Unpriced Actions

Contract modifications that change the price of a contract are bilateral and normally must contain the final negotiated price before they are signed. However, in those rare instances in which time does not permit for negotiating a final price and a delay could adversely affect FDIC, a modification may be issued as an unpriced action. A maximum (not-to-exceed) price must be negotiated and incorporated in the modification. Also, the

modification must include a firm schedule for negotiating the final price and for issuing the ultimate modification relating to the change. Authority to issue a modification for an unpriced action must be obtained from the respective ASB Assistant Director.

6.504 Types of Contract Modifications

The types of modifications and associated responsibilities are defined below.

6.504(a) Unilateral Changes

(1) *Oversight Manager Responsibility*: The Oversight Manager must:

- Identify the necessary change, when applicable; and
- Submit a procurement requisition (PR) through the New Financial Environment (NFE) to the Contracting Officer.

(2) *Contracting Officer Responsibility:* The Contracting Officer must:

- Verify that the change does not affect the rights of the parties;
- Document the change in a unilateral contract modification and provide a signed copy to the contractor;
- File the modification in the official contract file; and
- Obtain legal review, when required (see APM 5.15).

6.504(b) Bilateral Changes

(1) *Oversight Manager Responsibility:* The Oversight Manager must:

- Submit a PR through NFE to the Contracting Officer;
- Provide the Contracting Officer with a detailed written explanation of the reason for, and description of, the change and rationale as to whether any additional work is in-scope or out-of-scope;
- Determine if the cost to FDIC caused by the modification exceeds the contract or task order ceiling, and if so, ensure that additional procurement request authority has been obtained;
- 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 contractors change proposal;
- Provide a complete and approved Justification for Non-Competitive Procurement, when required; and
- Participate jointly with the Contracting Officer in any negotiation pursuant to the need for the modification.

(2) *Contractor Officer Responsibility:* The Contracting Officer must:

- Determine if the requested modification is within the scope of the

contract. In making such determination, the Contracting Officer considers:

- What was reasonably anticipated by the parties to be within the scope of the contract when it was first entered into;
- The extent to which the proposed modification increases the overall cost of the contract;
- Change in the delivery schedule;
- Whether the change requires a contract extension; and
- The effect the change might have on competition.

- Use price analysis techniques to help determine the reasonableness of the proposed price by using the techniques set forth in PGI 3.210, *Proposal Evaluation* (or any other reasonable basis), and document the pricing analysis in the official contract file;
- Negotiate the changes required by the modification, with the support of the Oversight Manager;
- Obtain legal review, when required (see APM 5.15);
- Execute the modification with the contractor; and
- Provide an original of the executed modification to the contractor and a copy to the official contract file.

6.505 Constructive Changes

A constructive change occurs when, as a result of FDIC action or inaction, a change has occurred in the circumstances of the contractor's performance that was not expressly ordered by the Contracting Officer. It typically occurs either by the communications or conduct of FDIC officials and has the effect of requiring the contractor to perform different work under the contract than what was originally contemplated.

Monitoring a contractor's technical performance requires skill and judgment to ensure that the contractor performs the exact tasks required by the contract. A contractor sometimes performs work beyond that which is required by the contract. If the contractor perceives that the work was ordered by FDIC or otherwise caused by a perceived act or omission of FDIC, the contractor may claim that the contract was "constructively" changed. As a result, the contractor may be entitled to additional compensation for the changes.

The Oversight Manager must take care to avoid inadvertently causing constructive changes. Constructive changes may occur when an Oversight Manager or other corporation official:

(1) Provides "suggestions" to a contractor;

(2) Provides definitions to general contract terms;
(3) Accelerates the delivery schedule;
(4) Directs work to be performed differently;
(5) Changes the sequencing of work;
(6) Delays rejecting or accepting deliverables;
(7) Delays reviewing invoices and approving payment;
(8) Fails to warn the contractor of an event/change; or
(9) Interferes with, or hinders performance.

The Oversight Manager must immediately notify the Contracting Officer, if it appears that the contractor is performing work that is not required under the contract and which may result in a claim against FDIC.

Claims for constructive changes are a primary reason FDIC is sometimes required to pay additional compensation under fixed price contracts. Constructive changes can arise from written or oral communication or as a result of action or inaction by corporation officials any of which may be perceived as an expansion or modification of the work/performance requirements of the contract. These types of communications and actions may be construed by the contractor as having the same effect as a written change order.

If the contractor has changed performance such that it is no longer complying with the contract requirements and FDIC did not know, or could not have known, about the change, then:

(1) No constructive change has occurred;
(2) The contractor is not entitled to any related increased cost or schedule change; and
(3) The Contracting Officer must take action to enforce the contract performance requirements and schedule.

6.506 Consent-to-Assignment: Novation

When a contractor requests consent to assignment of its contract with FDIC to another business entity, which if approved will result in a novation, the Contracting Officer and the Oversight Manager must determine whether the assignment is in the best interest of FDIC. The steps to take in making this assessment are set out below.

6.506(a) Oversight Manager Responsibility

The Oversight Manager must:

(1) Determine whether the technical expertise of the proposed contractor meets the technical expertise required to perform the contract;

(2) Provide a written recommendation to the Contracting Officer specifying whether FDIC should consent to the assignment; and

(3) Provide a written recommendation to the Contracting Officer specifying whether the current contractor should be released from liability under the contract.

6.506(b) Contracting Officer Responsibility

The Contracting Officer must:

(1) Determine if the proposed contractor has been debarred or otherwise excluded from doing business with the government;

(2) Determine if any conflicts of interest exist under the proposed assignment;

(3) Determine whether the proposed contractor has the financial capability to successfully complete the remaining contract requirements;

(4) Ensure that the dollar value of the contract does not increase as a result of the novation, without adequate consideration. For labor hour and time and materials type contracts, ensure that the labor rates remain the same or, if applicable, negotiate a reduction;

(5) Upon receipt of written recommendations from the Oversight Manager and with support of the Contracting Law Unit (CLU), determine whether FDIC consents to the assignment, and whether the original contractor will be released from liability;

(6) Obtain integrity and fitness representations and certifications and, other contractor representations and certifications from the proposed contractor and complete background checks in the same manner as for new contracts;

(7) Request that CLU draft a *Consent to Assignment* (https://fdicnet.fdic.gov/content/doa/home/rim/forms.html) and any other documents needed to effect assignment and novation;

(8) Execute the documents with the current contractor and the assigned contractor; and

(9) Provide copies of the document to the contractor, the Oversight Manager, and the official contract file.

6.507 Assignment of Claims

The Contractor and its assignee (the institution providing financing) initiate the assignment process by executing an instrument of assignment. The instrument of

assignment must be attached to a notice of assignment, which is prepared and provided to the Contracting Officer by the assignee. The following is a suggested format for a notice of assignment.

Notice of Assignment

To: _____ [Address and send to the Contracting Officer. Also address and send to a surety on any bond applicable to the Contract].

This has reference to Contract No. _____ dated _____, entered into between _____ [Contractor's name and address] and FDIC _____ [office and address], for _____ [Describe nature of the contract].

Moneys due or to become due under the contract described above have been assigned to the undersigned under the provisions of the Assignment of Claims Act of 1940, as amended, 31 U.S.C. 3727, 41 U.S.C. 15.

A true copy of the instrument of assignment executed by the Contractor on _____ [Date], is attached to the original notice.

Payments due or to become due under this contract should be made to the undersigned assignee.

Please return to the undersigned the enclosed copies of this notice with appropriate notations showing the date and hour of receipt, and signed by the person acknowledging receipt on behalf of the addressee.

Sincerely,

_____
[Name of Assignee]
By _____
[Signature of Signing Officer]

_____
[Title of Signing Officer]

_____
[Address of Assignee]

Acknowledgement

Receipt is acknowledged of the above notice and of a copy of the instrument of assignment. They were received ____ (a.m.) (p.m.) on _____, 20___.

_____
[Signature]

_____
[Title]

_____
On behalf of

_____
[Name of Addressee of this Notice]

In order for remittance to be made to the assignee, the assignee must be registered in the System for Award Management (SAM) and must have an NFE vendor ID. The Contracting Officer must notify DOF Accounts Payable of the impending assignment of claims and thereafter coordinate the appropriate date for changing the remittance address in NFE.

The Contracting Officer may sign the assignment of claims only after obtaining review and concurrence from CLU. The signed assignment of claims is then returned to the assignee, with a copy provided to DOF Accounts Payable. The Contracting Officer must also modify the contract to incorporate the assignment of claims and change the remittance address to that of the assignee.

6.508 Stop Work Orders

The Contracting Officer must provide the stop work order to the contractor, in writing, by either a letter or modification bearing the Contracting Officer's name, signature and date. The stop work order may require the contractor to stop all, or any part, of the work called for by the contract for a period not to exceed ninety (90) days, unless the contractor and FDIC agree to extend the stop work order. As applicable, stop work orders must include:

(1) A description of the work to be suspended;

(2) Instructions concerning the contractor's issuance of further orders for materials or services;

(3) Guidance to the contractor on action to be taken on any subcontracts; and

(4) Other suggestions to the contractor for minimizing costs.

Promptly after issuing the stop work order, the Contracting Officer may discuss the stop work order with the contractor and may modify the order, if necessary, in light of the discussion.

If the stop work order is canceled or otherwise expires, the contractor must immediately resume work. The Contracting Officer must adjust the performance schedule, the contract amount, or both and modify the contract if:

(1) The stop work order causes an increase in the time required to perform the work or the cost to do the work, or both; and

(2) The contractor asserts its right to an adjustment, in writing to the Contracting Officer, within thirty (30) days following the end of the stop work order period.

If the contractor is notified during the period of the stop work order that the contract will be terminated, the contractor must not resume work, unless otherwise directed to do so in the termination notice.

If the contract is terminated, the FDIC will consider the necessary, unavoidable and reasonable costs to the contractor caused by the stop work order, during the period from its issuance until the date of termination of the contract.

6.509 Prescriptions for Provisions and Clauses

Contracting Officers must insert the following provisions and clauses as required:

7.6.5-1 Changes - insert clause in all awards except for construction.

7.6.5-2 Changes (Construction) - insert clause in all awards for construction.

7.6.5-3 Stop Work Order - insert clause in all awards except construction.

7.6.5-4 Suspension of Work - insert clause in all awards for construction.

7.6.5-5 Assignment of Claims - insert clause in all awards.

PGI Chapter 6.6 Contract Termination

6.601 Scope

This chapter provides the procedures, guidance and information to be used by FDIC Contracting Officers and Program Offices in processing contract terminations.

6.602 Definitions

Cure Notice – A notice issued by the Contracting Officer to a contractor for unsatisfactory performance under the terms of the contract instructing the contractor to "cure" the performance within a specified period of time.

6.603 Termination Procedures

The decision to terminate a contract for default or convenience is made by the Contracting Officer, after consultation with, and concurrence from, the Contracting Law Unit (CLU). The Contracting Officer must notify the ASB Deputy Director of any decision to terminate for default and must notify the respective ASB Assistant Director for termination for convenience.

6.604 Termination for Convenience

The Contracting Officer must obtain written concurrence from the Oversight Manager and CLU before proceeding with a termination for convenience.

6.604(a) Procedures

Termination for convenience takes place when FDIC delivers a notice of termination for convenience to the contractor specifying the extent of termination and the effective date. The Contracting Officer includes in the notice a requirement for the contractor to:

(1) Complete any performance of work not terminated, and take whatever action is necessary to mitigate any further costs, and for an orderly and timely discontinuation of the work terminated;

(2) Deliver to FDIC all contract deliverables, completed or partially completed, including any plans, drawings, information, data, materials or equipment in the contractors possession; and

(3) Provide a settlement proposal detailing any cost associated with the termination for convenience.

The contractor is generally paid for allowable costs incurred up to the termination.

6.604(b) Partial Termination for Convenience

If the termination for convenience 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 must make any adjustment agreed upon within ninety (90) days from the effective date of termination, unless extended in writing by the Contracting Officer. The contractor can request an adjustment to any proposal by the Contracting Officer.

6.604(c) Charges Incurred After Termination for Convenience

FDIC is not liable for payment to the contractor, or to any subcontractors, for any fees, charges, penalties, or damages related to the terminated work, which are incurred after the effective date of the termination for convenience.

6.605 Termination for Default

6.605(a) Oversight Manager Responsibilities

The Oversight Manager must notify the Contracting Officer in writing when a basis for termination for default arises and assist the Contracting Officer and CLU in considering whether termination for default is appropriate. During termination for default, the Oversight Manager must maintain complete records in the official contract file of the facts that support termination.

6.605(b) Contracting Officer Responsibilities

When considering termination of a contract for default, the Contracting Officer must:

(1) Issue a cure notice, if practical, and provide the contractor with a reasonable amount of time to correct the situation;

(2) Evaluate the response to the cure notice and determine if the termination for default is still warranted;

(3) Obtain written recommendations and concurrence from the Oversight Manager and obtain CLU advice on the propriety of the termination and the likely risks of such action;

(4) Notify the ASB Deputy Director of the decision to terminate the contract;

(5) Prepare the notice of termination to the contractor and obtain CLU

concurrence;

(6) Execute the termination documents;

(7) Determine whether any unpaid contractor invoices must be paid, ensure that the contract file contains all documents relating to the termination, and determine whether the termination might affect other contracts; and

(8) Discuss with CLU the possibility of suspension and debarment of the contractor, if the grounds for termination warrant.

6.606 Prescriptions for Provisions and Clauses

Contracting Officers must insert the following provisions and clauses as required:

7.6.6-1 Termination for Convenience of the FDIC - insert clause in all awards.

7.6.6-2 Termination for Default - insert clause in all awards.

7.6.6-3 Termination for Default Damages - insert clause in all awards for construction or dismantling, demolition, or removal of improvements.

7.6.6-4 Excusable Delays - insert clause in all awards.

PGI Chapter 6.7 FDIC-Furnished Property

6.701 Scope

This chapter provides the procedures, guidance and related information for FDIC Contracting Officers and other officials involved in managing FDIC-furnished property used on FDIC contracts.

6.702 RESERVED

6.703 FDIC-Furnished Property Procedures

Contracting Officers and the Program Offices they support must comply with the procedures regarding FDIC-furnished property discussed in this chapter in the award of contracts for FDIC.

6.704 Contracting Officer Responsibilities

The Contracting Officer must include, as appropriate, requirements for monitoring FDIC property in the possession of contractors in the Oversight Manager and Technical Monitor appointment memorandums, and periodically monitor the status of the property.

6.705 Oversight Manager Responsibilities

If the contract calls for FDIC to provide the contractor with any FDIC property or equipment, the Oversight Manager must:

(1) Prepare an itemized list of the property including serial numbers, if any;

(2) Ensure delivery of the property in accordance with the contract;

(3) Obtain written acknowledgement for receipt of the property from the contractor;

(4) Provide the Contracting Officer with the property list, that includes the condition and age of the property and a written contractor acknowledgement for receipt of the property; and

(5) Recover the property or account for it at the end of the contract or whenever FDIC property is no longer required.

(6) List any FDIC property or equipment provided to the contractor on the 'Contractor Personnel/FDIC-Furnished Property Log'. A template 'Contractor Personnel/FDIC-Furnished Property Log' is provided on the Division of Administration's Oversight Manager's Tool Box webpage at:

https://fdicnet.fdic.gov/content/doa/home/buying/oversightmanager-toolbox.html.

6.706 RESERVED

6.707 Property Disposition Options

The contractor may be directed or authorized by the Contracting Officer to dispose of FDIC-owned property under contractor control in any of the following ways:

(1) *Transfer Property Title to Contractor*: FDIC may transfer the title of property to the contractor. This approach is used when it is not practical for FDIC to readily utilize the property.

(2) *Return Property to Suppliers*: Return excess contractor-acquired property to suppliers for full credit, less the supplier's normal restocking charge. The cost of returning contractor-acquired property to suppliers should not be included in any claim for reimbursement.

(3) *Return Property to FDIC*: Property may be returned to FDIC for reutilization or disposal.

6.708 Prescriptions for Provisions and Clauses

Contracting Officers must insert the following provisions and clauses as required:

7.6.7-1 FDIC Property - insert clause in awards by FDIC in its corporate capacity, where FDIC property may be furnished to the contractor.

PGI Chapter 6.8 Contract Closeout

6.801 Scope

This chapter provides procedures, guidance and information for closing out official contract files.

6.802 RESERVED

6.803 Contract Closeout Procedures

The Contracting Officer and Oversight Manager are responsible for contract closeout using the procedures in the following paragraphs. FDIC does not require a contractor release for contract closeout. Additionally, the Contracting Officer does not sign a release from the contractor.

6.803(a) Contracting Officer Closeout Responsibilities

The standard timeframe in which a Contracting Officer initiates contract closeout is 180 days after the expiration date of the contractual action. However, different timeframes are permissible, based on the discretion of the respective ASB Assistant Director.

The Contracting Officer must determine that the contractor has performed all required contractual obligations prior to closing out the contract.

The Contracting Officer begins contract closeout by requesting the Oversight Manager to complete the Oversight Manager Closeout Memorandum found at https://fdicnet.fdic.gov/content/doa/home/buying/acq_docs.html.

Upon receipt of the signed Oversight Manager Closeout Memorandum, the Contracting Officer must:

(1) Review the Oversight Manager Closeout Memorandum and verify that there are no open issues, such as unreturned property, FDIC information in the possession of the contractor, unpaid invoices, undelivered goods or services, claims, disputes, audits or billing reviews. If there are open issues, they must be resolved before moving to the next step in the contract closeout process. All issues that require referral to the Legal Division must immediately be referred to the Contract Law Unit.

(2) If there are no open issues, send the contractor written notification that FDIC intends to close out the contract and afford the contractor twenty-one (21) days to confirm that the contract is ready to be closed out. A template for the contractor notification letter is available on the ASB website https://fdicnet.fdic.gov/content/doa/home/buying/acq_docs.html. In the event the contractor identifies an unresolved issue in its response, the contract closeout process must be suspended pending resolution of the issue. All issues that require referral to the Legal Division must immediately be referred to the Contract Law Unit;

(3) Ensure that the official contract file contains all required documentation;

(4) Complete and sign the closeout checklist to officially close out the contract file. A template for the closeout checklist is available on the ASB website https://fdicnet.fdic.gov/content/doa/home/buying/acq_docs.html;

(5) Officially close out the contract in the appropriate procurement and finance systems; and

(6) Move the official contract file to the procurement contract closeout folder in CEFile.

6.803(b) Oversight Manager Closeout Responsibilities

The Oversight Manager completes the Oversight Manager Closeout Memorandum, which includes the Oversight Manager's determination or verification that:

(1) All deliverables, including reports, have been delivered and accepted;

(2) All FDIC information in the possession of the Contractor has been returned or destroyed. If the contract includes clause 7.6.3-2, Contractor Return, Destruction and Retention of FDIC Information, the contractor has delivered a Certification of Sanitization and the Oversight Manager has filed it in CEFile in the sub-folder entitled Tracking Contractor Personnel/FDIC-Furnished Equipment.

(3) All payments have been made and reconciled;

(4) Any funds owed by the contractor to FDIC have been collected;

(5) All FDIC property has been returned;

(6) A pre-exit clearance has been completed on contractor personnel who have access to the FDIC's Network, unescorted access to FDIC facilities/offices, access to sensitive information, or on contractor personnel who had a background investigation completed on them by SEPS. This includes the completion of Form 3700/25, "Pre-Exit Clearance/Transfer Record for Contractor Personnel" and all pre-exit clearance actions specified in the FDIC Pre-Exit Clearance Procedures (Departing and Transferring Contractor Personnel) document found on the Division of Administration's Oversight

Manager's Tool Box webpage at: https://fdicnet.fdic.gov/content/doa/home/buying/oversightmanager-toolbox.html;

(7) A *Contractor Performance Evaluation and Reporting Form* has been completed, if required, and provided to the Contracting Officer;

(8) All contract oversight documentation has been filed in CEFile (i.e., the official contract file); and

(9) The Oversight Manager agrees that the Contracting Officer may closeout the contract.

The Oversight Manager must return a signed copy of the Oversight Manager Closeout Memorandum, within twenty-one (21) days from the date of the Contracting Officer's request.

6.804 Disposition of Contract Files

Once contracts are formally closed, the Contracting Officer must move the contract file to the procurement contract closeout folder within CEFile. The official contract file remains in the archived folder for the period required in accordance with established FDIC records management procedures.

MODULE 7:FDIC CONTRACT PROVISIONS AND CLAUSES

PGI Chapter 7.1 FDIC Contract Provision and Clauses

7.101 Scope

This chapter provides instructions for using provisions and clauses in solicitations and contracts, sets forth the solicitation provisions and contract clauses prescribed by this FDIC acquisition PGI manual, and presents a matrix listing the provisions and clauses in a user friendly manner.

7.102 Instructions for Using Provisions and Clauses

The following paragraphs address instructions for the use of provisions and clauses, including an explanation of the provision and clause numbering system, prescriptions, and the provision/clause matrix. Also prescribed below are procedures for incorporating, identifying, and modifying provisions and clauses; using alternates; and adding new clauses or provisions.

7.102(a) Numbering of Provisions and Clauses

Subchapter 7.103 sets forth the text of all FDIC provisions and clauses. Each provision or clause is uniquely identified. All provision and clause numbers begin with 7 since the text of all provisions and clauses appear in Module 7. The next digit corresponds to the number of the module in which the provision or clause is prescribed. Following this single digit are one or two digits which correspond to the number of the chapter of the module in which the provision or clause is prescribed. The provision or clause number is then completed by a hyphen and a sequential number. The following example illustrates the makeup of the provision or clause number 7.3.12-11.

7.	**3.**	**12.**	**-11**
Module containing provision or clause text	**Module prescribing provision or clause**	**Chapter prescribing provision or clause**	**Sequence number**

7.102(b) Prescriptions

Each provision and clause has an associated prescription which describes the conditions, requirements, and instructions for using the provision or clause. A provision or clause is prescribed in the PGI, at the end of the chapter where the subject matter of the provision or clause receives its primary or most closely related treatment. Prescriptions are also listed in 7.103, immediately prior to the text of each provision or clause.

7.102(c) Provision/Clause Matrix

The provision/clause matrix in 7.104 contains a column for each principal type of solicitation (request for quotation and request for proposal) and type of award (e.g., contract, basic ordering agreement, task order). The matrix also has columns that identify (1) whether the number and title applies to a provision or a clause, (2) the section of the contract in which the provision or clause is located, and (3) whether the provision or clause requires editing by the Contracting Officer. Since the matrix does not provide sufficient information to determine the applicability of a provision or clause, Contracting Officers must refer to the prescription for its use.

7.102(d) Dates

All provisions and clauses are dated “July 2008” in accordance with the issuance of the revised APM and newly issued PGI. The date will always be included as part of the title of the provision or clause. Any revisions to the provisions and clauses will reflect a change in the date based upon approval by ASB Policy and Systems Section.

7.102(e) Incorporating Provisions and Clauses

Provisions and clauses may be incorporated by full text or by reference. When incorporation by reference is used, the provision or clause must include the number, the title and the date.

Provisions and clauses that require editing by the Contracting Officer to fill in words, descriptions, numbers, dates, etc.; select among various choices or alternatives; or tailor the language to meet unique aspects of the acquisition must be incorporated in full text. Also, provisions that require the offeror or prospective contractor to fill in information, select among various choices, or provide narrative statements (e.g., Section K Representations and Certifications) must be incorporated in full text. All other provisions and clauses should be incorporated by reference to the maximum practical extent. Any provision or clause that is incorporated by reference must be accessible electronically to the offeror or prospective contractor via the FDIC web page http://www.fdic.gov/buying/goods/acquisition/index.html). However, the Contracting

Officer, upon request, must provide the full text of any provision or clause incorporated by reference.

7.102(f) Procedures for Modifying and Completing Provisions and Clauses

The Contracting Officer must not modify any provisions or clauses designated in the provision/clause matrix with an "N" under the column entitled "Editing Required?." If the Contracting Officer believes a provision or clause designated as non-editable should be changed, they must submit the proposed language in writing to the Contracting Law Unit (CLU) with an explanation for the basis of the change, and copy the ASB Policy and Systems Section. Approval of the revised language will be obtained from the CLU. The revised provision or clause may apply to a specific solicitation or contract, or may apply to all future procurements. If the change is approved, the provision or clause will be updated in the FDIC Automated Procurement System (APS) by the ASB Policy and Systems Section who will then notify the Contracting Officer.

The Contracting Officer must complete the provisions and clauses designated in the matrix with a "Y" under the column entitled "Editing Required?". If a Contracting Officer believes there are unique aspects of an acquisition that, beyond completing fill-ins, selecting alternatives, or describing factors/sub-factors and evaluation criteria in Sections L and M, require the structure or language of an editable provision to be changed, they must submit the proposed language in writing to the CLU with an explanation for the basis of the change. The Contracting Officer must also copy the ASB Policy and Systems Section with information sent to the CLU. Approval of the revised language will be obtained from the CLU. If the change is approved, the Contracting Officer will be authorized to edit the provision or clause accordingly, as the document is created in APS.

7.102(g) Procedures for Using Alternates

A major variation in a provision or clause may be accommodated by the use of an alternate. The Contracting Officer must edit the provision or clause, as applicable, to either include or delete the alternate. Provisions and clauses containing alternates must contain narrative statements as to when the alternate applies.

7.102(h) Procedures for Adding New Provisions or Clauses

If the Contracting Officer believes a new provision or clause is appropriate, they must submit the proposed language in writing to the CLU with an explanation for the basis of it use, and copy the ASB Policy and Systems Section. Approval of the language must be obtained from the CLU. The new provision or clause may apply to a specific solicitation or contract, or may apply to all future procurements. Once approved, the ASB Policy and Systems Section will upload the solicitation or clause into the APS Clause Library.

7.103 Text of Provisions and Clauses

Set forth below are all provisions and clauses, in full text, along with prescriptions for their use.

7.0.1-1 Solicitation Provisions Incorporated by Reference (October 2008)

Prescription:

Insert Provision 7.0.1-1, *Solicitation Provisions Incorporated by Reference,* in all solicitations.

Provision:

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. The full text of a solicitation provision is available in Module 7 of the document entitled *Procedures, Guidance and Information* (PGI), which may be accessed electronically at the FDIC website: www.fdic.gov/buying/goods/acquisition/index.html.

7.0.1-2 Clauses Incorporated by Reference (October 2008)

Prescription:

Insert Clause 7.0.1-2, *Clauses Incorporated by Reference*, in solicitations and awards.

Clause:

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. The full text of a contract clause is available in Module 7 of the document entitled *Procedures, Guidance and Information (PGI)*, which may be accessed electronically at the FDIC website: www.fdic.gov/buying/goods/acquisition/index.html.

7.1.2-1, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities. (September 2020)

Prescription:

Per PGI 1.215, insert clause 7.1.2-1, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities, in all awards.

Clause:

(a) *Definitions*. As used in this clause—

"Covered article" means any hardware, software, or service that–

Is developed or provided by a covered entity;

(2) Includes any hardware, software, or service developed or provided in whole or in part by a covered entity; or

(3) Contains components using any hardware or software developed in whole or in part by a covered entity.

"Covered entity" means–

(1) Kaspersky Lab;

(2) Any successor entity to Kaspersky Lab;

(3) Any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or

(4) Any entity of which Kaspersky Lab has a majority ownership.

(b) *Prohibition*. Section 1634 of Division A of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91) prohibits Government use of any covered article. The Contractor is prohibited from—

(1)Providing any covered article that the FDIC will use; and

(2) Using any covered article in the development of data or deliverables first produced in the performance of the contract.

(c) *Reporting requirement*.

(1) In the event the Contractor identifies a covered article provided to the FDIC during contract performance, or the Contractor is notified of such by a subcontractor at any tier or any other source, the Contractor shall report, in writing, to the Contracting Officer. For Basic Ordering Agreements (BOAs), Receivership BOAs (RBOAs) and Blanket Purchase Agreements (BPAs), the Contractor shall report to the Contracting Officer for the BOA/RBOA/BPA, and the Contracting Officer(s) for any affected order.

(2) The Contractor shall report the following information pursuant to paragraph (c)(1) of this clause:

(i) Within 1 business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; brand; model number (Original Equipment Manufacturer (OEM) number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the report pursuant to paragraph (c)(1) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of a covered article, any reasons that led to the use or submission of the covered article, and any additional efforts that will be incorporated to prevent future use or submission of covered articles.

(d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts, including subcontracts for the acquisition of commercial items.

7.1.2-2 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (September 2020)

Prescription:

Per PGI 1.215, insert clause 7.1.2-2, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, in all awards.

Clause:

(a) Definitions. As used in this clause—

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means—

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled—

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) Prohibition. Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to FDIC any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FDIC Procedures, Guidance, and Information (PGI) 1.214(b)(iv).

(c) Exceptions. This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) Reporting requirement. (1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information. For Basic Ordering Agreements (BOAs), Receivership BOAs (RBOAs) and Blanket Purchase Agreements (BPAs), the Contractor shall report to the Contracting Officer for the BOA/RBOA/BPA, and the Contracting Officer(s) for any affected order.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and

any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

7.1.3-1 Post-Government Employment Certification (Pre-Award) (May 2009)

Prescription:

Per PGI 1.314, insert provision 7.1.3-1, *Post-Government Employment Certification (Pre-Award),* in all solicitations.

Provision:

Any former Federal Deposit Insurance Corporation (FDIC) or Resolution Trust Corporation (RTC) employee who the offeror proposes to use in performance of work under the contract or its subcontracts must complete the post-government employment certification found at FDIC website www.fdic.gov/buying/goods/acquisition/index.html. The offeror shall submit the certification(s) in the volume of its proposal entitled "Additional Information". The certification(s) of the successful offeror will be reviewed by the FDIC Legal Division Ethics Unit to determine compliance with post-government employment restrictions. The former employee may be required to provide additional information as to their position and responsibilities while employed at FDIC or RTC and as a post-government employee working on the FDIC contract or subcontract.

7.1.3-2 Post-Government Employment Certification (Post-Award) (May 2009)

Prescription:

Per PGI 1.314, insert clause 7.1.3-2, *Post-Government Employment Certification (Post-Award),* in all awards.

Clause:

Any former Federal Deposit Insurance Corporation (FDIC) or Resolution Trust Corporation (RTC) employee who the contractor intends to use in performance of work under the contract or its subcontracts must complete and submit the post-government employment certification found at FDIC website www.fdic.gov/buying/goods/acquisition/index.html. The certification must be submitted to the Contracting Officer prior to the former employee commencing work under the contract. The FDIC Legal Division Ethics Unit will review the certification to determine compliance with the post-government employment restrictions. The former employee may be required to provide additional information as to their position and responsibilities

while employed at FDIC or RTC and as a post-government employee working on the FDIC contract or subcontract.

7.1.3-3 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (Aug 2018)

Prescription:

Per PGI 1.314, insert clause 7.1.3-3, *Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights*, in all awards that exceed $100,000, to include contracts, BPAs, BOAs, and all RBOAs.

Clause:

(a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239).

(b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over $100,000.

7.3.1-1 Disposition of Submitted Material (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218, insert provision 7.3.1-1, *Disposition of Submitted Material*, in all solicitations.

Provision:

Materials submitted in response to this solicitation will not be returned, except for proposals deemed non-responsive. The FDIC will retain one (1) copy of each proposal submitted, including non-responsive proposals, for official record purposes; remaining copies will be archived or destroyed, at the discretion of the Contracting Officer.

7.3.1-2 System for Award Management (SAM) (March 2014)

Prescription:

Per PGI 3.112 or PGI 3.218, insert provision 7.3.1-2, *System for Award Management (SAM)*, in all solicitations.

Provision:

The FDIC will only make awards to businesses that are registered in the System for Award Management (SAM) database. Registration is via http://www.sam.gov. This webpage also contains user guides and demonstration videos under the Help tab. If you have any questions regarding SAM or the registration process, please contact the SAM Assistance Center toll free at (866) 606-8220.

7.3.1-3 Restriction on Disclosure of Information (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218, insert provision 7.3.1-3, *Restriction on Disclosure of Information* in all solicitations.

Provision:

By participating in this solicitation, the offeror expressly agrees not to disclose any information it obtains from the FDIC related to this solicitation or any subsequent award without the prior written approval of the Contracting Officer (except as part of the preparation of a proposal in response to this solicitation). Offeror may be required to execute a confidentiality agreement. "Disclosure of information" includes any disclosure in any format, by or through any media (e.g., press releases) to anyone else, including the general public. The Contracting Officer has complete and sole discretion to determine if an offeror is in violation of this provision. FDIC reserves the right to disqualify an offeror from further participation in the solicitation, if the offeror violates this non-disclosure agreement. The FDIC also reserves the right to consider a violation of the non-disclosure agreement in the award decision or as a potential breach of contract in any subsequent award.

7.3.1-4 Solicitation Requirements, Terms and Conditions (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218, insert provision 7.3.1-4, *Solicitation Requirements, Terms and Conditions*, in all solicitations.

Provision:

Offerors are expected to meet all solicitation requirements. Any assumption that has been used in preparation of the proposal or any exception to the solicitation's terms and

conditions must be fully explained and justified in the offeror's proposal. Failure to comply with the terms and conditions of the solicitation may result in the offeror being removed from consideration for award.

7.3.1-5 Price Only Evaluation Method (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218, insert provision 7.3.1-5, *Price Only Evaluation Method*, in solicitations when Best Value is not appropriate and award will be based only on price.

Provision:

After receipt and evaluation of proposals, FDIC may award a contract to the responsive offer which is technically acceptable and has the lowest price.

7.3.1-6 Identification and Delivery of Proposals (March 2009)

Prescription:

Per PGI 3.112 or PGI 3.218, insert provision 7.3.1-6, *Identification and Delivery of Proposals*, in all solicitations. Fill in the date and time and select the appropriate address for delivery of proposals.

Provision:

The proposal due date under this RFP is _____, 20__, by _____ p.m., local time of the FDIC office issuing this solicitation. Proposals received after that date and time may be returned without any review by the FDIC.

Proposals and amendments to proposals must be: (1) marked with the solicitation number and the name and address of the offeror, (2) submitted in both paper media within a sealed envelope or package and electronic media in the form of a CD, and (3) delivered to the office specified below. An offeror who uses a commercial carrier to deliver its proposal must ensure the outermost wrapper of its package contains the information specified in (1) and (3) above. Proposals may be delivered by regular mail, express delivery mail, or hand-delivered by the offeror or private courier. When hand-delivering a proposal, offeror should allow at least an additional hour for delivery in advance of the time specified above.

[THE FOLLOWING ADDRESS SHALL BE USED FOR WASHINGTON PROPOSALS ONLY]

Federal Deposit Insurance Corporation

Seidman Center
3501 North Fairfax Drive
Arlington, VA 22226-3500

[NOTE: THE FOLLOWING ADDRESS IS FOR FIELD OFFICE PROPOSALS ONLY]

Federal Deposit Insurance Corporation
1601 Bryan Street
Dallas, TX 75201
Attention: Acquisition Services

7.3.1-7 Proprietary Information (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218, insert provision 7.3.1-7, *Proprietary Information*, in all solicitations.

Provision:

All proposals submitted in response to this solicitation become the property of the FDIC. The offeror should specifically designate any proprietary or confidential information with an appropriate restrictive legend. The FDIC will use its best efforts to maintain the confidentiality of all such information. In the absence of any claim of confidentiality, the FDIC will assume that none of the information in the proposal is confidential, and the offeror waives any claim for breach of confidentiality. The FDIC is subject to the "Freedom of Information Act," 5 U.S.C. §522, as amended, and the determination of the releasability of information is made pursuant to that statute and the implementing regulations.

7.3.1-8 Amendments, Extensions and Cancellations (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218, insert provision 7.3.1-8, *Amendments, Extensions, and Cancellations*, in all solicitations.

Provision:

This solicitation may be amended, extended or cancelled by the FDIC Contracting Officer at any time prior to award, if in the best interest of the FDIC. All prospective offerors will be notified of any amendment, extension or cancellation issued under this solicitation.

7.3.1-9 Delivery Schedule (July 2008)

Prescription:

Per PGI 3.112 or 3.218, insert clause 7.3.1-9, *Delivery Schedule*, in all awards for goods.

Clause:

The goods must be delivered in accordance with the following schedule.

Item Description	Day after Award
_____	_____
_____	_____
_____	_____
_____	_____

7.3.1-10 Place of Delivery or Performance (November 2013)

Prescription:

Per PGI 3.112 or PGI 3.218, insert clause 7.3.1-10, *Place of Delivery or Performance*, in all awards.

Clause:

The place of delivery or performance is: _____.

[ADD THE FOLLOWING SENTENCE WHEN THE CONTRACTOR IS REQUIRED TO DELIVER GOODS AND/OR MATERIALS.]

Contractor must ensure the contract number is listed on the shipping material or packing slip.

7.3.1-11 Deliverables (July 2008)

Prescription:

Per PGI 3.112 or 3.218, insert clause 7.3.1-11, *Deliverables*, in all awards.

Clause:

The Contractor must provide all deliverables described in the statement of work.

7.3.1-12 Period of Performance (October 2015)

Prescription:

Per PGI 3.112 or 3.218, insert clause 7.3.1-12, *Period of Performance*, in all awards for services.

Clause:

The Period of Performance begins on _____ ("Effective Date") and expires on _____.

[USE THE FOLLOWING VERSION OF THE CLAUSE, INSTEAD OF THE ABOVE VERSION, WHEN ONE OR MORE OPTION PERIODS ARE INCLUDED IN THE AWARD]

The Initial Period of Performance begins on _____ ("Effective Date") and expires on _____. If all option periods are exercised, the final expiration date is _____.
See clause 7.5.5-1, Option Period.

7.3.1-13 OIG Fraud Hotline (July 2008)

Prescription:

Per PGI 3.112 or 3.218, insert clause 7.3.1-13, *OIG Fraud Hotline*, in all awards

Clause:

The FDIC's Office of Inspector General (OIG) investigates allegations of fraud, waste and abuse in FDIC contracting. The OIG maintains a telephone hotline to collect information about possible fraud, waste or abuse. Contractor is required to:
(1) Put up OIG Fraud Hotline posters in each facility where it has employees working on FDIC contracts, and (2) distribute pamphlets about the OIG Fraud Hotline to employees working on FDIC contracts. The FDIC will supply Contractor with OIG Fraud Hotline posters and pamphlets, upon request.

7.3.1-14 Order of Precedence (July 2008)

Prescription:

Per PGI 3.112 or 3.218, insert clause 7.3.1-14, *Order of Precedence*, in all awards.

Clause:

The order of precedence for resolving any inconsistency in or conflict among the various components of this contract is:
(1) Contract Clauses
(2) Statement of Work
(3) Exhibits and Attachments
(4) Contractor's Proposal including all revisions.

7.3.1-15 Governing Law (July 2008)

Prescription:

Per PGI 3.112 or 3.218, insert clause 7.3.1-15, *Governing Law*, in all awards

Clause:

This contract is governed by Federal law and will be construed accordingly. To the extent State law may apply, in the case where there is no applicable Federal law, the State law that applies is the law of the State in which the FDIC office executing the contract is located (or the law of the District of Columbia for contracts executed by the FDIC office located in the District of Columbia).

7.3.2-1 Description of Goods or Services (July 2008)

Prescription:

Per PGI 3.112 or 3.218, insert provision 7.3.2-1, *Description of Goods or Services,* in all solicitations.

Provision:

The FDIC is requesting proposals from offerors to perform the following activities: [brief description of goods or services; period of expected performance, including options, if any; location of performance; and any incidental deliverables such as manuals, reports, etc.]. The goods or services the FDIC requires are described in the [Statement of Objectives (SOO), Statement of Work ("SOW"), or Performance Work Statement (PWS)] included in this solicitation. The term “proposal” as may be used in this document refers to the written offer, written information, and pricing information. Each of the elements is further described in Section L, Instructions, Conditions, and Notices to Offerors, of this solicitation

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7.3.2-2 References to Time (July 2008)

Prescription:

Per PGI 3.112 or 3.218, insert provision 7.3.2-2, *References to Time*, in all solicitations.

Provision:

All references to time in this solicitation refer to the local time of the FDIC office issuing this solicitation.

7.3.2-3 Outreach Program: SDB, Minority-Owned and Women-Owned Business Concerns (July 2008)

Prescription:

Per PGI 3.112 or 3.218, insert provision in 7.3.2-3, *Outreach Program: SDB, Minority-Owned and Women-Owned Business Concerns*, in solicitations that will result in an award exceeding $100,000.

Provision:

The FDIC strongly encourages the participation of Small Disadvantaged Business (SDB) and Minority-Owned and Women-Owned Business (MWOB) concerns in this solicitation.

7.3.2-4 Site Visit (July 2008)

Prescription:

Per PGI 3.112 or 3.218, insert provision 7.3.2-4, *Site Visit*, in solicitations when services will be performed on-site at FDIC and a site visit will be allowed prior to award.

Provision:

In order to provide potential offerors an opportunity to walk through the FDIC location(s) where services will be performed under the contract, a site visit will be held on _____ at _____ a.m. to tour the facility[ies].

Each potential offeror is limited to two (2) attendees at the site visit. Potential offerors must submit the names of attendees to _____ by _____, 200_. All submissions must be by email to _____ at _____@fdic.gov or by facsimile at Fax No. (___) _____). If a potential

offeror elects not to attend the site visit, it will be deemed to have waived any objection based on not having had access to information provided at the site visit. If a potential offeror is unable to use either email or fax, it should contact _____at _____.

Attendees shall meet in the lobby area at the following location, at the times specified below:

Date: _____
Time: ____a.m. / p.m. (the site visit will last approximately ____ hour(s))
Location: Federal Deposit Insurance Corporation
_____ -- Lobby
_____

[ADD OTHER LOCATIONS, IF SERVICES WILL BE PERFORMED AT DIFFERENT SITES AND A WALK-THROUGH/SITE VISIT IS NEEDED AT BOTH SITES (i.e., Virginia Square and DC location(s)]:

Date: _____
Time: ____p.m. (the Site Visit will last approximately ____ hour(s))
Location: Federal Deposit Insurance Corporation
_____ -- Lobby
_____

Attendees will be required to obtain a visitor's badge when they arrive at the FDIC. A picture ID must be shown to obtain the visitor's badge. The FDIC will not provide transportation to the site visit location(s).

_____

7.3.2-5 Offerors' Conference (July 2008)

Prescription:

Per PGI 3.112 or 3.218, insert provision 7.3.2-5, *Offeror's Conference*, in solicitations when an offerors' conference will be held.

Provision:

In order to provide a forum for questions from potential offerors, the FDIC will hold an offerors' Conference ("Conference") at the following location on _____, 200_ at _____a.m./ p.m.:

Federal Deposit Insurance Corporation
_____
_____
_____

Each potential offeror is limited to two (2) attendees at the Conference. Potential offerors must submit the names of attendees to _____ by _____, 200_. All submissions must be by email to _____ at _____@fdic.gov or by facsimile at Fax No. (___) _____). If a potential offeror is unable to use either email or fax, it should contact _____at _____.

If a potential offeror elects not to attend the Conference, it will be deemed to have waived any objection based on not having had access to information provided at the Conference.

7.3.2-6 Questions Regarding Solicitation (July 2008)

Prescription:

Per PGI 3.112 or 3.218, insert provision 7.3.2-6, *Questions Regarding Solicitation*, in all solicitations.

Provision:

The FDIC will respond to questions or requests for clarification, submitted in writing by an offeror, regarding this solicitation. Questions or requests for clarification must be submitted by ____p.m. on _____, 200_ by email to _____ at _____@fdic.gov or by facsimile at Fax No. (___) _____). If an offeror is unable to use either email or fax, it should contact _____at _____.

[INCLUDE THE FOLLOWING FOR SOLICITATIONS THAT ARE MAILED TO PROSPECTIVE OFFERORS]

The FDIC will provide a copy of the questions and any written responses or clarifications to all firms from whom proposals have been solicited.

[INCLUDE THE FOLLOWING FOR SOLICITATIONS THAT ARE PUT ON FEDBIZOPPS FOR USE BY PROSPECTIVE OFFERORS]

Questions and their answers to this solicitation will be posted in the form of an Amendment on the Federal Business Opportunities (FedBizOpps) Internet website (http://www.fedbizopps.gov).

7.3.2-7 Submission of Offers in the English Language and in U.S. Currency (July 2008)

Prescription:

Per PGI 3.112 or 3.218, insert provision 7.3.2-7, *Submission of Offers in the English Language and U.S. Currency*, in all solicitations.

Provision:

Offers submitted in response to this solicitation must be in the English language and in terms of U.S. dollars. Offers received in other than English or in other than U.S. dollars will be rejected.

7.3.2-8 Award of Contract - Competitive (July 2008)

Prescription:

Per PGI 3.112 or 3.218, insert provision 7.3.2-8, *Award of Contract - Competitive*, in all solicitations which are competed.

Provision:

The Contracting Officer reserves the right to make award (s) as a result of the initial responses to this solicitation, make final offer revisions with the apparent successful offeror(s), or hold discussions with all offerors as appropriate. The FDIC reserves the right to award one, more than one or no contracts under this solicitation.

7.3.2-9 General Proposal Instructions (July 2008)

Prescription:

Per PGI 3.112 or 3.218, insert provision 7.3.2-9, *General Proposal Instructions*, in all solicitations.

Provision:

(a) This solicitation does not commit the FDIC to award any contract, to pay any cost incurred related to proposal submission, oral presentation, or any subsequent negotiations. It is also the offeror's responsibility to inform the FDIC of any present, pending or possible future conflict of interest.

(b) Because the FDIC expects to receive and analyze a large volume of data in selection of the successful offeror, proposals shall be made strictly in accordance with the proposal format set forth herein. Failure to comply with the terms and conditions of this solicitation may result in the offeror being removed from consideration for award.

(c) Each proposal shall be divided into _____ ( ) separate parts:

Volume __ - Mission Capability
Volume __ - Relevant Past Performance
Volume __ - Pricing
Volume __ - Additional Information
Volume __ - Background Investigation Questionnaires
Volume __ - Section 508 [USE ONLY IF EIT IS INCLUDED]

The numbers of printed copies to be submitted for each volume are specified in other provisions of this solicitation. In addition to printed copies, offeror must submit the proposal electronically on compact disk (CD). Each proposal volume must be contained in a separate folder or file on the CD(s)

(d) Each volume shall have a cover page that identifies: (1) the offeror's name, address and telephone and fax numbers and the name of its contact person regarding the solicitation; (2) the solicitation Number; and (3) the volume number and name.

(e) If the proposal exceeds the page limits identified in the solicitation, the proposal may be determined non-responsive and returned to the offeror. The following will not be included in the page count limitations: cover pages, table of contents, tabs, dividers, glossaries, blank pages and a compliance matrix (if proposed).

(f) Exceptions taken to the terms and conditions of the solicitation, including the attachments, must be identified and fully described in the "Additional Information" volume of your proposal. Each exception must be identified specifically, by reference to the paragraph or part of the solicitation to which exception is taken. Provide rationale in support of the exception and fully explain the impact it has, if any, on performance, schedule, and price. Failure to comply with the terms and conditions of the solicitation may result in the offeror being removed from consideration for award.

7.3.2-10 General Proposal Instructions – Oral Presentation (July 2008)

Prescription:

Per PGI 3.112 or 3.218, insert provision 7.3.2-10, *General Proposal Instructions – Oral Presentation*, in conjunction with 7.3.2-27 *Oral Presentation* when proposal evaluations will include the use of oral presentations.

Provision:

(a) This solicitation does not commit the FDIC to award any contract, to pay any cost incurred related to proposal submission, oral presentation, or any subsequent negotiations. It is also the offeror's responsibility to inform the FDIC of any present, pending or possible future conflict of interest.

(b) Because the FDIC expects to receive and analyze a large volume of data in selection of the successful offeror, proposals shall be made strictly in accordance with the proposal format set forth herein. Failure to comply with the terms and conditions of this solicitation may result in the offeror being removed from consideration for award.

(c) Each proposal shall be divided into _____ ( ) separate parts:

Volume __ - Mission Capability
Volume __ - Relevant Past Performance
Volume __ - Pricing
Volume __ - Additional Information
Volume __ - Background Investigation Questionnaires
Volume __ - Section 508 [USE ONLY IF EIT IS INCLUDED]

The numbers of printed copies to be submitted for each volume are specified in other provisions of this solicitation. In addition to printed copies, offeror must submit the proposal electronically on compact disk (CD). Each proposal volume must be contained in a separate folder or file on the CD(s)

(d) Each volume shall have a cover page, that identifies (1) the offeror's name, address and telephone and fax numbers and the name of its contact person regarding the solicitation; (2) the solicitation Number; and (3) the volume number and name.

(e) The oral presentation requirements, including the deliverables and the topics to be presented, are identified in the provision "Oral Presentation".

(f) If the proposal exceeds the page limits identified in the solicitation, the proposal may be determined non-responsive and returned to the offeror. The following will not be included in the page count limitations: cover pages, table of contents, tabs, dividers, glossaries, blank pages and a compliance matrix (if proposed).

(g) Exceptions taken to the terms and conditions of the solicitation, including the attachments, must be identified and fully described in the "Additional Information" volume of your proposal. Each exception must be identified specifically, by reference to the paragraph or part of the solicitation to which exception is taken. Provide rationale in support of the exception and fully explain the impact it has, if any, on performance, schedule, and price. Failure to comply with the terms and conditions of the solicitation may result in the offeror being removed from consideration for award.

7.3.2-11 Pricing Proposal (Firm-Fixed-Price) (April 2011)

Prescription:

Per PGI 3.112 or 3.218, insert provision 7.3.2-11, *Pricing Proposal (Firm-Fixed-Price)*, in solicitations that will result in firm fixed priced contracts. For RBOAs, include the

version of paragraph (a) that includes volume rebate proposal instructions. For awards greater than $1,000,000, include paragraph (d).

Provision:

Offerors shall submit an original and one (1) copy of the Pricing Proposal. (No page limitation.)

(a) Pricing Schedule. Offerors shall complete and submit the Pricing Schedule provided as Attachment ___ to this solicitation. Instructions for completing the Pricing Schedule are provided in Attachment ___.

[INCLUDE THE FOLLOWING PARAGRAPH (a) IN ALL RBOAs.]

(a) Pricing Schedule and Volume Rebate. Offerors shall complete and submit the Pricing Schedule provided as Attachment ___ to this solicitation. Instructions for completing the Pricing Schedule are provided in Attachment ___. Offerors shall also provide in the Pricing Proposal a rebate percentage for each Tier level above the Base Tier level, as specified in clause 7.3.2-74 Volume Rebate.

[IF TRAVEL COSTS WILL NOT BE REIMBURSED, USE THE FOLLOWING PARAGRAPH (b)]:

(b) Travel costs will not be reimbursed separately; factor travel costs into the firm fixed price you propose.

[IF TRAVEL COSTS WILL BE REIMBURSED, USE THE FOLLOWING PARAGRAPH (b)]:

(b) Travel costs will be reimbursed in accordance with FDIC Contractor Travel Reimbursement Guidelines found at http://www.fdic.gov/buying/goods/acquisition/index.html. If the Contractor must be in the Washington, D.C., area overnight, the Contractor is required to stay at the Seidman Center providing space is available. If space is not available the Contracting Officer will authorize the contractor to obtain alternate lodging. For reimbursement, the Contractor must submit written evidence regarding the unavailability of lodging at the Seidman Center with their invoice.

(c) Sales Tax Exemption. FDIC is a Federal Government corporation and is exempt from State sales tax. Therefore, it is not required to pay sales tax on invoices submitted to it and, if included, the amounts will be deducted from the total amount invoiced.

[INCLUDE THE FOLLOWING FOR CONTRACTS OF $1,000,000 OR MORE.]

(d) Bank Reference & Certified Financial Statements. Offerors must provide a bank reference together with a certified Balance Sheet and Income Statement prepared by an

independent auditor for the offeror, or an acceptable equivalent, for the current and preceding two (2) fiscal years. If the offeror cannot provide these statements, explain why, and provide other suitable proof of the offeror's financial responsibility.

7.3.2-12 Pricing Proposal (Time-and-Material or Labor Hour) (April 2011)

Prescription:

Per PGI 3.112 or 3.218, insert provision 7.3.2-12 *Pricing Proposal (Time-and-Material or Labor Hour)*, in solicitations for time-and-material or labor hour contracts. For RBOAs, include the version of paragraph (a) that includes volume rebate proposal instructions. For awards greater than $1,000,000, include subparagraph (f).

Provision:

Offerors shall submit an original and one (1) copy of the Pricing Proposal. (No page limitation.)

(a) Pricing Schedule. Offerors shall complete and submit the Pricing Schedule provided as Attachment ___ to this solicitation. Instructions for completing the Pricing Schedule are provided in Attachment ___.

[INCLUDE THE FOLLOWING PARAGRAPH (a) IN ALL RBOAs.]

(a) Pricing Schedule and Volume Rebate. Offerors shall complete and submit the Pricing Schedule provided as Attachment ___ to this solicitation. Instructions for completing the Pricing Schedule are provided in Attachment ___. Offerors shall also provide in the Pricing Proposal a rebate percentage for each Tier level above the Base Tier level, as specified in clause 7.3.2-74 Volume Rebate.

[IF SUBCONTRACTING IS NOT PERMITTED, INCLUDE THE FOLLOWING PARAGRAPH (b)]:

(b) Subcontracting is not permitted under this solicitation.

[IF SUBCONTRACTING IS PERMITTED, WITH SUBCONTRACTOR MARKUP, INCLUDE THE FOLLOWING PARAGRAPH (b)]:

(b) Offeror must identify the markup rate the prime contractor has applied to each subcontractor labor category. Offeror must justify the reasonableness of the subcontractor markup rate(s).

[IF SUBCONTRACTING IS PERMITTED, BUT SUBCONTRACTOR MARKUP IS NOT PERMITTED, INCLUDE THE FOLLOWING PARAGRAPH (b)]:

(b) Subcontracting is permitted under this solicitation; however, markup of the subcontractor labor rates by the prime contractor is not permitted.

(c) For the purpose of proposing on-site and off-site labor rates, the following definitions apply:

(1) On-site - a contractor is working on-site if the major portion of the work activity, measured in labor hours, is performed at or in a facility controlled by FDIC. For these purposes, "controlled" includes facilities owned, leased, rented or occupied by the FDIC, for the purpose of doing business in its corporate, conservatorship, or receivership capacities. For the portion of the work that the Contractor performs at or in a facility controlled by FDIC, FDIC will allow Contractor to utilize standard and existing FDIC equipment and material, including but not limited to computer hardware and software.

(2) Off-site - a contractor is working off-site if the major portion of the work activity, measured in labor hours, is performed at a facility other than one controlled by the FDIC (as defined above), in which the Contractor furnishes any and all materials needed to perform the work, including ,but not limited to, computer hardware and software. FDIC may decide to supply contractor with software to be used in which case no cost or fee will be charged to the contractor. No other fees, costs, or expenses must be paid to a contractor working off-site other than the labor hour rate, unless specifically set forth in this contract.

(d) If the contract includes reimbursable travel, and the Contractor must be in the Washington, D.C., area overnight, the Contractor is required to stay at the Seidman Center providing space is available. If space is not available the Contracting Officer will authorize the contractor to obtain alternate lodging. For reimbursement, the Contractor must submit written evidence regarding the unavailability of lodging at the Seidman Center with their invoice.

(e) Sales Tax Exemption. FDIC is a Federal Government corporation and is exempt from State sales tax. Therefore, it is not required to pay sales tax on invoices submitted to it and if included, the amounts will be deducted from the total amount invoiced.

[INCLUDE THE FOLLOWING FOR CONTRACTS OF $1,000,000 OR MORE.]

(f) References/Financials.
Offerors must provide a bank reference together with a certified Balance Sheet and Income Statement prepared by an independent auditor, or an acceptable equivalent, for the current and preceding two (2) fiscal years. If the offeror cannot provide these statements, explain why, and provide other suitable proof of the offeror's financial responsibility.

7.3.2-13 Effective Period of Offer (July 2008)

Prescription:

Per PGI 3.112 or 3.218, insert provision 7.3.2-13, *Effective Period of Offer*, in all solicitations

Provision:

The proposal shall be signed by an authorized officer of the company who can commit the offeror, and shall include a statement that the offer is valid for a period of not less than 120 days, unless withdrawn by written notice to the Contracting Officer.

7.3.2-14 Non-Responsive Proposals (July 2008)

Prescription:

Per PGI 3.112 or 3.218, insert provision 7.3.2-14, *Non-Responsive Proposals*, in all solicitations

Provision:

Any proposal that fails to comply with the material requirements of this solicitation may be considered non-responsive and may be eliminated from further consideration.

7.3.2-15 Mission Capability - Proposal Instructions (August 2018)

Prescription:

Per PGI 3.112 and PGI 3.218, insert provision 7.3.2-15, *Mission Capability - Proposal Instructions*, in solicitations when mission capability will be evaluated. Include paragraphs (b), and/or (c), when applicable.

Provision:

(a) The Mission Capability Volume must include the information described below. Do not include any pricing information in this volume. Offerors must submit an original and _____ ( ) copies of the Mission Capability Volume. The Mission Capability Volume should be specific and complete. Legibility, clarity and coherence are very important. Your responses will be evaluated against the Mission Capability rating criteria defined in the provision of this solicitation *Evaluation of Mission Capability*. Using the instructions provided below, provide as specifically as possible the actual methodology you would use for accomplishing/satisfying these sub-factors. Do not merely reiterate the objective or reformulate the requirements specified in the solicitation.

The proposal must address the following:
Sub-factor 1. (For example Management Plan) (_____ page maximum)
Sub-factor 2. (For example Technical Approach) (_____ page maximum)
Sub-factor 3. (For example Key Personnel) (_____ page maximum)

[USE (b) BELOW IF SUBCONTRACTING IS PERMITTED; THE ESTIMATED AWARD VALUE IS OVER $500,000; AND SERVICES (TO BE PERFORMED BY THE PRIME AND/OR SUBCONTRACTORS) WILL COMPRISE THE MAJORITY OF THE AWARD VALUE.]

(b) Subcontracting Plan. The offeror must provide a subcontracting plan for any portion of the work proposed to be subcontracted. Offerors are encouraged to subcontract with Minority or Woman Owned Business (MWOBs) and Small Disadvantaged Business (SDBs).

The subcontracting plan must provide at least the following;

(1) Name, Address, and Dun and Bradstreet Number (DUNS) of the subcontractor, if the subcontractor has a DUNS number. (Note: A subcontractor is considered to be any entity or person, other than an employee of the contractor, that will receive payment from the contractor and is a direct charge to the contract.);

(2) Summary of capabilities of the subcontractor;

(3) Description of roles of Key Personnel of the subcontractor;

(4) Estimated percentage of work to be performed by the subcontractor, based on dollars (i.e., dollars to be paid to subcontractor divided by the total award amount);

(5) Description of services to be performed or goods/material provided by the subcontractor,

(6) Minority or Woman Owned Business (MWOB) designation of the subcontractor, i.e., Women-Owned, Minority-Owned. If Minority-Owned, also provide the subcontractor's ethnic/racial category from the following list:

Asian-Pacific American
Subcontinent Asian (Asian-Indian) American
Black American
Hispanic American
Native American
Other than one of the preceding

(7) Designation of the subcontractor as a Small Business, Small Disadvantaged Business, Small Business Administration 8(a), Historically Underutilized Business Zone (HUBZone), Veteran Owned and/or Service Disabled Veteran Owned Business; and

(8) Provide your rationale and a policy for subcontracting on this contract, including how you will meet your proposed subcontracting commitments. Include information on efforts undertaken by the Contractor to include subcontractors that are minority-owned, women-owned or small disadvantaged businesses.

(Note: Do NOT include any labor rates in the Subcontracting Plan. Estimated compensation to the subcontractor, including detailed information concerning labor categories and labor rates, must be included in the Pricing Volume.)

[INCLUDE (c) BELOW AS A SEPARATE PARAGRAPH UNDER THIS SECTION IF THIS IS A FOLLOW-ON/RE-COMPETE CONTRACT]

(c) If the offeror proposes to hire any incumbent key personnel, the offeror must include a copy of the incumbent personnel's resume and a letter of commitment from the individual. Do not include any pricing information (e.g., proposed salary, etc.) in the letter of commitment.

7.3.2-16 Past Performance - Proposal Instructions (July 2008)

Prescription:

Per PGI 3.112 or 3.218, insert provision 7.3.2-16, *Past Performance - Proposal Instructions*, in solicitations when past performance information will be evaluated.

Provision:

Offerors must submit an original and _____ ( ) copies of the Past Performance Volume. Do not include any pricing information in this volume.

(a) General

Each offeror must submit a Past Performance Volume with its proposal, containing past performance information in the format described in paragraph (d) below, Past Performance Information. This information is required for both the offeror and for major subcontractors and joint venture partners that the offeror considers critical to its overall successful performance of this requirement. The FDIC will use data provided by each offeror, as well as data obtained from other sources, in the evaluation of past performance.

Offeror must notify its proposed subcontractors that by providing past performance information and references to the offeror for inclusion in the proposal, a subcontractor is deemed to have given consent to the possible release by FDIC to offeror of any adverse past performance information the FDIC receives, in order that the offeror can respond to it.

(b) Relevant Contracts (Maximum ___ pages for each relevant contract).

Submit past performance information, in the format described in paragraph (d), on _____ ( ) recent contracts you consider the most relevant in demonstrating

your ability to perform this requirement. Also include past performance information on up to _____ ( ) recent contracts performed by each of your subcontractors and joint venture partners, if any, which you consider the most relevant in demonstrating their ability to perform this requirement. For a description of the characteristics or aspects the FDIC will consider in determining relevance, *see* Section M, Evaluation Factors for Award.

(c) Specific Content

Explain the rationale supporting the relevance to this requirement of the particular contracts you selected as indicators of past performance, e.g., what particular aspects of these contracts relate to the particulars of this requirement, in what way do they relate, and to what degree. Your discussion may include your accomplishments in resolving problems encountered on these prior contracts and in identifying and managing program risk. Clearly describe management actions you took to overcome problems and the effect those actions had in achieving improvements or rectifying problems. Merely having problems does not automatically equate to a little or no confidence rating, since the problems encountered may have been on a more complex program, or an offeror may have subsequently demonstrated the ability to overcome the problems encountered. This may allow the offeror to be considered a higher confidence candidate.

(d) Past Performance Information

Provide the information listed below for each contract (Government or commercial) being described (see paragraph (b)). Provide frank, concise comments regarding your performance on the contracts you identify. Provide a separate completed form for each contract.

(1) Name of the customer.
(2) Contract/work identification number.
(3) Contract type.
(4) Total contract value.
(5) Brief description of the work performed.
(6) Period of performance.
(7) Point of contact for the contract (technical/project manager's and contracting official's names and telephone numbers).
(8) For each of the sub-factors under the Mission Capability factor, illustrate how the work you performed applies to that sub-factor.
(9) Specify, by name, any key personnel, who you propose for the contract resulting from this solicitation, who participated in this contract, and indicate their contractual roles for both contracts.
(10) Identify whether a subcontracting plan was required by the contract. If one was required, identify, in percentage terms, the planned versus achieved goals during contract performance for Small Businesses, Small Disadvantaged Businesses (SDB),

and Minority or Women Owned Businesses (MWOB). If goals were not met, please explain.

(e) Performance Questionnaires

Offeror must ask each customer identified by the offeror in paragraph (d) to complete a Past Performance Questionnaire (PPQ) (form is available at www.fdic.gov/buying/goods/acquisition/index.html). The offeror is responsible for providing customers with the questionnaire, along with ensuring the questionnaire identifies the solicitation number and the name, fax number, and email address of the Contracting Officer. By selecting the customer as a reference and requesting they submit the questionnaire to FDIC, the offeror is authorizing the customer to release past performance information to the FDIC, whether it is positive or negative information. Responsibility for tracking the completion of the PPQs rests solely with the offeror. The completed PPQs must be sent directly to the FDIC from the customer and should be preferably emailed to _____@fdic.gov or faxed to the Contracting Officer _____ at _____(insert fax number). Any PPQs received from the offeror will not be considered. The offeror is responsible for ensuring the PPQs are received by FDIC no later than the proposal due date. Offeror should contact the Contracting Officer to confirm receipt. In the event no PPQs are received by the FDIC Contracting Office, the Contracting Officer may contact the points of contact provided by the offeror.

7.3.2-17 Best Value Evaluation Process (August 2018)

Prescription:

Per PGI 3.112 or 3.218, insert provision 7.3.2-17, *Best Value Evaluation Process*, in solicitations when the evaluation is based on best value.

Provision:

(a) The FDIC will review all proposals for responsiveness and all Offerors (including subcontractors) for compliance with 12 CFR 366, and will evaluate individual proposals against the evaluation criteria. The FDIC may exclude an offeror from further consideration if it submits an Offer that does not conform to the proposal submission requirements.

[ORDER OF IMPORTANCE MUST BE INCLUDED IN PARAGRAPH (b) OF THIS PROVISION. EXAMPLES INCLUDE BUT ARE NOT LIMITED TO THE FOLLOWING.]

(b) Factors A and B are of equal importance, and are more important than Factors C and D, which are all equal in importance. Sub-factors A-1, A-2, and A-3 are all equal in importance.

(b) Factors A, B, C, and D are listed in descending order of importance. Sub-factors A1, A2, and A3 are all equal in importance.

Factor A - Mission Capability
  Sub-factor A.1 -
  Sub-factor A.2 -
  Sub-factor A.3 -
Factor B - Past Performance
Factor C – Price
Factor D – Section 508 Compliance [if required]

Following an evaluation, award will be made to the offeror(s) whose proposal is determined to be most advantageous (best value) to the FDIC.

(c) Subjective judgment is implicit in the analysis of best value. The best value may not necessarily be represented by the lowest price offered. Price is not expected to be the most significant factor in the selection of a Contractor from this solicitation. The degree of importance of price as a factor, however, could increase depending upon how equally matched the competing proposals are for the other factors evaluated. When competing proposals are judged to be equal upon evaluation of the other factors considered in the best value analysis, total price and other price factors would become the most significant factor.

7.3.2-18 Evaluation of Mission Capability (February 2014)

Prescription:

Per PGI 3.112 or 3.218, insert provision 7.3.2-18, *Evaluation of Mission Capability* in solicitations where mission capability will be evaluated

Provision:

[USE THE FOLLOWING PARAGRAPH (a) FOR COLOR-CODED BEST VALUE METHODOLOGY]

(a) Review and Assessment of Mission Capability Written Proposals. FDIC will review and assess the Mission Capability of each written proposal against the stated evaluation sub-factors (e.g., Management Plan) set forth in the provision *Mission Capability – Proposal Instructions*. Mission Capability ratings will focus on strengths and weaknesses of the offeror's proposal and assess the extent to which offeror's proposal fulfills the functional requirements and meets FDIC's needs. Evaluators will consider the soundness, content, clarity, quality, accuracy, and completeness of the proposal. Each sub-factor within the Mission Capability factor will receive one of the following color ratings (Blue, Green, Yellow, Red), based on the assessed strengths and proposal

shortfalls of each offeror's proposal as it relates to each of the Mission Capability sub-factors.

[ADD THE FOLLOWING SENTENCE AT THE END OF THE PRECEDING PARAGRAPH IF A SINGLE COLOR RATING WILL BE ASSIGNED TO THE MISSION CAPABILITY FACTOR. (NOTE: EACH SUB-FACTOR MUST STILL RECEIVE A COLOR RATING).]

After the sub-factors have been evaluated and rated, evaluators will consider the order of importance of the sub-factors and assign a single overall color rating to the Mission Capability factor.

MISSION CAPABILITY RATING SCALE

COLOR RATING DEFINITION

Blue/ Exceptional: Exceeds minimum performance or capability requirements in a way beneficial to the FDIC.

Green/Acceptable: Meets minimum performance or capability requirements necessary for acceptable contract performance.

Yellow/Marginal: Does not meet some minimum performance or capability requirements necessary for acceptable contract performance, but any proposal inadequacies are correctable.

Red/Unacceptable: Fails to meet minimum performance or capability requirements. Proposals with an unacceptable rating are not awardable.

[USE THE FOLLOWING PARAGRAPH (a) FOR POINT SYSTEM BEST VALUE METHODOLOGY]

(a) Review and Assessment of Mission Capability Written Proposals. FDIC will review and assess the Mission Capability of each written proposal against the stated evaluation sub-factors set forth above. Mission Capability ratings will focus on strengths and weaknesses of the offeror's proposal and assess the extent to which offeror's proposed technical and management solutions fulfill the functional requirements and meets FDIC's needs. A total of 100 points will be assigned to the Mission Capability factor. Points assigned at the sub-factor level will be driven by the order of importance for each sub-factor. All points assigned at the sub-factor level will equal 100 points at the factor level. Cumulative points will reflect the quality of the offeror's proposal for Mission Capability according to the stratification table below.

MISSION CAPABILITY RATING SCALE

TECHNICAL POINTS

Point Rating Table.

Adjectival Rating/Point Range: Rating Description/Standard

Excellent/90-100: Meets or exceeds all requirements. Proposal demonstrates complete understanding of the requirement and offers a substantial chance of success. No deficiencies or weaknesses identified.

Very Good/80-89: Meets or exceeds some requirements. Proposal shows reasonable understanding of the requirement and offers a high chance of success. No deficiencies or weaknesses identified.

Good/70-79: Meets minimum requirements. Proposal shows reasonable understanding of the requirement and offers a high chance of success. Significant weaknesses or deficiencies exist, but are correctable through clarification or discussions.

Marginal/60-69: Meets some minimum requirements. Proposal indicates only a marginal understanding of the requirement and offers only a minimal chance for success. Significant deficiencies and weaknesses must be corrected in order to make the proposal acceptable, but any proposal inadequacies are correctable.

Poor/0-59: Does not meet requirements. Proposal demonstrates a significant lack of understanding of the requirement and does not offer a reasonable chance for success. Proposals with a poor rating are not awardable.

[USE THE FOLLOWING PARAGRAPH (a) FOR PRICE/PERFORMANCE TRADEOFF BEST VALUE METHODOLOGY]

(a) Review and Assessment of Mission Capability Written Proposals. FDIC will review and assess the Mission Capability of each written proposal against the minimum technical qualification requirements set forth below. Each sub-factor within the Mission Capability Factor will receive a Pass/Fail rating. An offeror must receive an acceptable (i.e., Pass) rating for each sub-factor to be considered for award.

[INSERT MINIMUM TECHNICAL QUALIFICATION REQUIREMENTS FOR EACH SUB-FACTOR LISTED BELOW]

Sub-factor A:
Sub-factor B:
Sub-factor C:

[IF EXPERIENCE WAS IDENTIFIED AS AN AREA FOR EVALUATION, INLCUDE THE FOLLOWING]

(b) Offeror will be evaluated on its experience in managing services similar in scope to those required in this solicitation, which demonstrate the offeror's capability to support the mission.

7.3.2-19 RESERVED

7.3.2-20 Evaluation of Past Performance (July 2008)

Prescription:

Per PGI 3.112 or 3.218, insert provision 7.3.2-20, *Evaluation of Past Performance*, in solicitations when past performance will be evaluated.

Provision:

(a) Past Performance Factor. Under the Past Performance factor, the performance confidence assessment is an evaluation of an offeror's past work record to assess the FDIC's confidence in the probability that offeror can successfully perform, as proposed. The FDIC will evaluate the offeror's demonstrated record of contract compliance in supplying services that meet user's needs, including management of cost and schedule. The Past Performance Evaluation is accomplished by reviewing aspects of an offeror's relevant past performance, focusing on and targeting performance that is relevant to the Mission Capability sub-factors. In determining relevance, contracts of similar project complexity, scope, type, and schedule are considered. Data on efforts performed by other divisions within offeror’s organization and by critical subcontractors may also be considered, if such resources significantly influence the offeror’s performance of the proposed effort.

(b) The FDIC may consider as relevant contracts performed for agencies of the federal, state or local governments, and for commercial customers. Each offeror will receive an integrated performance confidence assessment, which is the rating for the Past Performance factor. While the Past Performance Evaluation focuses on performance that is relevant to the Mission Capability sub-factors, the resulting performance confidence assessment is made at the factor level and represents an overall evaluation of contractor performance.

(c) Where the relevant performance record indicates performance problems, the FDIC will consider the number and severity of the problems and the appropriateness and effectiveness of any corrective actions taken (not just planned or promised). The FDIC may review more recent contracts or performance evaluations to ensure corrective actions have been implemented and to evaluate their effectiveness.

(d) The following criteria will be used to determine relevancy of previous contracts:

HIGHLY RELEVANT - The magnitude and the complexity of the effort on this contract are essentially the same as the solicitation.

RELEVANT - Some dissimilarity in the magnitude or the complexity of the effort on this contract exists, but it contains most of what the solicitation requires.

NOT RELEVANT - Performance on this contract contains little similarity to the performance required by this solicitation.

Each offeror will receive one of the ratings described below:

RATING DEFINITION

Exceptional/High Confidence - Based on the offeror's performance record, essentially no uncertainty exists that the offeror will successfully perform the required effort.

Very Good/Significant Confidence - Based on the offeror's performance record, little uncertainty exists that the offeror will successfully perform the required effort.

Satisfactory/Confidence - Based on the offeror's performance record, some uncertainty exists that the offeror will successfully perform the required effort.

Neutral/Unknown Confidence - No performance record can be established.

Marginal/Little Confidence - Based on the offeror's performance record, substantial uncertainty exists that the offeror will successfully perform the required effort. Changes to the offeror's existing processes may be necessary in order to achieve contract requirements.

Unsatisfactory/No Confidence - Based on the offeror's performance record, extreme uncertainty exists that the offeror will successfully perform the required effort.

(e) Discussions may be conducted as necessary to provide the offeror an opportunity to address any adverse past performance, or clarify the relevancy of the offeror's past performance information or address minor clerical issues.

(f) Offerors without a record of relevant past performance or for whom information on past performance is not available will not be evaluated favorably or unfavorably on past performance, but will receive a "Neutral/Unknown Confidence" rating for the Past Performance factor.

(g) More recent and relevant performance will have a greater impact on the Performance Confidence Assessment than less recent or relevant effort. A strong record of relevant past performance may be considered more advantageous to the FDIC than a "Neutral/Unknown Confidence" rating. Likewise, a more relevant past

performance record may receive a higher confidence rating and be considered more favorably than a less relevant record of favorable performance.

(h) Past performance information may be obtained through other Government systems, questionnaires tailored to the circumstances of this acquisition, interviews with program managers and contracting officers, and other sources known to the FDIC, including commercial sources and any other sources deemed appropriate.

7.3.2-21 Description/Specifications/Work Statement (October 2008)

Prescription:

Per PGI 3.112 or PGI 3.218, insert clause 7.3.2-21, *Description/ Specifications/Work Statement (October 2008),* in awards where either a SOW or a SOO and PWS or another form of work statement is included as an attachment in Section J of the award document.

Clause:

The name/description of the goods or services being acquired is as follows:

_____.

The specifications for and the description of the work to be performed under this award are fully detailed in either a Statement of Work (SOW) or a Statement of Objective (SOO) coupled with a Performance Work Statement (PWS), which is included as an attachment in Section J of this award document.

7.3.2-22 Evaluation of Pricing (April 2011)

Prescription:

Per PGI 3.112 or PGI 3.218, insert provision 7.3.2-22, *Evaluation of Pricing*, in all solicitations. The provision may be tailored by the Contracting Officer to accommodate the contract type and pricing arrangement. For RBOAs, the Contracting Officer must provide weights for the volume rebate tier levels, for evaluation purposes.

Provision:

Price proposals will be evaluated with respect to completeness, reasonableness, and realism. The Contracting Officer may also evaluate the Overall Evaluated Price (OEP) for each offeror.

Completeness. Offerors must submit their proposed prices in accordance with the Pricing Schedule. Offerors must submit fully loaded labor rates. Offers failing to propose a price for all mandatory labor categories may receive no further consideration and may be eliminated.

Reasonableness. FDIC will evaluate prices for labor rates using one or more of the following techniques.

(a) Comparing the proposed prices to those of other offerors.
(b) Comparing the proposed prices to FDIC's independent estimate and those in other FDIC contracts.
(c) Comparing the proposed prices to the prices in the company's GSA Schedule or commercial price list.

Prices that are extreme (high or low) may be judged unreasonable.

Realism. Labor rates that do not reflect a reasonable compensation for the skill required in a labor category will be considered unrealistic.

Overall Evaluated Price (OEP): The OEP will be computed based on the total of the following:

(a) The offeror's proposed labor rates for each labor category multiplied by the number of labor hours.
(b) The FDIC-reimbursed travel costs.

[INCLUDE THE FOLLOWING PARAGRAPH IN ALL RBOAs. CONTRACTING OFFICERS MUST ASSIGN WEIGHTS FOR EACH TIER AND THE TOTAL OF ALL TIERS MUST AMOUNT TO 100%.]

Volume Rebate: For evaluation purposes only, the following weights have been assigned to the revenue tiers specified in clause 7.3.2-74 Volume Rebate. For Tiers 1 and above, FDIC will multiply the mid-range dollar amount of each tier times its assigned weight, and then multiply the results times the offeror's proposed percentage.

Revenue Tiers

	Weight	
Base Tier:	_____%_____	(fill-in)
Tier 1:	_____%_____	(fill-in)
Tier 2:	_____%_____	(fill-in)
Tier 3:	_____%_____	(fill-in)
Tier 4:	_____%_____	(fill-in)
Tier 5:	_____%_____	(fill-in)

7.3.2-23 Evaluation of Financial Capability (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218, insert provision 7.3.2-23, *Evaluation of Financial Capability* in solicitations for awards over $1,000,000.

Provision:

The FDIC will evaluate the financial capability of the potential awardee(s) on a "pass/fail" basis.

7.3.2-24 Technical Approach (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert provision 7.3.2-24, *Technical Approach*, in solicitations when the submission of a technical approach is required (Use in conjunction with the provision *Mission Capability – Proposal Instructions.*).

Provision:

(a) The offeror must provide a comprehensive and complete written technical approach. The technical approach must demonstrate the offeror's understanding of the requirement and describe the methodology by which the offeror will successfully accomplish the requirements stated in the Statement of Objectives/Statement of Work. The technical approach must, at a minimum, include the following:

(1)
(2)
(3)

[CONTRACTING OFFICER MUST INCLUDE/LIST ALL PERTINENT ELEMENTS TO BE USED IN THE EVALUATION OF OFFERORS PROPOSAL]

[IF FDIC WILL EVALUATE AN OFFEROR'S EXPERIENCE, ADD THE FOLLOWING:]

(b) If the proposed technical approach is similar to that used successfully by the offeror in performing previous services, which are similar in size and scope to those required in this solicitation, describe the experience and how it supports the mission capability of this effort.

7.3.2-25 Management Plan (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert provision 7.3.2-25, *Management Plan*, in solicitations when the submission of a management plan is required. (Use in conjunction with the provision *Mission Capability – Proposal Instructions.*).

Provision:

(a) The offeror must provide a comprehensive and complete written management plan for managing the project that clearly provides a practical, low-risk approach and includes all of the following:

(1)
(2)
(3)

[CONTRACTING OFFICER MUST INCLUDE/LIST ALL PERTINENT ELEMENTS TO BE USED IN THE EVALUATION OF OFFERORS PROPOSAL]

[IF FDIC WILL EVALUATE AN OFFERORS EXPERIENCE, ADD THE FOLLOWING:]

(b) If the proposed management plan is similar to that used successfully by the offeror in performing previous services, which are similar in size and scope to those required in this solicitation, describe the experience and how it supports the mission capability of this effort.

7.3.2-26 Key Personnel (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert provision 7.3.2-26, *Key Personnel*, in solicitations when information on Key Personnel is required. (Use in conjunction with the provision *Mission Capability – Proposal Instructions.*).

Provision:

The offeror must identify and demonstrate that proposed key personnel possess the necessary experience and qualifications. The offeror must provide resumes for each key personnel. Each resume must not exceed 2 pages in length. Each resume must include the following information:

(1) General Information (name/title)
(2) Education
(3) Experience
(4) Accreditations (memberships/professional licenses)

7.3.2-27 Oral Presentation (July 2008)

Prescription:

Per PGI 3.112 and PGI 3.218, insert provision 7.3.2-27, *Oral Presentation*, in solicitations in conjunction with 7.3.2-10 *General Proposal Instructions – Oral Presentation* when proposal evaluations will include the use of oral presentations.

Provision:

(a) After the submission of proposals, eligible offerors must make an oral presentation of the technical aspects of their proposals to the FDIC Technical Evaluation Panel and Contracting Officer, and participate in a question and answer session. Offerors must expect probing questions as to their understanding of the requirement and capabilities. Oral presentations will be evaluated as described in Section M. THE PRESENTATION OF INFORMATION ABOUT PRICING IS NOT PERMITTED DURING EITHER THE ORAL PRESENTATION OR THE QUESTION AND ANSWER SESSION.

(b) With the offeror's proposal, the offeror must submit an electronic file (on CD) of the oral presentation slides and _____(__) paper copy sets of the presentation. Offeror must use PowerPoint (.ppt) or a similar program to provide visual support for its presentation. There is no limit on the number of slides that an offeror may use. However, when reviewing and evaluating the oral presentations, FDIC will not evaluate any slide that was not projected and fully addressed during the presentation. The production and use of an excessive number of or overly elaborate slides may be considered in the evaluation process.

(c) FDIC will not accept any change to the oral presentation briefing slides after the due date for proposal submission. However, while making the oral presentation, the offeror may expand on the information contained in the briefing slides. The FDIC will not discuss an offeror's strengths or weaknesses and will not conduct negotiations during the oral presentation. Statements made by the offeror during the oral presentation will not become a part of any contract resulting from this solicitation unless the FDIC and offeror agree to make it a part of the contract.

(d) The following topics must be covered in the oral presentation:

(1)
(2)
(3)

(e) The presentation must be given by key personnel or senior members of the team being proposed to manage the contract. The majority of the presentation must be given by the individual who will personally direct and supervise performance and will have complete operational responsibility. However, the offeror may have other personnel

conduct parts of the presentation related to their area of expertise. The number of presenters must be held to a minimum and all must be individuals who will perform under the contract.

(f) The oral presentation, excluding the question and answer period, will be limited to _____ (__) minutes. Following the oral presentation, there will be a short recess to be followed by a _____ (__) minute question and answer session. During the question and answer session, FDIC may request clarification or elaboration of any points addressed in the oral presentation for the purpose of clarifying areas of the offeror's response which are unclear or not adequately supported or understood. The offeror is not entitled to ask FDIC questions during the oral presentation or question and answer period.

(g) Oral presentations are expected to occur approximately _____ ( ) calendar days after the closing date of this solicitation. The order in which oral presentations will be made will be randomly determined by the Contracting Officer. The Offeror will receive an advance notice, at least _____ (__) calendar days prior to the oral presentation date, identifying the offeror's scheduled date, time and location for the oral presentation. The offeror must confirm the receipt of the notification for the oral presentation to the Contracting Officer and must include a list of names and titles for all presenters and attendees. The offeror's point of contact for the presentation, including telephone number, must also be included in the confirmation. FDIC may not be able to accommodate a schedule change requested by an offeror for its oral presentation and may proceed with the source selection process without hearing the offeror's oral presentation. It is within the Contracting Officer's discretion to reschedule any offeror's presentation.

(h) At the start of the oral presentation, the Contracting Officer will provide the offeror with the oral presentation CD that was submitted with the proposal, which the offeror must use for the presentation. The offeror will have access to an overhead projector and a podium. The offeror may not use any other media, such as a chalk board, white board, or flip-chart.

(i) Offeror may not record its presentation using audio or videotape or any other method/medium. FDIC reserves the right to videotape or otherwise record the presentation, including question and answer session. Copies of videotaped presentations or other recordings will not be made available to individual offerors.

(j) The actual facilities that will be used for the oral presentation, or facilities similar to them, will be made available to offerors for a 20-minute inspection, at a date to be determined by the Contracting Officer. An offeror must make a written request to the Contracting Officer to view the facilities, if it desires to inspect them prior to the oral presentation.

7.3.2-28 Late Proposals, Modifications of Proposals, and Withdrawal of Proposals (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert provision 7.3.2-28*, Late Proposals, Modifications of Proposals, and Withdrawals of Proposals*, in all solicitations.

Provision:

Any proposal or modification of a proposal, including Best and Final Offers, received after the date and time specified in the solicitation for submission to the FDIC, will not be considered, unless it is received before award is made and the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition and:

(a) It was sent either by commercial carrier or by U.S. Postal Service registered or certified mail not later than the fifth (5th) calendar day prior to the date specified in Block 8 (e.g., an offer due by the twentieth (20th) of the month must have been mailed on the fifteenth (15th) or earlier); or

(b) In the case of receipt after the date and time specified in in the solicitation, the FDIC determines that the late receipt was due solely to mishandling by the FDIC after receipt at the FDIC; or

(c) It was the only proposal received; or

(d) It offers significant price or technical advantages to the FDIC.

(e) The only acceptable evidence to establish:

(1) The date of mailing of a late proposal or a modification is a shipping label from a commercial carrier, the U.S. Postal Service registered or certified mail postmark on the envelope or wrapper, or the original receipt from the U.S. Postal Service. If there is not a legible date, then the proposal or modification shall be deemed to have been mailed late.

(2) The time of receipt at the FDIC office issuing this RFP is either the time and date stamp on the proposal wrapper or other documentary evidence of receipt provided by the FDIC office.

(f) Proposals may be withdrawn by written or facsimile notice received by FDIC any time prior to award. Proposals may be withdrawn in person by the offeror or an authorized representative, as well.

7.3.2-29 Award - Best Value (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert provision 7.3.2-29, *Award - Best Value*, in all solicitations in which award is based on best value.

Provision:

FDIC will base the award on an integrated assessment of the evaluation factors and sub-factors. FDIC has the sole discretion to determine which proposal(s) represents the best value to the FDIC. A technically acceptable offer other than the one with the lowest-evaluated price may be awarded the contract.

7.3.2-30 Rejecting Proposals/Waiving Informalities (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert provision 7.3.2-30, *Rejecting Proposals/Waiving Informalities*, in all solicitations.

Provisions:

The FDIC may reject any or all proposals if it is in the best interest of the FDIC to do so. In awarding the contract, the FDIC Contracting Officer may waive minor informalities and irregularities in proposals it receives. The Contracting Officer has sole discretion to determine what constitutes minor informalities and irregularities.

7.3.2-31 Pre-Award Site Visit (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert provision 7.3.2-31, *Pre-Award Site Visit*, in solicitations where the Contracting Officer has decided a pre-award site-visit may be conducted.

Provision:

A pre-award site visit and survey of the offeror's site or sites may be conducted to verify the security of the offeror's facility and validate the offeror's ability to perform in accordance with its proposal.

7.3.2-32 Compliance with Presidential $1 Coin Act of 2005 (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert clause 7.3.2-32, *Compliance with Presidential $1 Coin Act of 2005*, in awards where the Contractor is operating a business on Federal premises.

Clause:

The Contractor will ensure full compliance with the Presidential $1 Coin Act, Public Law 109-145. By January 1, 2008, any contractor operating a business on Federal premises must provide the capability for customers to use $1 coins in business operations that involve currency and coin, including vending machines, and must display signage noting this capability. These business operations must be capable of accepting and dispensing $1 coins, either through person-to-person transactions or through automated means.

7.3.2-33 Independent Contractors (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert clause 7.3.2-33, *Independent Contractors*, in all awards.

Clause:

The FDIC retains Contractor as an independent contractor for the sole purpose of performing the services or providing the goods described in this contract. If subcontracting is permitted, the use of the term “Contractor” herein refers to both the Contractor and all Subcontractors at all levels. Contractor must ensure that all Subcontractors adhere to all of the terms and conditions of this contract that have flow-down requirements.

7.3.2-34 Duty to Deliver or Perform (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert clause 7.3.2-34, *Duty to Deliver or Perform*, in all awards.

Clause:

Contractor agrees to perform the services or provide the goods, in accordance with the terms and conditions set forth herein and in any attachments to the contract.

7.3.2-35 Calendar Days (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert clause 7.3.2-35, *Calendar Days*, in all awards.

Clause:

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

7.3.2-36 Task Order (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert clause 7.3.2-36, *Task Order*, in all BOAs or RBOAs . Contracting Officer must choose a method for TO awards.

Clause:

At any time during the Period of Performance, the Contracting Officer may send to Contractor, and any other Contractors awarded this [BOA] [RBOA] a Request for Task Order Proposal (the "Request") describing the nature of one or more specific tasks, the structure for Contractor's offer and any other information relating to the task. Task orders under this Agreement will be awarded based using the following method(s):

[CHOOSE METHOD FOR AWARD OF TASK ORDERS]

<u>Rotational:</u> Contractors will be placed in a queue established on the basis of their price-fee proposals. The queue will list contractors from lowest to highest price-fee with the lowest price-fee contractor listed first. Task orders will be issued on a rotational basis beginning with the first contractor in the queue. This method will be the primary method used to award task orders.
<u>Direct Award:</u> FDIC reserves the right to issue a task order directly, outside of any rotation. A contractor receiving a direct award will be placed at the end of the queue for the next rotational award.
<u>Competition:</u> FDIC may compete the award of a particular task order among all contractors holding this Agreement. Both price-fee and technical capability will be evaluated. A contractor awarded a task order through competition will be placed at the end of the queue for the next rotational award.
If Contractor wishes to offer its goods or services for the task, it must deliver an offer pursuant to the terms of the Request. Based on the offers received, the FDIC may select one or more contractors to perform the tasks. The task order must be executed by Contractor and the FDIC Contracting Officer after which there will exist a binding obligation between Contractor and the FDIC under the terms of the Agreement and the

task order for delivery of the goods or services described therein. The task order format, an example of which is set forth as Attachment **[ ]** to this Agreement, may change during the period of performance of this Agreement.

7.3.2-37 Audit of Records (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert clause 7.3.2-37, *Audit of Records*, in all awards that exceed $100,000.

Clause:

(a) Audit and Inspection Rights. The FDIC, through its Contracting Officer or his designated representative(s), has the right to audit and examine Contractor's records and inspect its facilities. The scope of these rights is described below.

(b) Examination of Costs. Contractor is required to maintain sufficiently detailed records of the costs it incurs in performing this contract The FDIC has the right to audit and examine Contractor's books and records, and its accounting procedures and practices, regardless of their form (e.g., machine readable media) or type (e.g., data bases, applications software, data base management software,). The FDIC has the right to inspect, at reasonable times, the facilities used by Contractor during performance of the contract.

(c) Reports. If Contractor is required to furnish cost, funding or performance reports, the FDIC has the right to audit and examine Contractor's books, records, other documents and supporting materials to evaluate (1) the data underlying the reports and (2) the effectiveness of Contractor's policies and procedures to produce data compatible with the objectives of these reports.

(d) Comptroller General.

(1) The Comptroller General of the United States, or his authorized representative, shall have access to and the right to examine any of the contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder for a period of three (3) years following final payment under the contract.

(2) The period of access and examination is automatically extended for records relating to claims or litigation arising from the performance of this contract, or costs and expenses of this contract to which the Comptroller General has taken exception, and continues until all claims, litigation, appeals or exceptions are resolved.

(3) This paragraph may not be construed to require contractors or subcontractors to create or maintain any record that the contractor or subcontractor does not maintain in ordinary course of business or pursuant to a provision of law.

(e) Retention Requirement. Contractor must retain the materials described in paragraphs (b) and (c) above for three (3) years following final payment under this contract, or for any longer period required by statute or another clause in this contract. Contractor must make the materials available to the FDIC for audit, examination and reproduction, at reasonable times during the retention period. Contractor must also provide the FDIC with working space at its facilities to conduct the audit and examination.

If this contract is terminated, completely or partially, Contractor must maintain the materials described in subparagraphs (b) and (c) above for three (3) years following any final settlement Contractor must maintain, and make available to the FDIC, records relating to appeals under the "Disputes" clause of this contract, or to claims or litigation arising under or from this contract, until the appeals, claims or litigation are resolved.

(f) Computer Data. Contractor may transfer computer data in machine readable form from one reliable computer medium to another. Contractor's computer data retention and transfer procedures must maintain the integrity, reliability and security of the original data. Contractor's choice of media affects neither Contractor's obligations nor the FDIC's rights under this clause.

(g) Subcontracts. Contractor is required to insert a clause containing all the terms of this clause, including this subparagraph (g) - altered as necessary to identify properly the contracting parties and the Contracting Officer under the FDIC prime contract - in all subcontracts under this contract that exceed $100,000.

7.3.2-38 Scope of Services – Task Orders (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert clause 7.3.2-38, *Scope of Service – Task Orders*, in task order awards

Clause:

Contractor must . . . [Describe the work to be performed or goods to be provided. Include the specific details of the work, level of the firm's responsibility, expected staffing projections, level of FDIC oversight, etc.].

7.3.2-39 Incorporation of Terms and Conditions – Task Orders/Delivery Orders (October 2015)

Prescription:

Per PGI 3.112 or PGI 3.218 insert clause 7.3.2-39, *Incorporation of Terms and Conditions – Task Orders/Delivery Orders*, in all task orders and delivery orders.

Clause:

All terms and conditions of Agreement No. _____/ FSS Contract No. _____] are hereby incorporated by reference as if specifically set forth herein, unless otherwise modified. In case of a conflict, the order of precedence is the [Agreement/ FSS Contract], the task order and the Contractor's proposal.

7.3.2.40 Change in Physical Location (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert clause 7.3.2-40, *Change in Physical Location*, in all awards.

Clause:

Contractor is required to notify the FDIC Contracting Officer and Oversight Manager in writing of any change in Contractor's physical location for the Place of Performance of this contract. A "change" includes, without limitation, any facilities relocation and/or reconstruction activity or any other planned event that may have an impact on the continued operation of contractor-operated network equipment located on Contractor's premises. The notification must be made at least thirty (30) days in advance of a change to allow the FDIC time to take appropriate action.

7.3.2-41 FDIC Personnel (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert clause 7.3.2-41, *FDIC Personnel*, in all awards

Clause:

(a) FDIC Oversight Manager. The Oversight Manager is the person designated in writing by the Contracting Officer to represent the FDIC for the purpose of monitoring technical performance and accepting goods or services. The Oversight Manager is not authorized to issue any instructions or directions which effect any substantive change in this contract, including, but not limited to, an increase or decrease in the price of this contract, or a change in the delivery date(s) or Period of Performance. Specific areas of delegated authority are more particularly defined in the Oversight Manager Appointment Memorandum. The Oversight Manager is _____

(b) FDIC Contracting Officer. The Contracting Officer is the person with FDIC-delegated authority to enter into, modify, administer, and terminate contracts and orders. The Contracting Officer is _____.

7.3.2-42 Contractor Personnel (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert clause 7.3.2-42, *Contractor Personnel*, in all awards

Clause:

Any individual who is performing any part of the work under this award, and who is a direct employee of Contractor is considered Contractor Personnel ("Contractor Personnel"). However, self-employed individuals, other independent contractors, contract laborers, individuals who are employees of a temporary employment/personnel agency, and the like, who perform any part of the work under this award, do not come within the definition of Contractor Personnel and are either subcontractors or employees of subcontractors.

7.3.2-43 Key Personnel (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert clause 7.3.2-43, *Key Personnel*, in all awards in which the Program Office has determined key personnel are required.

Clause:

(a) The following key personnel are essential to the proper performance of Contractor's duties under this contract:

Name	Title
_____	_____
_____	_____
_____	_____
_____	_____

(b) Contractor must make the above named key personnel available for performance under this contract as long as such persons are employed by Contractor or its related entities. All key personnel changes must be authorized in writing by the FDIC Contracting Officer prior to the new key personnel beginning work. Contractor must give a minimum of a 14-day advance written notice to the FDIC Contracting Officer of any proposed substitutions of key personnel. The notice must describe the reason for

the proposed change; give the name of the proposed substitute individual with a description of his educational and professional background; and include a completed background investigation questionnaire. The determination of acceptability of proposed substitute personnel is in the sole discretion of the FDIC.

7.3.2-44 Representations of Contractor (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert clause 7.3.2-44, *Representations of Contractor*, in awards over $100,000.

Clause:

Contractor represents as follows:

(a) The execution, delivery and performance of this contract have been duly authorized by all necessary corporate or partnership actions of Contractor.

(b) Contractor will have in its possession all necessary licenses, permits and approvals required to execute, deliver and perform its duties under this contract no later than ten (10) days after the execution of this contract; Contractor will maintain the qualifications needed to do business imposed by all jurisdictions where Contractor will execute, deliver and perform its duties under this contract. Contractor must deliver copies of all licenses, permits, approvals and other qualifications to the FDIC Contracting Officer not later than fifteen (15) days after the execution of this contract.

(c) At the time of execution of this contract, there has been no change to any answer contained within the representations and certifications submitted to the FDIC with its proposal. Contractor will notify the FDIC Contracting Officer, in writing, of any change to any representation or certification previously given by it or any person performing services under this contract, *within ten (10) days after Contractor discovers, learns of or is otherwise notified of the change*.

7.3.2-45 Preamble to Contractor Representations and Certifications (November 2009)

Prescription:

Per PGI 3.112 or PGI 3.218 insert provision 7.3.2-45, *Preamble to Contractor Representations and Certifications*, in solicitations for awards over $100,000.

Provision:

Contractor is subject to the provisions of 12 Code of Federal Regulations Chapter III, Part 366, which may be found at: http://www.fdic.gov/buying/goods/acquisition/index.html. The representations and certifications set out in this solicitation must be completed by an official authorized to bind the contractor, and must 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 certifying official subject to prosecution under 18 United States Code §§ 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 Title 18 of the United States Code). In addition, any misrepresentations or false, fictitious, or fraudulent certifications may render the contractor and the certifying official subject to administrative remedies available to the FDIC, which include suspension and/or exclusion from contracting, or termination of the contract, (12 CFR 366.16; 12 CFR Part 367).

The offeror must provide notice to the Contracting Officer within 10 business days of discovery or at any time prior to contract award, if the contractor learns that one or more of its representations and certifications were erroneous when submitted or have become erroneous by reason of changed circumstances.

The signature of the offeror on the face page of this solicitation constitutes the making of the applicable representations and certifications. The applicable representations and certifications will be incorporated by reference into any contract awarded to the offeror under this solicitation.

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 used primarily to examine a contractor's eligibility for potential FDIC contract award; 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 is voluntary. However, failure to furnish all requested information may preclude you from receiving an FDIC contract.

7.3.2-46 Integrity and Fitness Representations and Certifications (November 2009)

Prescription:

Per PGI 3.112 or PGI 3.218 insert provision 7.3.2-46, *Integrity and Fitness Representations and Certifications*, in solicitations for awards for services over $100,000.

Provision:

Answer all questions and fill in the information asked for.

I. IDENTIFYING INFORMATION:

(a) 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 _____.

(b) 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 _____

DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER _____

ADDRESS _____

CITY _____ STATE _____

ZIP CODE _____

(c) 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 _____

JV PARTNER'S DUNS NUMBER _____

JV'S DUNS NUMBER (If different) _____

ADDRESS _____

CITY _____ STATE _____

ZIP CODE _____

Has a Joint Venture Agreement been executed? [ ] Yes, [ ] No (If yes, attach Agreement.)

(d) 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 _____

DUNS NUMBER _____

ADDRESS _____

CITY _____ STATE _____

ZIP CODE _____

NAME OF SUBCONTRACTOR _____

DUNS NUMBER _____

ADDRESS _____

CITY _____ STATE _____

ZIP CODE _____

NAME OF SUBCONTRACTOR _____

DUNS NUMBER _____

ADDRESS _____

CITY _____ STATE _____

ZIP CODE _____

(If additional space is necessary, attach separate sheets.)

II. PART 366 INTEGRITY AND FITNESS

a) Unique Terms

Unique terms used in these representations and certifications are described in 12 CFR Part § 366 as follows:

(1) Conflict of interest occurs when a contractor, any entity that owns or controls a contractor, or any entity the contractor owns or controls:

(i) Has a personal, business, or financial interest or relationship that relates to the services performed under the contract; or

(ii) Is a party to litigation against the FDIC, or represents a party that is; or

(iii) 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.

(2) Ownership or control:

(i) The president or chief executive officer has control of an organization.

(ii) 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.

(iii) 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.

(iv) Ownership or control is evidenced by the:

1. Power to vote, directly or indirectly, 25% or more interest of any class of voting stock of a company;

2. Ability to direct in any manner the election of a majority of a company's directors or trustees; or

3. Ability to exercise a controlling influence over the company's management and policies.

(3) 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.

(4) FDIC-insured depository institution includes any bank or savings association the deposits of which are insured by the FDIC.

(5) 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.

(6) 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:

(i) To one or more FDIC-insured depository institutions;

(ii) More than ninety (90) days delinquent in the payment of principal, interest, or a combination thereof; and

(iii) More than $50,000 each.

(7) Person includes an individual, corporation, partnership or other entity with a legally independent existence.

(8) 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:

(i) 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;

(ii) 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;

(iii) 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

(iv) 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.

(b) Representations as to Eligibility (12 CFR 366.3)

To the best of the contractor's knowledge:

(1) Has the contractor been convicted of a felony?

[ ] Yes [ ] No (If yes, explain below.)

(2) 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.)

(3) Has the contractor demonstrated a pattern or practice of defalcation regarding obligations?

[[Yes [ ] No (If yes, explain below.)

(4) 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 II(a) of these representations and certifications for your convenience.

(c) 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:

(1) 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.)

(2) Are any such person(s) a party to litigation against us, or represent a party that is?

[ ] Yes [ ] No (if yes, explain below.)

(3) 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.)

(4) 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.)

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.

(d) Representations as to Defaults (CFR 366.14(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.

(e) Representations as to Employees and Subcontractors (CFR 366.14(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.)

III. RETENTION OF INFORMATION

A contractor must retain the information upon which it relied in preparing its integrity and fitness representations and making its certifications during the term of the contract and for a period of three (3) years following the termination or expiration of the contract, and make such information available for review by FDIC upon request.

7.3.2-47 Additional Information - Representations, Certifications and Other Statements of the Offeror (July 2008)

Prescription:

Per PGI 3.112 or 3.218, insert provision 7.3.2-47, *Additional Information - Representations, Certifications and Other Statements of the Offeror***,** in solicitations for awards that will exceed $100,000.

Provision:

The offeror must complete the Section K, Representations, Certifications and Other Statements of the Offeror, and submit them with its proposal in a section entitled "Additional Information". Do not retype the Representations and Certifications; simply complete and return the signed original and one copy. Should there be any material change that affects the accuracy of the information in the Representations and Certifications after they have been submitted, the offeror must file new Representations and Certifications with the FDIC.

The offeror (prime contractor) is responsible for:

- Obtaining the Section K clause 7.3.2-46 *Integrity and Fitness Representations and Certifications* from its subcontractors with subcontracts valued at $100,000 or more;
- Reviewing them for accuracy and completeness;
- Ensuring no subcontracts are issued to third parties who do not meet the requirements addressed in the representations and certifications;
- Referring any conflicts revealed by the certifications or that arise during the course of performing work to the Contracting Officer;
- Maintaining the representations and certifications; and
- Making the representations and certifications available to the Contracting Officer, upon request.

7.3.2-48 Certification of Registration in System for Award Management (SAM) (March 2014)

Prescription:

Per PGI 3.112 or PGI 3.218, insert provision 7.3.2-48, *Certification of Registration in* System for Award Management (SAM) , in solicitations for awards over $100,000.

Provision:

(a) The offeror certifies that it is registered in the System for Award Management (SAM) at www.sam.gov, and that all information in SAM is correct, including its socio-economic status.

[ ] Yes [ ] No

An offeror that marks "No" must also complete the certification in paragraph (b).

(b) The offeror certifies that it is in the process of registering in the System for Award Management (SAM) at www.sam.gov , and will enter correct information in SAM, including its socio-economic status.

[ ] Yes [ ] No

(c) The socio-economic groups in SAM are as follows:

Women-Owned Business
Minority-Owned Business
Small Disadvantaged Business

For Minority-Owned Businesses, the ethnic/racial categories are as follows:

Asian-Pacific American Owned
Subcontinent Asian (Asian-Indian) American Owned
Black American Owned
Hispanic American Owned
Native American Owned
Other than one of the preceding

7.3.2-49 Small Business Representation (June 2011)

Prescription:

Per PGI 3.112 or PGI 3.218, insert provision 7.3.2-49, *Small Business Representation*, in all solicitations.

Provision:

(a) NAICS code and size standard:

(1) The North American Industry Classification System (NAICS) code for this acquisition is identified on the cover page of the solicitation.

(2) The small business size standard is _____ [insert size standard].

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b) Representation.

(1) This acquisition is not a Small-Business Set-Aside. However, for general statistical purposes, the offeror represents as part of its quote or offer that it [_] is, [_] is not a small business concern.

7.3.2-50 Certificate of Independent Price Determination (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert provision 7.3.2-50, *Certificate of Independent Price Determination*, in solicitations for awards over $100,000.

Provision:
(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 for 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, 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.

_____

7.3.2-51 Contingent Fee Representation (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218, insert provision 7.3.2-51, *Contingent Fee Representation*, in solicitations for awards over $100,000. This certification is not required for the acquisition of commercial items.

Provision:

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.

7.3.2-52 Equal Opportunity Certification (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert provision 7.3.2-52*, Equal Opportunity Certification*, in solicitations for awards over $100,000.

Provision:

The offeror represents that --

(a) It [ ] has [ ] has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation;

(b) It [ ] has [ ] has not filed all required compliance reports; and

(c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

The offeror also represents that --

(d) It [ ] has developed and has on file [ ] has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2); or

(e) It [ ] has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

7.3.2-53 Certification Regarding Fair Inclusion of Minorities and Women (November 2014)

Prescription:

Per PGI 3.112 and PGI 3.218, insert provision 7.3.2-53, *Certification Regarding Fair Inclusion of Minorities and Women,* in all solicitations for awards over $100,000, except Task Orders issued under FDIC BOAs/RBOAs/BPAs.

Provision:

(a) The Contractor certifies to the following: [ ] Yes [ ] No

(1) It is committed to equal opportunity in employment and contracting.
(2) It has made and will continue to make, or will make during the course of this contract, a good faith effort to ensure, to the maximum extent possible, the fair inclusion of minorities and women in its workforce and in the workforces of its applicable subcontractors,
(3) For purposes of this certification,
"minority" shall have the meaning set forth in Section 342 (g) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010); and
"Applicable Subcontractor" refers to all tiers of subcontractors under this contract whose subcontract exceeds $100,000 in value; and
"Good faith effort," may include actions by the contractor intended to identify and, if present, remove barriers to minority and women within its workforce or expand employment opportunities for minorities and women within its workforce. Efforts to remove such barriers or expand employment opportunities may include, but are not limited to, recruiting minorities and women, providing job-related training, or other activity that could lead to those results.

(b) If the Contractor answers "No" to paragraph (a) above, an explanation must be provided:

_____

_____

_____

_____

7.3.2-54 Cooperation with the Office of Inspector General (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert clause 7.3.2-54, *Cooperation with the Office of Inspector General*, in all awards.

Clause:

Contractors must comply with FDIC Circular 12000.1, *Cooperation with the Office of Inspector General,* which is available at FDIC website: www.fdic.gov/buying/goods/acquisition/index.html

_____

7.3.2-55 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (November 2009)

Prescription:

Per PGI 3.112 or PGI 3.218 insert provision 7.3.2-55, *Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions*, in solicitations for awards over $100,000, when FDIC is acting in its corporate capacity.

Provision:

(a) *Definitions.* As used in this provision—"Lobbying contact" has the meaning provided at 2 U.S.C. §1602(8). The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in clause 7.3.2-58 entitled "Limitation on Payments to Influence Certain Federal Transactions".

(b) *Prohibition*. The prohibition and exceptions contained in clause 7.3.2-58 entitled "Limitation on Payments to Influence Certain Federal Transactions" are hereby incorporated by reference in this provision.

(c) *Certification*. The offeror, by signing its offer, hereby certifies to the best of its knowledge and belief that 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 this contract.

(d) *Disclosure*. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(e) *Penalty*. Submission of this certification and disclosure 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 this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than $10,000, and not more than $100,000, for each such failure.

7.3.2-56 Task Assignment Procedures (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert clause 7.3.2-56, *Task Assignment Procedures*, in contracts or task order when task assignments will be used. The Contracting Officer may tailor the clause, as necessary.

Clause:

Task Assignment Procedures are as follows:

(a) For each task assignment, the Contracting Officer will request a task assignment proposal from the Contractor. The request for task assignment proposal will include a description of the required services and information such as background, scope, goals/objectives, Period of Performance, constraints, etc. The request for task assignment proposal will also contain the required proposal submission date. If necessary, the Contractor may meet with FDIC to discuss the requirement and address any questions.

(b) The Contractor must submit its proposal to the Contracting Officer and the Oversight Manager in accordance with the instructions set forth in the request for task assignment proposal. The Contractor's task assignment proposal must include:

1. For labor-hour and time-and-material type task assignments, a total proposed dollar amount for the task assignment, along with the labor categories, rates, hours, and travel costs (if applicable) used to derive the amount;

2. For firm-fixed-price type task assignments, a total dollar amount for the task assignment, along with pricing data that demonstrates how the amount was derived along with information to support reasonableness;

3. Timeframe, in terms of calendar days, required to complete task assignment;

4. Resumes, for each proposed personnel, which demonstrate the individual is qualified to perform at the proposed labor category; and

5. Other information, as requested by the Contracting Officer.

(c) The Contracting Officer may accept the proposal as submitted or may conduct negotiations prior to award of the task assignment. All task assignments must contain a total Not-To-Exceed (NTE) ceiling amount.

(d) The Contractor must not begin work until the task assignment has been incorporated into the contract or task order by modification.

(e) Task assignments are anticipated to be awarded within _____ calendar days after the request for task assignment proposal is sent to the Contractor. Task assignments for complex requirements may require additional time to finalize.

(f) The Contractor must submit separate invoices for each task assignment. When billing for task assignment services, the Contractor must include on each invoice the Contract or Task Order number, in addition to the task assignment number.

7.3.2-57 Public Release of Contract Award and Advertising and Publicity Information (April 2013)

Prescription:

Per PGI 3.112 or PGI 3.218 insert clause 7.3.2-57, *Public Release of Contract Award and Advertising and Publicity Information*, in all awards.

Clause:

(a) The Contractor, its affiliates, agents or subcontractors, and their respective employees shall not issue press releases or provide other information to the public regarding any FDIC contract award.

(b) The Contractor, its affiliates, agents or subcontractors, and their respective employees shall not make statements to the media or issue press releases regarding the goods or services provided under this Contract. Requests for information from anyone representing themselves as working for, or on the behalf of, a media or news organization must be directed to the Contracting Officer, who will obtain appropriate approval from the FDIC Office of Communications at 202-898-6993.

(c) Advertising or publicity materials (including the placement of information in its website):

(1) The Contractor may include a reference to “FDIC” or “Federal Deposit Insurance Corporation” in a list of the Contractor’s clients, along with a short, broad description of the goods or services provided, such as “FDIC – IT Services” or “FDIC – Security Services”. In no event may any confidential information regarding the details of the contract or the name of the financial institutions where work is being performed be disclosed.

(2) Without the prior written approval from the Contracting Officer, the Contractor shall not:

(i) issue or sponsor any advertising or publicity (including the placement of information in its website) that states or implies the FDIC endorses, recommends or prefers the Contractor’s goods or services.
(ii) use the FDIC’s logo or other FDIC material or refer to the FDIC in its advertising and publicity materials (including its website).

All requests for such approvals must be submitted to the Contracting Officer at least 30 days prior to the scheduled release of advertising or publicity materials. The Contracting Officer will coordinate with the FDIC Office of Communications and notify the Contractor of the final decision.

(d) The prohibitions addressed in the preceding paragraphs also apply to information placed on social networks (Twitter, Linkedin, Facebook, blogs, etc.).

(e) The Contractor agrees to include this clause in all its subcontracts under this contract.

7.3.2-58 Limitation on Payment to Influence Certain Federal Transactions (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert clause 7.3.2-58, *Limitation on Payments to Influence Certain Federal Transactions*, in awards over $100,000, when FDIC is acting in its corporate capacity.

Clause:

(a) Application. Section 1352 of Title 31 of the United States Code limits the use of appropriated funds to influence or attempt to influence certain Federal contracting and financial transactions. 31 U.S.C. §1352 is incorporated by reference. 31 U.S.C. §1352 is available at the FDIC website: www.fdic.gov/buying/goods/acquisition/index.html

(b) Agreement and Certification. Contractor agrees not to make any payment prohibited by 31 U.S.C. §1352. As a prerequisite to entering into or making this contract, Contractor has submitted its certification with respect to the limitations in 31 U.S.C. §1352. Additionally, Contractor must collect certifications from its subcontractors where the value of a subcontract exceeds $100,000. Contractor is required to retain in its subcontract files all certifications filed by its subcontractors.

(c) Prohibitions and Exceptions. 31 U.S.C. §1352, among other things, prohibits a recipient of a Federal contract from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress (hereafter “Covered Agency or Congressional Party”) in connection with the award of a Federal contract or the extension, continuation, renewal, amendment, or modification of a Federal contract.

The prohibition of 31 U.S.C. §1352 does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or

receiving a Federal contract if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

31 U.S.C. §1352 does not prohibit any reasonable payment to a person in connection with, or any payment of reasonable compensation to an officer or employee of a person requesting or receiving, a Federal contract or an extension, continuation, renewal, amendment, or modification of a Federal contract if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal or application for that Federal contract or for meeting requirements imposed by law as a condition for receiving that Federal contract.

(d) Disclosures. Contractor must file a Disclosure of Lobbying Activities - OMB standard form LLL - if Contractor has made or has agreed to make any payment using non-appropriated funds (this includes profits from any Federal action covered by 31 U.S.C. §1352), which would be prohibited by 31 U.S.C. §1352 if paid for with appropriated funds.

Thereafter, Contractor must file a Disclosure of Lobbying Activities at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information in any disclosure previously filed. An event that materially affects the accuracy of a prior disclosure includes—

(1) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action;

(2) A change in the party influencing or attempting to influence a covered Federal action; or

(3) A change in the Covered Agency or Congressional Party contacted for purposes of influencing or attempting to influence a covered Federal action.

Contractor must collect from its subcontractors their Disclosure of Lobbying Activities forms where the value of the subcontract exceeds $100,000. Contractor is required to submit these disclosures to the Contracting Officer at the end of the calendar quarter in which they are received by Contractor.

(e) Penalties. (1) Any person who makes an expenditure prohibited by 31 U.S.C. §1352 or who fails to file the disclosures required by 31 U.S.C. §1352 is subject to the substantial civil penalties provided for in 31 U.S.C. §1352. An imposition of a civil penalty does not prevent the FDIC from seeking any other remedy that might apply. (2) Contractor may rely without liability on the certifications and disclosures filed by its subcontractors.

7.3.2-59 Warranty Concerning Contingent Fees (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert clause 7.3.2-59, *Warranty Concerning Contingent Fees*, in awards over $100,000 except for acquisition of commercial items .

Clause:

(a) Contractor warrants that it has not employed or retained any person or selling agency to solicit or secure this contract under an agreement or understanding for a commission, percentage, brokerage, or contingent fee. Contractor's use of its bona fide employees, or use of the bona fide established commercial or selling agencies the Contractor maintains for the purpose of securing business, are accepted.

(b) For breach of this warranty by Contractor, the FDIC has the right to annul this Contract without liability or, in its discretion, to deduct from the contract price or consideration the full amount of any commission, percentage, brokerage, or contingent fee paid in violation of the warranty.

7.3.2-60 Anti-Kickback Procedures (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert clause 7.3.2-60, *Anti-Kickback Procedures*, in awards over $100,000.

(a) The Anti-Kickback Act of 1986 applies to this contract. The text of the Act is found at 41 U.S.C. §§ 51-58, The Act provides substantial penalties, both criminal and civil, for violation of the prohibitions against kickbacks.

(b) The Anti-Kickback Act of 1986 prohibits both the payment and the acceptance of kickbacks, and the inclusion of the cost of kickbacks in the price of a contract. "Kickback" means any money, fee, commission, credit, gift, gratuity, thing of value or compensation of any kind which is provided, directly or indirectly, to any prime contractor, prime contractor employee, subcontractor or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

(c) Contractor, as a prime contractor (as defined in 41 U.S.C. §52), is required to establish and follow reasonable procedures designed to prevent and detect violations of the Anti-Kickback Act of 1986 .This requirement applies only to contracts greater than $100,000, but excludes contracts for the acquisition of commercial goods (as defined in 41 U.S.C. §403(12)).

When Contractor has reasonable grounds to believe that a violation of the Anti-Kickback Act of 1986 may have occurred, Contractor must report the possible violation, promptly

and in writing, either to the Inspector General of the FDIC or to the Department of Justice. Contractor must cooperate fully with any Federal agency investigating a suspected violation of the Anti-Kickback Act of 1986.

(d) As a remedy for violation of the Anti-Kickback Act of 1986, the Contracting Officer either may (1) offset the amount of the kickback against any monies owed by the FDIC under the prime contract or (2) direct the Contractor to withhold the amount of the kickback from sums it owes a subcontractor. The Contracting Officer may order that monies withheld under subparagraph (2) be paid over to the FDIC, unless the FDIC has already offset those monies under subparagraph (1). Contractor is required to notify the Contracting Officer when the action withholding a kickback from monies owed a subcontractor is taken.

(e) Contractor is required to incorporate the substance of this clause, with the exception of the first sentence of subparagraph (c), in all subcontracts under this contract.

7.3.2-61 Drug-Free Workplace (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert clause 7.3.2-61, *Drug-Free Workplace*, in all awards of any value to an individual, and in all other awards over $100,000, except contracts for commercial items.

Clause:

(a) This clause applies to all contracts where Contractor is an individual (as defined below) or to any other contracts that exceed $100,000, except contracts for commercial items.

(b) For a contract where the Contractor is an individual, Contractor agrees not to engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in the performance of this contract.

(c) For a contract exceeding $100,000, Contractor agrees to make a good faith effort to maintain a drug-free workplace. To accomplish this, Contractor is required to:

(1) Publish a statement

(i) Notifying its employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in Contractor's workplace is prohibited,

(ii) Specifying the actions that will be taken against employees for violations of the prohibition, and

(iii) Notifying employees that, as a condition of continued employment on the contract, employees must abide by the terms of the statement, and must notify Contractor in writing of any conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after the conviction.

(2) Provide all employees engaged in performance of the contract with a copy of the statement described above.

(3) Establish a drug free workplace awareness program to inform employees about

(i) The dangers of drug abuse in the workplace,

(ii) Contractor's policy of maintaining a drug free workplace,

(iii) Any available drug counseling, rehabilitation and employee assistance programs, and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

(4) Notify the Contracting Officer within ten (10) days after receiving a notice from an employee (or notice from another source) of his/her conviction for violation of a criminal drug statute occurring in the workplace.

(5) Take one of the following actions, within thirty (30) days after receiving notice of a conviction, with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Take an appropriate personnel action against the employee, up to and including termination, or

(ii) Require the employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved by either a Federal, State or local government agency responsible for the licensing, certification or oversight of drug programs, such as health or law enforcement agencies.

(d) The FDIC may suspend contract payments, terminate the contract for default, and suspend or debar Contractor if Contractor does not comply with the requirements concerning a drug-free workplace. These remedies are in addition to others available to the FDIC.

(e) Definitions. As used in this clause,

(1) "Controlled substance" means a controlled substance in schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. §812) and as further defined in regulation at 21 C.F.R. §§1308.11-1308.15.

(2) "Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

(3) "Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.

(4) "Drug free workplace" means a site for the performance of work done by Contractor in connection with a specific contract at which employees of Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance.

(5) "Employee" means an employee of a contractor directly engaged in performance of work under an FDIC contract.

(6) "Individual" means a contractor that has no more than one employee including the contractor.

7.3.2-62 Equal Opportunity (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert clause 7.3.2-62, *Equal Opportunity*, in all awards over $10,000.

Clause:

(a) FDIC policy prohibits discrimination by Contractor in its employment practices. If, during any 12-month period (including the 12 months preceding the award of this contract), Contractor has been or is awarded nonexempt Federal contracts or subcontracts that have an aggregate value in excess of $10,000, Contractor must comply with this clause. Contractor agrees to provide the FDIC with information it may need to determine whether this clause applies, as FDIC may request.

(b) During the performance of this contract Contractor agrees to:

(1) Not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin.

(2) Take affirmative action to ensure that its employment decisions are made without regard to an applicant's or employee's race, color, religion, sex or national origin. Employment decisions include, without limit, the following: (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) Post in conspicuous places, available to employees and applicants for employment, notices (provided by the Contracting Officer) that explain Contractor's equal opportunity practices.

(4) State, in all solicitations and advertisements for employees placed by or on behalf of Contractor, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(5) Send, to each labor union or representative of workers with which Contractor has a collective bargaining agreement, other contract or understanding, a notice (provided by the Contracting Officer) advising the labor union or workers' representative of Contractor's commitments under this clause, and post the notice in conspicuous places where it can be seen by employees and applicants for employment.

(6) Comply with Executive Order 11246, as amended, and the rules, regulations and relevant orders of the Secretary of Labor.

(7) Furnish all information and reports required by Executive Order 11246, as amended, and by the rules, regulations and orders of the Secretary of Labor.

(8) Give the FDIC or the Office of Federal Contract Compliance Programs access to Contractor's books, records, and accounts to investigate Contractor's compliance with Executive Order 11246, as amended, and the rules, regulations and relevant orders of the Secretary of Labor.

(9) Include the terms and conditions of this clause in each subcontract it awards under this contract.

(c) In the event Contractor does not comply with this clause, or with any of the rules, regulations or orders referred to herein, FDIC may cancel, terminate or suspend this contract, in whole or in part.

7.3.2-63 Affirmative Action for Workers with Disabilities (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert clause 7.3.2-63, *Affirmative Action for Workers with Disabilities*, in all awards over $10,000.

Clause:

(a) General. Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability, regarding to any position for which the employee or applicant is qualified. Contractor agrees to take affirmative action in all its employment practices to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability. Employment practices include: hiring, recruitment, advertising, upgrading, demotion or transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Contractor agrees to comply with the rules, regulations and orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973), as amended (29 U.S.C. §793).

(b) Postings. Contractor agrees to post notices that state Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities and the rights of applicants and employees under the Rehabilitation Act of 1973. Notices must be posted in conspicuous places, available to employees and applicants, The Contracting Officer will provide the form of the notices or direct Contractor to resources within the Office of Federal Contract Compliance Programs in the U.S. Department of Labor.

Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding that Contractor is bound by the terms of section 503 of the Rehabilitation Act of 1973, and is committed to taking affirmative action to employ and advance in employment qualified individuals with physical or mental disabilities.

(c) Noncompliance. In the event Contractor does not comply with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations and orders of the Secretary issued under the Rehabilitation Act of 1973.

(d) Subcontracts. Contractor must include the terms of this clause in every subcontract or purchase order in excess of $10,000 to bind each subcontractor or vendor to the requirements of the clause, unless exempted by rules, regulations, or orders of the Secretary. Contractor agrees to take action to enforce this clause, including action for noncompliance, as specified by the Director of the Office of Federal Contract Compliance Programs.

7.3.2-64 Affirmative Action for Special Disabled Veterans and Vietnam Era Veterans (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert clause 7.3.2-64, *Affirmative Action for Special Disabled Veterans and Vietnam Era Veterans*, in all awards at or above $100,000.

Clause:

(a) General.

(1) The Contractor shall not discriminate against the individual because the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status in all employment practices such as-

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(iii) Rate of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

(vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. §3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor must comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U S.C. 4211 and 4212).

(b) Definitions. As used in this clause--

(1) "All employment openings" means all positions except: executive and top management, those positions that will be filled from within the Contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment.

(2) "Executive and top management" means any employee--

(i) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision;

(ii) Who customarily and regularly directs the work of two or more other employees;

(iii) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;

(iv) Who customarily and regularly exercises discretionary powers; and

(v) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote more than 40 percent of total hours of work in the work week to activities that are not directly and closely related to the performance of the work described in paragraphs (i) through (iv) of this definition. This paragraph (v) does not apply in the case of an employee who is in sole charge of an establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which the individual is employed.

(3) "Other eligible veteran" means any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

(4) "Positions that will be filled from within the Contractor's organization" means employment openings for which the Contractor will give no consideration to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

(5) "Qualified special disabled veteran" means a special disabled veteran who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position the veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of the position.

(6) "Special disabled veteran" means--

(i) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability-

(A) Rated at 30 percent or more; or

(B) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. §3106 to have a serious employment handicap (i.e., a significant impairment of the veteran's ability to prepare for, obtain, or retain employment consistent with the veteran's abilities, aptitudes, and interests); or

(ii) A person who was discharged or released from active duty because of a service-connected disability.

(7) "Veteran of the Vietnam era" means a person who-

(i) Served on active duty for a period of more than 180 days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred-

(A) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(B) Between August 5, 1964, and May 7, 1975, in all other cases; or

(ii) Was discharged or released from active duty for a service-connected disability if any part of the active duty was performed-

(A) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(B) Between August 5, 1964, and May 7, 1975, in all other cases.

(c) Listing openings.

(1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the State wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.

(2) The Contractor shall make the listing of employment openings with the local employment service office at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and non-veterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(3) At the time the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State public employment agency in each State where it has establishments of the name and location of each of its hiring locations in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.

(d) Application. This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.

(e) Postings.

(1) The Contractor must post employment notices in conspicuous places that are available to employees and applicants for employment.

(2) The employment notices must-

(i) State the rights of applicants and employees, as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, and other eligible veterans; and

(ii) Be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor), and provided by or through the Contracting Officer.

(3) The Contractor must ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled veteran, or may post the notice where it can be read by a person in a wheelchair).

(4) The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans.

(f) Noncompliance. If the Contractor does not comply with the requirements of this clause, the Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(g) Subcontracts. The Contractor is required to insert the terms of this clause in all subcontracts or purchase orders of $100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.

7.3.2-65 Employment Reports on Special Disabled Veterans and Vietnam Era Veterans (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert clause 7.3.2-65, *Employment Reports on Special Disabled Veterans and Vietnam Era Veterans*, in all awards at or above $100,000..

Clause:

(a) Unless the Contractor is a State or local government agency, the Contractor is obligated to report at least annually, as required by the Secretary of Labor, on—

(1) The number of special disabled veterans, the number of veterans of the Vietnam era, and other eligible veterans in the workforce of the Contractor by job category and hiring location;

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of special disabled veterans, the number of veterans of the Vietnam era, and the number of other eligible veterans; and

(3) The maximum number and the minimum number of employees of the Contractor during the period covered by the report.

(b) The Contractor reports the above items by completing the Form VETS-100, entitled Federal Contractor Veterans" Employment Report (VETS-too Report)".

(c) The Contractor is obligated to submit VETS-100 Reports no later than September 30 of each year beginning September 30, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause must reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractor may select an ending date--

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The Contractor is to base the count of veterans reported on the employment profile report required by this clause on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. §4212 shall invite all special disabled veterans, veterans of the Vietnam era, and other eligible veterans who wish to benefit under the affirmative action program at 38 U.S.C. §4212 to identify themselves to the Contractor. The invitation shall state that—

(1) The information is voluntarily provided;

(2) The information will be kept confidential;

(3) Disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and

(4) The information will be used only in accordance with the regulations promulgated under 38 U.S.C. §4212.

(f) The Contractor must insert the terms of this clause in all subcontracts or purchase orders of $100,000 or more, unless exempted by rules, regulations, or orders of the Secretary of Labor.
(g) The terms "special disabled veterans, "veterans of the Vietnam era" and " other eligible veterans" are defined in clause ___(187)___.

7.3.2-66 Ozone-Depleting Substances (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert clause 7.3.2-66, *Ozone Depleting Substances*, in awards for supplies that may contain or be manufactured with ozone-depleting substances, or construction awards that may involve the use of ozone-depleting substances.

Clause:

(a) Contractor must label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. §7671j (b), (c), and (d), and 40 C.F.R. Part 82, Subpart E, as follows:

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

(b) Definitions. Ozone-depleting substance, as used in this clause, means: (1) Any substance designated as Class I by the Environmental Protection Agency (EPA) (40 C.F.R. Part 82), including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or(2) Any substance designated as Class II by EPA (40 C.F.R. Part 82), including, but not limited to, hydro chlorofluorocarbons.

7.3.2-67 Representation by Corporations Regarding an Unpaid Delinquent Federal Tax Liability (April 2016)

Prescription:
Insert provision 7.3.2-67, *Representation by Corporations Regarding an Unpaid Delinquent Federal Tax Liability*, in all solicitations for awards over $100,000.

Provision:

(a) FDIC may not enter into a contract with any corporation that -

Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

(b) The Offeror represents that -
It is [ ] is not [ ] a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
(Authority: Section 744 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235)).

7.3.2-68 Refrigeration Equipment and Air Conditioners (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert clause 7.3.2-68, *Refrigeration Equipment and Air Conditioners*, in awards for services that include the maintenance, repair, or disposal of any equipment or appliance using ozone-depleting substances as a refrigerant, such as air conditioners, including motor vehicles, refrigerators, chillers, or freezers.

Clause:

Contractor must comply with air pollution prevention and control laws governing the servicing of motor vehicle air conditioners -42 U.S.C. §7671g – and the national recycling and emission reduction program – 42 U.S.C. § 7671h,- as each apply to this contract.

7.3.2-69 Joint and Several Liability (July 2008)

Prescription:

Per PGI 3.112 or PGI 3.218 insert clause 7.3.2-69, *Joint and Several Liability*, in all awards.

Clause:

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

7.3.2-70 RESERVED

7.3.2-71 FDIC Contracting Capacity - BOAs/RBOAs/BPAs (July 2009)

Prescription:

Per PGI 3.112 or PGI 3.218, insert clause 7.3.2-71, *FDIC Contracting Capacity-BOAs/RBOAs/BPAs*, in all awards for BOAs, RBOAs, or BPAs.

Clause:

Each order issued under this [BOA, RBOA, BPA] will identify one of the following contracting capacities in which the FDIC will be acting for the period of performance of the order.

- Corporate capacity
- Receivership capacity for various institutions
- Conservatorship capacity

7.3.2-72 FDIC Contracting Capacity - Contracts/Task Orders/Delivery Orders (July 2009)

Prescription:

Per PGI 3.112 or PGI 3.218, insert clause 7.3.2-72, *FDIC Contracting Capacity - Contracts/Task Orders/Delivery Orders*, in all awards for contracts, task orders, or delivery orders.

Clause:

FDIC is [acting in its corporate capacity] [acting as receiver for various institutions] [acting in its conservatorship capacity] for this award and will execute it in this capacity throughout the period of performance.

7.3.2-73 Compliance with 12 CFR Part 366 and Application of 12 CFR Part 367 (September 2009)

Prescription:

Per PGI 3.112 or PGI 3.218 insert clause 7.3.2-73, *Compliance with 12 CFR Part 366 and Application of 12 CFR Part 367,* in all awards.

Clause:

(a) The Contractor must comply with the *Minimum Standards of Integrity and Fitness for an FDIC Contractor* set out in 12 CFR Part 366.

(b) The FDIC's regulations governing the suspension and exclusion of contractors – titled *Suspension and Exclusion of Contractor and Termination of Contracts* - apply to this contract and are found at 12 CFR Part 367.

(c) 12 CFR Parts 366 and 367 may be found on the following webpage: www.fdic.gov/buying/goods/acquisition/index.html.

7.3.2-74 Volume Rebate (April 2011)

Prescription:

Insert clause 7.3.2-74 *Volume Rebate* in all RBOAs. The Contracting Officer shall provide fill-in information prior to issuing the solicitation. In the award document(s), the Contracting Officer shall add the negotiated rebate percentages to this clause. The number of tiers and the dollar ranges of the tiers are established at the discretion of the Contracting Officer.)

Clause:

A pricing range of $0 to $_____(fill-in) represents FDIC's best current estimate as to the dollar amount of work that will generate across all Task Orders annually throughout the RBOA period (including all option periods), and is designated the Base Tier range. The annual 12 month period for this RBOA runs from_____ (fill-in date) to _____ (fill-in date). If, in any annual 12 month period, the Contractor performs work across all Task Orders that amounts to more than the maximum limit of the Base Tier range, a rebate shall be paid by the Contractor to FDIC.

The following revenue tiers apply to this RBOA:

Revenue Tiers				Rebate Percentage
Base Tier:	$ 0	to $_____	(fill-in)	0.0%
Tier 1:	$_____	to $_____	(fill-in)	* %
Tier 2:	$_____	to $_____	(fill-in)	* %
Tier 3:	$_____	to $_____	(fill-in)	* %
Tier 4:	$_____	to $_____	(fill-in)	* %

Tier 5: $_____ to $_____ (fill-in) * %

* Instructions for proposing rebate percentages are contained in provisions 7.3.2-11 and/or 7.3.2-12. Negotiated percentages will be included in this clause in the award document.

The rebate amount shall be calculated by summing the dollar amounts of all work performed (including that of subcontractors and any pass-through costs) during the annual 12 month period and multiplying it by the rebate percentage designated for the revenue tier range that contains the dollar amount of work performed. For example; assume the dollar amount of all work performed during a 12 month period is $35,800,000; Tier 3 has a range of $30,000,001 to $40M; and the rebate percentage for Tier 3 is 5.0%. The amount of the rebate due FDIC is $1.79M calculated as follows: ($35.8M X 5.0% = $1.79M)

No later than 60 days after the end of the annual 12 month period, the Contractor must submit to the Contracting Officer documentation identifying the dollar amounts of all work performed during the annual 12 month period. The documentation must identify dollar amounts applicable to each Task Order, and totaled at the RBOA level. Failure of the Contractor to include all dollar amounts for work performed during the annual 12 month period shall result in a recalculation of the rebate due FDIC. Rebates shall be paid annually by check made payable to FDIC and are due 90 days after the end of the annual 12 month period. In the event the rebate is not paid by the required due date or the Contractor fails to include dollar amounts for all work performed, FDIC may take other actions to obtain the rebate, such as offsetting other payments due the Contractor on any outstanding invoices.

7.3.2-76, Covered Telecommunications Equipment or Services-Representation. (September 2020)

Prescription:

Per PGI 1.215, insert provision 7.3.2-76, Covered Telecommunications Equipment or Services-Representation, in all solicitations.

Provision:

(a) Definitions. As used in this provision, “covered telecommunications equipment or services” has the meaning provided in the clause 7.1.2-2, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) Procedures. The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (https://www.sam.gov) for entities excluded from receiving federal awards for “covered telecommunications equipment or services”.

(c) Representation. The Offeror represents that it □ does, □ does not provide covered telecommunications equipment or services as a part of its offered products or services to the FDIC in the performance of any contract, subcontract, or other contractual instrument.

7.3.2-77, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment. (September 2020)

Prescription:

Per PGI 1.215, insert provision 7.3.2-77, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment, in all solicitations.

Provision:

The Offeror shall not complete the representation in this provision if the Offeror has represented that it "does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument" in the provision at 7.3.2-76, Covered Telecommunications Equipment or Services-Representation.

(a) Definitions. As used in this provision—

"Covered telecommunications equipment or services", "critical technology", and "substantial or essential component" have the meanings provided in clause 7.1.2-2, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) Prohibition. Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Contractors are not prohibited from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) Procedures. The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (https://www.sam.gov) for entities excluded from receiving federal awards for "covered telecommunications equipment or services".

(d) Representation. The Offeror represents that it □ will, □ will not provide covered telecommunications equipment or services to the FDIC in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation.

(e) Disclosures. If the Offeror has represented in paragraph (d) of this provision that it "will" provide covered telecommunications equipment or services", the Offeror shall provide the following information as part of the offer—

(1) A description of all covered telecommunications equipment and services offered (include brand; model number, such as original equipment manufacturer (OEM) number, manufacturer part number, or wholesaler number; and item description, as applicable);

(2) Explanation of the proposed use of covered telecommunications equipment and services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b) of this provision;

(3) For services, the entity providing the covered telecommunications services (include entity name, unique entity identifier, and Commercial and Government Entity (CAGE) code, if known); and

(4) For equipment, the entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known).

7.3.3-1 Copy of Contractor's General Services Administration Schedule Contract (July 2008)

Prescription:

Per PGI 3.306, insert provision 7.3.3-1, *Copy of Contractor's General Services Administration (GSA) Schedule Contract*, in solicitations for orders against GSA Schedules.

Provision:

Offeror must provide a copy of its entire current GSA Schedule contract. Offeror must highlight the areas of the GSA Schedule contract that demonstrate the services required by FDIC are within the scope of the GSA Schedule contract. Offerors must highlight the Period of Performance of the GSA Schedule contract.

7.3.3-2 Contractor Use of AbilityOne - Mandatory Source of Goods or Services (July 2009)

Prescription:

Per PGI 3.306, insert clause 7.3.3-2 *Contractor Use of AbilityOne - Mandatory Source of Goods or Services* in awards for goods or services where some of the goods or services to be procured are on the AbilityOne Procurement List (maintained by the Committee for Purchase from People Who are Blind or Severely Disabled), a mandatory source of procurement for the FDIC.

Clause:

Certain goods or services to be provided under this award are required by law to be obtained from nonprofit agencies participating in the AbilityOne program, a program operated by the Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee) under the Javits-Wagner-O'Day Act (41 U.S.C. §48). The Contractor must obtain mandatory goods or services it will provide to the FDIC under this award from the specific sources indicated in the schedule attached to the award.

The Contractor must immediately notify the Contracting Officer if a mandatory source is unable to provide the goods or services within the required time frame, or if the quality of goods or services provided by the mandatory source is unsatisfactory. The Contractor cannot purchase the goods or services from other sources until the Contracting Officer has notified the Contractor that the Committee or an AbilityOne central nonprofit agency has authorized purchase from other sources.

Points of contact for AbilityOne central nonprofit agencies are:

(1) National Industries for the Blind
1310 Braddock Place
Alexandria, VA 22314-1691
(703) 310-0500
www.nib.org

(2) NISH
8401 Old Courthouse Road
Vienna, VA 22182
(571) 226-4660
www.nish.org

7.3.3-3 Applicable FAR 8(a) Clauses (June 2011)

Prescription:

Per PGI 3.306, insert clause 7.3.3-3 *Applicable FAR 8(a) Clauses,* in all solicitations and awards issued under the 8(a) Business Development Program.
Contracting Officers must follow the guidance in the prescriptions of FAR 19.811-3 in order to select and incorporate the appropriate FAR clauses. The FAR clauses that do not apply must be deleted from clause 7.3.3-3 by the Contracting Officer. FAR clause

52.219-14, Limitations on Subcontracting, must always be included. One or more of the other FAR clauses must also be included, the choice of which depends on whether the acquisition is sole source or competitive.

Clause:

The following FAR clauses are incorporated into the contract:

[FOLLOW THE GUIDANCE IN THE PRESCRIPTION AND FAR 19.811-3. EDIT THE CLAUSE TO REMOVE THE FAR CLAUSES THAT DO NOT APPLY.]

52.219-11 -- Special 8(a) Contract Conditions.

As prescribed in 19.811-3(a), insert the following clause:

Special 8(a) Contract Conditions (Feb 1990)

The Small Business Administration (SBA) agrees to the following:

(a) To furnish the supplies or services set forth in this contract according to the specifications and the terms and conditions hereof by subcontracting with an eligible concern pursuant to the provisions of section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

(b) That in the event SBA does not award a subcontract for all or a part of the work hereunder, this contract may be terminated either in whole or in part without cost to either party.

(c) Except for novation agreements and advance payments, delegate to the FDIC the responsibility for administering the subcontract to be awarded hereunder with complete authority to take any action on behalf of the Government under the terms and conditions of the subcontract; provided, however, that the FDIC shall give advance notice to the SBA before it issues a final notice terminating the right of a subcontractor to proceed with further performance, either in whole or in part, under the subcontract for default or for the convenience of the Government.

(d) That payments to be made under any subcontract awarded under this contract will be made directly to the subcontractor by the FDIC.

(e) That the subcontractor awarded a subcontract hereunder shall have the right of appeal from decisions of the Contracting Officer cognizable under the “Disputes” clause of said subcontract.

(f) To notify the FDIC Contracting Officer immediately upon notification by the subcontractor that the owner or owners upon whom 8(a) eligibility was based plan to relinquish ownership or control of the concern.

(End of Clause)

52.219-12 -- Special 8(a) Subcontract Conditions.

As prescribed in 19.811-3(b), insert the following clause:

Special 8(a) Subcontract Conditions (Feb 1990)

(a) The Small Business Administration (SBA) has entered into Contract No._____ [insert number of contract] with the FDIC to furnish the supplies or services as described therein. A copy of the contract is attached hereto and made a part hereof.

(b) The _____ [insert name of subcontractor], hereafter referred to as the subcontractor, agrees and acknowledges as follows:

(1) That it will, for and on behalf of the SBA, fulfill and perform all of the requirements of Contract No. _____ [insert number of contract] for the consideration stated therein and that it has read and is familiar with each and every part of the contract.

(2) That the SBA has delegated responsibility, except for novation agreements and advance payments, for the administration of this subcontract to the FDIC with complete authority to take any action on behalf of the Government under the terms and conditions of this subcontract.

(3) That it will not subcontract the performance of any of the requirements of this subcontract to any lower tier subcontractor without the prior written approval of the SBA and the designated Contracting Officer of the FDIC.

(4) That it will notify the FDIC Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(c) Payments, including any progress payments under this subcontract, will be made directly to the subcontractor by the FDIC.

(End of Clause)

52.219-14 -- Limitations on Subcontracting.

As prescribed in 19.508(e) or 19.811-3(e), insert the following clause:

Limitations on Subcontracting (Dec 1996)

(a) This clause does not apply to the unrestricted portion of a partial set-aside.

(b) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for --

(1) Services (except construction). At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.

(2) Supplies (other than procurement from a nonmanufacturer of such supplies). The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.

(3) General construction. The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.

(4) Construction by special trade contractors. The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

(End of Clause)

52.219-17 -- Section 8(a) Award.

As prescribed in 19.811-3(c), insert the following clause:

Section 8(a) Award (Dec 1996)

(a) By execution of a contract, the Small Business Administration (SBA) agrees to the following:

(1) To furnish the supplies or services set forth in the contract according to the specifications and the terms and conditions by subcontracting with the Offeror who has been determined an eligible concern pursuant to the provisions of section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

(2) Except for novation agreements and advance payments, delegates to the FDIC the responsibility for administering the contract with complete authority to take any action on behalf of the Government under the terms and conditions of the contract; provided, however that the contracting agency shall give advance notice to the SBA before it issues a final notice terminating the right of the

subcontractor to proceed with further performance, either in whole or in part, under the contract.

(3) That payments to be made under the contract will be made directly to the subcontractor by the contracting activity.

(4) To notify the FDIC Contracting Officer immediately upon notification by the subcontractor that the owner or owners upon whom 8(a) eligibility was based plan to relinquish ownership or control of the concern.

(5) That the subcontractor awarded a subcontract hereunder shall have the right of appeal from decisions of the cognizant Contracting Officer under the "Disputes" clause of the subcontract.

(b) The offeror/subcontractor agrees and acknowledges that it will, for and on behalf of the SBA, fulfill and perform all of the requirements of the contract.

(c) The offeror/subcontractor agrees that it will not subcontract the performance of any of the requirements of this subcontract to any lower tier subcontractor without the prior written approval of the SBA and the cognizant Contracting Officer of the FDIC.

(End of Clause)

52.219-18 -- Notification of Competition Limited to Eligible 8(a) Concerns.

As prescribed in 19.811-3(d), insert the following clause:

Notification of Competition Limited to Eligible 8(a) Concerns (June 2003)

(a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) Program and which meet the following criteria at the time of submission of offer --

(1) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and

(2) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA.

(b) By submission of its offer, the Offeror represents that it meets all of the criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation will be made to the Small Business Administration, which will subcontract performance to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(d) (1) Agreement. A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed $25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply in connection with construction or service contracts.

(2) The _____ [insert name of SBA's contractor] will notify the FDIC Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(End of Clause)

Alternate I (Apr 2005). If the competition is to be limited to 8(a) concerns within one or more specific SBA regions or districts, add the following subparagraph (a)(3) to paragraph (a) of the clause:

(3) The offeror's approved business plan is on the file and serviced by _____ [Contracting Officer completes by inserting the appropriate SBA District and/or Regional Office(s) as identified by the SBA].

Alternate II (Dec 1996). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502-2(c), delete subparagraph (d)(1).

7.3.3-4 Contract Execution - 8(a) Business Development Program (June 2011)

Prescription:

Per PGI 3.306, insert clause 7.3.3-4 *Contract Execution - 8(a) Business Development Program,* in all solicitations and awards issued under the 8(a) Business Development Program.

Clause:

(a) Even though the 8(a) Contractor's name is listed as the Contractor in block 17a of the award cover page, the prime Contractor is the SBA.

(b) The SBA district office designated for this contract is: _____.

[AS REQUIRED BY FAR 19.811-1(b)(1), INCLUDE PARAGRAPH (c) IN SOLE SOURCE ACQUISITIONS.]

(c) The authority for use of other than full and open competition is 41 U.S.C. 253(c)(5).

7.3.5-1 Emergency Preparedness (July 2008)

Prescription:

Per PGI 3.513, insert clause 7.3.5-1, *Emergency Preparedness*, in awards when the Program Office has determined the requirement to be critical or essential to FDIC.

Clause:

(a) If the contractor, at any time during the performance of this contract/order, is determined by the FDIC (at its sole discretion) to provide services essential or critical to the FDIC mission (based on the nature of an actual or threatened emergency situation as declared by any competent federal, state or local authority), then upon such notice to the contractor by the FDIC contracting officer; the contractor shall take immediate and effective measures to ensure the availability or use of back-up or redundant services and/or system(s) support to deal with such emergency, and to ensure uninterrupted support of the services or system(s) support under the contract/order so identified.

(b) Any back-up or redundant services and/or system(s) support required under this provision (whether subject to reimbursement by FDIC or not, as described below) must be provided for as long as the actual or threatened emergency situation exists.

(c) Any costs associated with providing back-up or redundant services and/or system(s) support provided by the contractor under this section must be reimbursed at a rate that must not exceed the current prices or hourly rates provided for in the contract/order, unless such back-up or redundant services and/or system(s) support was a requirement of the contract/order in question and the costs for providing such back-up or redundant services and/or system(s) support was included in the contract/order price. In this case, the contract/order requiring back-up or redundant services and/or system(s) support must be provided by the vendor as required at no additional cost to FDIC during the term of the contract/order, and must be subject to reimbursement only for the time the back-up or redundant services and/or system(s) support is provided beyond the expiration of the contract/order, if so required by FDIC.

7.4.2-1 Security and Privacy Compliance for IT Services (September 2019)

Prescription:

Per PGI 4.205, insert clause 7.4.2-1, *Security and Privacy Compliance for IT Services*, in all awards for services in which contractor or its subcontractors may develop, manage or maintain information technology (IT) applications or resources that are for the sole use of, or owned by, the FDIC.

Clause:

(a) Security and Privacy Compliance. The Contractor is responsible for Information Technology (IT) security for Contractor personnel and subcontractor personnel granted access to: sensitive information as defined in FDIC Circular 1360.9 (and referenced throughout this contract as 'sensitive' or 'FDIC-sensitive information'); the FDIC network; systems connected to the FDIC network; and systems developed, maintained, implemented or operated by the Contractor for FDIC. All IT products and services provided by the Contractor that collect, process, maintain, or store FDIC-sensitive information shall comply with all FDIC information security and privacy directives, policies and requirements unless Contractor obtains a written waiver from FDIC Information Security/Privacy staff.

(b) Laws and Standards. All IT products and services provided by the Contractor that collect, process, maintain, or store FDIC-sensitive information must comply with Federal laws and standards addressing information security and privacy. These include but are not limited to:

(1) The Privacy Act of 1974 (5 U.S.C. § 552a) as amended (if incorporated in the contract);

(2) Office of Management and Budget (OMB) Circular A-130, Management of Federal Information Resources (Transmittal Memorandum No. 4) including Appendices;

(3) E-Government Act of 2002 (P. L. 107-347) including Title II, Section 208 - Privacy Provisions and Title III - Federal Information Security Modernization Act of 2014 (FISMA), and related OMB guidance; and

(4) National Institute of Standards and Technology (NIST) Federal Information Processing Standards (FIPS) and Special Publications.

(c) FDIC Policy and Guidance. All IT products developed by and IT development services provided by the Contractor, specifically for FDIC, shall address information security and privacy requirements throughout their design, development,

implementation, maintenance, operation, and termination as provided in FDIC system development life cycle policy and guidance. This includes completing or providing the necessary information for the FDIC to complete privacy impact assessments, security assessments, risk assessments, security plans, contingency plans, and other security and privacy artifacts as required.
(d) Subcontracts. Contractor must ensure this clause is included in all first-tier subcontracts and lower-tier levels of subcontracts to which the conditions and requirements described in this clause would apply.

7.4.2-2 Off-site Processing and Storing of FDIC Information (August 2018)

Prescription:

Per PGI 4.205, insert clause 7.4.2-2, Off-site *Processing and Storing of FDIC Information*, in all awards in which FDIC information (electronic or paper form) may be processed or stored in a non-Federal System.

Clause:

(a) Control and Protection of FDIC Information. The Contractor shall implement effective, administrative, technical, and physical safeguards to ensure that all FDIC information in its possession or under its control is adequately protected from loss, misuse, and unauthorized access or modification. The creation, collection, use, processing, storing, maintenance, dissemination, disclosure, and disposal of FDIC information shall comply with all applicable federal and state laws and FDIC directives, rules and regulations regarding protection of information. The Contractor shall not use any FDIC information except to the extent necessary to carry out its obligations under the contract. The Contractor shall not disclose FDIC information to any third party unless disclosure is authorized in the contract, the Contractor obtains the prior written consent of the Contracting Officer, or to the extent expressly required by applicable law, in which case the Contractor shall notify the Contracting Officer at least ten (10) business day before such disclosure, to allow the FDIC to object or concur. The Contractor, subcontractor, or any entity under the Contractor's control shall not access, disseminate, maintain, store, use or disclose FDIC information outside the United States, unless specifically directed by the contract or otherwise authorized by the Contracting Officer.

(b) Return, Destruction and Retention of FDIC Information. All FDIC information remains the property of the FDIC. Upon completion or termination of the contract, or at any time upon request of the Contracting Officer, Contractor shall promptly return to the Oversight Manager all FDIC information in its possession and/or securely dispose of it as required in the contract, Statement of Work, or as directed by the Oversight Manager. Information shall be returned securely in a format directed by the Oversight Manager. Retention of FDIC information by the Contractor beyond the conclusion of the

contract is only permissible in accordance with clause 7.6.3-2, Contractor Return, Destruction and Retention of FDIC Information.

(c) Inspections/Assessments/Audits/Reviews/Examinations. To confirm Contractor's compliance with this contract, as well as any applicable laws, regulations and industry standards, Contractor shall grant FDIC information security and privacy staff, the FDIC Office of the Inspector General, the U.S. Government Accountability Office (GAO), or an FDIC-selected third party acting on the FDIC's behalf, permission to perform inspections, assessments, audits, reviews or examinations of all controls in Contractor's physical and/or technical environment in relation to all FDIC information being handled and/or services being provided to FDIC pursuant to this contract. The Contractor shall fully cooperate by providing access to knowledgeable personnel, physical premises, documentation, infrastructure and application software that collects, processes, transmits, or stores FDIC information pursuant to this contract. These inspections, assessments, audits, reviews, and examinations may be conducted either by phone, electronically or in-person. Nothing in this clause shall be viewed as limiting the FDIC or the federal government's audit and inspection rights delineated in other clauses of this contract or by statute.

(d) Security and Privacy Incident Handling. The Contractor shall monitor its facility, premises and information systems for security and privacy incidents and provide the capability to respond to and resolve them effectively and in a timely manner, including allowing for inspection, investigation, forensic analysis, and any other action necessary to ensure compliance with OMB M-17-12 and FDIC's Breach Response Plan, and to assist in responding to a breach. FDIC's Breach Response Plan is available at the FDIC website: www.fdic.gov/buying/goods/acquisition/index.html. The Contractor and subcontractors (at any tier) shall report a suspected or confirmed breach in any medium or form, as soon as possible and without unreasonable delay, consistent with FDIC's Breach Response Plan. All security and privacy incidents that involve FDIC information must be immediately reported to FDIC's Computer Security Incident Response Team (CSIRT)/Security Operations Center (SOC) at the telephone/email address provided in paragraph (e) below. The Contractor and subcontractors (at any tier) shall cooperate and exchange information with agency officials in order to effectively report and manage a suspected or confirmed breach. The Contractor shall maintain capabilities to, at a minimum, determine what FDIC information was or could have been accessed and by whom, construct a timeline of user activity, determine methods and techniques used to access the information, and identify the initial attack vector.

(e) The Contractor shall appoint and provide points of contact (names, telephone numbers, e-mail addresses) for the officials who have overall accountability for incident response and protection of FDIC information and with whom the Contracting Officer, Oversight Manager, and other applicable FDIC staff may communicate throughout the duration of the contract about information security and privacy issues. These individuals or designees shall, at a minimum:

1. Be available to assist the FDIC as needed in resolving an incident;

2. Notify the FDIC of an incident immediately after the Contractor becomes aware of it; and
3. Notify FDIC's Computer Security Incident Response Team (CSIRT) via email at fdic-csirt@fdic.gov or telephone at 1-877-FDIC-999 (877-334-2999), as well as to the Oversight Manager (OM) of an incident.

The Contractor shall take all necessary steps to effectively contain identified incidents and coordinate and cooperate with the FDIC in investigating and remediating the incident.

The Contractor shall, at its own costs and at a minimum, provide individuals affected by a breach involving personally identifiable information (PII) under its control with notice of the breach and access to two (2) years of complimentary credit monitoring and identity protection services to protect such affected individuals against risks posed by the breach.

(f) Subcontracts. Contractor must ensure this clause is included in all first-tier subcontracts and lower-tier levels of subcontracts to which the conditions and requirements described in this clause would apply.

7.4.2-3 Data Connection (September 2019)

Prescription:

Per PGI 4.205, insert clause 7.4.2-3, *Data Connection*, in all awards in which a direct and continuous network-level data connection (e.g., gateway-to-gateway virtual private network (VPN)) may be established between the FDIC network and the contractor located at a non-FDIC facility. This clause does not apply to non-persistent VPN connections such as WebVPN connections initiated by a user to access a remote system nor to any spurious connections such as a user connection to a website with a web browser (e.g., Internet Explorer, Firefox).

Clause:

(a) Pre-connection Requirements. Prior to the establishment of data connections, Contractor shall allow and cooperate with FDIC to conduct physical review(s) of Contractor premises and facilities. At the FDIC's discretion, the Contractor shall execute an Interconnection Security Agreement/Memorandum of Agreement (or equivalent document(s)) with FDIC prior to establishing any data connection between the FDIC network and Contractor facility, in accordance with the FDIC Interconnection Security Agreement (ISA) and Memorandum of Agreement (MOA) Guide.

(b) FDIC Network Segments. If the FDIC network is extended into the Contractor's facility, the Contractor shall connect only FDIC-provided or FDIC-approved hardware containing FDIC-provided software to that FDIC-network segment unless prior written

waiver and approval of the FDIC Oversight Manager and FDIC information technology staff has been received. Vendor-issued security patches shall be applied promptly to operating system and other software running on network-attached hardware. The Contractor shall keep all FDIC network equipment located in Contractor's facilities in a secured area with controlled access. The Contractor, at all times, shall isolate all FDIC-network segments and associated equipment located at the Contractor's facility from any non-FDIC networks located at the same facility. FDIC-network segments shall not be connected to non-FDIC network segments. Equipment (desktops, laptops, printers, etc.) shall not be simultaneously connected to both FDIC and non-FDIC networks.

(c) Subcontracts. Contractor must ensure this clause is included in all first-tier subcontracts and lower-tier levels of subcontracts to which the conditions and requirements described in this clause would apply.

7.4.2-4 Privacy Requirements for External Web Applications and Content (July 2008)

Prescription:

Per PGI 4.205, insert the clause 7.4.2-4, *Privacy Requirements for External Web Applications and Content* in all awards in which the contractor may develop or maintain applications or content located on an FDIC-web site accessed by the public.

Clause:

(a) The Contractor shall ensure that each publicly accessible web site that is developed or maintained for FDIC under this contract conforms to the privacy requirements of the E-Government Act of 2002 (44 U.S.C. Ch. 36). The web site shall not use persistent cookies or other persistent tracking devices, although session cookies may be used. The home page, all major entry points into the web site, and all web pages that collect personal information shall include a hyperlink labeled "Privacy Policy" that links to the FDIC's privacy policy located on FDIC.gov.

(b) The Contractor shall provide access to FDIC for the purpose of performing scans or conducting other verification techniques to ensure the above requirements are met.

7.4.2-5 Basic Safeguarding of Covered Contractor Information Systems (August 2018)

Prescription:

Per PGI 4.205, insert the clause 7.4.2-5, *Basic Safeguarding of Covered Contractor Information Systems,* in awards when the FDIC Outsourced Solution Assessment Methodology (OSAM) Risk Level is rated 1 or 2.

Clause:

(a) Definitions. As used in this clause:

“Covered contractor information system” means an information system that is owned or operated by a contractor that processes, stores, or transmits Federal contract information.

“Federal contract information” means information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government, but not including information provided by the Government to the public (such as on public Web sites) or simple transactional information, such as necessary to process payments.

“Information” means any communication or representation of knowledge such as facts, data, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual (Committee on National Security Systems Instruction (CNSSI) 4009).

“Information system” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information (44 U.S.C. 3502).

“Safeguarding” means measures or controls that are prescribed to protect information systems.

(b) Safeguarding requirements and procedures.

(1) The Contractor shall apply the following basic safeguarding requirements and procedures to protect covered contractor information systems. Requirements and procedures for basic safeguarding of covered contractor information systems shall include, at a minimum, the following security controls:

(i) Limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems).

(ii) Limit information system access to the types of transactions and functions that authorized users are permitted to execute.

(iii) Verify and control/limit connections to and use of external information systems.

(iv) Control information posted or processed on publicly accessible information systems.

(v) Identify information system users, processes acting on behalf of users, or devices.

(vi) Authenticate (or verify) the identities of those users, processes, or devices, as a prerequisite to allowing access to organizational information systems.

(vii) Sanitize or destroy information system media containing Federal Contract Information before disposal or release for reuse.

(viii) Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals.

(ix) Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.

(x) Monitor, control, and protect organizational communications (i.e., information transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems.

(xi) Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.

(xii) Identify, report, and correct information and information system flaws in a timely manner.

(xiii) Provide protection from malicious code at appropriate locations within organizational information systems.

(xiv) Update malicious code protection mechanisms when new releases are available.

(xv) Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.

(c) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (c), in subcontracts under this contract in which the subcontractor may have Federal contract information residing in or transiting through its information system.

7.4.2-6 NIST SP 800-171 Security Requirement (August 2018)

Prescription:

Per PGI 4.205, insert the clause 7.4.2-6, *NIST SP 800-171 Security Requirement*, in awards when the FDIC Outsourced Solution Assessment Methodology (OSAM) Risk Level is rated 3.

Clause:

(a) Definitions

"Adequate security" means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.

"Covered contractor information system" means an information system that is owned or operated by a contractor that processes, stores, or transmits Federal contract information.

"Federal contract information" means information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government, but not including information provided by the Government to the public (such as on public Web sites) or simple transactional information, such as necessary to process payments.

"Information" means any communication or representation of knowledge such as facts, data, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual (Committee on National Security Systems Instruction (CNSSI) 4009).

"Information system" means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information (44 U.S.C. 3502).

(b) This contract/BOA/RBOA/BPA will or may involve the use of a covered contractor information system and work will or may involve FDIC sensitive information being processed or stored off-site at a covered contractor information system.

(c) The Contractor shall provide adequate security on all covered contractor information systems. To provide adequate security, the contractor shall implement all security requirements contained in the latest published version of NIST SP 800-171, Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations, (available via the internet at http://dx.doi.org/10.6028/NIST.SP.800-171) in effect at the time the solicitation is issued or as authorized by the Contracting Officer.

(d) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts under this contract, in which the subcontractor may

have Federal contract information residing in or transiting through its information system.

7.4.3-1 Commencement, Prosecution and Completion of Work (July 2008)

Prescription:

Per PGI 4.304 insert clause 7.4.3-1, *Commencement, Prosecution and Completion of Work*, in construction awards.

Clause:

Contractor is required to (a) commence work under this contract within _____ ( ) calendar days after [award of this contract] [the date Contractor receives a notice to proceed from the FDIC], (b) prosecute the work diligently, and (c) complete the entire work ready for use not later than _____. The time stated for completion includes final cleanup of premises.

7.4.3-2 Location(s) for Services (July 2008)

Prescription:

Per PGI 4.304 insert clause 7.4.3-2, *Location(s) for Services*, in construction contracts

Clause:

The locations of the buildings in which the services are to be performed are as follows:

(a)
(b)
(c)
(d)

7.4.3-3 Contractor's Project Manager (July 2008)

Prescription:

Per PGI 4.304 insert clause 7.4.3-3, *Contractor's Project Manager*, in construction contracts.

Clause:

Contractor must designate, as a key personnel, a Project Manager who will be Contractor's authorized supervisor for technical and administrative performance of all work hereunder. Contractor's Project Manager must provide the single point of contact between Contractor and the FDIC Oversight Manager under this award. Contractor's Project Manager must receive and execute, on behalf of Contractor, such technical direction as the FDIC Oversight Manager may issue within the terms and conditions of this award.

7.4.3-4 Specifications and Drawings (July 2008)

Prescription:
Per PGI 4.304 insert clause 7.4.3-4 *Specifications and Drawings*, in awards over $100,000 for construction or dismantling, demolition, or removal of improvements. (Also, insert in awards below $100,000, at Contracting Officer's discretion.)

Clause:

Contractor must keep on the work site a copy of the drawings and specifications and must at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, must be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications must govern. In case of discrepancy either in the figures, in the drawings, or in the specifications, the matter must be promptly submitted to the Contracting Officer, who must promptly make a determination in writing. Any adjustment by Contractor without such a determination must be at its own risk and expense. The Contracting Officer must furnish from time to time such detail drawings and other information as he may consider necessary, unless otherwise provided.

7.4.3-5 Differing Site Conditions (July 2008)

Prescription:

Per PGI 4.304 insert clause 7.4.3-5, *Differing Site Conditions*, in awards over $100,000 for construction or dismantling, demolition, or removal of improvements. (Also, insert in awards at or below $100,000, at Contracting Officer's discretion.)

Clause:

(a) Contractor must promptly, and before such conditions are disturbed, notify the Contracting Officer in writing of: (1) Subsurface or latent physical conditions at the site differing materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for

in this contract. The Contracting Officer must promptly investigate the conditions and, if he finds that such conditions do materially so differ and cause an increase or decrease in Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed as a result of such conditions, an equitable adjustment must be made and the contract modified in writing accordingly.

(b) No claim of Contractor under this clause must be allowed unless Contractor has given the notice required in (a) above; provided, however, the time prescribed therefore may be extended by the FDIC.

(c) No claim by Contractor for an equitable adjustment hereunder must be allowed if asserted after final payment under this contract.

7.4.3-6 Material and Workmanship (July 2008)

Prescription:

Per PGI 4.304, insert clause 7.4.3-6, *Material and Workmanship*, in all construction awards.

Clause:

(a) Unless otherwise specifically provided in this contract, all equipment, material, and articles incorporated in the work covered by this contract are to be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided in this contract, reference to any equipment, material, article, or patented process, by trade name, make, or catalog number, must be regarded as establishing a standard of quality and shall not be construed as limiting competition, and Contractor may, at its option, use any equipment, material, article, or process, which, in the judgment of the Contracting Officer, is equal to that named. Contractor must furnish to the Contracting Officer for his approval the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capacity, nature, and rating of the machinery and mechanical and other equipment which Contractor contemplates incorporating in the work. When required by this contract or when called for by the Contracting Officer, Contractor must furnish the Contracting Officer for approval full information concerning the material or articles which he contemplates incorporating in the work. When so directed, samples must be submitted for approval at Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles installed or used without required approval must be at the risk of subsequent rejection.

(b) All work under this contract must be performed in a skillful and workmanlike manner. The Contracting Officer may, in writing, require Contractor to remove from the work any employee the Contracting Officer deems incompetent, careless or otherwise objectionable.

7.4.3-7 Superintendence by Contractor (July 2008)

Prescription:

Per PGI 4.304, insert clause 7.4.3-7, *Superintendence by Contractor*, in awards over $100,000 for construction or dismantling, demolition, or removal of improvements. (Also, insert in awards at or below $100,000, at Contracting Officer's discretion.)

Clause:

Contractor, at all times during performance and until the work is completed and accepted, shall give its personal superintendence to the work or have on the work a competent superintendent, satisfactory to the Contracting Officer and with authority to act for Contractor.

7.4.3-8 Permits and Responsibilities (July 2008)

Prescription:

Per PGI 4.304, insert clause 7.4.3-8, *Permits and Responsibilities*, in awards for construction or dismantling, demolition, or removal of improvements.

Clause:

Contractor must, without additional expense to the FDIC, be responsible for obtaining any necessary licenses and permits, and for complying with any applicable Federal, State, and municipal laws, codes, and regulations, in connection with the prosecution of the work. Contractor shall be similarly responsible for all damages to persons or property that occurs as a result of its fault or negligence. Contractor must take proper safety and health precautions to protect the work, the workers, the public, and the property of others. Contractor must also be responsible for all materials delivered and work performed until completion and acceptance of the entire construction work, except for any completed unit of construction thereof which may have been accepted.

7.4.3-9 Conditions Affecting the Work (July 2008)

Prescription:

Per PGI 4.304, insert clause 7.4.3-9, *Conditions Affecting the Work*, in awards over $100,000 for construction or dismantling, demolition, or removal of improvements. (Also, insert in awards at or below $100,000, at Contracting Officer's discretion.)

Clause:

Contractor must be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions which can affect the work or the cost thereof. Any failure by Contractor to do so will not relieve him from responsibility for successfully performing the work without additional expense to the FDIC. The FDIC assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this contract, unless such understanding or representations by the FDIC are expressly stated in the contract.

7.4.3-10 Other Contracts (July 2008)

Prescription:

Per PGI 4.304, insert clause 7.4.3-10, *Other Contracts*, in awards over $100,000 for construction or dismantling, demolition, or removal of improvements. (Also, insert in awards at or below $100,000, at Contracting Officer's discretion.)

Clause:

The FDIC may undertake or award other contracts for additional work, and Contractor must fully cooperate with such other contractors and FDIC employees and carefully fit its own work to such additional work as may be directed by the Contracting Officer. Contractor must not commit or permit any act which will interfere with the performance of work by any other contractor or by FDIC employees.

7.4.3-11 Shop Drawings (July 2008)

Prescription:

Per PGI 4.304, insert clause 7.4.3-11, *Shop Drawings*, in contracts over $100,000 for construction or dismantling, demolition, or removal of improvements. (Also, insert in contracts at or below $100,000, at Contracting Officer's discretion.)

Clause:

(a) The term "shop drawings" includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by Contractor to explain in detail specific portions of the work required by the contract.

(b) If this contract requires shop drawings, Contractor must coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and must indicate its approval thereon as evidence of such coordination

and review. Shop drawings submitted to the Contracting Officer without evidence of Contractor's approval may be returned for resubmission. The Contracting Officer will indicate his approval or disapproval of the shop drawings and, if not approved as submitted, must indicate his reasons therefore. Any work done prior to such approval must be at Contractor's risk. Approval by the Contracting Officer must not relieve Contractor from responsibility for any errors or omissions in such drawings or from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (c) below.

(c) If shop drawings show variations from the contract requirements, Contractor must describe such variations in writing separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation(s), they must issue an appropriate contract modification, except that, if the variation is minor and does not involve a change in price or in time of performance, a modification need not be issued.

7.4.3-12 Use and Possession Prior to Completion (July 2008)

Prescription:

Per PGI 4.304, insert clause 7.4.3-12, *Use and Possession Prior to Completion*, in awards over $100,000 for construction or dismantling, demolition, or removal of improvements. (Also, insert in awards at or below $100,000, at Contracting Officer's discretion.)

Clause:

The FDIC must have the right to take possession of or use any completed or partially completed part of the work. Prior to such possession or use, the Contracting Officer must furnish Contractor an itemized list of work remaining to be performed or corrected on such portions of the project as are to be possessed or used by the FDIC, provided that failure to list any item of work must not relieve Contractor of responsibility for compliance with the terms of the contract. Such possession or use must not be deemed an acceptance of any work under the contract. While the FDIC has such possession or use, Contractor, notwithstanding the provisions of the clause of this contract entitled "Permits and Responsibilities," must be relieved of the responsibility for the loss or damage to the work resulting from the FDIC's possession or use. If such prior possession or use by the FDIC delays the progress of the work or causes additional expense to Contractor, an equitable adjustment in the contract price or the time of completion will be made and the contract must be modified in writing accordingly.

7.4.3-13 Measurements (July 2008)

Prescription:

Per PGI 4.304, insert clause 7.4.3-13, *Measurements*, in construction awards.

Clause:

All dimensions shown of existing work, and all dimensions required for work that is to connect with work now in place, must be verified by Contractor by actual measurement of the existing work. Any discrepancies between the contract requirements and the existing conditions must be referred to the Contracting Officer before any work affected thereby has been performed.

7.4.3-14 Layout of Work (July 2008)

Prescription:

Per PGI 4.304, insert clause 7.4.3-14, *Layout of Work*, in construction awards where there is a need for accurate work layout and site verification during work performance.

Clause:

Contractor must lay out its work from FDIC established baselines and benchmarks indicated on the drawings, and must be responsible for all measurements in connection with the layout. Contractor must furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. Contractor must be responsible for executing the work to the lines and grades that may be established or indicated by the Contracting Officer. Contractor must also be responsible for maintaining and preserving all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed by Contractor or through its negligence before their removal is authorized, the Contracting Officer may replace them and deduct the expense of the replacement from any amounts due or to become due to Contractor.

7.4.3-15 Availability and Use of Utility Services (July 2008)

Prescription:

Per PGI 4.304, insert clause 7.4.3-15, *Availability and Use of Utility Services*, in awards for construction or dismantling, demolition, or removal of improvements.

Clause:

(a) The FDIC must make all reasonably required amounts of utilities available to Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed must be charged to or paid for by Contractor at prevailing rates charged to the FDIC, where the

utility is produced by the Government, at reasonable rates determined by the Contracting Officer. Contractor must carefully conserve any utilities furnished without charge.

(b) Contractor, at its expense and in a workmanlike manner satisfactory to the Contracting Officer, must install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the FDIC, Contractor must remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

7.4.3-16 Use of Premises (July 2008)

Prescription:

Per PGI 4.304, insert clause 7.4.3-16, *Use of Premises*, in all construction awards.

Clause:

(a) If the premises are occupied, Contractor, or any subcontractors, and their employees must comply with the regulations governing access to, operation of, and conduct while in or on the premises and must perform the work required under this contract in such a manner as not to unreasonably interrupt or interfere with the conduct of FDIC, or other tenant, business.

(b) Any request received by Contractor from occupants of existing buildings to change the sequence of work shall be referred to the Contracting Officer for determination.

(c) If the premises are occupied, Contractor, any subcontractors and their employees must not have access to or be admitted into any building outside the scope of this contract except with official permission.

7.4.3-17 Operation and Storage Areas (July 2008)

Prescription:

Per PGI 4.304, insert clause 7.4.3-17, *Operations and Storage Areas*, in awards over $100,000 for construction or dismantling, demolition, or removal of improvements. (Also, insert in awards at or below $100,000, at Contracting Officer's discretion.)

Clause:

(a) Contractor must confine all operations (including storage of materials) on FDIC premises to areas authorized or approved by the Contracting Officer. Contractor must

hold and save the FDIC, its officers and agents, free and harmless from liability of any nature occasioned by Contractor's performance.

(b) Temporary structures (e.g., storage sheds, shops, offices) and utilities may be erected by Contractor only with the approval of the Contracting Officer and must be built with labor and materials furnished by Contractor without expense to the FDIC. The temporary buildings and utilities must remain the property of Contractor and must be removed by Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

(c) Contractor must, under regulations prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by Contractor, when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles must not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, Contractor must protect them from damage. Contractor must repair or pay for the repair of any damaged curbs, sidewalks, or roads.

7.4.3-18 Heat (July 2008)

Prescription:

Per PGI 4.304, insert clause 7.4.3-18, *Heat*, in construction awards.

Clause:

Unless otherwise specified or unless already provided by the FDIC, Contractor must:

(a) Provide heat as necessary to protect all work, materials, and equipment against injury from dampness and cold;

(b) Protect, cover and/or heat as may be necessary to produce and maintain a temperature of not less than fifty (50) degrees Fahrenheit (1) in the concrete during the placing, setting and curing of concrete, and (2) in the plaster during the application, setting and curing of plaster; and

(c) Provide heat as necessary in the area where work is to be done to provide the minimum temperature recommended by the supplier or manufacturer of the material, but in no case less than fifty (50) degrees Fahrenheit, for a period beginning ten (10) days before placing of interior finishes and finish materials and continuing until completion or beneficial occupancy of the area, whichever is earlier.

7.4.3-19 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvement (July 2008)

Prescription:

Per PGI 4.304, insert clause 7.4.3-19, *Protection of Existing Vegetation, Structures, Equipment, Utilities and Improvement,* in awards over $100,000 for construction or dismantling, demolition, or removal of improvements. (Also, insert in awards below $100,000, at Contracting Officer's discretion.)

Clause:

(a) Contractor must preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which is not to be removed and which does not unreasonably interfere with the work required under this contract. Contractor must only remove trees when specifically authorized to do so, and must avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, Contractor must trim those limbs or branches with a clean cut and paint the tree with a tree pruning compound as directed by the Contracting Officer.

(b) Contractor must protect from damage all existing improvements and utilities (1) at or near the work site, and (2) on adjacent property of a third party, the locations of which are made known to or should be known by Contractor. Contractor must repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to Contractor.

7.4.3-20 Health and Safety (July 2008)

Prescription:

Per PGI 4.304, insert clause 7.4.3-20, *Health and Safety*, in construction awards.

Clause:

In performing this contract, Contractor must provide for protecting the lives and health of employees and other persons; preventing damage to property, materials, supplies, and equipment; and avoiding work interruptions. Contractor must be responsible for its subcontractors' compliance with this clause.

7.4.3-21 Cleanup (July 2008)

Prescription:

Per PGI 4.304, insert clause 7.4.3-21, *Cleanup*, in awards for construction or dismantling, demolition, or removal of improvements that are other than simplified procurements.

Clause:

Contractor must at all times comply with all applicable fire safety codes and must keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, Contractor must remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the FDIC. Upon completing the work, Contractor must leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

7.4.3-22 Use of Equipment by the FDIC (July 2008)

Prescription:

Per PGI 4.304, insert clause 7.4.3-22, *Use of Equipment by the FDIC*, in construction awards.

Clause:

(a) The FDIC may take over and operate, with FDIC employees, such equipment as is necessary for heating or cooling such areas of the building as require the service, as soon as the installation is sufficiently complete.

(b) The Contracting Officer will advise Contractor by letter, prior to the use of equipment, which items of equipment will be operated, and the date and time such operation will begin.

(c) FDIC operation of equipment will not relieve Contractor of the one (1) year guarantee on materials and workmanship elsewhere provided for in this contract.

(d) The guarantee period, elsewhere provided for in this contract, for each piece of equipment must be in accordance with the "Guarantees" clause of this contract.

7.5.1-1 Privacy Act (July 2008)

Prescription:

Per PGI 5.108, insert clause 7.5.1-1, *Privacy Act*, in all awards that require the design, development, or operation of a system of records on individuals.

Clause:

(a) NOTICE. The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an FDIC function subject to the PRIVACY ACT OF 1974 ("THE ACT"), PUBLIC LAW 93-579, DECEMBER 31, 1974 (5 U.S.C. 552a) and applicable FDIC regulations. Violation of THE ACT may involve the imposition of criminal penalties.

(b) The Contractor agrees to:

(1) Comply with THE ACT and the FDIC rules and regulations issued under THE ACT in the design, development, or operation of any system of records on individuals to

accomplish an agency function when the contract specifically identifies:

(i) The systems of records; and

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

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

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

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

(d) DEFINITIONS. As used in this clause:

(1) "Operation of a system of records" means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.
(2) "Record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

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

7.5.1-2 Protecting Sensitive Information (February 2019)

Prescription:

Per PGI 5.108, insert clause 7.5.1-2, Protecting Sensitive Information, in all awards in which the Contractor, its subcontractors or consultants, and any of their personnel may have access to FDIC facilities, networks and/or information systems, or sensitive information, whether in hardcopy or electronic format. Add the two versions of the confidentiality agreement as attachments to the contract when including this clause.

Clause:

(a) Sensitive Information Defined. Per FDIC Circular 1360.9, sensitive information is any information, the loss, misuse, or unauthorized access to or modification of which could adversely impact the interests of FDIC in carrying out its programs or the privacy to which individuals are entitled. It includes, but not exclusively, the following:

(1) Information that is exempt from disclosure under the Freedom of Information Act, such as trade secrets and commercial or financial information, information compiled for law enforcement purposes, personnel and medical files, and information contained in bank examination reports;

(2) Information under the control of FDIC contained in a Privacy Act system of record that is retrieved using an individual’s name or by other criteria that identifies an individual;

(3) Personally Identifiable Information (PII) about individuals maintained by FDIC that if released for unauthorized use may result in financial or personal damage to the individual to whom such information relates. Sensitive PII, a subset of PII, may be comprised of a single item of information (e.g., SSN) or a combination of two or

more items (e.g., full name along with, financial, medical, criminal, or employment information). Sensitive PII presents the highest risk of being misused for identity theft or fraud;

(4) Information about insurance assessments, resolution and receivership activities, as well as enforcement, legal, and contracting activities; and

(5) Information related to information technology specific to the FDIC that could be misused by malicious entities (e.g., internal IP addresses, server names, firewall rules, encryption and authentication mechanisms, and network architecture pertaining to FDIC),

(b) Protecting Sensitive Information. Contractor, all Contractor Personnel, subcontractors and subcontractor personnel shall comply with FDIC Circular 1360.9, *Protecting Sensitive Information,* and protect the confidentiality, integrity and availability of sensitive information, including PII, to which they have access. FDIC Circular 1360.9 is available at the FDIC website: www.fdic.gov/buying/goods/acquisition/index.html

(c) Controlling Sensitive Information. All sensitive information, electronic and paper copy, remains the property of FDIC. Sensitive information shall not be moved outside of FDIC premises or networks/systems unless this contract contains clause 7.4.2-2, *Off-site Processing and Storing of FDIC Information*.

(d) Confidentiality Agreement. An authorized representative of the Contractor, its subcontractors and consultants, and all personnel (key personnel and non-key personnel) who will have access to FDIC facilities, networks and/or information systems, or sensitive information (whether in hardcopy or electronic form) must execute confidentiality agreements. FDIC Form 3700/46, *Confidentiality Agreement (for Contractors/Subcontractors/Consultants)* and FDIC Form 3700/46A, *Confidentiality Agreement (for Contractor/Subcontractor/Consultant Personnel*) are included as attachments to this contract. The 3700/46 forms must be signed by the Contractor, and each subcontractor or consultant and submitted at the time of award to the Contracting Officer, with the signed contract. Post-award, they must be submitted to the Contracting Officer when a new subcontractor or consultant is being requested. (For Basic Ordering Agreements (BOAs), Receivership Basic Ordering Agreements (RBOAs), and Blanket Purchase Agreements (BPAs), it is acceptable for the 3700/46 forms to be executed by the Contractor, subcontractors and consultants at the BOA/RBOA/BPA level, thereby being applicable to all task orders issued thereunder.) The 3700/46A forms executed by personnel must be submitted to FDIC no later than five (5) business days after starting performance and prior to receiving any sensitive information. The Contractor must submit the 3700/46A forms signed by key personnel to the Contracting Officer and those signed by non-key personnel to the Oversight Manager. Key personnel and non-key personnel who are required to sign a confidentiality agreement, and do not sign, will not be permitted to perform work on the contract. It is acceptable for any key personnel or non-key personnel working on one or more task orders issued under a

BOA/RBOA/BPA to sign and submit a single 3700/46A at the BOA/RBOA/BPA level, thereby being applicable to all task orders issued thereunder.

(e) Information Security and Privacy Awareness Training. Any key personnel or non-key personnel with access to sensitive information, who do not have access to the FDIC. network and therefore are unable to take FDIC's on-line Information Security and Privacy Awareness Training using FDIC's internal website, must access the training through FDIC's external website https://www.fdic.gov/buying/goods/acquisition/index.html (under the Miscellaneous section). Upon completion of the training, they must provide confirmation via email to the Oversight Manager. The email must contain the following:

-trainee's name and phone number;
-contract number;
-name of the Contractor (and subcontractor or consultant, if applicable), and
-date the training was completed.

The training and email confirmation to the Oversight Manager must be accomplished prior to the individual's initial receipt of any sensitive information, and annually thereafter until contract performance is completed. The Contractor must keep a record of when the training was accomplished, and provide it to FDIC upon request. Failure to complete this training and provide email confirmations within the required timeframes may result in removal from the contract.

(f) Subcontracts. Contractor must ensure this clause is included in all first–tier subcontracts and lower-tier levels of subcontracts to which the conditions and requirements described in this clause would apply.

7.5.1-3 Access to FDIC Information Systems (April 2015)

Prescription:
Per PGI 5.108, insert clause 7.5.1-3, *Access to FDIC Information Systems*, in awards for services in which contractor personnel or subcontractor personnel may have access to FDIC's network and/or information systems.

Clause:

(a) The Contractor, all Contractor Personnel, subcontractors and subcontractor personnel granted access to FDIC's network/systems must comply with these FDIC directives:

(1) Information Security and Privacy Awareness Training. FDIC Circular 1360.16 *Mandatory Information Security Awareness Training*, which requires the completion of on-line FDIC- information security and privacy awareness training and electronic certification of completion within five (5) business days of receiving an FDIC network ID, and annually thereafter until such time as the access is terminated. Failure to complete this training and provide electronic certification within the required timeframes will result

in revocation of network/system access privileges and possible removal of contractor personnel from the contract.

(2) Acceptable Use of Information Technology Resources. FDIC Circular 1300.4 *Acceptable Use Policy for Information Technology Resources,* which outlines the permitted and prohibited uses of FDIC hardware, software, and information technology services.

(3) Passwords. FDIC Circular 1360.10 *Corporate Password Standards* for password configuration and maintenance requirements, which requires the use of strong passwords, changing passwords at prescribed intervals and the protection of passwords.

(4) Access Control. FDIC Circular 1360.15 *Access Control for Information Technology Resources,* which governs the granting and revocation of access to information technology resources, including the initial approval, continued review, and eventual termination of access. Contractor shall promptly notify Oversight Manager and Contracting Officer when personnel join or leave the contract so access may be granted or revoked without delay.

(5) Reporting Privacy/Security Incidents. FDIC Circular 1360.12 *Reporting Computer Security Incidents*, which requires reporting to FDIC's Computer Security Incident Response Team (CSIRT) of all suspected or actual security or privacy incidents involving unauthorized access, misuse, tampering, bypassing security controls, alteration, disclosure or theft of information technology resources, data, and passwords.

(b) Subcontracts. Contractor must ensure this clause is included in all first-tier subcontracts and lower-tier levels of subcontracts to which the conditions and requirements described in this clause would apply.

(c) The FDIC Circulars identified in this clause are available on the FDIC website: www.fdic.gov/buying/goods/acquisition/index.html

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7.5.2-1 Background Investigation Questionnaires (July 2008)

Prescription:

Per PGI 5.204, insert provision 7.5.2-1, *Background Investigation Questionnaires***,** in all solicitations for awards for services greater than $100,000 or in which any Contractor Personnel or subcontractor personnel will be required to undergo a background investigation, namely when the contract requires they work on-site and have unescorted access to FDIC offices or facilities, or have access to FDIC networks/systems.

Provision:

Background Investigation Questionnaires.

Pre-Award

Offeror shall submit the following document, signed by an authorized representative:

- Background Investigation Questionnaire for Contractors (FDIC 1600/7).

In addition, offeror shall submit these documents, completed and signed by all Key Personnel:

- Background Investigation Questionnaire for Contract Personnel and Subcontractors (FDIC 1600/4); and
- Notice and Authorization Pertaining to Consumer Reports (FDIC 1600/10).

All three of the above documents are available at the FDIC website: www.fdic.gov/buying/goods/acquisition/index.html

The offeror shall submit these documents in the volume of its proposal entitled "Background Investigation Questionnaires". The information submitted on these forms must be accurate and complete so as not to delay the investigation and evaluation process.

Post-Award

The successful offeror must comply with additional background investigation requirements, as set forth in clause 7.5.2-3, Background Investigations.

7.5.2-2 RESERVED

7.5.2-3 Background Investigations (November 2014)

Prescription:

Per PGI 5.204, insert clause 7.5.2-3, *Background Investigations*, in: 1) all awards for services over $100,000, 2) awards at any dollar amount when Contractor Personnel or subcontractor personnel will work on-site and have unescorted access to FDIC offices or facilities, or have access to FDIC networks/systems, or 3) in any other contract where the Program Office has described a need for background investigations. (Use Alternate 1 when a waiver to FDIC Circular 1610.2 has been granted allowing the $100,000 threshold to apply separately to the value of the contract and the value of any subcontract.)

Clause:

a) Any Contractor Personnel or subcontractor personnel who:

- work on-site at and have unescorted access to FDIC offices or facilities, or
- have access to FDIC networks/systems

must undergo a background investigation, in accordance with FDIC Circular 1610.2. In addition, background investigations are conducted on all Contractor Personnel and subcontractor personnel on contracts and other awards for services with a value greater than $100,000, or on any contract or award at the discretion of the FDIC. The extent of the background investigation conducted will be in direct relation to the risk level assigned either in clause 7.5.2-8, Risk Level Designation – Functional Responsibility, or in clause 7.5.2-10, Risk Level Designation – Labor Category. FDIC Circular 1610.2 is available at the FDIC website: www.fdic.gov/buying/goods/acquisition/index.html

b) Prior to obtaining an FDIC identification/access badge and commencing work under the contract, Contractor Personnel and subcontractor personnel are required to undergo both a fingerprint and a credit check. In addition, Contractor Personnel and subcontractor personnel may be subject to an OPM background investigation, based on the risk level assigned to the functional responsibilities or to the labor categories. No Contractor Personnel or subcontractor personnel, including any new personnel added at any time during the term of the contract, shall be permitted to begin work until the fingerprint and the credit check processes have been completed and FDIC has rendered a favorable determination, and the paperwork for any further OPM background investigations has been submitted.

c) Contractor must provide the Oversight Manager with the following documents for all Contractor Personnel and subcontractor personnel subject to the background investigation requirement:

1) An executed *Background Investigation Questionnaire for Contractor Personnel and Subcontractors* (FDIC 1600/04);
2) An executed *Notice and Authorization Pertaining to Consumer Reports* (FDIC 1600/10);
3) A Fingerprint Card (The contractor must submit FD Form 258 Fingerprint Card or coordinate with the Oversight Manager to schedule fingerprinting by the Security and Emergency Preparedness Section of FDIC.)

FDIC Forms 1600/04 and 1600/10 are available at the FDIC website: www.fdic.gov/buying/goods/acquisition/index.html

In addition, where the assigned risk level of the contract mandates background investigations by the Office of Personnel Management, the Contractor must provide the Oversight Manager with the completed paperwork for Contractor Personnel and subcontractor personnel needed to initiate an OPM background investigation. The Oversight Manager will notify the Contractor of the method by which to submit the paperwork - either manually, using Standard Form 85P *Questionnaire for Public Trust Positions*, or via e-QIP (the OPM Electronic- Questionnaires-for-Investigations-

Processing system). If any Contractor Personnel or subcontractor personnel have received a background investigation-clearance from another federal agency within the last 5 years, at the same or a higher risk level as that assigned to this contract, the Contractor may also provide the following to the OM:

> A Certificate of Investigation or a Letter of Consent or other documentation from a government agency, verifying the date of the investigation, the investigating agency, the type of investigation completed and the clearance given.

d) Any Contractor Personnel or subcontractor personnel, whose background investigation reveals an adverse finding, may be excluded from working on the contract at the discretion of the Contracting Officer. Contractor is obligated to replace any personnel so excluded with personnel acceptable to FDIC. Replacement of personnel shall be made at no additional cost to the FDIC and without relieving Contractor of performance and delivery requirements of the contract.

e) Contractor must comply with Homeland Security Presidential Directive-12 (HSPD-12) and Federal Information Processing Standard Publication 201 (FIPS 201) entitled "*Personal Identification Verification for Federal Employees and Contractors*". Contractor Personnel and subcontractor personnel must present two forms of identification in original form prior to badge issuance; at least one document must be a valid State or federal government-issued picture ID. Acceptable forms of identification are listed in Form I-9, OMB No., 1615-0047, "*Employment Eligibility Verification*." In addition, Contractor Personnel and subcontractor personnel must appear in person at least once before an FDIC official who is responsible for checking the identification documents. FDIC will not issue identification/access badges to Contractor Personnel and subcontractor personnel until proof-of-identity has been established.

f) Subcontracts. Contractor must include this clause in all its subcontracts to which the conditions and requirements described in this clause would apply. Contractor also must require it subcontractors (first-tier) to include this clause in any of their subcontracts (second-tier) to which the conditions and requirements of this clause would apply.

7.5.2-3 Alternate 1 (November 2014)

Prescription:

Per PGI 5.204, insert 7.5.2-3 Alternate 1 in awards when a waiver to FDIC Circular 1610.2 has been granted which allows the $100,000 threshold for requiring background investigations to apply separately to the value of the contract and the value of any subcontract.

Clause:

Substitute the following paragraph (a) for paragraph (a) of the basic clause

7.5.2-3.

a) Any Contractor Personnel or subcontractor personnel who:

- work on-site at and have unescorted access to FDIC offices or facilities, or
- have access to FDIC networks/systems must undergo a background investigation, in accordance with FDIC Circular 1610.2. In addition, background investigations are conducted on all:
- Contractor Personnel on contracts and other awards for services with a value greater than $100,000, and
- subcontractor personnel on subcontracts for services with a value greater than $100,000**.**

Background investigations may be done on any contract or award at the discretion of the FDIC. The extent of the background investigation conducted will be in direct relation to the risk level assigned either in clause 7.5.2-8, Risk Level Designation – Functional Responsibility, or in clause 7.5.2-10, Risk Level Designation – Labor Category. FDIC Circular 1610.2 is available at the FDIC website:
www.fdic.gov/buying/goods/acquisition/index.html

7.5.2-4 Contractor Submittal of Current Personnel (December 2017)

Prescription:

Per 5.204, insert the following clause in 1) all awards at any dollar amount when contractor personnel or subcontractor personnel will have access to the FDIC's Network, or unescorted access to FDIC facilities/offices, or access to sensitive information, or 2) in any other award where the Program Office has described a need for background investigations (i.e., requirement for contractor and subcontractor personnel to complete FDIC Form 1600/04).

Clause:

The Contractor is required to submit a current list of contractor and subcontractor personnel, including all key personnel, that are working under the award and for which a background investigation was required, in accordance with clause 7.5.2-3, Background Investigations. The contractor must also include a list of all contractor and subcontractor personnel that have been removed from the award since the previous quarterly report. The list of personnel must be submitted to the FDIC Oversight Manager by the beginning of each quarter (*January 1st, April 1st, July 1st, and October 1st)* for the duration of the award. Both reports are to be submitted in the same email, as follows:

1) The current contractor and subcontractor personnel list shall be submitted by email, in a Microsoft Excel or compatible software file, and must include:

   a) Award Number
   b) Contractor Personnel's Name

c) Prime Contractor
d) Subcontractor (when applicable)
e) Contractor or Subcontractor Personnel's on-board date for the Award Number

2) A list of all contractor and subcontractor personnel that have been removed from the award since the previous quarterly report, or a negative response, shall be submitted by email with "1)" above, in a Microsoft Excel or compatible software file, and must include:

a) Award Number
b) Contractor Personnel's Name
c) Prime Contractor
d) Subcontractor (when applicable)
e) Contractor or Subcontractor Personnel's removal date for the Award Number

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7.5.2-5 RESERVED

7.5.2-6 RESERVED

7.5.2-7 RESERVED

7.5.2-8 Risk Level Designation (Functional Responsibility) (November 2014)

Prescription:

Per PGI 5.204, insert clause 7.5.2-8, Risk Level Designation (Functional Responsibility), in awards for services when risk levels are based on the functional responsibilities that Contractor or subcontractor personal will perform. See Circular 1610.2 for the policy on use of risk level designation by functional responsibilities. Do not use both this clause and clause 7.5.2-10, Risk Level Designation (Labor Category), unless the award identifies the specific line items (or tasks, efforts, etc.) that are applicable to each clause. Contracting Officers must include in this clause the functional responsibilities and associated risk levels specified in the FDIC form 1600/17.

Clause:

(a) All work to be performed by personnel of the Contractor or subcontractor(s) fall into one of the functional responsibilities described below:

Functional Responsibilities	Risk Level
1._____	_____
2._____	_____

3._____ _____
4._____ _____

(b) Post-award background investigations are based on the risk levels assigned to the functional responsibilities.

(c) Personnel performing functional responsibilities designated at the HIGH risk level must be United States Citizens. Personnel performing functional responsibilities designated at the MODERATE or LOW risk levels must be either United States Citizens or Lawful Permanent Residents of the United States.

(d) If an employee of the Contractor or subcontractor may perform more than one functional responsibility, and the assigned risk levels are not the same, the highest of the assigned risk level applies to the employee.

7.5.2-9 RESERVED

7.5.2-10 Risk Level Designation (Labor Category) (November 2014)

Prescription:

Per PGI 5.204, insert clause 7.5.2-10, Risk Level Designation - Labor Category, in awards for services when FDIC establishes the labor categories and designates risk levels for each labor category per the policy set out in Circular 1610.2. Do not use both this clause and clause 7.5.2-8, Risk Level Designation – Functional Responsibility, unless the award identifies the specific line items (or tasks, efforts, etc.) that are applicable to each clause. Contracting Officers must include in this clause the labor categories and associated risk levels specified in the FDIC form 1600/17.

Clause:

(a) The risk levels for the labor categories in this [Contract, BOA, RBOA, BPA] are:

	Labor Category	Risk Level
1.		
2.		
3.		

(b) The post-award background investigations for these labor categories will be done at these risk levels.

(c) Personnel performing labor categories designated at the HIGH risk level must be United States Citizens. Personnel performing labor categories designated at the

MODERATE or LOW risk levels must be either United States Citizens or Lawful Permanent Residents of the United States.

(d) If an employee of the Contractor or subcontractor may be used to perform more than one labor category, and the assigned risk levels are not the same, the highest of the assigned risk level applies to the employee.

7.5.2-11 Identification/Access Badges (July 2008)

Prescription:

Per PGI 5.204, insert the clause 7.5.2-11, *Identification/Access Badge*, in awards for services in which the Contractor may work on-site at FDIC and require unescorted access to FDIC facilities.

Clause:

All contractor and subcontractor employees regularly working on-site at an FDIC facility must be issued an identification/access control badge. Such employees will not be granted on-site access until receiving the badge. Renewal of the badges is required semiannually.

7.5.2-12 Contractor Notification of Departing Personnel (June 2018)

Prescription:

Per 5.204, insert the following clause in 1) all awards at any dollar amount when contractor personnel or subcontractor personnel will have access to the FDIC's Network, or unescorted access to FDIC facilities/offices, or access to sensitive information, or 2) in any other award where the Program Office has described a need for background investigations (i.e., requirement for contractor and subcontractor personnel to complete FDIC Form 1600/04).

Clause:

1. No later than 14 days prior to the date of departure/transfer* of contractor or subcontractor personnel who have: 1) access to the FDIC's Network, or unescorted access to FDIC facilities/offices, or access to FDIC sensitive information, or 2) have had a FDIC background investigation completed on them (i.e., contractor personnel or subcontractor personnel who completed FDIC Form 1600/04), the Contractor must notify the FDIC Oversight Manager of the employee's departure. If a minimum 14 day notice is not possible, notification must be made immediately once it is known the contractor or subcontractor personnel will be departing or transferring to

another FDIC contract/task order. The notification shall be emailed to the FDIC Oversight Manager and must include the following:

1) Award Number
2) Contractor Personnel's Name
3) Prime Contractor
4) Subcontractor (when applicable)
5) Contractor or Subcontractor Personnel's Removal Date for the Award Number.

2. Prior to a contractor or subcontractor personnel's departure/transfer*, the contractor or subcontractor personnel must sign Section VI of FDIC Form 3700/25, Pre-Exit Clearance/Transfer Record for Contractor Personnel, certifying, among other things, to the return of all FDIC tangible property and certifying that such contractor or subcontractor personnel will not use FDIC nonpublic information to further its own private interests.

*Contractor or subcontractor personnel who are ending their performance on an FDIC contract/task order, and are not transferring to another FDIC contract/task order, are considered to be departing. Contractor or subcontractor personnel who are ending their performance on an FDIC contract/task order, but are starting performance on another FDIC contract/task order, are considered to be transferring.

7.5.2-13 Use of FDIC Premises by Contractor Personnel (July 2008)

Prescription:

Per PGI 5.204, insert clause 7.5.2-13, *Use of Premises by Contractor Personnel*, in all awards in which the Contractor may access FDIC offices or facilities.

Clause:

Contractor shall comply with the FDIC directives governing access to and operations at FDIC offices and facilities, while on FDIC premises. The directives are available at the FDIC website: www.fdic.gov/buying/goods/acquisition/index.html, or may be obtained from the Oversight Manager. Contractor is responsible for assuring that its personnel understand and observe these directives. Contractor shall perform its contract activities in a manner which does not interrupt or interfere with the business conducted at FDIC.

Subcontracts. Contractor must include this clause in all its subcontracts to which the conditions and requirements described in this clause would apply. Contractor also must require it subcontractors (first-tier) to include this clause in any of their subcontracts (second-tier) to which the conditions and requirements of this clause would apply.

7.5.3-1 Section 508, Information and Communication Technology (ICT) (November 2019)

Prescription:

Per PGI 5.304, insert clause 7.5.3-1, Section 508, Information and Communication Technology (ICT) in all awards. (When the clause is included in a BOA/RBOA/BPA, it need not be included in task orders issued thereunder.)

Clause:

(a) Definition:

Information and Communication Technology (ICT) - Information technology and other equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or transmission of electronic data and information, as well as any associated content.

(b) If this award is for the purchase, development, or maintenance of Information and Communication Technology (ICT), the items or services must, at the time of delivery, be in compliance with the following:

1) Section 508 of the Rehabilitation Act and the Architectural and Transportation Barriers Compliance Board's (Access Board's) Information and Communication Technology Standards and Guidelines (36 CFR Part 1194) - https://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-ict-refresh/final-rule ;

2) FDIC regulation 12 CFR §352.5 - http://www.fdic.gov/regulations/laws/rules/2000-7400.html#2000part352.5; and

3) FDIC Circular 2711.1, Information and Communication Technology (ICT) Accessibility Pursuant to Section 508 of the Rehabilitation Act of 1973, is the FDIC policy for implementation of Section 508. The circular is available at https://www.fdic.gov/about/diversity/pdf/2711-1.pdf.

7.5.3-2 RESERVED

7.5.4-1 Authorization and Consent (July 2008)

Prescription:

Per PGI 5.405, insert clause 7.5.4-1, *Authorization and Consent*, in all construction awards and any awards involving the application of patentable business methods, such as online auction services.

Clause:

(a) The FDIC authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the FDIC under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the FDIC for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the FDIC assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.
(b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed $100,000); however, omission of this clause from any subcontract, including those at or below $100,000, does not affect this authorization and consent.

7.5.4-2 Notice and Assistance Regarding Patent and Copyright Infringement (July 2008)

Prescription:

Per PGI 5.405, insert clause 7.5.4-2, *Notice and Assistance Regarding Patent and Copyright Infringement*, in all construction awards; awards in which original data is transferred or developed by a Contractor for use by the FDIC; awards in which educational or training materials are developed by a Contractor for the use by the FDIC; and awards involving the licensing of any intellectual property.

Clause:

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.
(b) In the event of any claim or suit against the FDIC on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the FDIC, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the FDIC except where the Contractor has agreed to indemnify the Government.
(c) The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services).

7.5.4-3 Patent Indemnity (July 2008)

Prescription:

Per PGI 5.405, insert clause 7.5.4-3, *Patent Indemnity*, in all construction awards and any award involving the application of patentable business methods, such as online auction services.

Clause:

(a) The Contractor shall indemnify the FDIC and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as “construction work”) under this contract, or out of the use or disposal by or for the account of the FDIC of such supplies or construction work.
(b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the FDIC of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to—

(1) An infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor;

(2) An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or

(3) A claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

7.5.4-4 Patent Rights-Retention by the Contractor (July 2008)

Prescription:

Per PGI 5.405, Insert clause 7.5.4-4, *Patent Rights—Retention by the Contractor*, in awards in which use of an invention developed by the Contractor under the contract is a core component of the services provided by the Contractor. This clause is to be used when patent rights are to be retained by the Contractor instead of the FDIC.

Clause:

(a) Definitions.

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

(2) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(3) "Practical application" means to manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that is benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(4) "Subject invention" means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract.

(b) Allocation of principal rights. The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C 203. With respect to any subject invention in which the Contractor retains title, the FDIC shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention disclosure, election of title, and filing of patent application by Contractor.

(1) The Contractor will disclose each subject invention to the FDIC within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to the FDIC shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the FDIC, the Contractor will promptly notify the FDIC of the acceptance of

any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(2) The Contractor will elect in writing whether or not to retain title to any such invention by notifying the FDIC within 2 years of disclosure to the FDIC. However, in any case where publication, on sale or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor will file its initial patent application on a subject invention to which it elects to retain title within 1 year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure election, and filing under paragraphs (c)(1), (2), and (3) of this clause may, at the discretion of the agency, be granted.

(d) Conditions when the FDIC may obtain title. The Contractor will convey to the FDIC, upon written request, title to any subject invention—

(1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title; provided, that the agency may only request title within 60 days after learning of the failure of the Contractor to disclose or elect within the specified times.

(2) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the FDIC, the Contractor shall continue to retain title in that country.

(3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum rights to Contractor and protection of the Contractor right to file.

(1) The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the FDIC obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the FDIC, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the FDIC to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with

applicable provisions at 37 CFR Part 404. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the FDIC to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the FDIC will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the FDIC for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and agency regulations, if any, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) Contractor action to protect the FDIC's interest.

(1) The Contractor agrees to execute or to have executed and promptly deliver to the FDIC all instruments necessary to—

(i) Establish or confirm the rights the FDIC has throughout the world in those subject inventions to which the Contractor elects to retain title; and

(ii) Convey title to the FDIC when requested under paragraph (d) of this clause and to enable the FDIC to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the FDIC's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor will notify the FDIC of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with FDIC support under (identify the contract) awarded by the FDIC. The United States Government has certain rights in the invention."

(g) Subcontracts.

(1) The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The

subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The Contractor will include in all other subcontracts, regardless of tier, for experimental, developmental, or research work the patent rights clause required by this clause.

(3) In the case of subcontracts, at any tier, the agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the FDIC with respect to the matters covered by the clause.

(h) Reporting on utilization of subject inventions. The Contractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), the FDIC agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

(i) Preference for United States industry. Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the FDIC upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in rights. The Contractor agrees that, with respect to any subject invention in which it has acquired title, the FDIC has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request the FDIC has the right to grant such a license itself if the FDIC determines that—

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special provisions for contracts with nonprofit organizations. If the Contractor is a nonprofit organization, it agrees that—

(1) Rights to a subject invention in the United States may not be assigned without the approval of the FDIC, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions as the Contractor;

(2) The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and

(4) As used in this clause, “Nonprofit organization” means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

7.5.4-5 Patent Rights-Acquisition by the FDIC (July 2008)

Prescription:

Per PGI 5.405, Insert clause 7.5.4-5, *Patent Rights—Acquisition by the FDIC* in awards in which use of an invention developed by the Contractor under the contract is a core component of the services provided by the Contractor. This clause is to be used when patent rights are to be transferred to the FDIC.

Clause:

(a) Definitions. “Invention,” as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

“Practical application,” as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent

permitted by law or Government regulations, available to the public on reasonable terms.
"Subject invention," as used in this clause, means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this contract
(b) Allocations of principal rights— The Contractor agrees to assign to the FDIC the entire right, title, and interest throughout the world in and to each subject invention.

7.5.4-6 FDIC Rights in Data-General (July 2008)

Prescription:

Per PGI 5.405, insert clause 7.5.4-6, *FDIC Rights in Data—General*, in awards in which original data or software applications are transferred or developed by a Contractor for use by the FDIC; contracts in which educational or training materials are developed by a Contractor for use by the FDIC; and contracts involving the licensing of any intellectual property by the Contractor to the FDIC.

Clause:

(a) Definitions. "Computer software," as used in this clause, means computer programs, computer data bases, and documentation thereof.
"Data," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.
"Form, fit, and function data," as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.
"Limited rights," as used in this clause, means the rights of the FDIC in limited rights data as set forth in the Limited Rights Notice of paragraph (g)(2) if included in this clause.
"Limited rights data," as used in this clause, means data (other than computer software) that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications thereof.
"Restricted computer software," as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of such computer software.

"Restricted rights," as used in this clause, means the rights of the FDIC in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g)(3) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.
"Technical data," as used in this clause, means data (other than computer software) which are of a scientific or technical nature.
"Unlimited rights," as used in this clause, means the right of the FDIC to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of rights.

(1) Except as provided in paragraph (c) of this clause regarding copyright, the FDIC shall have unlimited rights in—

(i) Data first produced in the performance of this contract;
(ii) Form, fit, and function data delivered under this contract;
(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and
(iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to—

(i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;
(ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;
(iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and
(iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause.

(c) Copyright—

(1) Data first produced in the performance of this contract. Unless provided otherwise in paragraph (d) of this clause, the Contractor may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in scientific and

technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the Contracting Officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract. When claim to copyright is made, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of FDIC sponsorship (including contract number) to the data when such data are delivered to the FDIC, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Contractor grants to the FDIC, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the FDI. For computer software, the Contractor grants to the Government and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the FDIC.

(2) Data not first produced in the performance of this contract. The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the FDIC, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause; provided, however, that if such data are computer software the FDIC shall acquire a copyright license as set forth in paragraph (g)(3) of this clause if included in this contract or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.

(3) Removal of copyright notices. The FDIC agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, publication and use of data.

(1) The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this contract.

(2) The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

(e) Unauthorized marking of data.

(1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer shall make written inquiry to the Contractor affording the Contractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the FDIC shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Contractor a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subdivision (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request there under.

(f) Omitted or incorrect markings.

(1) Data delivered to the FDIC without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the FDIC assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside

the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor's expense, and the Contracting Officer may agree to do so if the Contractor—

(i) Identifies the data to which the omitted notice is to be applied;
(ii) Demonstrates that the omission of the notice was inadvertent;
(iii) Establishes that the use of the proposed notice is authorized; and
(iv) Acknowledges that the FDIC has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also (i) permit correction at the Contractor's expense of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(g) Protection of limited rights data and restricted computer software.

(1) When data other than that listed in subdivisions (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this contract and qualify as either limited rights data or restricted computer software, if the Contractor desires to continue protection of such data, the Contractor shall withhold such data and not furnish them to the Government under this contract. As a condition to this withholding, the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Government are to be treated as limited rights data and not restricted computer software.

(h) Subcontracting. The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the FDIC under this contract. If a subcontractor refuses to accept terms affording the FDIC such rights, the Contractor shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subcontract award without further authorization.

(i) Relationship to patents. Nothing contained in this clause shall imply a license to the FDIC under any patent or be construed as affecting the scope of any license or other right otherwise granted to the FDIC.

7.5.4-7 Rights in Data-Special Works (January 2010)

Prescription:

Per PGI 5.405, insert clause 7.5.4-7, *Rights in Data—Special Works*, in awards involving specially commissioned copyrightable works in which the Contractor should not acquire any copyright in the works unless specifically approved by the Contracting Officer.

Clause:

(a) Definitions.
"Data," as used in this clause, means any and all documents, information, and records collected, produced, used, and/or recorded in the performance of this contract, regardless of the form or media on which it may be recorded, including but not limited to work products, notes, analyses, results, forms, reports, and data. The term includes shopping scenarios, scripts, profiles, questionnaires, training materials, and computer software, databases, and reports.
"Unlimited rights," as used in this clause, means the right of the FDIC to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of Rights.
(1) The FDIC shall have—
(i) Unlimited rights in all data delivered under this contract, and in all data first produced in the performance of this contract, except as provided in paragraph (c) of this clause for copyright.
(ii) The right to limit exercise of claim to copyright in data first produced in the performance of this contract, and to obtain assignment of copyright in such data, in accordance with paragraph (c)(1)(ii) of this clause.
(2) The Contractor shall have, to the extent permission is granted in accordance with paragraph (c)(1) of this clause, the right to establish claim to copyright subsisting in data first produced in the performance of this contract.

(c) Copyright—
(1) Data first produced in the performance of this contract.
(i) The Contractor agrees not to assert, establish, or authorize others to assert or establish, any claim to copyright subsisting in any data first produced in the performance of this contract without prior written permission of the Contracting Officer. When claim to copyright is made, the Contractor shall affix the appropriate copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of FDIC sponsorship (including contract number) to such data when delivered to the FDIC, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the FDIC, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the FDIC.
(ii) If the FDIC desires to obtain copyright in data first produced in the performance of this contract and permission has not been granted as set forth in

subdivision (c)(1)(i) for the Contractor to claim copyright, the Contractor shall assign and transfer any right to copyright such data first produced simultaneously with it registration of such copyright for the FDIC in the U.S. Copyright Office.

7.5.4-8 Rights in Data-Existing Works (January 2010)

Prescription:

Per PGI 5.405, insert clause 7.5.4-8, *Rights in Data—Existing Works*, in awards in which pre-existing copyrighted materials are used by the Contractor in the performance of the contract.

Clause:

(a) Except as otherwise provided in this contract, the Contractor grants to the FDIC, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the FDIC,for all the material or subject matter called for under this contract, or for which this clause is specifically made applicable.

(b) The Contractor shall indemnify the FDIC and its officers, agents, and employees acting for the FDIC against any liability, including costs and expenses, incurred as the result of (1) the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication or use of any data furnished under this contract; or (2) any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the FDIC provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules, or regulations to participate in the defense thereof, and obtains the Contractor’s consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction; and do not apply to material furnished to the Contractor by the FDIC and incorporated in data to which this clause applies.

7.5.4-9 Commercial Computer Software-Restricted Rights (July 2008)

Prescription:

Per PGI 5.405, insert clause 7.5.4-9, *Commercial Computer Software—Restricted Rights*, in awards which include the acquisition of commercial computer software, except orders under GSA's Multiple Award Schedules.

Clause:

(a) As used in this clause, “restricted computer software” means any computer program, computer data base, or documentation thereof, that has been developed at private expense and either is a trade secret, is commercial or financial and confidential or privileged, or is published and copyrighted.
(b) Notwithstanding any provisions to the contrary contained in any Contractor’s standard commercial license or lease agreement pertaining to any restricted computer software delivered under this purchase order/contract, and irrespective of whether any such agreement has been proposed prior to or after issuance of this purchase order/contract or of the fact that such agreement may be affixed to or accompany the restricted computer software upon delivery, vendor agrees that the FDIC shall have the rights that are set forth in paragraph (c) of this clause to use, duplicate or disclose any restricted computer software delivered under this purchase order/contract. The terms and provisions of this contract, including any commercial lease or license agreement, shall be subject to paragraph (c) of this clause and shall comply with Federal laws.
(c) (1) The restricted computer software delivered under this contract may not be used, reproduced or disclosed by the FDIC except as provided in paragraph (c)(2) of this clause or as expressly stated otherwise in this contract.

(2) The restricted computer software may be—

(i) Used or copied for use in or with the computer or computers for which it was acquired, including use at any FDIC installation to which such computer or computers may be transferred;

(ii) Used or copied for use in or with backup computer if any computer for which it was acquired is inoperative;

(iii) Reproduced for safekeeping (archives) or backup purposes;

(iv) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to same restrictions set forth in this purchase order/contract;

(v) Disclosed to and reproduced for use by support service Contractors or their subcontractors, subject to the same restrictions set forth in this purchase order/contract; and

(vi) Used or copied for use in or transferred to a replacement computer.

(3) If the restricted computer software delivered under this purchase order/contract is published and copyrighted, it is licensed to the FDICt, without disclosure prohibitions, with the rights set forth in paragraph (c)(2) of this clause unless expressly stated otherwise in this purchase order/ contract.

(4) To the extent feasible the Contractor shall affix a Notice substantially as follows to any restricted computer software delivered under this purchase order/contract; or, if the vendor does not, the FDIC has the right to do so:

NOTICE—Notwithstanding any other lease or license agreement that may pertain to, or accompany the delivery of, this computer software, the rights of the FDIC regarding its use, reproduction and disclosure are as set forth in FDIC contract (or Purchase Order) No. _____.

(d) If any restricted computer software is delivered under this contract with the copyright notice of 17 U.S.C. 401, it will be presumed to be published and copyrighted and licensed to the FDIC in accordance with paragraph (c)(3) of this clause, unless a statement substantially as follows accompanies such copyright notice: Unpublished—rights reserved under the copyright laws of the United States.

7.5.5-1 Option Period (October 2015)

Prescription:

Per PGI 5.504, insert clause7.5.5-1, *Option Period*, in awards which include option periods.

Clause:

The Period of Performance may be extended, at the discretion of the FDIC, for the Option Period(s) identified below:

Period of Performance

Option Period 1	From: _____	To:_____
Option Period 2	From: _____	To:_____
Option Period 3	From: _____	To:_____

[ADD OR DELETE OPTION PERIODS, AS NEEDED]

Except where specifically indicated otherwise, "Period of Performance" as used hereafter in this contract refers both to the Initial Period of Performance and to any Option Period which may be exercised.

7.5.5-2 Notice of Exercise of Option (July 2008)

Prescription:

Per PGI 5.504, insert clause 7.5.5-2, *Notice of Exercise of Option*, in awards which include option periods.

Clause:

If the FDIC desires to exercise the option to extend the Period of Performance, the FDIC must notify Contractor, in writing, of its intent not less than _____ (__) days before the expiration of the current Period of Performance.

7.5.6-1 Prohibition on Subcontracting (July 2008)

Prescription:

Per PGI 5.605, insert clause 7.5.6-1, *Prohibition on Subcontracting*, in solicitations when subcontracting will not be permitted.

Clause:

Subcontracting is not permitted under the contract.

7.5.6-2 Subcontracting Reporting (January 2020)

Prescription:

Per PGI 5.604, insert clause 7.5.6-2, *Subcontracting Reporting*, in awards (other than BOAs, RBOAs, and BPAs) when subcontracting is approved and the majority of dollars in FDIC's estimated award value is for services (to be performed by the prime and/or subcontractors).

Clause:

If subcontracting is approved under this award, the Contractor must submit a subcontracting report, on a quarterly basis, addressing the following for each subcontractor:

a. Subcontractor's Name, Address, and Data Universal Numbering System (DUNS) number if the subcontractor has a DUNS number. (Note: A subcontractor is considered to be any entity or person, other than an employee of the Contractor, that will receive payment from the Contractor and is a direct charge to the contract.).
b. Subcontractor's type of business concern [Minority Owned (including ethnicity), Women Owned, Small Business, Small Disadvantaged Business, Small Business Administration 8(a), Historically Underutilized Business Zone (HUBZone), Veteran Owned, and/or Service Disabled Veteran Owned Business].
c. Estimated percentage of the contract work to be performed by the subcontractor. based on dollars (i.e., dollars to be paid to subcontractor divided by the total award amount). (Note: Applicable only to awards with Subcontracting Plans. The percentage must match that in the Subcontracting Plan.)
d. Description of services to be performed or goods/material to be provided by the subcontractor during the report period and dates, or range of dates, performance was accomplished.
e. Compensation paid to the subcontractor during reporting period; and
f. Total compensation paid to the subcontractor cumulative to date, including all payments made from the effective date of the award.

The Contractor must provide the subcontracting report to FDIC using the FDIC Subcontracting Reporting System (SRS). The SRS is a web-based system that is accessible via the internet. The link to the current webpage that provides access to the FDIC SRS is contained in the SRS Prime Contractor User Guide. The Contractor may access a copy of the SRS Prime Contractor User Guide in the Miscellaneous section of the following webpage: http://www.fdic.gov/buying/goods/acquisition/index.html.

The subcontracting report must be submitted within 15 days after the end of each quarter (i.e., by April 15th for Quarter 1 ending March 31st , by July 15th for Quarter 2 ending June 30th, by October 15th for Quarter 3 ending September 30th, and by January 15th for Quarter 4 ending December 31st.

For awards with Subcontracting Plans, the Contractor must routinely monitor their subcontract awards and payments to ensure compliance in meeting the Subcontracting Plan goal percentages.

7.5.6-3 Subcontracting Reporting (BOAs/RBOAs/BPAs) (January 2020)

Prescription:

Per PGI 5.604, insert clause 7.5.6-3, *Subcontracting Reporting (BOAs/RBOAs/BPAs)*, in BOAs, RBOAs or BPAs if subcontracting is approved and the majority of the dollars in FDIC's estimated award value is for services (to be performed by the contractor or subcontractors).

Clause:

For every task order in which subcontracting is approved, the Contractor must submit a subcontracting report, on a quarterly basis, addressing the following for each subcontractor:
a. Subcontractor's Name, Address, and Data Universal Numbering System (DUNS) number if the subcontractor has a DUNS number. (Note: A subcontractor is considered to be any entity or person, other than an employee of the Contractor, that will receive payment from the Contractor and is a direct charge to the contract.);
b. Subcontractor's Type of business concern [Minority Owned (including ethnicity), Women Owned, Small Business, Small Disadvantaged Business (SDB), Small Business Administration 8(a), Historically Underutilized Business Zone (HUBZone), Veteran Owned and/or Service Disabled Veteran Owned Business];
c. Estimated percentage of the contract work to be performed by the subcontractor , based on dollars (i.e., dollars paid to the subcontractor divided by the total award amount). (Note: Applicable only to awards with Subcontracting Plans. The percentage must match that in the Subcontracting Plan.);
d. Description of services to be performed or goods/material to be provided by the subcontractor during the report period and dates, or range of dates, performance was accomplished;

e. Compensation paid to the subcontractor during reporting period;
f. Total compensation paid to the subcontractor cumulative to date, including all payments made from the effective date of the award;

The Contractor must provide the subcontracting report to FDIC using the FDIC Subcontracting Reporting System (SRS). The SRS is a web-based system that is accessible via the internet. The link to the current webpage that provides access to the FDIC SRS is contained in the SRS Prime Contractor User Guide. The Contractor may access a copy of the SRS Prime Contractor User Guide in the Miscellaneous section of the following webpage: http://www.fdic.gov/buying/goods/acquisition/index.html.

The subcontracting report must be submitted within 15 days after the end of each quarter (i.e., by April 15th for Quarter 1 ending March 31st , by July 15th for Quarter 2 ending June 30th, by October 15th for Quarter 3 ending September 30th, and by January 15th for Quarter 4 ending December 31st.

For awards with Subcontracting Plans, the Contractor must routinely monitor their subcontract awards and payments to ensure compliance in meeting the Subcontracting Plan goal percentages.

7.5.6-4 Approved Subcontractors and Consent to Subcontract (July 2014)

Prescription:

Per PGI 5.605, insert clause 7.5.6-4, *Approved Subcontractors and Consent to Subcontract* in all awards, with the following exception: use Alternate 1 when a waiver to the APM requirement for approval of subcontractors has been granted for subcontracts valued at $100,000 and under.

Clause:
The Contractor must not engage subcontractors to perform any of its responsibilities without the prior written approval of the FDIC. The Contractor must notify the FDIC of any changes in subcontracting arrangements. If the Contractor proposes to add a subcontractor after award, the Contractor must obtain consent from the Contracting Officer. The Contractor must send a written request to the Contracting Officer, along with a Subcontracting Plan, or amended Subcontracting Plan, as applicable, which sets forth the following:

(1) Name, Address, and Data Universal Numbering System (DUNS) number of the subcontractor if the subcontractor has a DUNS number. (Note: A subcontractor is considered to be any entity or person, other than an employee of the Contractor, that will receive payment from the Contractor and is a direct charge to the contract.);

(2) Summary of capabilities of the subcontractor;

(3) Description of roles of Key Personnel of the subcontractor;

(4) Estimated percentage of work to be performed by the subcontractor, based on dollars (i.e., dollars to be paid to subcontractor divided by the total award amount);

(5) Description of services to be performed or goods/material to be provided by the subcontractor;

(6) Minority or Women-Owned Business (MWOB) designation of the subcontractor, i.e., Women-Owned, Minority-Owned. If Minority-Owned, also provide the subcontractor's ethnic/racial category from the following list:

Asian-Pacific American
Subcontinent Asian (Asian-Indian) American
Black American
Hispanic American
Native American
Other than one of the preceding

(7) Designation of the subcontractor as a Small Business, Small Disadvantaged Business, Small Business Administration 8(a), Historically Underutilized Business Zone (HUBZone), Veteran Owned and/or Service Disabled Veteran Owned Business; and

(8) Rationale and the offeror's policy for subcontracting, including a description of how the subcontracting commitments will be met.

In the case of time and material or labor hour contracts, the contractor must provide pricing support for the reasonableness of the proposed labor rates. If markup on the subcontractor rates has been approved by the Contracting Officer, any proposed markup rates must be identified in the pricing support.

A subcontractor must not begin work until the contractor receives written approval by the FDIC Contracting Officer.

The following subcontractors are approved for performance under this contract:

_____
_____
_____

Consent by the FDIC to any proposed subcontractor does not: (1) constitute a determination of the acceptability of any subcontract terms or conditions; or (2) constitute a determination of the acceptability of any amount paid under any subcontract; or (3) relieve Contractor of any of its responsibilities under the award. Contractor must notify the FDIC Contracting Officer of any changes in subcontracting arrangements.

_____

7.5.6-4 Alternate 1 (May 2009)

Prescription:

Per PGI 5.605, insert 7.5.6-4 Alternate 1 in awards when a waiver to the APM requirement for approval of subcontractors has been granted for subcontracts valued at $100,000 and under.

Clause:

Insert the following paragraph as the first paragraph of the basic clause 7.5.6-4.

The requirements of this clause only apply to subcontractors with subcontract amounts greater than $100,000.

7.5.6-5 Subcontracting Plan Compliance (March 2011)

Prescription:

Per PGI 5.605, insert clause 7.5.6-5, *Subcontracting Plan Compliance*, in awards where a Subcontracting Plan is required.

Clause:

The Subcontracting Plan is a material part of the contract and compliance with the Subcontracting Plan is extremely important, especially as it applies to subcontractors that are women-owned, minority-owned and small disadvantaged businesses. The Contractor's failure to comply with and make progress under the Subcontracting Plan may be considered a breach of contract. In addition, failure to achieve the stated subcontracting goals may result in the issuance of a cure notice or show cause letter for purposes of termination for default and/or have a negative and adverse impact on the Contractor's past performance record to be considered during proposal evaluation on future solicitations. FDIC will monitor the performance of the Contractor, including a review of the payments to subcontractors, to ensure appropriate efforts are being made to comply with the Subcontracting Plan.

7.5.6-6 Evaluation of Subcontracting Plan (March 2011)

Prescription:

Per PGI 5.604, insert provision 7.5.6-6, *Evaluation of Subcontracting Plan*, in solicitations when a Subcontracting Plan is required.

Provision:

The FDIC will evaluate the Contractor's Subcontracting plan and proposed subcontractors, considering the following:

(1) The adequacy of the proposed rationale for subcontracting, including information on efforts undertaken by the Contractor to include subcontractors that are minority-owned, women-owned or small disadvantaged businesses.

(2) The appropriateness of the proposed level of subcontracting for the requirements of the contract (that is, logically balanced on a technical basis).

(3) The appropriateness of the subcontractor's qualifications, resources and capabilities for the complexity of the work.

7.5.8-1 Liability Insurance (April 2010)

Prescription:

Per PGI 5.807, insert clause 7.5.8-1*, Liability Insurance*, in awards over $100,000.

Clause:

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

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

(b) Comprehensive Bodily Injury and Property Damage Liability Insurance covering the work, the performance of the work and everything incidental thereto, with Bodily Injury (including death) and Property Damage limits of not less than Five Million Dollars ($5,000,000) per occurrence combined single limit. This policy shall be endorsed to cover: Contractual liability coverage, completed operations coverage, and broad form property damage endorsement; and

(c) Automobile Public Liability and Property Damage Insurance, including coverage on owned, hired, and non-owned automobiles and other vehicles, if used in connection with the performance of the work, with Bodily Injury and Property Damage limits of not less than One Million Dollars ($1,000,000) per occurrence combined single limit; and

(d) Such other insurance as may be required elsewhere in the Agreement documents.

The FDIC shall be named as Additional Insured under Contractor's Comprehensive Bodily Injury and Property Damage Liability Insurance, and Automobile Public Liability and Property Damage Insurance coverage. Contractor's insurance shall be primary.

7.5.8-2 Certificates of Insurance (July 2008)

Prescription:

Per PGI 5.807, insert clause 7.5.8-2, *Certificates of Insurance*, in awards over $100,000.

Clause:

Contractor must provide to the Contracting Officer, no later than ten (10) calendar days after the date of execution, a Certificate of Insurance, identifying the required types of insurance and dollar limits. The Certificate of Insurance must include the following FDIC mailing address and reference the contract number:

Federal Deposit Insurance Corporation
Attention: _____
_____
_____
Reference: Contract No. _____

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

Upon request of the Contracting Officer, Contractor must provide the FDIC with a binder or a copy of the original insurance policy.

7.5.8-3 Insurance for Equipment/Tools (July 2008)

Prescription:

Per PGI 5.807, insert clause 7.5.8-3, *Insurance for Equipment/Tools*, in construction awards and other awards in which the Contractor will use its equipment, tools, supplies, or materials on FDIC premises.

Clause:

Contractor is responsible for insurance coverage on its equipment, tools, supplies and any other materials which it may use or store in the course of the work on FDIC premises. The FDIC is not liable for any loss or damage to the equipment and tools of Contractor or its employees or its subcontractors.

7.5.8-4 Notice to the FDIC on Damages (July 2008)

Prescription:

Per PGI 5.807, insert clause 7.5.8-4*, Notice to the FDIC on Damages*, in awards over $100,000.

Clause:

Contractor must promptly notify the Contracting Officer of all damages to property of the FDIC or of others, or injuries incurred by persons other than employees of Contractor in any manner relating, either directly or indirectly, to the work.

7.5.8-5 Cost of Insurance (July 2008)

Prescription:

Per PGI 5.807 insert clause 7.5.8-5 *Cost of Insurance*, in awards over $100,000.

Clause:

Contractor's expenses in fulfilling the insurance requirements must not be reimbursed by the FDIC.

7.5.8-6 Payment and/or Performance Bonds (July 2008)

Prescription:

Per PGI 5.807, insert clause 7.5.8-6, *Payment and/or Performance Bonds*, in construction awards valued at or above $100,000.

Clause:

(a) A "bond," as used herein, means a written instrument executed by Contractor and a surety to assure fulfillment of Contractor's obligations to the FDIC. A "surety" means an individual or corporation legally liable for the debt, default, or failure of Contractor to satisfy the contractual obligation. The "penal amount" means the amount of money specified in the bond as the maximum payment for which the surety is obligated. See also clause 4.1.29, Pledges of Assets, concerning individual sureties. The acceptance of a bond and of a surety is totally within the discretion of the FDIC.

(b) Contractor must provide to the Contracting Officer, prior to commencing performance of the contract: (1) a payment bond which assures payments, as required by law, to all persons supplying labor or material in the prosecution of work provided for in the contract and which carries a penal amount of fifty percent (50%) of the original contract amount and (2) a performance bond which secures performance and fulfillment of Contractor's obligations under the contract and which carries a penal amount of one hundred percent (100%) of the original contract amount.

(c) If any surety furnishing a performance or payment bond in connection with the contract becomes unacceptable to FDIC or fails to furnish reports on its financial condition as requested by the Contracting Officer, or if the contract price increases to the point where the security furnished becomes inadequate in the Contracting Officer's opinion, the contractor must promptly furnish additional security as required to protect the interests of FDIC and of persons supplying labor or materials in performance of a contract.

7.5.8-7 Fidelity Bond Coverage (April 2010)

Prescription:

Per PGI 5.807, insert clause 7.5.8-7, *Fidelity Bond Coverage*, in all awards when the program office informs the Contracting Officer that coverage is necessary.

Clause:

Contractor must maintain fidelity bond coverage of at least _____ Dollars ($_____) at all times during the Period of Performance of the contract. Fidelity bond coverage must be with a responsible carrier or bonding company with a financial rating of at least B+ VI from A.M. Best or an equivalent rating agency. The fidelity bond must cover all of Contractor's employees, partners, trustees, brokers, subcontractors, agents, affiliates or other representatives involved in the day-to-day performance of the contract, and must protect the FDIC against losses, including, without limitation, those arising from theft, embezzlement, fraud, or misplacement of funds, money, or documents. The FDIC must be named as "loss payee" on Contractor's fidelity bond. Contractor may, in lieu of a fidelity bond, deliver an unconditional, irrevocable letter of credit for the dollar amount required for fidelity bond coverage, issued in the FDIC's favor by a financial institution acceptable to the FDIC. The expiration date of the letter

of credit must not be any earlier than sixty (60) days after the expiration date of the contract, as that date may be extended under the Option provision of the contract.

Contractor must provide the FDIC with evidence of its fidelity bond coverage, either in the form of a binder or a copy of the fidelity bond, or provide its letter of credit no later than ten (10) days after the date of execution of the contract. Contractor agrees to notify the FDIC Contracting Officer in writing within five (5) business days of any notice or proposal of cancellation, termination or modification of fidelity bond coverage that Contractor receives.

7.5.8-8 RESERVED

7.5.8-9 Errors and Omissions Insurance (August 2009)

Prescription:

Per PGI 5.807, insert clause 7.5.8-9, *Errors and Omissions Insurance*, in awards when the program office informs the Contracting Officer that coverage is necessary.

Clause:

Contractor must maintain at all times during the Period of Performance of the contract, at its own expense, errors and omissions insurance coverage in the amount of at least _____ Dollars ($_____). Contractor must provide the FDIC, no later than ten (10) calendar days after the date of execution of the contract, evidence of errors and omissions coverage. Such evidence may be (1) a binder or (2) a copy of the original policy. Contractor must also provide, no later than ten (10) calendar days after the date of execution, a Certificate of Insurance which must reference the contract Number and include the FDIC's mailing address, as specified on the award cover sheet.

Contractor must obtain and maintain such coverage with a responsible carrier with at least a financial rating of B+ VI from A.M. Best or equivalent rating agency. Contractor agrees to notify the FDIC Contracting Officer in writing within five (5) business days of the first notice or proposal of cancellation, termination or modification of coverage which Contractor receives.

Contractor may, in lieu of insurance coverage, obtain and deliver to the FDIC an unconditional, irrevocable letter of credit issued in the FDIC's favor by a financial institution acceptable to the FDIC for the dollar amount required for insurance coverage. The letter of credit must have an expiration date no earlier than sixty (60) days after the termination or expiration of the contract, as the contract may be extended.

The issuer, policy terms and forms and amounts of any errors and omissions insurance coverage, including applicable deductibles, must be satisfactory to the FDIC.

7.5.8-10 RESERVED

7.5.8-11 Liability to Third Persons (July 2008)

Prescription:

Per PGI 5.807, insert clause 7.5.8-11, *Liability to Third Persons*, in all awards.

Clause:

The FDIC does not assume any liability to third persons for loss due to death, bodily injury, or damage to property resulting from the performance of this contract or any subcontract, nor will the FDIC reimburse Contractor for its liability to third persons.

7.5.8-12 Pledge of Assets (July 2008)

Prescription:

Per PGI 5.807, insert clause 7.5.8-12 *Pledges of Assets*, in all awards when an individual surety is required as a term of the contract.

Clause:

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee, a performance bond, or a payment bond--

(1) Pledge of assets; and
(2) Standard Form 28, Affidavit of Individual Surety.

(b) Pledges of assets from each person acting as an individual surety shall be in the form of--

(1) Evidence of an escrow account containing cash, certificates of deposit, commercial or Government securities, and/or;
(2) A recorded lien on real estate. The offeror will be required to provide:
(i) Evidence of title in the form of a certificate of title prepared by a title insurance company approved by the United States Department of Justice. This title evidence must show fee simple title vested in the surety along with any concurrent owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the FDIC;
(ii) Evidence of the amount due under any encumbrance shown in the evidence of title;

(iii) A copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than six (6) months prior to the date of the bond, prepared by a professional appraiser who certifies that the appraisal has been conducted in accordance with the generally accepted appraisal standards as reflected in the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Foundation.

7.5.9-1 FDIC Exempt from Federal, State, and Local Taxes (July 2008)

Prescription:

Per PGI 5.904 and 5.1306, insert clause 7.5.9-1 *FDIC Exempt from Federal, State, and Local Taxes*, in all awards.

Clause:

FDIC is a Federal Government corporation and is exempt from State and local sales taxes. Therefore, it will not pay state and local sales tax on invoices submitted to it and if included, the amounts will be deducted from the total amount invoiced. Since most taxing jurisdictions charge taxes on goods and sometimes services purchased by contractors in the performance of federal contracts, FDIC will pay those costs if included in the contractor's proposal. FDIC will furnish evidence of its exemption from any Federal, State, or local tax at the Contractor's request, if there is a basis for claiming exemption.

7.5.10-1 Warranty of Construction (July 2008)

Prescription:

Per PGI 5.1008, insert clause 7.5.10-1, *Warranty of Construction*, in all construction awards.

Clause:

(a) In addition to any other warranties in this contract, Contractor warrants, except as provided in paragraph (j) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by Contractor or any subcontractor or supplier at any tier.

(b) This warranty must continue for a period of one (1) year from the date of final acceptance of the work. If the FDIC takes possession of any part of the work before final acceptance, this warranty must continue for a period of one (1) year from the date the FDIC takes possession.

(c) Contractor must remedy at Contractor's expense any failure to conform, or any defect. In addition, Contractor must remedy at Contractor's expense any damage to FDIC owned or controlled real or personal property, when that damage is the result of

(1) Contractor's failure to conform to contract requirements; or
(2) Any defect of equipment, material, workmanship, or design furnished.

(d) Contractor must restore any work damaged in fulfilling the terms and conditions of this clause. Contractor's warranty with respect to work repaired or replaced will run for one (1) year from the date of repair or replacement.

(e) The Contracting Officer must notify Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the FDIC must have the right to replace, repair, or otherwise remedy the failure, defect, or damage at Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, Contractor must

(1) Obtain all warranties that would be given in normal commercial practice;
(2) Require all warranties to be executed, in writing, for the benefit of the FDIC, if directed by the Contracting Officer; and
(3) Enforce all warranties for the benefit of the FDIC, if directed by the Contracting officer.

(h) In the event Contractor's warranty under paragraph (b) of this clause has expired, the FDIC may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the negligence of Contractor or any subcontractor or supplier at any tier, Contractor is not liable for the repair of any defects of material or design furnished by the FDIC or for the repair of any damage that results from any defect in FDIC-furnished material or design.

(j) This warranty does not limit the FDIC's rights under the "Inspection and acceptance" clause of this contract with respect to latent defects, gross mistakes, or fraud.

(k) Defects in design or manufacture of equipment specified by the FDIC on a "brand name and model" basis shall not be included in this warranty. In this event, Contractor shall require any subcontractors, manufacturers, or suppliers thereof to execute their warranties, in writing, directly to the FDIC.

7.5.10-2 Guarantees (July 2008)

Prescription:

Per PGI 5.1008, insert clause 7.5.10-2, *Guarantees*, in all construction awards.

Clause:

(a) Unless otherwise provided in the specifications, Contractor guarantees all work to be in accordance with contract requirements and free from defective or inferior materials, equipment, and workmanship for one (1) year after the date of final acceptance or the date the equipment or work was placed in use by the FDIC, whichever occurs first.

(b) If, within any guarantee period, the Contracting Officer finds that guaranteed work requires repair or change because of defective or inferior materials, equipment, or workmanship or is not in accordance with the contract requirements, the Contracting Officer must notify Contractor in writing. Contractor must promptly, and without additional expense to the FDIC, correct:

(1) All guaranteed work;
(2) All damage to equipment, the site, the building or its contents resulting from the unsatisfactory guaranteed work; and
(3) Any work, materials, and equipment that are disturbed in fulfilling the guarantee.

(c) Any special guarantees that may be required under the contract will be subject to paragraphs (a) and (b), insofar as they do not conflict with special guarantees.

(d) Contractor must furnish to the FDIC: (1) each transferable guarantee or warranty of equipment, materials, or installation furnished by any manufacturer, supplier, or installer in the ordinary course of business; (2) all information required to make such guarantee or warranty legally binding and effective; and (3) the information in the guarantee or warranty in sufficient time to permit the FDIC to meet any time limit specified in the guarantee or warranty or, if no time limit is specified, prior to completion and acceptance of all work under this contract.

7.5.11-1 Service Contract Act of 1965 (July 2008)

Prescription:

Per PGI 5.1105, insert clause 7.5.11-1, *Service Contract Act of 1965*, in service contracts over $2,500 entered into by FDIC in its corporate capacity where the principal purpose of the contract is to furnish services through "service employees", as defined in subparagraph (k) of the clause.

Clause:

(a) Application. The Service Contract Act of 1965, as amended – 41 U.S.C. §351 et seq. – ("SCA") applies to this contract. The regulations of the Secretary of Labor, found at 29 C.F.R. Part 4, apply as well.

(b) Compensation.

(1) Wages and Fringe Benefits. Each service employee (defined in subparagraph K) employed in the performance of this contract by Contractor or any subcontractor is to be paid not less than the minimum monetary wages and is to be furnished the fringe benefits, as determined by the Secretary of Labor or authorized representative, and as specified in any wage determination attached to this contract.

(2) Conforming Classes of Service Employees.

(i) If a wage determination is attached to this contract, Contractor must classify any class of service employee not listed therein, which is to be employed to perform work under the contract, so as to provide a reasonable relationship (i.e., an appropriate level of skill comparison) between unlisted classifications and the classifications listed in the wage determination. Contractor is required to pay the monetary wages and to furnish the fringe benefits, as determined under the procedures in this paragraph, to this conformed class of employees.

(ii) This conforming procedure is initiated by Contractor prior to the performance of contract work by an unlisted class of employees. Contractor must submit a written report of the proposed conforming action - including information regarding the agreement or disagreement of the authorized representative of the employees involved or, where there is no authorized representative, the employees themselves - to the Contracting Officer no later than thirty (30) days after an unlisted class of employees performs any contract work. The Contracting Officer will review the proposed action and promptly submit a report of the action, together with the FDIC's recommendation and all pertinent information - including the position of Contractor and the employees - to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. The Wage and Hour Division will approve, modify, or disapprove the action, or render a final determination in the event of disagreement, within thirty (30) days of receipt or will notify the Contracting Officer within thirty (30) days of receipt that additional time is necessary.

(iii) The final determination by the Wage and Hour Division will be transmitted to the Contracting Officer who will promptly notify Contractor of the action taken. Contractor must furnish each affected employee with a written copy of the determination or post it as a part of the wage determination.

(iv) No Single Formula.

(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job factors, for example, may be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option or extension of an existing contract, or in any other case where a contractor succeeds to a contract under which the classification in question was previously conformed pursuant to this paragraph, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits, where appropriate, between the wages and fringe benefits specified for all wage determinations and those specified for the corresponding classifications in the previous wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of the contract work by the unlisted class of employees, Contractor must advise the Contacting Officer of the action taken, but the other procedures in subparagraph (b)(2)(ii) need not be followed.

(C) In any event, no employee engaged in performing work on this contract shall be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The Contractor is required to pay all employees performing in a classification the wage rate and fringe benefits determined pursuant to subparagraph (b)(2) of this clause from the first day on which contract work is performed. Failure to pay unlisted employees compensation at the determined wage rate, retroactive to the date the class of employees commenced contract work, is a violation of the SCA and this contract.

(vi) Upon discovery of a Contractor's failure to comply with subparagraph (b)(2) of this clause, the Wage and Hour Division will make a final determination of conformed classification, wage rate and fringe benefits which will be applied retroactively to the date the class of employees commenced work.

(3) Adjustment of Compensation. If the term of this contract is more than one (1) year, the minimum monetary wages and fringe benefits Contractor is required to pay or furnish to service employees under this contract is subject to adjustment after one (1) year and not less often than once every two (2) years, under wage determinations issued by the Wage and Hour Division.

(c) Obligation to Furnish Fringe Benefits. Contractor or the subcontractor may discharge the obligation to furnish fringe benefits, as specified in the wage determination attached to the contract or as determined under subparagraph (b)(2)(ii) of this clause, by furnishing any equivalent combination of bona fide fringe benefits or by making equivalent or differential cash payments only, in accordance with the rules set forth in Subpart D of 29 C.F.R. Part 4.

(d) Minimum Wage and Predecessor Contracts Subject to Collective Bargaining Agreements.

(1) In the absence of a wage determination attachment for this contract, Contractor and any subcontractor under this contract are obligated to pay any person performing work under this contract (regardless of whether the person is a service employee) no less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Nothing in this clause relieves Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(2) If this contract succeeds a contract subject to the SCA, under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, and if there is no wage determination attachment for this contract setting forth collectively bargained wage rates and fringe benefits, then Contractor and any subcontractor under this contract are obligated to pay any service employee performing any of the contract work (regardless of whether or not the employee was employed under the predecessor contract) no less than the wages and fringe benefits provided for in the collective bargaining agreement This includes accrued wages and fringe benefits and any prospective increase in wages and fringe benefits provided for under the agreement.

No contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 C.F.R. §4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative either:

• finds, after hearing as provided in 29 C.F.R. §4.10, that the wages or fringe benefits provided for in the collective bargaining agreement are substantially at variance with those that prevail for services of a similar character in the locality, or
• determines, as provided in 29 C.F.R. §4.11, that the collective bargaining agreement, which applied to service employees employed under the predecessor contract, was not entered into as a result of arm's length negotiations.

Where one of the two situations described above is found, then the Department of Labor will issue a new or revised wage determination of the applicable wage rates and fringe benefits. This determination is made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether its

issuance occurs prior to or after the award of a contract or subcontract (See 53 Comp. Gen. 401 (1973)). A wage determination issued solely as a result of a finding of substantial variance is effective as of the date of the final administrative decision.

(e) Notification to Employees. Contractor and any subcontractor under this contract either must notify each service employee commencing work on this contract of the minimum monetary wage paid and any fringe benefits furnished pursuant to this contract or post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) must be posted in a prominent and accessible place at the work site. Failure to comply with this requirement is a violation of section 2(a)(4) of the SCA and this contract.

(f) Safe and Sanitary Working Conditions. Contractor and any subcontractor are obligated to comply with the safety and health standards applied under 29 C.F.R. Part 1925. No part of the services under this contract is to be performed in buildings or surroundings or under working conditions (provided for by, or under the control or supervision of, Contractor or any subcontractor) that are unsanitary, hazardous or dangerous to the health or safety of the service employees.

(g) Records.

(1) Contractor and each subcontractor performing work subject to the SCA must make records containing the information specified below for each employee subject to the SCA, and maintain them for three (3) years from the completion of the work:

(i) Name and address and social security number;

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

(iii) Daily and weekly hours worked;

(iv) Any deductions, rebates, or refunds from an employee’s total daily or weekly compensation;

(v) A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the labor standards clause in paragraph (b) of this clause (a copy of the report required by paragraph (b)(2)(ii) will fulfill this requirement); and

(vi) Any list of the predecessor contractor's employees furnished to Contractor, as prescribed by 29 C.F.R. §4.6(l)(2).

Records must be made available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

(2) Contractor is obligated to make a copy of this contract available to authorized representatives of the Wage and Hour Division for inspection and transcription.

(3) Failure to make or maintain records or to make them available for inspection and transcription is a violation of the regulations and this contract. In the case of failure to produce records for inspection or transcription, the Contracting Officer, upon direction of the Department of Labor and notice to the Contractor, will take action to suspend any further payment or advance of funds to Contractor until the violation ceases.

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

(h) Pay Periods. Contractor must unconditionally pay to each employee subject to the SCA all wages due, free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 C.F.R. Part 4), rebate or kickback on any account. Wages must be paid no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under the SCA may not be of any duration longer than semi-monthly.

(i) Withholding of Payments and Termination of contract. The Contracting Officer will withhold or cause to be withheld from the FDIC prime Contractor under this contract, or any other FDIC contract with the prime Contractor, such sums as an appropriate official of the Department of Labor requests withheld or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by Contractor or the subcontractor. In the event Contractor or any subcontractor fails to pay any employees subject to the SCA all or part of the wages or fringe benefits due under the SCA, the FDIC may, after authorization or by direction of the Department of Labor and written notification to Contractor, take action to cause suspension of any further payment or advance of funds to Contractor until violations have ceased. Additionally, any failure to comply with the requirements of the contract relating to the SCA, may be grounds for termination of the right to proceed with the contract work. In this event, the FDIC may enter into other contracts or arrangements for completion of the work and may charge Contractor in default with any additional cost to the FDIC.

(j) Subcontracts. Contractor agrees to insert this clause relating to the Service Contract Act of 1965, as amended, in all subcontracts subject to the SCA.

(k) Service Employee. As used in this clause, the term “service employee” means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 C.F.R. Part 541, as of July 30, 1976, and any subsequent revision of

those regulations. The term “service employee” includes all persons described above, regardless of any contractual relationship that may be alleged to exist between the Contractor or subcontractor and any of these persons.

(l) Collective Bargaining Agreements Applicable to Service Employees; Seniority List.

(1) If wages to be paid or fringe benefits to be furnished any service employees employed by the FDIC prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement, which is or will be effective during any period in which the contract is being performed, the FDIC prime Contractor is obligated to:

- report this fact to the Contracting Officer;

- include full information as to the application and accrual of the wages and fringe benefits, including any prospective increase, to service employees engaged in work on the contract; and

- provide a copy of the collective bargaining agreement.

The report is to be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at the time performance commences. In the case of collective bargaining agreements, select provisions thereof or amendments thereto effective at a later time during the period of contract performance, the report is to be made promptly after their negotiation.

(2) In the case where a contract is being performed at a Federal facility and the service employees may be retained by a successor contractor and may be subject to a wage determination which contains vacation or other benefit provisions based upon length of service with other contractors (See 29 C.F.R. § 4.173), the incumbent prime Contractor must furnish the Contracting Officer with a certified list of the names of all service employees on Contractor's or any subcontractor's payroll during the last month of contract performance The list must contain each service employees’ anniversary dates of employment on the contract either with the current or predecessor contractors. The list must be delivered to the Contracting Officer not less than ten (10) days before the contract ends. The Contracting Officer will turn over the list to the successor contractor at the commencement of the new contract.

(m) Rulings and Interpretations. Rulings and interpretations of the SCA are contained in 29 C.F.R. Part 4.

(n) Contractor's Certification.

(1) By entering into this contract, Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in

Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions by section 5 of the SCA.

(2) No part of this contract can be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the SCA.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. §1001.

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

(1) Apprentices, student learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the SCA, without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the SCA, in accordance with the conditions and procedures prescribed for the employment of apprentices, student learners, handicapped persons and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 C.F.R. Parts 520, 521, 524 and 525).

(2) The Administrator will issue certificates under the SCA for the employment of apprentices, student-learners, handicapped persons or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 C.F.R. Parts 520, 521, 524 and 525).

(3) The Administrator will also withdraw, annul or cancel certificates in accordance with the regulations in 29 C.F.R. Parts 525 and 528.

(p) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency, which is recognized by the U.S. Department of Labor or, if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program must be paid the wage rate and fringe benefits contained in the applicable wage determination for the

journeyman classification of work actually performed. The wage rates paid apprentices cannot be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification cannot be greater than the ratio permitted to Contractor as to his entire work force under the registered program.

(q) Tips. An employee engaged in an occupation in which he or she customarily and regularly receives more than $30 a month in tips may have the amount of tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the SCA to the extent permitted by section 3(m) of the Fair Labor Standards Act and Regulations, 29 C.F.R. Part 531. To use this provision—

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the SCA.

(r) Disputes Concerning Labor Standards. The U.S. Department of Labor has set forth in 29 C.F.R. Parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Labor standards disputes will be resolved in accordance with those procedures and not the "Disputes" clause of this contract. Disputes within the meaning of this provision include disputes between Contractor (or any of its subcontractors) and the FDIC, the U.S. Department of Labor, or the employees or their representatives.

7.5.11-2 Davis Bacon Act (July 2008)

Prescription:

Per PGI 5.1105, insert clause 7.5.11-2, *Davis Bacon Act*, in awards over $ 2,000 for construction, alterations, or repair (including painting and decorating) of public buildings or public works within the United States.

Clause:

(a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled "Apprentices and Trainees." Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis Bacon poster (WH 1321) shall be posted at all times by Contractor and any subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b) (1) The Contracting Officer shall require that any class of laborers or mechanics, which is not listed in the wage determination and which is to be employed under the contract, shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(iv) With respect to helpers, such a classification prevails in the area in which the work is performed.

(2) If Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards

Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the thirty (30) day period that additional time is necessary.

(3) In the event Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for Determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the thirty (30) day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (b)(2) and (b)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If Contractor does not make payments to a trustee or other third person, Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of Contractor, that the applicable standards of the Davis Bacon Act have been met. The Secretary of Labor may require Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

7.5.11-3 Contract Work Hours and Safety Standards Act Overtime Compensation (July 2008)

Prescription:

Per PGI 5.1105, insert clause 7.5.11-3, *Contract Work Hours and Safety Standards Act Overtime Compensation*, in all construction contracts over $100,000, and any other contract over $100,000 where laborers and mechanics are used.

Clause:

(a) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) Withholding for unpaid wages and liquidated damages. The Contracting Officer shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) Payrolls and basic records.

(1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of contract work and shall preserve them for a period of 3 years from the completion of the contract for all laborers and mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor. The

Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.

(e) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts exceeding $100,000 the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.

7.5.11-4 Payrolls and Basic Records (July 2008)

Prescription:

Per PGI 5.1105, insert clause 7.5.11-4, *Payrolls and Basic Records*, in all construction awards over $2,000.

Clause:

If this contract is for an amount in excess of $2,000, (a) Payrolls and basic records relating thereto shall be maintained by Contractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled "Davis Bacon Act" that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis Bacon Act, Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b) (1) Contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH 347 (Federal Stock Number 029 005 00014 1) is available for this

purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by Contractor or any subcontractor or its or their agent who pays or supervises the payment of the persons employed under the contract and shall certify

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH 347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject Contractor or any subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) Contractor or any subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. Contractor or any subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If Contractor or any subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

7.5.11-5 Apprentices and Trainees (July 2008)

Prescription:

Per PGI 5.1105, insert clause 7.5.11-5, *Apprentices and Trainees*, in all construction awards over $2,000.

Clause:

If this contract is for an amount in excess of $2,000, (a) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and

Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246 and 29 CFR Part 30.

7.5.11-6 Compliance with Copeland Act Requirements (July 2008)

Prescription:

Per PGI 5.1105, insert clause 7.5.11-6, *Compliance with Copeland Act Requirements*, in all construction awards over $2,000.

Clause:

If this contract is for an amount in excess of $2,000, the Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

7.5.11-7 Subcontracts (Labor Standards) (July 2008)

Prescription:

Per PGI 5.1105, insert clause 7.5.11-7, *Subcontracts (Labor Standards)*, in construction awards over $2,000.

Clause:

If this contract is for an amount in excess of $2,000, (a) Contractor or any subcontractor shall insert in any subcontracts the clauses entitled "Davis Bacon Act," "Contract Work Hours and Safety Standards Act Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Act Requirements," "Withholding of Funds," "Subcontracts (Labor Standards)," "Contract Termination-Debarment," "Disputes Concerning Labor Standards," "Compliance with Davis-Bacon and Related Act Regulations," and "Certification of Eligibility," and such other clauses as the Contracting Officer may, by appropriate instructions, require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited in this paragraph.

(b) (1) Within fourteen (14) days after award of the contract, Contractor shall deliver to the Contracting Officer a completed Statement and Acknowledgment Form (SF 1413) for each subcontract, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (a) of this clause have been included in the subcontract.

(2) Within fourteen (14) days after the award of any subsequently awarded subcontract, Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

7.5.11-8 Contract Termination - Debarment (July 2008)

Prescription:

Per PGI 5.1105, insert clause 7.5.11-8, *Contract Termination – Debarment*, in construction awards over $2,000.

Clause:

If this contract is for an amount in excess of $2,000, a breach of the contract clauses entitled "Davis Bacon Act," "Contract Work Hours and Safety Standards Act Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Act Requirements," "Subcontracts (Labor Standards)," "Compliance With Davis-Bacon and Related Act Regulations," or "Certification of Eligibility" may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 CFR 5.12.

7.5.11-9 Compliance with Davis-Bacon and Related Act Regulations (July 2008)

Prescription:

Per PGI 5.1105, insert clause 7.5.11-9, *Compliance with Davis-Bacon and Related Act Regulations*, in construction awards over $2,000.

Clause:

If this contract is for an amount in excess of $2,000, all rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this contract.

7.5.11-10 Disputes Concerning Labor Standards (July 2008)

Prescription:

Per PGI 5.1105, insert clause 7.5.11-10, *Disputes Concerning Labor Standards*, in construction awards over $2,000.

Clause:

If this contract is for an amount in excess of $2,000, the United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the "Disputes" clause of this contract. Disputes within the meaning of this clause include disputes between Contractor (or any of its subcontractors) and the FDIC, the U.S. Department of Labor, or the employees or their representatives.

7.5.11-11 Certification of Eligibility (July 2008)

Prescription:

Per PGI 5.1105, insert clause 7.5.11-11, *Certificate of Eligibility*, in construction awards over $2,000.

Clause:

If this contract is for an amount in excess of $2,000,

(a) By entering into this contract, Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

7.5.11-12 Withholding of Funds (July 2008)

Prescription:

Per PGI 5.1105, insert clause 7.5.11-12, *Withholding of Funds*, in construction awards over $ 2,000.

Clause:

If this contract is for an amount in excess of $2,000,

The Contracting Officer must, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

7.5.11-13 Notice to the FDIC of Labor Disputes (July 2008)

Prescription:

Per PGI 5.1105, insert clause 7.5.11-13, *Notice to the FDIC of Labor Disputes*, in all construction awards.

Clause:

(a) If Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, Contractor must immediately give notice, including all relevant information, to the Contracting Officer.

(b) Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract to which a labor dispute may delay the timely performance of this contract, except that each subcontract must provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or Contractor, as the case may be, of all relevant information concerning the dispute.

7.5.11-14 RESERVED

7.5.12-1 Buy American - Supplies (May 2018)

Prescription:

Per PGI 5.1206, insert clause 7.5.12-1*, Buy American - Supplies*, in all solicitations and awards [Corporate Capacity only] for supplies over $10,000 (micro purchase threshold) but not exceeding $25,000; and in solicitations and awards over $25,000 if neither of the clauses at 7.5.12-3 and 7.5.12-5 apply. Do not insert the clause if an exception to the Buy American statute applies (e.g., non-availability, public interest or information technology that is a commercial item).

Clause:

(a) Definitions. As used in this clause—
"Commercially available off-the-shelf (COTS) item" —
(1) Means any item of supply (including construction material) that is—
(i) A commercial item;
(ii) Sold in substantial quantities in the commercial marketplace; and
(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.
"Component" means an article, material, or supply incorporated directly into an end product.
"Cost of components" means—
(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

"Domestic end product" means—
(1) An unmanufactured end product mined or produced in the United States; or
(2) An end product manufactured in the United States, if -
(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or
(ii) The end product is a COTS item.
"End product" means those articles, materials, and supplies to be acquired under the contract for public use.
"Foreign end product" means an end product other than a domestic end product.
"United States" means the 50 States, the District of Columbia, and outlying areas.
(b) 41 U.S.C. chapter 83, Buy American, provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for an end product that is a COTS item.
(c) Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.
(d) The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled "Buy American Certificate."

7.5.12-2 Buy American Certificate (May 2018)

Prescription:

Per PGI 5.1206, insert provision 7.5.12-2, *Buy American Certificate*, in solicitations containing the clause at 7.5.12-1.

Provision:

(a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product and that, for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of "domestic end product." The terms "commercially available off-the-shelf (COTS) item," "component," "domestic end product," "end product," "foreign end product," and "United States" are defined in the clause of this solicitation entitled "Buy American—Supplies."

(b) Foreign End Products:
LINE ITEM NO. COUNTRY OF ORIGIN
_____ _____
_____ _____
_____ _____
[List as necessary]

(c) The FDIC will evaluate offers in accordance with the policies and procedures of the Buy American statute.

7.5.12-3 Buy American - Free Trade Agreements - Israeli Trade Act (May 2018)

Prescription:

Per PGI 5.1206, insert clause 7.5.12-3, *Buy American - Free Trade Agreements - Israeli Trade Act*, in all solicitations and awards [Corporate Capacity only] for supplies, or for services involving the furnishing of supplies, in which the acquisition value is $25,000 or more but is less than $180,000, **except** if the acquisition is for information technology that is a commercial item.

Clause:

(a) *Definitions*. As used in this clause—
"**Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end product**" means an article that—
(1) Is wholly the growth, product, or manufacture of Bahrain, Morocco, Oman, Panama, or Peru; or
(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain, Morocco, Oman, Panama, or Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.
"**Commercially available off-the-shelf (COTS) item"** –
(1) Means any item of supply (including construction material) that is—
(i) A commercial item;
(ii) Sold in substantial quantities in the commercial marketplace; and
(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.
"**Component**" means an article, material, or supply incorporated directly into an end product.

"Cost of components" means—
(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
"**Domestic end product**" means—
(1) An unmanufactured end product mined or produced in the United States; or
(2) An end product manufactured in the United States, if –
(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or
(ii) The end product is a COTS item.
"**End product**" means those articles, materials, and supplies to be acquired under the contract for public use.
"**Foreign end product**" means an end product other than a domestic end product.
"**Free Trade Agreement country**" means Australia, Bahrain, Canada, Chile, Columbia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru or Singapore.
"**Free Trade Agreement country end product**" means an article that—
(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or
(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.
"**Israeli end product**" means an article that—
(1) Is wholly the growth, product, or manufacture of Israel; or
(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Israel into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.
"United States" means the 50 States, the District of Columbia, and outlying areas.
(b) *Components of foreign origin*. Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

(c) Delivery of end products. 41 U.S.C. chapter 83, Buy American statute, provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for an end product that is a COTS item. In addition, the Contracting Officer has determined that FTAs (except the Bahrain, Morocco, Oman, Panama, and Peru FTAs) and the Israeli Trade Act apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled "Buy American—Free Trade Agreements—Israeli Trade Act Certificate." If the Contractor specified in its offer that the Contractor would supply a Free Trade Agreement country end product (other than a Bahrainian, Moroccan, Omani, Panama, or Peruvian end product) or an Israeli end product, then the Contractor shall supply a Free Trade Agreement country end product (other than a Bahrainian, Moroccan, Omani or Peruvian end product), an Israeli end product or, at the Contractor's option, a domestic end product.

ALTERNATE I. IF THE ACQUISITION VALUE IS $25,000 OR MORE BUT LESS THAN $50,000: ADD THE FOLLOWING DEFINITION TO PARAGRAPH (a) OF THE BASIC CLAUSE, AND SUBSTITUTE THE FOLLOWING PARAGRAPH (c) FOR PARAGRAPH (c) OF THE BASIC CLAUSE.

"Canadian end product" means an article that—
(1) Is wholly the growth, product, or manufacture of Canada; or
(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

(c) Delivery of end products. 41 U.S.C. chapter 83 provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for an end product that is a COTS item. In addition, the Contracting Officer has determined that NAFTA applies to this acquisition. Unless otherwise specified, NAFTA applies to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled "Buy American—Free Trade Agreements—Israeli Trade Act Certificate." If the Contractor specified in its offer that the Contractor would supply a Canadian end product, then the Contractor shall supply a Canadian end product or, at the Contractor's option, a domestic end product.

ALTERNATE II. IF THE ACQUISITION VALUE IS $50,000 OR MORE BUT LESS THAN $80,317:

ADD THE FOLLOWING DEFINITION TO PARAGRAPH (a) OF THE BASIC CLAUSE, AND SUBSTITUTE THE FOLLOWING PARAGRAPH (c) FOR PARAGRAPH (c) OF THE BASIC CLAUSE.

"Canadian end product" means an article that—
(1) Is wholly the growth, product, or manufacture of Canada; or
(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

(c) Delivery of end products. 41 U.S.C. chapter 83 provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for an end product that is a COTS item. In addition, the Contracting Officer has determined that NAFTA and the Israeli Trade Act apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled "Buy American—Free Trade Agreements—Israeli Trade Act Certificate." If the Contractor specified in its offer that the Contractor would supply a Canadian end product or an Israeli end product, then the Contractor shall supply a Canadian end product, an Israeli end product or, at the Contractor's option, a domestic end product.

ALTERNATE III. IF THE ACQUISITION VALUE IS $80,317 OR MORE BUT LESS THAN $100,000:
DELETE THE DEFINITION OF "BAHRAINIAN, MOROCCAN, OMANI, PANAMANIAN, OR PERUVIAN END PRODUCT" AND ADD IN ITS PLACE THE FOLLOWING DEFINITION OF "BAHRAINIAN, KOREAN, MOROCCAN, OMANI, PANAMANIAN, OR PERUVIAN END PRODUCT" IN PARAGRAPH (a) OF THE BASIC CLAUSE; AND SUBSTITUTE THE FOLLOWING PARAGRAPH (c) FOR PARAGRAPH (c) OF THE BASIC CLAUSE.

"Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian end product" means an article that—
(1) Is wholly the growth, product, or manufacture of Bahrain, Korea (Republic of), Morocco, Oman, Panama, or Peru; or
(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain, Korea (Republic of), Morocco, Oman, Panama, or Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract,

but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

(c) Delivery of end products. 41 U.S.C. chapter 83 provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for an end product that is a COTS item. In addition, the Contracting Officer has determined that FTAs (except the Bahrain, Korea (Republic of), Morocco, Oman, Panama, and Peru FTAs) and the Israeli Trade Act apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled “Buy American—Free Trade Agreements—Israeli Trade Act Certificate.” If the Contractor specified in its offer that the Contractor would supply a Free Trade Agreement country end product (other than a Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian end product) or an Israeli end product, then the Contractor shall supply a Free Trade Agreement country end product (other than a Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian end product), an Israeli end product or, at the Contractor’s option, a domestic end product.

7.5.12-4 Buy American - Free Trade Agreements - Israeli Trade Act Certificate (May 2018)

Prescription:

Per PGI 5.1206, insert provision 7.5.12-4, *Buy American - Free Trade Agreements - Israeli Trade Act Certificate*, in all solicitations containing the clause at 7.5.12-3.

Provision:

(a) The offeror certifies that each end product, except those listed in paragraph (b) or (c) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms “ Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end product,” “commercially available off-the-shelf (COTS) items”, “component,” “domestic end product,” “end product,” “foreign end product,” “Free Trade Agreement country,” “Free Trade Agreement country end product,” “Israeli end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act.”

(b) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end

products) or Israeli end products as defined in the clause of this solicitation entitled “Buy American-Free Trade Agreements-Israeli Trade Act”:
Free Trade Agreement Country End Products (Other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian End Products) or Israeli End Products:
LINE ITEM NO. COUNTRY OF ORIGIN

_____ _____
_____ _____
_____ _____
[List as necessary]

(c) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (b) of this provision) as defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act.” The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.
i.e. an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of “domestic end product.”
Other Foreign End Products:
LINE ITEM NO. COUNTRY OF ORIGIN

_____ _____
_____ _____
_____ _____
[List as necessary]

(d) The FDIC will evaluate offers in accordance with the policies and procedures of the Buy American statute.
(End of provision)

ALTERNATE I. SUBSTITUTE THE FOLLOWING PARAGRAPH (b) FOR PARAGRAPH (b) OF THE BASIC PROVISION IF THE ACQUISITION VALUE IS $25,000 OR MORE BUT LESS THAN $50,000:

(b) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act”:
Canadian End Products:
LINE ITEM NO.

_____
_____
_____
[List as necessary]

ALTERNATE II. SUBSTITUTE THE FOLLOWING PARAGRAPH (b) FOR PARAGRAPH (b) OF THE BASIC PROVISION IF THE ACQUISITION VALUE IS $50,000 OR MORE BUT LESS THAN $80,317:

(b) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act”:
Canadian or Israeli end products:
LINE ITEM NO. COUNTRY OF ORIGIN

_____ _____
_____ _____
_____ _____
[List as necessary]

ALTERNATE III. SUBSTITUTE THE FOLLOWING PARAGRAPH (b) FOR PARAGRAPH (b) OF THE BASIC PROVISION IF THE ACQUISITION VALUE IS $80,317 OR MORE BUT LESS THAN $100,000.

(b) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act”:
Free Trade Agreement Country End Products (Other than Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian End Products) or Israeli End Products:
LINE ITEM NO. COUNTRY OF ORIGIN

_____ _____
_____ _____
_____ _____
[List as necessary]

7.5.12-5 Trade Agreements (May 2018)

Prescription:

Per PGI 5.1206, insert clause 7.5.12-5, *Trade Agreements*, in all solicitations and awards [Corporate Capacity only] valued at $180,000 or more, if the acquisition is covered by the World Trade Organization-Government Procurement Agreement.

Clause:

(a) Definitions. As used in this clause—
“Caribbean Basin country end product”—
(1) Means an article that—
(i) (A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or
(B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed; and

(ii) Is not excluded from duty-free treatment for Caribbean countries under 19 U.S.C. 2703(b).
(A) For this reason, the following articles are not Caribbean Basin country end products:
(1) Tuna, prepared or preserved in any manner in airtight containers;
(2) Petroleum, or any product derived from petroleum;
(3) Watches and watch parts (including cases, bracelets, and straps) of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Harmonized Tariff Schedule of the United States (HTSUS) column 2 rates of duty apply (i.e., Afghanistan, Cuba, Laos, North Korea, and Vietnam); and
(4) Certain of the following: textiles and apparel articles; footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel; or handloomed, handmade, and folklore articles;
(B) Access to the HTSUS to determine duty-free status of articles of these types is available at http://www.usitc.gov/tata/hts/. In particular, see the following:
(1) General Note 3(c), Products Eligible for Special Tariff treatment.
(2) General Note 17, Products of Countries Designated as Beneficiary Countries under the United States-Caribbean Basin Trade Partnership Act of 2000.
(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).
(4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits under the United States-Caribbean Basin Trade Partnership Act; and
(2) Refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the acquisition, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.
“Designated country” means any of the following countries:
(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as "the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei))", Ukraine, or United Kingdom);
(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Columbia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru or Singapore);
(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

"Designated country end product" means a WTO GPA country end product, an FTA country end product, a least developed country end product, or a Caribbean Basin country end product.

"End product" means those articles, materials, and supplies to be acquired under the contract for public use.

"Free Trade Agreement country end product" means an article that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

"Least developed country end product" means an article that—

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

"United States" means the 50 States, the District of Columbia, and outlying areas.

"U.S.-made end product" means an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

"WTO GPA country end product" means an article that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services, (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

(b) Delivery of end products. The Contracting Officer has determined that the WTO GPA and FTAs apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only U.S.-made or designated country end products except to the extent that, in its offer, it specified delivery of other end products in the provision entitled "Trade Agreements Certificate."

7.5.12-6 Trade Agreements Certificate (May 2018)

Prescription:

Per PGI 5.1206, insert clause 7.5.12-6, *Trade Agreements Certificate*, in all solicitations containing the clause at 7.5.12-5.

Provision:

(a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a U.S.-made or designated country end product, as defined in the clause of this solicitation entitled "Trade Agreements."

(b) The offeror shall list as other end products those supplies that are not U.S.-made or designated country end products.
Other End Products:
LINE ITEM NO. COUNTRY OF ORIGIN
_____ _____
_____ _____
_____ _____

[List as necessary]

(c) The FDIC will evaluate offers in accordance with the policies and procedures of the Trade Agreements Act. For line items covered by the WTO GPA, the FDIC will evaluate offers of U.S.-made or designated country end products without regard to the restrictions of the Buy American statute. The Government will consider for award only offers of U.S.-made or designated country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for those products are insufficient to fulfill the requirements of this solicitation.

7.5.12-7 Restrictions on Certain Foreign Purchases (July 2008)

Prescription:

Per PGI 5.1206, insert the clause 7.5.12-7, *Restrictions on Certain Foreign Purchases*, in awards by FDIC in its corporate capacity, unless an exception applies.

Clause:

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.
(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at http://www.treas.gov/offices/enforcement/ofac/sdn. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at http://www.treas.gov/offices/enforcement/ofac.
(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

7.5.13-1 Method of Payment – Electronic Fund Transfer (EFT) (March 2014)

Prescription:

Per PGI 5.1306, insert clause 7.5.13-1, *Method of Payment - EFT*, in all awards.

Clause:

(a) Payment methods. Payments by the FDIC may be made by check or electronic funds transfer (EFT), or by a third party in lieu of payment directly from the FDIC, at the option of the FDIC. If the FDIC makes payment by EFT, the FDIC may, at its option, also forward the associated payment information by electronic transfer. Any third party payments will be made by the FDIC's commercial purchase card issuer. In the event Contractor certifies in writing to the payment office that Contractor does not have an account with a financial institution or an authorized payment agent, the FDIC would make payments by other than EFT.

(b) Contractor Payment Requests. If the FDIC elects for third party payments to be made, Contractor shall make payment requests through a charge to the FDIC purchase card with the third party, at the time and for the amount due in accordance with the terms of this contract. Contractor and the third party shall agree that payments due under this contract shall be made upon submittal of payment requests to the third party in accordance with the terms and conditions of an agreement between Contractor, the Contractor's financial agent (if any), and the third party and its agents (if any). No payment shall be due the Contractor until such agreement is made. Payments made or due by the third party are not subject to the Prompt Payment Act or any implementation

thereof in this contract. Documentation of each charge against the FDIC's purchase card shall be provided to the Contracting Officer upon request.

Contractor is required, as a condition to any payment, to maintain current information in the System for Award Management (SAM) database. Any invoice submitted with incorrect EFT information shall be deemed not to be a proper invoice as defined in the Prompt Payment Act clause herein.

7.5.13-2 Method of Payment – Third Party (July 2008)

Prescription:

Per PGI 5.1306, insert clause 7.5.13-2, *Method of Payment - Third Party*, in awards where the CO determines payments will be made by a FDIC Purchase Card Issuer.

Clause:

Payments by the FDIC will be made by a third party in lieu of payment directly from the FDIC. Any third party payments will be made by the FDIC's commercial purchase card issuer requests. Contractor shall make payment requests through a charge to the FDIC purchase card with the third party, at the time and for the amount due in accordance with the terms of this award. Contractor and the third party shall agree that payments due under this award shall be made upon submittal of payment requests to the third party in accordance with the terms and conditions of an agreement between Contractor, the Contractor's financial agent (if any), and the third party and its agents (if any). No payment shall be due the Contractor until such agreement is made. Payments made or due by the third party are not subject to the Prompt Payment Act or any implementation thereof in this award. Documentation of each charge against the FDIC's purchase card shall be provided to the Oversight Manager.

7.5.13-3 Payments Under Labor-Hour Awards (July 2008)

Prescription:

Per PGI 5.1306, insert clause 7.5.13-3, *Payments Under Labor-Hour Awards*, in Labor-Hour awards.

Clause:

For satisfactory performance of this award, the FDIC will compensate Contractor at the hourly rates specified in the Pricing Schedule attached to this award for actual productive work hours exclusive of travel time, vacation, holiday, sick leave and other absences. Contractor's hourly rates include any and all wages, overhead, general and administrative expenses and profit or fee.

7.5.13-4 Payments Under Time and Material Awards (July 2008)

Prescription:

Per PGI 5.1306, insert clause 7.5.13-4, *Payments Under Time and Material Awards*, in Time and Material awards.

Clause:

(a) Hourly rates: For satisfactory performance of this award, the FDIC will compensate Contractor at the hourly rates specified in the Pricing Schedule attached to this award for actual productive work hours exclusive of travel time, vacation, holiday, sick leave and other absences. Contractor's hourly rates include any and all wages, overhead, general and administrative expenses and profit or fee.

(b) Material: The FDIC will pay reasonable amounts Contractor has been invoiced for the materials or other reimbursable expenses listed below, purchased specifically for performing under this award. The price of the materials or other reimbursable expenses must be approved in advance by the FDIC Contracting Officer unless such materials/reimbursable expenses were set out in Contractor's Proposal which was accepted by the FDIC at the time of award or modification. The price of materials or other reimbursable expenses must be adjusted by Contractor to deduct any credits, trade discounts, rebates or allowances received by, or credited to, Contractor. If these materials or other reimbursable expenses are regularly sold by Contractor to the general public in the normal course of its business, the FDIC will not pay more than the price paid by Contractor's most favored customers for like items in similar quantities.

Materials:

_____

_____

_____

7.5.13-5 Payment Under Fixed Price Awards (June 2009)

Prescription:

Per PGI 5.1306, insert clause 7.5.13-5, *Payment Under Fixed Price Awards*, in awards where the Contractor is paid on a fixed price basis for goods or services.

Clause:

For satisfactory performance of this award, the FDIC will pay Contractor the agreed-upon fixed prices specified in Section B or in a pricing schedule attached to this award.

Contractor's fixed prices include any and all of Contractor's costs and expenses, direct and indirect, as well as any profit, fee, or any markups of any nature.

7.5.13-6 Compensation Ceiling - Contract or Task Order (July 2008)

Prescription:

Per PGI 5.1306, insert clause 7.5.13-6, *Compensation Ceiling - Contract or Task Order*, in awards for contracts or task orders using labor hour, time & material, and/or fixed-unit-price pricing arrangements.

Clause:

Period of Performance	Not-to-Exceed Ceiling Amount
Initial Period:	$_____
Option Period 1:	$_____
Option Period 2:	$_____
Option Period 3:	$_____
Total (if all option periods are exercised):	$_____

In no event will total FDIC compensation to Contractor, including any reimbursed costs and expenses, exceed the sum of _____ Dollars ($_____) for the entire Period of Performance, including the initial period and all options, if any. Contractor must notify the Contracting Officer, in writing, when Contractor has incurred charges amounting to seventy-five percent (75%) of the ceiling amount for each performance period.

7.5.13-7 Compensation Ceiling – BOA or BPA (May 2014)

Prescription:

Per PGI 5.1306, insert clause 7.5.13-7, *Compensation Ceiling – BOA or BPA*, in all BOA and BPA awards. Do not insert in RBOAs.

Clause:

In no event will total FDIC compensation to Contractor for any and all task orders issued under this Basic Ordering Agreement (BOA) or Blanket Purchase Agreement (BPA) exceed the sum of _____ Dollars ($_____) for the entire Period of Performance, including the initial period and all options, if any. Contractor must notify the Contracting Officer, in writing, when Contractor has incurred charges to the FDIC of seventy-five percent (75%) of the total compensation ceiling amount stated above, and also each individual task order.

[ADD THE FOLLOWING WHEN MULTILE BOAs or BPAs WILL BE ISSUED AND IT IS IN THE BEST INTEREST OF FDIC TO STATE THE AGGREGATE MAXIMUM CEILING AMOUNT FOR ALL TASK ORDERS ISSUED AGAINST THE MULTIPLE BOAs or BPAs.]

The maximum aggregate dollar value of all Task Orders FDIC may award to multiple BOA or BPA Contractors shall not exceed $_____

_____

7.5.13-8 Invoice Preparation and Submission (Center for Financial Research-Visiting Scholars Program) (October 2008)

Prescription:

Per PGI 5.1306, insert clause 7.5.13-8, *Invoice Preparation and Submission (Center for Financial Research-Visiting Scholars Program)*, in awards issued to support the DIR Center for Financial Research-Visiting Scholars Program.

Clause:

The invoice preparation and submission instructions for contracts in support of the Center for Financial Research-Visiting Scholars Program are as follows:

(a) Contractor may submit an invoice by either fax or by mail. Submission by fax is preferred.

(i) Invoices submitted by fax must be sent to the Administrative Program Management Section of the FDIC's Division of Insurance and Research (DIR) - Center for Financial Research at 703-812-7492.

(ii) Invoices submitted by mail must be sent to:

Administrative Program Management Section
Division of Insurance and Research - Center for Financial Research
Federal Deposit Insurance Corporation
550 17th Street, NW, Room 4029
Washington, DC 20429

Contractor must use only one method to submit an invoice, either fax or mail; do not submit an invoice by both fax and by mail. Invoices must be submitted to DIR only; do not send invoices to the Division of Finance/Disbursement Operations Unit (DOF/DOU) or to the Contracting Officer.

(b) Invoices sent by fax must be sent as one document in a single fax, and not in multiple faxes. Submitting the entire invoice, including attachments, in one fax permits

the FDIC to automatically convert the invoice into a pdf document and upload it as a single, complete document into a database, thereby facilitating prompt payment.

(c) For purposes of the Prompt Payment Act, the counting of days begins on the date the invoice is received by the DIR's Administrative Program Management Section. Invoices received after 4:00 p.m. are deemed received on the next business day. Business days are Monday through Friday, excluding Federal holidays and other days FDIC facilities are closed by the Federal Government.

7.5.13-9 Travel Expenses (Non-Reimbursable) (July 2008)

Prescription:

Per PGI 5.1306, insert clause 7.5.13-9, *Travel Expenses (Non-Reimbursable)*, for awards in which travel expenses will NOT be reimbursed.

Clause:

Contractor will not be reimbursed for any travel expenses it incurs in performing under this award.

7.5.13-10 Travel Expenses (Reimbursable) (July 2008)

Prescription:

Per PGI 5.1306, insert clause 7.5.13-10, *Travel Expenses (Reimbursable)*, in awards in which travel expenses will be reimbursed.

Clause:

The FDIC will reimburse Contractor for necessary travel and per diem expenses ("Travel Expenses"), which include subcontractor travel expenses, if any, that do not exceed amounts allowable under the FDIC Contractor Travel Reimbursement Guidelines, a copy of which can be found at http://www.fdic.gov/buying/goods/acquisition/index.html and are incorporated herein by reference. All travel must be approved in advance, in writing, by the Contracting Officer or Oversight Manager unless such travel was set out in Contractor's Proposal which was accepted by the FDIC at the time of award or modification. In no event will the FDIC separately reimburse Contractor, outside of the pricing set out in this award for any other costs or expenses it incurs in connection with its performance under this award, including fees for labor hours incurred while traveling to the work site.

7.5.13-11 Fees and Expenses of Subcontractors (July 2008)

Prescription:

Per PGI 5.1306, insert clause 7.5.13-11, *Fees and Expenses of Subcontractors*, in awards where subcontractor fees and expenses WILL BE reimbursed.

Clause:

The FDIC may pay amounts Contractor has been invoiced for labor hours actually worked, exclusive of travel time, vacation, holiday, sick leave and other absences, by its approved subcontractors in performing under this award provided that its approved subcontractors' hourly rates, labor hours and any subcontractor mark-up percentage have been approved in advance by the FDIC Contracting Officer. Contractor is responsible for payment of all subcontractor invoices.

7.5.13-12 Schedule for Invoicing (July 2008)

Prescription:

Per PGI 5.1306, insert clause 7.5.13-12, *Schedule for Invoicing*, in all awards.

Clause:

CONTRACTING OFFICER MUST SPECIFY THE TERMS IN WHICH THE INVOICE(S) MUST BE SUBMITTED (e.g., within 10 days after the end of each month.)

For Labor-Hour or Time-and-Material, Contractor must submit invoices within _____(_____) days after the end of each month.

For Firm-Fixed-Price, Contractor must submit invoice upon completion of the service or delivery of the goods.

7.5.13-13 Content of Invoice (March 2014)

Prescription:

Per PGI 5.1306, insert clause 7.5.13-13, *Contents of Invoice*, in all awards.

Clause:

Contractor’s invoices must include the following items in order to be processed for payment:

(a) Contractor name, address and phone number.

(b) Invoice date. (Contractors must date invoices as close as possible to the date of electronic transmission to FDIC.)
(c) Invoice number.
(d) Contract Number (e.g., Contract Number, Task Order Number, Delivery Order Number, etc.)
(e) Line Item Number(s), as identified in the contract, and the amount invoiced for each Line Item Number.
(f) Allocation of all hours and expenses to Financial Institution Number (FIN) and Asset Name/Number, if applicable.
(g) Description, quantity, unit of measure, unit price, extended price of goods delivered or services performed.
(h) Total invoice amount.
(i) Payment terms (discount for prompt payment terms).
(j) Remittance address.
(k) Billing Point of Contact (e.g., name (where practicable), title, phone number, and mailing address of person to notify if there are questions regarding the invoice).
(l) Shipping information (e.g., shipment number, date of shipment, bill of lading number and weight of shipment. Shipping charges, if any, must be shown as a separate item on the invoice.
(m) For time and material or labor hour awards, copies of time sheets in support of direct labor charges.
(n) If travel expenses are reimbursable under the award, Contractor must submit travel documentation, receipts and other proof of expenses as required by the FDIC Contractor Travel Reimbursement Guidelines.
(o) If subcontractor expenses are reimbursable under a labor-hour or time-and-material award, Contractor must:

(1) identify subcontractor expenses and costs separate from prime contractor expenses and costs on the invoice it submits to FDIC;

(2) submit with its invoice, as supporting documentation, a copy of its subcontractor's invoice when seeking reimbursement of subcontractor expenses.

(p) Pass through costs - If expenses or costs are reimbursable under the terms of the award, a description of each shall be provided in the invoice along with the quantity, unit amount, and total amount. Also, if amounts are derived from application of any formula, calculation, percentage, etc., such application must be clearly evident in the supporting documentation provided with the invoice.
(q) The following certification statement, signed by an authorized company representative:

"This is to certify that the services set forth herein [goods described herein] were performed [delivered] during the period stated.

_____ _____
Contractor's Authorized Representative Date"

(r) Any other information or supporting documentation required by the award.

If an invoice does not contain the above required information; contains errors; or exceeds the total compensation ceiling limit for this award, the invoice will be returned to Contractor and processing of the invoice for payment will be delayed until the deficiency is corrected.

In addition, the FDIC requires Contractors to maintain current information in the System for Award Management (SAM) database and complete the annual renewal process, in order to receive timely invoice payments. FDIC may reject any invoice received from Contractor where processing of the invoice cannot be completed because Contractor has failed to maintain its registration, including electronic funds transfer (EFT) information, in the SAM database.

7.5.13-14 Electronic Invoice Preparation and Submission (CORHQ Business Unit) (July 2008)

Prescription:

Per PGI 5.1306, insert clause 7.5.13-14, *Electronic Invoice Preparation and Submission ((CORHQ Business Unit)*, Include this clause in awards issued under the CORHQ business unit.

Clause:

Contractor must follow the FDIC's electronic invoice preparation and submission instructions stated below:

(a) Contractor must email electronic invoices to the FDIC's Division of Finance/Accounts Payable (DOF/AP) at the following address: DOFAPInvoice@fdic.gov

(b) Contractor must only email their invoices to the above DOF/AP email address and not the Oversight Manager (OM) or Contracting Officer. The FDIC will not accept hand-delivered invoices or invoices sent to any other address (i.e., FDIC street address or any other email addresses).

(c) Contractor must submit the electronic invoice as a single file document, in pdf format. The file should include the exact same information that has been submitted physically via mail in the past. (FDIC only wants one electronic file because we will be uploading the single pdf into a database and we only want one file associated with an invoice. However, if the size of a single pdf file exceeds 30 MB, the invoice may either be submitted as two pdf files, with neither pdf file exceeding 30 MB, or it may be submitted as a zip file that does not exceed 30 MB. If two pdf files are used, each email must clearly identify that the invoice has been separated into two pdf files to accommodate the size limitation. If a zip file is used, the individual files inside the zip file must be kept to a minimum and each must have a descriptive file name, such as "Invoice cover page", "Timesheets", etc.)

(d) Contractor must not include more than one electronic invoice in the same email. (For example, if a Contractor has four task orders, a separate email with a single invoice must be submitted for each of the four task orders.)

(e) Contractor must name the pdf file or zip file in the following format (with invoice date shown as year/month/date followed by a space and the invoice number):

Invoice date and invoice number (e.g., 2008-01-31 1067876)

(f) Contractor's email subject line must include the words, "Contractor Invoice", followed by a hyphen and the Contract Number (or Task Order Number, or Delivery Order Number, as applicable), as shown in the example below:

"Contractor Invoice – CORHQ-08-C-0000"

(g) Task Assignments: For contracts and task orders containing provisions for Task Assignments, a separate invoice must be submitted via a separate email for each Task Assignment.

(h) The counting of days for Prompt Payment begins on the date the invoice is received in the inbox of the DOF/AP email address, until 4PM. Invoices received after 4PM will be counted as being received the following FDIC workday.

7.5.13-15 Electronic Invoice Preparation and Submission (CORFD/RECVR/SUBSD) (July 2010)

Prescription:

Per PGI 5.1306, insert clause 7.5.13-15, *Electronic Invoice Preparation and Submission (CORFD/RECVR/SUBSD)*, in awards assigned a CORFD, RECVR, or SUBSD business unit.

Clause:

Contractor must follow the FDIC's electronic invoice preparation and submission instructions stated below:

(a) Contractor must email electronic invoices to the following address: APDL@fdic.gov

(b) Contractor must only email their invoices to the above email address and not the Oversight Manager (OM) or Contracting Officer. The FDIC will not accept hand-delivered invoices or invoices sent to any other address (i.e., FDIC street address or any other email addresses).

(c) Contractor must submit the electronic invoice as a single file document, in Portable Document Format (pdf). The file should include the exact same information that has been submitted physically via mail in the past. (FDIC only wants one electronic file because we will be uploading the single pdf into a database and we only want one file associated with an invoice. However, if the size of a single pdf file exceeds 30 MB, the invoice may either be submitted as two pdf files, with neither pdf file exceeding 30 MB, or it may be submitted as a zip file that does not exceed 30 MB. If two pdf files are used, each email must clearly identify that the invoice has been separated into two pdf files to accommodate the size limitation. If a zip file is used, the individual files inside the zip file must be kept to a minimum and each must have a descriptive file name, such as "Invoice cover page", "Timesheets", etc.)

(d) Contractor must not include more than one electronic invoice in the same email. (For example, if a Contractor has four task orders, a separate email with a single invoice must be submitted for each of the four task orders.)

(e) Contractor must name the pdf file or zip file in the following format (with invoice date shown as year/month/date followed by a space and the invoice number):

Invoice date and invoice number (e.g., 2008-01-31 1067876)

(f) Contractor's email subject line must include the words, "Contractor Invoice", followed by a hyphen and the Contract Number (or Task Order Number, or Delivery Order Number, as applicable), as shown in the example below:

"Contractor Invoice – CORHQ-08-C-0000"

(g) Task Assignments: For contracts and task orders containing provisions for Task Assignments, a separate invoice must be submitted via a separate email for each Task Assignment.
(h) The counting of days for Prompt Payment begins on the date the invoice is received in the inbox of the above email address, until 4PM. Invoices received after 4PM will be counted as being received the following FDIC workday.

(i) Contractor may check on the status of an invoice by sending an email to the following address: APDLINQUIRY@FDIC.GOV, or by calling the Dallas Accounts Payable Unit directly at (972) 761-8098. If payment has not been received within the time frame of the contract terms, the Contractor is advised to contact the FDIC to make sure the invoice was received and processed. FDIC will research and provide the Contractor with the status."

7.5.13-16 RESERVED

7.5.13-17 Right to Offset Contract Payment Against Delinquent Obligations (July 2008)

Prescription:

Per PGI 5.1306, insert clause 7.5.13-17, *Right to Offset Contract Payments Against Delinquent Obligations*, in all awards.

Clause:

(a) General. The FDIC has the right to offset any payments due the contractor under this contract against any Delinquent Obligation (defined below) which contractor owes the FDIC.

(b) Definition. "Delinquent Obligation" means:

(1) A delinquency of ninety (90) days or more in the payment of principal or interest on a loan or advance from the FDIC, in any of its various capacities, or any predecessor or successor thereto;

(2) The amount of debt forgiven by FDIC in a compromise settlement of any loan obligation of contractor to the FDIC, in any of its various capacities, in cases where the contractor failed to recognize as income for Federal income tax purposes the amount of the debt forgiven; or

(3) A failure to comply with the terms and conditions of any contract with the FDIC, in any of its various capacities, or any predecessor thereto.

(c) Description of the FDIC's Right to Offset Against Payments Under this contract. The FDIC may exercise its right of offset for any Delinquent Obligation which arises prior to or during the term of this contract. The Delinquent Obligation may be deducted from the contract until the Delinquent Obligation has been paid in full. However, if the total amount of the Delinquent Obligation exceeds fifteen (15) percent of the total amount of the consideration owed under the contract resulting from this RFP, the FDIC will offset aminimum of fifteen (15) percent of the contract price, and the parties will negotiate the additional amount, up to 100 percent of the contract price, which the FDIC will withhold to apply towards satisfaction of the Delinquent Obligation.

The right of offset does not apply when a Delinquent Obligation is subject to (1) litigation instituted by either party to this contract; or (2) a petition filed on behalf of or against contractor seeking any arrangement, reorganization, composition, readjustment, liquidation or dissolution under bankruptcy, insolvency or other debt relief laws.

The FDIC must give contractor thirty (30) days written notice of its intent to exercise the right of offset. Contractor has ten (10) days from the date it receives notice to provide the FDIC with written evidence disputing any portion of the amount to be offset from payments due under this contract.

The exercise by the FDIC of the right of offset does not under release contractor from any duties, obligations or responsibilities under this contract.

The right of offset is in addition to every other right or remedy available to the FDIC at law or in equity.

7.5.13-18 Prompt Payment (December 2008)

Prescription:

Per PGI 5.1306, insert clause 7.5.13-18, *Prompt Payment*, in awards by FDIC in its corporate capacity.

Clause:

(a) Application. This clause applies to contracts entered into by the FDIC in its corporate capacity. The FDIC will make invoice payments under the terms and conditions specified in this clause. The FDIC considers payment as being made on the day a check is dated or the date of an electronic funds transfer.

(b) Invoice Payments – Due Date.

(1) The due date for making invoice payments by the payment office designated in the contract is the later of the following two events:

(i) The 30th day after the designated payment office receives a proper invoice from contractor

(ii) The 30th day after FDIC accepts supplies delivered or services performed by contractor. For a final invoice, when the payment amount is subject to contract settlement actions, acceptance is deemed to have occurred on the effective date of the contract settlement.

(2) If the designated payment office fails to annotate the invoice with the actual date of receipt, the invoice payment due date is the 30th day after the date of Contractor's invoice, provided the designated payment office receives a proper invoice and there is no disagreement over quantity, quality, or contractor compliance with contract requirements.

(3) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the payment due date is the date specified in the contract.

(c) Contractor’s Invoice. Contractor must submit invoices to the payment office specified in the contract. A proper invoice must include all the items listed in 7.5.13-13, *Contents of Invoice*. If the invoice does not comply with these requirements, the designated payment office will return it within seven (7) days of receipt with the reasons

why it is not a proper invoice. The FDIC will take into account untimely notification when computing any interest penalty owed contractor.

(d) Interest Penalty. The designated payment office will pay an interest penalty automatically, without request from contractor, if payment is not made by the due date and the conditions listed below are met, as applicable.

(1) The designated payment office received a proper invoice.

(2) The FDIC processed a receiving report or other documentation authorizing payment and there was no disagreement over quantity, quality, or contractor compliance with any contract term or condition.

(3) In the case of a final invoice for any balance of funds due contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the FDIC and contractor.

(e) Computing Penalty Amount. The FDIC will compute the interest penalty in accordance with the Office of Management and Budget's prompt payment regulations at 5 C.F.R. Part 1315

(1) For the sole purpose of computing an interest penalty that might be due contractor, FDIC acceptance is deemed to occur constructively on the 7th day - unless otherwise specified in the contract - after contractor delivers the supplies or performs the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or contractor compliance with a contract provision. If actual acceptance occurs within the constructive acceptance period, the FDIC will base the determination of an interest penalty on the actual date of acceptance. The constructive acceptance requirement does not, however, compel FDIC officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

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

(3) Interest penalties will not be paid on payment delays due to disagreement between the FDIC and contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract.

(f) Discounts for Prompt Payment. The designated payment office will pay an interest penalty automatically, without request from contractor, if the FDIC takes a discount for prompt payment improperly. The interest penalty will be calculated as described in subparagraph (e) above.

(g) Additional Interest Penalty. The designated payment office will pay a penalty amount, calculated in accordance with regulations referenced in subparagraph (e) above in addition to the interest penalty amount only if:

(1) The FDIC owes an interest penalty of $1 or more;

(2) The designated payment office does not pay the interest penalty within ten (10) days after the date the invoice amount is paid; and

(3) the contractor makes a written demand to the designated payment office for additional penalty amount, not later than forty (40) days after the date the invoice amount is paid, that the FDIC pay such a penalty.

7.5.14-1 Disputes (June 2012)

Prescription:

Per PGI 5.1405, insert clause 7.5.14-1, *Disputes*, in all awards.

Clause:

Except as otherwise provided in this award, any factual dispute arising under this award, which is not disposed of by agreement, will be decided by the Contracting Officer. The Contracting Officer must, within 60 days, decide the claim or notify the contractor of the date by which the decision will be made. The Contracting Officer will furnish the contractor with a copy of the written decision.

The decision of the Contracting Officer is final and conclusive unless the contractor submits a written request for appeal of the decision to the Division of Administration, Acquisition Services Branch (ASB) Deputy Director, within 60 days from receipt of the Contracting Officer decision. The ASB Deputy Director must, within 30 days, decide the claim or notify the contractor of the date by which the decision will be made. The decision of the ASB Deputy Director is final and conclusive unless a court of competent jurisdiction finds the decision fraudulent, arbitrary and capricious, so grossly erroneous as to imply bad faith, or not supported by substantial evidence. The contractor has 180 days from the date of the ASB Deputy Director's decision to appeal to a court of competent jurisdiction.

Contractor will be afforded an opportunity to be heard and to offer evidence in support of its appeal, if it requests. Pending final decision of a dispute, Contractor remains obligated to proceed diligently with the performance of the contract, in accordance with the Contracting Officer's decision.

Questions of law may be considered in deciding disputes under the process described above. However, consideration of questions of law by any administrative official, representative or board is not a final decision, and is not to be construed as one.

7.5.14-2 Notice and Certification of Claims (July 2008)

Prescription:

Per PGI 5.1405, insert clause 7.5.14-2, *Notice and Certification of Claims*, in all awards.

Clause:

Contractor agrees that it will provide the Contracting Officer written notice of any claim it may have against the FDIC arising under or in connection with this award and that it will promptly meet with the FDIC after providing notice in a good faith effort to resolve the claim. The written notice of the claim must be accompanied by a certificate signed by an officer or general partner or senior official of Contractor that:

(a) The claim is made in good faith;

(b) Supporting data are accurate and complete to the best of Contractor's knowledge and belief; and

(c) The amount requested accurately reflects the contract adjustment for which contractor believes the FDIC is liable.

Contractor is advised that receivership claims fall under sections 11(d)(3)-(13) of the Federal Deposit Insurance Act, as amended (12 U.S.C. §1821(d)(3)-(13)).

7.6.3-1 Place of Manufacture (July 2008)

Prescription:

Per PGI 6.304, insert provision 7.6.3-1, *Place of Manufacture***,** in solicitations [Corporate Capacity only] that are predominantly for the acquisition of manufactured end products, (*i.e.*, the estimated value of the manufactured end products exceeds the estimated value of other items to be acquired as a result of the solicitation).

Provision:

(a) Definitions. As used in this provision—
"Manufactured end product" means any end product in Federal Supply Classes (FSC) 1000-9999, except—
(1) FSC 5510, Lumber and Related Basic Wood Materials;

(2) Federal Supply Group (FSG) 87, Agricultural Supplies;
(3) FSG 88, Live Animals;
(4) FSG 89, Food and Related Consumables;
(5) FSC 9410, Crude Grades of Plant Materials;
(6) FSC 9430, Miscellaneous Crude Animal Products, Inedible;
(7) FSC 9440, Miscellaneous Crude Agricultural and Forestry Products;
(8) FSC 9610, Ores;
(9) FSC 9620, Minerals, Natural and Synthetic; and
(10) FSC 9630, Additive Metal Materials.
"Place of manufacture" means the place where an end product is assembled out of components, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government. If a product is disassembled and reassembled, the place of reassembly is not the place of manufacture.
(b) For statistical purposes only, the offeror shall indicate whether the place of manufacture of the end products it expects to provide in response to this solicitation is predominantly—
(1) [ ] In the United States (Check this box if the total anticipated price of offered end products manufactured in the United States exceeds the total anticipated price of offered end products manufactured outside the United States); or
(2) [ ] Outside the United States.

7.6.3-2 Contractor Return, Destruction and Retention of FDIC Information (July 2017)

Prescription:

Per PGI 6.304, insert clause 7.6.3-2, *Contractor Return, Destruction and Retention of FDIC Information*, in awards that include any services.

Clause:

(a) Definitions:

"FDIC Information" as used in this clause, includes all recorded information, regardless of form or characteristics, that is created for FDIC use or received by or on behalf of FDIC and delivered to, or falling under the legal control of the FDIC in connection with the transaction of public business by the FDIC or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the FDIC and because of the informational value of data in the recorded information.

The term FDIC information:

(1) includes FDIC business records;
(2) applies to information created, received, or maintained by Contractors pursuant to their FDIC contract; and

(3) may include deliverables and documentation associated with deliverables.

(b) Maintenance of FDIC Information:

(1) Contractor shall comply with all applicable records management laws, regulations, as well as all FDIC records retention policies, including policies associated with the safeguarding of information covered by the Privacy Act of 1974 (5 U.S.C. 552a).

(2) FDIC Information is subject to FDIC policies, Federal laws, including, but not exclusively, the Freedom of Information Act (FOIA) (5 U.S.C. 552), as amended and the Privacy Act of 1974 (5 U.S.C. 552a), as amended, and must be managed and scheduled for disposition only as permitted by statute or FDIC policy.

(3) Contractor shall maintain and manage all FDIC Information in accordance with Federal laws and FDIC policies. Electronically stored information (ESI) and associated metadata must be accompanied by sufficient technical documentation to permit understanding and use of the information.

(4) The contractor is responsible for preventing the alienation or unauthorized destruction of FDIC Information, including all forms of mutilation. FDIC Information may not be destroyed except in accordance with the provisions of the FDIC records retention policies and with the written concurrence of the FDIC.

(c) Return, Destruction and Retention of FDIC Information

(1) Upon the conclusion of the contract by expiration, termination, cancelation or otherwise identified in the contract, FDIC Information and records in the possession or control of the contractor shall be returned or destroyed, as stated in the contract or as directed by the FDIC. The contractor shall execute destruction in accordance with the guidelines for media sanitization contained in the most current version of NIST SP 800-88, Guidelines for Media Sanitization, and submit to the Oversight Manager and Contracting Officer a certification thereof. Exceptions to the requirement that FDIC Information be returned or destroyed at the conclusion of the contract include the information addressed in clause 7.3.2-37 Audit of Records, and that addressed in paragraph (i).

(i) FDIC Information may be retained for a period after contract conclusion if such information is required to be retained by the contractor based on law and/or regulation. Upon award and throughout the period of the contract, the contractor shall notify the Contracting Officer and Oversight Manager in writing as soon as the contractor determines a law and/or regulation requires retention of information after contract conclusion.

(ii) If the contractor is required by law and/or regulation to retain FDIC Information after contract conclusion, the contractor agrees to do the following:

(A) Identify the law or regulation requiring the retention and length of the retention period;
(B) Maintain the FDIC Information in accordance with all security requirements of the contract;
(C) Provide an inventory of all FDIC Information that will be retained after conclusion of the contract;
(D) Notify the FDIC when the retention period has expired and follow FDIC instructions as to manner of destruction and/or return of the FDIC Information; and
(E) Execute destruction in accordance with the guidelines for media sanitization contained in the most current version of NIST SP 800-88, Guidelines for Media Sanitization, and submit to the Oversight Manager and Contracting Officer a certification thereof.

(iii) If the conditions of paragraphs (i) apply and the contractor is authorized by the Contracting Officer to retain FDIC Information, the contractor agrees to comply with all contract provisions impacting security of the information during the period of retention, including, but not exclusively:

7.4.2-2 Off-site Processing and Storing of FDIC Information
7.5.1-1 Privacy Act
7.5.1-2 Protecting Sensitive Information
7.5.2-8 Risk Level Designation (Functional Responsibility)
7.5.2-10 Risk Level Designation (Labor Category)

All of the referenced clauses, to the extent included in the contract, along with the following clauses, shall survive conclusion of the contract:

7.3.1-03 Restriction on Disclosure of Information
7.3.1-15 Governing Law
7.3.2-37 Audit of Records
7.3.2-54 Cooperation with the Office of Inspector General
7.5.4-06 Rights in Data General
7.5.4-07 Rights in Data Special Works
7.5.4-08 Rights in Data Existing Works
7.5.8-01 Liability Insurance
7.5.8-05 Cost of Insurance
7.5.14-01 Disputes

(2) The requirements of this clause do not rescind the contractor's responsibility for compliance with other applicable Federal statutory or regulatory requirements that may apply to the contract.

(3) Retention of FDIC Information after contract conclusion is for the sole benefit of the contractor and shall be at no cost to the FDIC.

(4) During the period of retention of FDIC Information, the contractor shall only allow access to such information by individuals who continue to meet the requirements for access under the FDIC Contract.

(d) Subcontracts

Contractor must ensure this clause is included in all first-tier and lower tier subcontracts to which the conditions and requirements described in this clause would apply. The contractor is required to obtain the Contracting Officer's approval prior to engaging in any contractual relationship (subcontract) in support of this contract requiring the disclosure of information, documentary material and/or records generated under, or relating to the contract.

7.6.4-1 Inspection and Acceptance (July 2008)

Prescription:

Per PGI 6.410, insert clause 7.6.4-1, *Inspection and Acceptance*, in all awards except construction awards.

Clause:

(a) All goods and services shall be subject to inspection and test by the FDIC Oversight Manager, to the extent practicable, at all times and places during the term of the award. All inspections by the FDIC shall be made in such a manner as not to unduly delay the work.

(b) The FDIC shall have [FILL IN NUMBER] business days from the date of Contractor's delivery to determine if such goods and services are in compliance with the requirements of the contract. If any services performed or goods delivered hereunder are not in conformity with the requirements of this Award, the FDIC shall have the right to require Contractor to reperform the services or redeliver the goods in conformity with the requirements of the Award, at no additional increase in total contract amount. When the services to be performed are of such a nature that the defect cannot be corrected by reperformance of the services, the FDIC shall have the right to (1) require Contractor immediately to take all necessary steps to ensure future performance of the services in conformity with the requirements of the contract; and (2) reduce the contract price to reflect the reduced value of the services performed. In the event Contractor fails

promptly to reperform the services or redeliver the goods, or to take necessary steps to ensure future performance of the services or delivery of the goods in conformity with the requirements of the Award, the FDIC shall have the right to either (1) by contract or otherwise, have the services performed or the goods delivered in conformity with the contract requirements and charge to Contractor any cost occasioned to the FDIC that is directly related to the performance of such services or the delivery of such goods; or (2) terminate this Award for default as provided in 7.6.6-2, Termination for Default.

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

7.6.4-2 Inspection and Acceptance (Construction) (July 2008)

Prescription:

Per PGI 6.410, insert clause 7.6.4-2, *Inspection and Acceptance (Construction)*, in all construction awards.

Clause:

(a) All work (which term includes but is not restricted to materials, workmanship, and manufacture and fabrication of components) shall be subject to inspection and test by the FDIC at all reasonable times and at all places prior to acceptance. Any such inspection and test is for the sole benefit of the FDIC and shall not relieve Contractor of the responsibility of providing quality control measures to assure that the work strictly complies with the contract requirements. No inspection or test by the FDIC shall be construed as constituting or implying acceptance. Inspection or test shall not relieve Contractor of responsibility for damage to or loss of the material prior to acceptance or in any way affect the continuing rights of the FDIC after acceptance of the completed work under the terms of paragraph (f) of this clause, except as hereinabove provided.

(b) Contractor shall give written notice to the Contracting Officer at least ten (10) calendar days before the date the work will be completed and ready for final inspection and tests. Final inspection and tests will begin within ten (10) calendar days after the date specified in Contractor's notice unless the Contracting Office determines that the work is not ready for final inspection and so informs Contractor.

(c) Contractor shall, without charge, replace any material or correct any workmanship found by the FDIC not to conform to the contract requirements, unless in the public interest the FDIC consents to accept such material or workmanship with an appropriate adjustment in contract price. Contractor shall promptly segregate and remove rejected material from the premises at its own expense.

(d) If Contractor does not promptly replace rejected material or correct rejected workmanship, the FDIC may (1) by contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to Contractor, or (2) terminate Contractor's right to proceed in accordance with the clause of this contract entitled "Termination for Default Damages."

(e) Contractor shall furnish promptly, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspection and test as may be required by the Contracting Officer. All inspection and test by the FDIC shall be performed in such manner as not unnecessarily to delay the work. Special, full size, and performance tests shall be performed as described in this contract. The FDIC reserves the right to charge to Contractor any additional cost of inspection and test when material or workmanship is not ready at the time specified by Contractor for inspection or test or when reinspection or retest is necessitated by prior rejection.

(f) Should it be considered necessary or advisable by the FDIC at any time before acceptance of the entire work to make an examination of work already completed, by removing or tearing out same, Contractor shall, on request, promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect, due to the fault of Contractor or any subcontractors, Contractor shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, an equitable adjustment shall be made in the contract price to compensate Contractor for the additional services involved in such examination and reconstruction and, if completion of the work has been delayed thereby, he shall, in addition, be granted a suitable extension of time.

(g) Unless otherwise provided in this contract, acceptance by the FDIC shall be made as promptly as practicable after completion and inspection of all work required by this contract, or that portion of the work that the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the FDIC's rights under any warranty or guarantee.

7.6.4-3 Risk of Loss or Damage (July 2008)

Prescription:

Per PGI 6.410, insert clause 7.6.4-3, *Risk of Loss or Damage*, in all awards.

Clause:

Contractor must retain title to all materials and equipment until receipt of the FDIC's written acceptance and payment after final inspection of the finished installation. Title

may transfer at an earlier date but only upon written notice to contractor by the Contracting Officer. Risks of loss or damage by fire or other causes to material or property ordered by contractor shall be the sole responsibility of contractor until acceptance by the FDIC. Contractor shall be liable to the FDIC for any and all damage to FDIC-owned and FDIC-leased property as a result of this work.

7.6.4-4 Fair Inclusion of Minorities and Women (September 2018)

Prescription:

Per PGI 6.410, insert clause 7.6.4-4, *Fair Inclusion of Minorities and Women,* in all awards over $100,000, except Task Orders issued under FDIC BOAs/RBOAs/BPAs.

Clause:

(a) Contractor confirms its commitment to equal opportunity in employment and contracting. To implement this commitment, the Contractor shall ensure, to the maximum extent possible consistent with applicable law, the fair inclusion of minorities and women in its workforce. The Contractor shall insert the substance of this clause in all subcontracts under this Contract whose dollar value exceeds $100,000. Within ten business days of a written request from the Contracting Officer, or such longer time as the Contracting Officer determines, and without any additional consideration required from FDIC, the Contractor shall provide documentation, satisfactory to FDIC, of the actions it (and as applicable, its subcontractors) has undertaken to demonstrate its good faith effort to comply with the aforementioned provisions. For purposes of this contract, “good faith effort” may include actions by the contractor intended to identify and, if present, remove barriers to minority and women employment or expansion of employment opportunities for minorities and women within its workforce. Efforts to remove such barriers may include, but are not limited to, recruiting minorities and women, providing job-related training, or other activity that could lead to those results.

(b) The documentation requested by the Contracting Officer to demonstrate “good faith effort” may include, but is not limited to, one or more of the following:

1. The total number of Contractor’s employees, and the number of minority and women employees, by race, ethnicity, and gender (e.g., an EEO-1);
2. A list of subcontract awards under the Contract that includes: dollar amount, date of award, and subcontractor’s minority and/or gender ownership status;
3. Information similar to that required in item 1, above, with respect to each subcontractor with a subcontract value that exceeds $100,000; and/or
4. The Contractor’s plan to ensure that minorities and women have appropriate opportunities to enter and advance within its workforce, including outreach efforts.

(c) Consistent with Section 342(c)(3) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010) (Dodd-Frank Act), a

failure to demonstrate to the Director of FDIC's Office of Minority and Women Inclusion such good faith efforts to include minorities and women in the Contractor's workforce (and as applicable, the workforce of its subcontractors), may result in termination of the Contract for default, referral to the Office of Federal Contract Compliance Programs, or other appropriate action.

(d) For purposes of this clause, the terms "minority," "minority-owned business" and "women-owned business" shall have the meanings set forth in Section 342(g) of the Dodd-Frank Act.

7.6.5-1 Changes (July 2008)

Prescription:

Per PGI 6.509, insert clause 7.6.5-1, *Changes*, in all awards except for construction.

Clause:

(a) The Contracting Officer, by written change order, may make changes within the general scope of this contract in the:

(1) Description of services to be performed,

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

(3) Place of performance of services,

(4) Drawings, designs or specifications of supplies specially manufactured for the FDIC,

(5) Method of shipment or packing of supplies,

(6) Place of delivery.

These changes may be made at any time and without notice to sureties.

(b) When a change occurs the Contracting Officer will adjust the contract price or the delivery schedule, or both, if the change causes an increase or decrease in the cost of or time for performance of any part of the work under this contract, and will modify the contract accordingly.

(c) Contractor must assert a right to an adjustment of the contract price or delivery schedule under this clause within thirty (30) days from the date it receives a written change order. The Contracting Officer has the discretion to receive and act upon a proposed adjustment submitted by the Contractor anytime before final payment of the

contract, if the Contracting Officer decides the facts justify consideration of a late submission.

(d) If Contractor's proposed adjustment includes the cost of property that was made obsolete by or became excess because of the change, the Contracting Officer has the right to prescribe the manner of disposition of the property.

(e) An adjustment to which the parties cannot agree is treated as a dispute under the "Disputes" clause of this contract. Failure to reach agreement on an adjustment does not excuse Contractor from performing the contract as changed.

7.6.5-2 Changes (Construction) (July 2008)

Prescription:

Per PGI 6.509, insert clause 7.6.5-2 *Changes (Construction)*, in all awards for construction.

Clause:

(a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make any change in the work within the general scope of the contract, including but not limited to changes:

(i) In the specifications (including drawings and designs);
(ii) In the method or manner of performance of the work;
(iii) In the FDIC furnished facilities, equipment, materials, services, or site; or
(iv) Directing acceleration in the performance of the work.

(b) Any other written or oral order, including any direction, instruction interpretation or determination, from the Contracting Officer which causes any such change, shall be treated as a change order under this clause if Contractor gives the Contracting Officer written notice stating the date, circumstances, and source of the order and that Contractor regards the order as a change order.

(c) Except as herein provided, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle Contractor to an equitable adjustment hereunder.

(d) If any change under this clause causes an increase or decrease in Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any order, an equitable adjustment shall be made and the contract modified in writing accordingly; provided, however, that except for claims based on defective specifications, no claim for any change under (b) above shall be allowed for any costs incurred more than twenty (20) days before Contractor gives

written notice as therein required. And further provided that, in the case of defective specifications for which the FDIC is responsible, the equitable adjustment shall include any increased cost reasonably incurred by Contractor in attempting to comply with such defective specifications.

(e) If Contractor intends to assert a claim for an equitable adjustment under this clause, he must, within thirty (30) days after receipt of a written change order under (a) above or the furnishing of written notice under (b) above, submit to the Contracting Officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the FDIC. The statement of claim hereunder may be included in the notice under (b) above.

(f) No claim by Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

7.6.5-3 Stop Work Order (July 2008)

Prescription:

Per PGI 6.509, insert clause 7.6.5-3, *Stop Work Order*, in all awards except construction.

Clause:

The FDIC may issue an order directing Contractor to stop work on this contract, if the Contracting Officer determines this action is in the best interests of the FDIC ("Stop Work Order"). Upon receipt of a Stop Work Order, Contractor must immediately comply with its terms and take all reasonable steps to minimize costs associated with the contract during the period of the Stop Work Order.

The maximum length of a Stop Work Order is ninety (90) days, unless the Contractor and the FDIC agree to extend the period. Within ninety (90) days of Contractor's receipt of the Stop Work Order, or any agreed extension thereof, the Contracting Officer must either:

(a) Cancel the Stop Work Order; or

(b) Terminate the contract in whole or in part, as appropriate, following the procedures in the termination clauses of this contract.

If the contract is terminated, the FDIC will consider the necessary, unavoidable and reasonable costs to Contractor caused by the Stop Work Order during the period from its issuance until the date of termination of the contract.

If the Stop Work Order is canceled or otherwise expires, Contractor must immediately resume work. If Contractor is notified during the period of a Stop Work Order that the contract will be terminated, Contractor must not resume work, unless otherwise directed to do so in the termination notice.

The FDIC will adjust the performance schedule, the contract amount, or both, and modify the contract if:

(a) The Stop Work Order causes an increase in the time required to perform the work or the costs to do the work or both; and

(b) Contractor asserts its rights to an adjustment, in writing to the Contracting Officer, within thirty (30) days following the end of the Stop Work Order period.

7.6.5-4 Suspension of Work (July 2008)

Prescription:

Per PGI 6.509, insert clause 7.6.5-4, *Suspension of Work*, in all awards for construction.

Clause:

(a) The Contracting Officer may order Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the FDIC.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of Contractor, where an equitable adjustment is provided for or excluded under any other term or condition of this contract.

(c) A claim under this clause shall not be allowed (1) for any costs incurred more than twenty (20) days before Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

7.6.5-5 Assignment of Claims (July 2008)

Prescription:

Per PGI 6.507, insert clause 7.6.5-5, *Assignment of Claims*, in all awards.

Clause:

Contractor may assign its claims for monies due or to become due under this contract to an institution providing financing to it, such as a bank, trust company or Federal lending agency. Reassignment for the same purpose is permitted, as well. Any assignment or reassignment must be for the entire remaining amount payable under the contract. An assignment may be made to one party only; if more than one party provides financing, payment may be made to an agent or trustee for the parties participating in the financing. The assignee must provide the Contracting Officer with a written notice of the assignment and a copy of the assignment document.

7.6.6-1 Termination for Convenience of the FDIC (August 2013)

Prescription:

Per PGI 6.606, insert clause 7.6.6-1, *Termination for Convenience of the FDIC*, in all awards.

Clause:

(a) The FDIC may terminate this contract or any task order, in whole or in part, at any time and in its sole discretion, if the Contracting Officer determines termination is in the best interests of the FDIC. The FDIC will deliver to Contractor a notice of termination for the convenience of the FDIC, specifying the extent of termination and the effective date. Contractor must take whatever action is necessary for an orderly and timely discontinuation of the contract. Contractor must deliver to the FDIC all contract deliverables, completed or partially completed, including any plans, drawings, information, data, materials or equipment in Contractor's possession. The FDIC is not liable for any fees, charges, penalties or damages related to the terminated work, incurred after the effective date of the termination.

(b) If the termination is partial, Contractor may file a proposal with the Contracting Officer for an adjustment of the price(s) of the portion of the contract or task order that is not terminated. Any proposal by Contractor for a price adjustment must be made within ninety (90) days from the effective date of partial termination unless the Contracting Officer agrees in writing to an extension of the proposal period. The contract will be modified to reflect any price adjustment to which the parties agree.

7.6.6-2 Termination for Default (July 2008)

Prescription:

Per PGI 6.606, insert clause 7.6.6-2, *Termination for Default*, in all awards except construction awards.

Clause:

(a) Time is of the essence in Contractor's performance of its duties under the contract. The FDIC may terminate the contract in whole or in part, subject to paragraphs (c) and (d) below, by written notice of default to Contractor, if Contractor fails to--

(1) Deliver the goods or perform the services within the time specified in the contract, or any extension;

(2) Make progress, so as to endanger performance of the contract (subject to the right to cure described below); or

(3) Perform any of the other provisions of the contract (subject to the right to cure described below).

Contractor may cure a default under subparagraphs (a)(2) or (a)(3) if it does so within ten (10) days after receiving the notice of default from the Contracting Officer. The cure period may be extended by the Contracting Officer in writing. Failure to cure the default will result in termination.

(b) If the FDIC terminates the contract in whole or in part for default, the FDIC may acquire from another source goods or services similar to those Contractor should have provided. Contractor is liable for any additional costs the FDIC incurs in obtaining goods or services in substitution for those Contractor failed to provide. If a partial termination of the contract occurs, Contractor remains obligated to perform those parts of the contract that are not terminated.

(c) Contractor is not liable for the additional costs described in paragraph b above, if the failure to perform the contract arises from causes beyond the control, and without the fault or negligence, of Contractor. Examples of such causes include: (1) acts of God or of the public enemy, (2) acts of the FDIC, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes and (9) unusually severe weather.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both Contractor and the subcontractor, and without the fault or negligence of either, Contractor is not liable for the additional costs caused by its failure to perform, unless the Contractor could have obtained the

subcontracted goods or services from other sources in sufficient time for Contractor to meet the delivery schedule.

(e) If the contract is terminated for default, the FDIC may require Contractor to transfer title and deliver to the FDIC any contract deliverables that have been completed, either in whole or in part, and any goods or products that Contractor has specifically produced or acquired for the contract. Contractor also must protect and preserve property in its possession in which the FDIC has an interest.

(f) The FDIC will pay the contract price for contract deliverables delivered and accepted. Contractor and the Contracting Officer will agree on the amount of payment by FDIC to Contractor for goods or products specifically produced or acquired by Contractor for the contract, delivered to and accepted by FDIC, and for costs associated with the protection and preservation of property. Failure to agree will be a dispute as defined in the "*Dispute*s" clause of the contract. The FDIC may withhold from amounts owed Contractor any sum the Contracting Officer determines necessary to protect the FDIC against loss arising from claims of lien holders to the goods or products in question.

(g) If after termination of the contract, it is determined that Contractor was not in default or that the default was excusable, the termination will be treated as a termination for convenience under the clause *Termination for Convenience of the FDIC*, and the rights and obligations of the parties will be governed accordingly.

(h) The rights and remedies of the FDIC set out in this clause are in addition to any other rights and remedies provided by law or elsewhere in the contract.

7.6.6-3 Termination for Default Damages (July 2008)

Prescription:

Per PGI 6.606, insert clause 7.6.6-3, *Termination for Default Damages*, in all awards for construction or dismantling, demolition, or removal of improvements.

Clause:

(a) If Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within such time, the FDIC may, by written notice to Contractor, terminate Contractor's right to proceed with the work or such part of the work as to which there has been delay. In such event, the FDIC may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and necessary therefore. Whether or not Contractor's right to proceed with the work is terminated, it and its sureties shall be

liable for any damage to the FDIC resulting from Contractor's refusal or failure to complete the work within the specified time.

(b) If fixed and agreed liquidated damages are provided in the contract and if the FDIC so terminates Contractor’s right to proceed, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the work, together with any increased costs occasioned the FDIC in completing the work.

(c) If fixed and agreed liquidated damages are provided in the contract and if the FDIC does not so terminate Contractor’s right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.

(d) Contractor's right to proceed shall not be so terminated nor Contractor charged with resulting damage if:

(1) The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the FDIC in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the FDIC, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both Contractor and such subcontractors or suppliers; and

(2) Contractor, within ten (10) days from the beginning of any such delay (unless the Contracting Officer grants a further period of time before the date of final payment under the contract), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in the "*Disputes*" clause.

(e) If, after notice of termination of Contractor's right to proceed under the provisions of this clause, it is determined for any reason that Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the FDIC, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the FDIC, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "*Disputes*."

(f) The rights and remedies of the FDIC provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(g) As used in paragraph (d)(1) of this clause, the term "subcontractors or suppliers" means subcontractors or suppliers at any tier.

7.6.6-4 Excusable Delays (July 2008)

Prescription:

Per PGI 6.606, insert clause 7.6.6-4, *Excusable Delays*, in all awards.

Clause:

Failure to perform this contract according to its terms is excusable and not an event of default if the failure to perform is caused by events beyond the control of Contractor, and through no fault or negligence of Contractor. Events beyond the control of Contractor include acts of God or of the public enemy, acts of the FDIC, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, and the like.

If the failure to perform is caused by the failure of a subcontractor (at any tier) to perform, and if the failure is caused by events beyond the control of both Contractor and the subcontractor, and through no fault or negligence of either, Contractor will not be in default, unless (a) Contractor reasonably could have obtained from other sources the supplies or services the subcontractor was to have furnished, (b) the Contracting Officer directed Contractor in writing to procure the supplies or services from the other sources, and (c) Contractor failed to comply with the order.

The delivery schedule for the contract will be revised at the request of Contractor, if the Contracting Officer determines that a failure to perform this contract was caused by an event beyond the control of Contractor. Excusable delay has no bearing on the FDIC's right to terminate the contract for convenience under the clause *Termination for Convenience of the FDIC*.

7.6.7-1 FDIC Property (July 2010)

Prescription:

Per PGI 6.708, insert clause 7.6.7-1, *FDIC Property*, in awards where FDIC property may be furnished to Contractor.

Clause:

(a) Application. This clause applies to contracts entered into by the FDIC in which the FDIC furnishes property to the Contractor to be used in performance of the contract. All communications under this clause must be in writing.

(b) Delivery and Condition of Property.

(1) The FDIC will deliver property to the Contractor of the type (item, quantity, and description) provided for in the contract, at the specified time. If no delivery time is specified, the FDIC will deliver the property in sufficient time to enable Contractor to meet the contract's delivery or performance dates.

(2) If Contractor receives property from the FDIC in a condition not suitable for the intended use, Contractor must notify the Contracting Officer of the deficiencies, and request a price adjustment to the contract, if warranted. The Contracting Officer will direct the Contractor either to repair, modify, return or otherwise dispose of the property, at the FDIC's expense, and will make a price adjustment to the contract, if warranted, in accord with paragraph (g) below.

(3) If FDIC does not deliver property to Contractor on time, the Contracting Officer, upon Contractor's timely request, will determine the affect of the delay on Contractor's ability to perform and will make a price adjustment to the contract, if warranted, in accord with paragraph (g) below.

(c) Property Substitutions.

(1) The Contracting Officer may decrease the property provided by the FDIC or substitute other property, upon giving notice to the Contractor. The notice may direct the Contractor in the removal, shipment or disposal of FDIC property previously supplied; Contractor must promptly comply with the directions given.

(2) If the FDIC decreases the property or substitutes other property, the Contracting Officer, upon Contractor's timely request, will make a price adjustment to the contract, if warranted, in accord with paragraph (g) below.

(d) Title in FDIC Property.

(1) The FDIC retains title to all property it supplies to Contractor.

(2) The title to FDIC property remains in the FDIC regardless of its incorporation into or attachment to property not owned by the FDIC. FDIC property does not become a fixture or lose its identity as personal property by being attached to real property.

(3) Title to property acquired by Contractor for the FDIC under this contract vests in the FDIC when either it is first used in performance of this contract or the FDIC has paid for it, whichever occurs first.

(4) If this contract contains a provision directing Contractor to purchase material for which the FDIC will reimburse Contractor as a direct item of cost under this contract, then:

(i) Title to material purchased from a vendor passes to and vests in the FDIC upon the vendor's delivery of the material; and

(ii) Title to all other material passes to and vests in the FDIC upon

(A) Issuance of the material for use in contract performance;

(B) Commencement of processing of the material or its use in contract performance; or

(C) Reimbursement of the cost of the material by the FDIC, whichever occurs first.

(e) Risk of Loss. Unless otherwise provided in this contract, Contractor assumes the risk of loss for any loss or destruction of, or damage to, FDIC property upon its delivery to Contractor or upon passage of title to the FDIC under paragraph (d). Contractor is not responsible for reasonable wear and tear to FDIC property or for FDIC property consumed in performing this contract.

(f) Property Administration.

(1) Contractor is accountable for all FDIC property provided under this contract.

(2) The FDIC property is for use in performing work for the FDIC under this contract only, unless the contract or the Contracting Officer permits otherwise. Contractor must maintain, repair, protect, and preserve FDIC property in its possession.

(3) If damage occurs to FDIC property for which FDIC has assumed the risk of loss, the FDIC will replace the items or direct Contractor to make repairs. If Contractor cannot effect repairs within the time specified, The Contracting Officer will direct Contractor on disposal of the property. The Contracting Officer will make a price adjustment in accord with paragraph (g) below, when the Contractor replaces or repairs any property for which the FDIC is responsible.

(4) Contractor represents that the contract price does not include any amount for replacement or repair of property for which the FDIC is responsible.

(5) Contractor grants FDIC access, during business hours, to the premises in which FDIC property is located for the purpose of inspecting FDIC property.

(g) Price Adjustment. The right to a price adjustment is Contractor's exclusive remedy under this clause. The FDIC is not liable for breach of contract for:

(1) Any delay in delivery of FDIC property;

(2) Delivery of FDIC property in a condition not suitable for its intended use;

(3) A decrease in or substitution of FDIC property, or

(4) Failure to repair or replace FDIC property for which the FDIC is responsible.

The procedures for price adjustments are those set out in the "Changes" clause. When appropriate, the Contracting Officer may initiate a price adjustment in favor of the FDIC.

(h) Final Accounting and Disposition of FDIC Property. Contractor must submit an inventory, in a format specified by the Contracting Officer, of all FDIC property (including any resulting scrap) not consumed in performing this contract or delivered back to the FDIC at completion of this contract, if required by the Contracting Officer.

Contractor must ship, deliver or dispose of FDIC property as directed by the Contracting Officer. The net proceeds from any disposal of FDIC property will be either credited to the contract price or paid to the FDIC, as the Contracting Officer directs.

FOR CONSTRUCTION CONTRACTS, PARAGRAPH (i) ALSO APPLIES:

(i) The FDIC will furnish to Contractor the property, if any, identified in the Contract to be incorporated or installed into the work or used in performing the contract. The listed property will be furnished F.O.B. railroad cars at the place specified in the contract Schedule or F.O.B. truck at the project site. Contractor is required to accept delivery, pay any damage or detention charges, and unload and transport the property to the job site at its own expense. When the property is delivered, Contractor shall verify its quantity and condition and acknowledge receipt in writing to the Contracting Officer. Contractor shall also report in writing to the Contracting Officer within twenty-four (24) hours of delivery any damage or shortage of the property as received. All such property shall be installed or incorporated into the work at the expense of Contractor, unless otherwise indicated in this contract.

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7.104 Provision/Clause Matrix

The matrix below contains information as stated in PGI 7.102(c).

Provision or Clause Number *	Provision or Clause Title	Editing required? (Y/N)	Clause Section * (B, C, D, E, F, G, H, I, J, K, L, M)	Provision or Clause?* (P,C)	Prescribed in PGI	Incorporated by Reference	Request for Quotation	Request for Proposal	Contracts	Basic Ordering Agreement (BOA)	Blanket Purchase Agreement (BPA)	GSA Awards= FSS	Consultant Agreements	Simplified Procurement Order	Construction Contract	Task Order (Services)	Delivery Order (Goods)	Interagency Agreement	Request for Task Order Proposal
7.0.1-01	Solicitation Provision Incorporated by Reference	N	L	P		N	A	A											A
7.0.1-02	Clauses Incorporated by Reference	N	I	C		N	A	A	A	A	A	A	A	A	A				
7.1.2-01	Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities.	N	I	C	1.215	Y			R	R	R	R	R	R	R				
7.1.2-02	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment	N	I	C	1.215	Y			R	R	R	R	R	R	R				
7.1.3-01	Post-Government Employment	N	L	P	1.314	N	R	R											R

Provision or Clause Number *	Provision or Clause Title	Editing required? (Y/N)	Clause Section * (B, C, D, E, F, G, H, I, J, K, L, M)	Provision or Clause?* (P,C)	Prescribed in PGI	Incorporated by Reference	Request for Quotation	Request for Proposal	Contracts	Basic Ordering Agreement (BOA)	Blanket Purchase Agreement (BPA)	GSA Awards= FSS	Consultant Agreements	Simplified Procurement Order	Construction Contract	Task Order (Services)	Delivery Order (Goods)	Interagency Agreement	Request for Task Order Proposal
	Certification (Pre-Award)																		
7.1.3-02	Post-Government Employment Certification (Post-Award)	N	H	C	1.314	N			R	R	R	R	R	R	R				
7.1.3-03	Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights	N	I	C	1.314	Y			A	A	A		A	A	A				
7.3.1-01	Disposition of Submitted Material	N	L	P	3.112 or 3.218	Y	R	R											R
7.3.1-02	System for Award Management (SAM)	N	L	P	3.112 or 3.218	Y	R	R											R
7.3.1-03	Restriction on Disclosure of Information	N	K	P	3.112 or 3.218	Y	R	R											
7.3.1-04	Solicitation Requirements, Terms and Conditions	N	L	P	3.112 or 3.218	Y	R	R											R
7.3.1-05	Price Only Evaluation Method	N	M	P	3.112 or 3.218	Y	A	A											A

Provision or Clause Number *	Provision or Clause Title	Editing required? (Y/N)	Clause Section * (B, C, D, E, F, G, H, I, J, K, L, M)	Provision or Clause?* (P,C)	Prescribed in PGI	Incorporated by Reference	Request for Quotation	Request for Proposal	Contracts	Basic Ordering Agreement (BOA)	Blanket Purchase Agreement (BPA)	GSA Awards= FSS	Consultant Agreements	Simplified Procurement Order	Construction Contract	Task Order (Services)	Delivery Order (Goods)	Interagency Agreement	Request for Task Order Proposal
7.3.1-06	Identification and Delivery of Proposals	Y	L	P	3.112 or 3.218	N	R	R											R
7.3.1-07	Proprietary Information	N	L	P	3.112 or 3.218	Y	R	R											R
7.3.1-08	Amendments, Extensions, and Cancellations	N	L	P	3.112 or 3.218	Y	R	R											R
7.3.1-09	Delivery Schedule	Y	F	C	3.112 or 3.218	N			A	A	A	A	A	A	A	A	A		A
7.3.1-10	Place of Delivery or Performance	Y	F	C	3.112 or 3.218	N			A	A	A	A	A	A	A	A	A	A	
7.3.1-11	Deliverables	N	F	C	3.112 or 3.218	Y			A	A	A	A	A	A	A	A	A	A	
7.3.1-12	Period of Performance	Y	F	C	3.112 or 3.218	N			A	A	A	A	A	A	A	A	A	A	
7.3.1-13	OIG Fraud Hotline	N	I	C	3.112 or 3.218	Y			R	R	R	R	R	R	R	R	R		
7.3.1-14	Order of Precedence	N	I	C	3.112 or 3.218	Y			R	R	R	R	R	R	R	R	R		
7.3.1-15	Governing Law	N	I	C	3.112 or 3.218	N			R	R	R	R	R	R	R	R	R		

Provision or Clause Number *	Provision or Clause Title	Editing required? (Y/N)	Clause Section * (B, C, D, E, F, G, H, I, J, K, L, M)	Provision or Clause?* (P,C)	Prescribed in PGI	Incorporated by Reference	Request for Quotation	Request for Proposal	Contracts	Basic Ordering Agreement (BOA)	Blanket Purchase Agreement (BPA)	GSA Awards= FSS	Consultant Agreements	Simplified Procurement Order	Construction Contract	Task Order (Services)	Delivery Order (Goods)	Interagency Agreement	Request for Task Order Proposal
7.3.2-01	Description of Goods or Services	Y	L	P	3.112 or 3.218	N	R	R											R
7.3.2-02	References to Time	N	L	P	3.112 or 3.218	Y	R	R											R
7.3.2-03	Outreach Program: SDB, Minority-Owned and Women-Owned Business Concerns	N	L	P	3.112 or 3.218	Y	A	A											A
7.3.2-04	Site Visit	Y	L	P	3.112 or 3.218	N	A	A											A
7.3.2-05	Offerors' Conference	Y	L	P	3.112 or 3.218	N	A	A											A
7.3.2-06	Questions Regarding Solicitation	Y	L	P	3.112 or 3.218	N	R	R											R
7.3.2-07	Submission of Offers in the English Language and in U.S. Currency	N	L	P	3.112 or 3.218	Y	R	R											R
7.3.2-08	Award of Contract - Competitive	N	L	P	3.112 or 3.218	Y	A	A											A
7.3.2-09	General Proposal Instructions	Y	L	P	3.112 or 3.218	N	A	A											A

Provision or Clause Number *	Provision or Clause Title	Editing required? (Y/N)	Clause Section * (B, C, D, E, F, G, H, I, J, K, L, M)	Provision or Clause?* (P,C)	Prescribed in PGI	Incorporated by Reference	Request for Quotation	Request for Proposal	Contracts	Basic Ordering Agreement (BOA)	Blanket Purchase Agreement (BPA)	GSA Awards= FSS	Consultant Agreements	Simplified Procurement Order	Construction Contract	Task Order (Services)	Delivery Order (Goods)	Interagency Agreement	Request for Task Order Proposal
7.3.2-10	General Proposal Instructions – Oral Presentation	Y	L	P	3.112 or 3.218	N	A	A											
7.3.2-11	Pricing Proposal (Firm-Fixed-Price)	Y	L	P	3.112 or 3.218	N	A	A											A
7.3.2-12	Pricing Proposal (Time and Material or Labor Hour)	Y	L	P	3.112 or 3.218	N	A	A											A
7.3.2-13	Effective Period of Offer	Y	L	P	3.112 or 3.218	N	R	R											R
7.3.2-14	Non-Responsive Proposals	N	L	P	3.112 or 3.218	Y	R	R											R
7.3.2-15	Mission Capability - Proposal Instructions	Y	L	P	3.112 or 3.218	N	A	A											A
7.3.2-16	Past Performance - Proposal Instructions	Y	L	P	3.112 or 3.218	N	A	A											A
7.3.2-17	Best Value Evaluation Process	Y	M	P	3.112 or 3.218	N	A	A											A
7.3.2-18	Evaluation of Mission Capability	Y	M	P	3.112 or 3.218	N	A	A											A
7.3.2-19	RESERVED																		

Provision or Clause Number *	Provision or Clause Title	Editing required? (Y/N)	Clause Section * (B, C, D, E, F, G, H, I, J, K, L, M)	Provision or Clause?* (P,C)	Prescribed in PGI	Incorporated by Reference	Request for Quotation	Request for Proposal	Contracts	Basic Ordering Agreement (BOA)	Blanket Purchase Agreement (BPA)	GSA Awards= FSS	Consultant Agreements	Simplified Procurement Order	Construction Contract	Task Order (Services)	Delivery Order (Goods)	Interagency Agreement	Request for Task Order Proposal
7.3.2-20	Evaluation of Past Performance	N	M	P	3.112 or 3.218	N	A	A											A
7.3.2-21	Description/Specifications/Work Statement	Y	C	C	3.11.2 or 3.218	N			A	A	A	A	A	A	A	A	A	A	
7.3.2-22	Evaluation of Pricing	Y	M	P	3.112 or 3.218	N	R	R											R
7.3.2-23	Evaluation of Financial Capability	N	M	P	3.112 or 3.218	N	A	A											A
7.3.2-24	Technical Approach	Y	L	P	3.112 or 3.218	N	A	A											A
7.3.2-25	Management Plan	Y	L	P	3.112 or 3.218	N	A	A											A
7.3.2-26	Key Personnel	Y	L	P	3.112 or 3.218	N	A	A											A
7.3.2-27	Oral Presentation	Y	L	P	3.112 or 3.218	N	A	A											A
7.3.2-28	Late Proposals, Modifications of Proposals, and Withdrawals of Proposals	N	L	P	3.112 or 3.218	Y	R	R											

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7.3.2-29	Award - Best Value	N	M	P	3.112 or 3.218	N	A	A											A
7.3.2-30	Rejecting Proposals/Waiving Informalities	N	L	P	3.112 or 3.218	Y	R	R											A
7.3.2-31	Pre-Award Site Visit	N	L	P	3.112 or 3.218	Y	A	A											A
7.3.2-32	Compliance with Presidential $1 Coin Act of 2005	N	I	C	3.112 or 3.218	Y			A	A	A	A	A	A	A	A	A		
7.3.2-33	Independent Contractors	N	I	C	3.112 or 3.218	N			R	R	R	R	R	R	R	R	R		
7.3.2-34	Duty to Deliver or Perform	N	C	C	3.112 or 3.218	Y			R	R	R	R	R	R	R	R	R	R	R
7.3.2-35	Calendar Days	N	I	C	3.112 or 3.218	Y			R	R	R	R	R	R	R	R	R		
7.3.2-36	Task Order	Y	H	C	3.112 or 3.218	N				R	R								
7.3.2-37	Audit of Records	N	I	C	3.112 or 3.218	N			A	A	A	A	A	A	A	A	A		
7.3.2-38	Scope of Service - Task Orders	Y	C	C	3.112 or 3.218	N										R			

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7.3.2-39	Incorporation of Terms and Conditions	Y	I	C	3.112 or 3.218	Y				R	R	R				R	R		
7.3.2-40	Change in Physical Location	N	I	C	3.112 or 3.218	Y			R	R	R	R	R	R	R	R	R		
7.3.2-41	FDIC Personnel	Y	G	C	3.112 or 3.218	N			R	R	R	R	R	R	R				
7.3.2-42	Contractor Personnel	N	I	C	3.112 or 3.218	Y			R	R	R	R	R	R	R	R	R		
7.3.2-43	Key Personnel	Y	H	C	3.112 or 3.218	N			A	A	A	A	A	A	A				
7.3.2-44	Representations of Contractor	N	I	C	3.112 or 3.218	Y			A	A	A	A	A	A	A	A	A		
7.3.2-45	Preamble to Contractor Representations and Certifications	N	K	C	3.112 or 3.218	N	A	A											
7.3.2-46	Integrity and Fitness Representations and Certifications	N	K	P	3.112 or 3.218	N	A	A											
7.3.2.47	Additional Information - Representations, Certifications and Other Statements of the Offeror	N	K	P	3.112 or 3.218	N	A	A											

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7.3.2-48	Certification of Registration in System for Award Management (SAM)	N	K	P	3.112 or 3.218	N	A	A											
7.3.2-49	Small Business Representation	Y	K	P	3.112 or 3.218	N	R	R											
7.3.2-50	Certificate of Independent Price Determination	N	K	P	3.112 or 3.218	N	A	A											
7.3.2-51	Contingent Fee Representation	N	K	P	3.112 or 3.218	N	A	A											
7.3.2-52	Equal Opportunity Certification	N	K	P	3.112 or 3.218	N	A	A											
7.3.2-53	Certification Regarding Fair Inclusion of Minorities and Women	N	K	P	3.112 or 3.218	N	A	A											
7.3.2-54	Cooperation with the Office of Inspector General	N	I	C	3.112 or 3.218	Y			R	R	R	R	R	R	R				
7.3.2-55	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions	N	K	P	3.112 or 3.218	N	A	A											

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7.3.2-56	Task Assignment Procedures	Y	H	C	3.112 or 3.218	N				A	A					A			
7.3.2-57	Public Release of Contract Award and Advertising and Publicity Information	N	I	C	3.112 or 3.218	N			R	R	R	R	R	R	R	R	R	R	
7.3.2-58	Limitation on Payment to Influence Certain Federal Transactions	N	I	C	3.112 or 3.218	Y			A	A	A	A	A	A	A	A	A		
7.3.2-59	Warranty Concerning Contingent Fees	N	I	C	3.112 or 3.218	Y			A	A	A	A	A	A	A	A	A		
7.3.2-60	Anti-Kickback Procedures	N	I	C	3.112 or 3.218	Y			A	A	A	A	A	A	A	A	A		
7.3.2-61	Drug-Free Workplace	N	I	C	3.112 or 3.218	Y			A	A	A	A	A	A	A	A	A		
7.3.2-62	Equal Opportunity	N	I	C	3.112 or 3.218	Y			A	A	A	A	A	A	A	A	A		
7.3.2-63	Affirmative Action for Workers with Disabilities	N	I	C	3.112 or 3.218	Y			A	A	A	A	A	A	A	A	A		
7.3.2-64	Affirmative Action for Special Disabled Veterans and Vietnam Era Veterans	N	I	C	3.112 or 3.218	Y			A	A	A	A	A	A	A	A	A		

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7.3.2-65	Employment Reports on Special Disabled Veterans and Vietnam Era Veterans	N	I	C	3.112 or 3.218	Y			A	A	A	A	A	A	A	A	A		
7.3.2-66	Ozone-Depleting Substances	N	I	C	3.112 or 3.218	N			A	A	A	A	A	A	A	A	A		
7.3.2-67	Representation by Corporations Regarding an Unpaid Delinquent Tax Liability	N	K	P	3.112 or 3.218	N	A	A											
7.3.2-68	Refrigeration Equipment and Air Conditioners	N	I	C	3.112 or 3.218	Y			A	A	A	A	A	A	A	A	A	A	
7.3.2-69	Joint and Several Liability	N	I	C	3.112 or 3.218	Y			R	R	R	R	R	R	R	R	R		
7.3.2-70	Legal Representation	N	H	C	3.112 or 3.218	N			A	A	A								
7.3.2-71	FDIC Contracting Capacity – BOAs/RBOAs/ BPAs	Y	I	C	3.112 or 3.218	N				R	R	R							

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7.3.2-72	FDIC Contracting Capacity – Contracts/Task Orders/Delivery Orders	Y	I	C	3.112 or 3.218	N			R							R	R		
7.3.2-73	Compliance with 12 CFR Part 366 and Application of 12 CFR 367	N	I	C	3.112 or 3.218	Y			R	R	R	R	R	R					
7.3.2-76	Covered Telecommunications Equipment or Services-Representation	N	K	P	1.215	N	R	R											
7.3.2-77	Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment	N	K	P	1.215	N	R	R											
7.3.3-01	Copy of Contractor's General Services Administration Schedule Contract	N	L	P	3.306	N	A	A											A
7.3.3-02	Contractor Use of AbilityOne – Mandatory Source of Goods or Services	N	I	C	3.306	Y			A	A	A	A	A						

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7.3.5-01	Emergency Preparedness	N	H	C	3.513	N			A	A	A	A	A	A	A	A	A		
7.4.2-01	Security and Privacy Compliance for IT Services	N	H	C	4.205	N			A	A	A	A	A	A					
7.4.2-02	Off-site Processing and Storing of FDIC Information	N	H	C	4.205	N			A	A	A	A	A	A					
7.4.2-03	Data Connection	N	H	C	4.205	N			A	A	A	A	A	A					
7.4.2-04	Privacy Requirements for External Web Applications and Content	N	H	C	4.205	N			A	A	A	A	A	A					
7.4.2-05	Basic Safeguarding of Covered Contractor Information Systems	N	H	C	4.205	N			A	A	A	A	A	A					
7.4.2-06	NIST SP 800-171 Security Requirement	N	H	C	4.205	N			A	A	A	A	A	A					
7.4.3-01	Commencement, Prosecution and Completion of Work	Y	F	C	4.304	N									R				
7.4.3-02	Location(s) for Services	Y	F	C	4.304	N									R				

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7.4.3-03	Contractor's Project Manager	N	H	C	4.304	N									R				
7.4.3-04	Specifications and Drawings	N	I	C	4.304	Y									A				
7.4.3-05	Differing Site Conditions	N	I	C	4.304	Y									A				
7.4.3-06	Material and Workmanship	N	I	C	4.304	Y									R				
7.4.3-07	Superintendence by Contractor	N	I	C	4.304	Y									A				
7.4.3-08	Permits and Responsibilities	N	I	C	4.304	Y									R				
7.4.3-09	Conditions Affecting the Work	N	I	C	4.304	Y									A				
7.4.3-10	Other Contracts	N	I	C	4.304	Y									A				
7.4.3-11	Shop Drawings	N	I	C	4.304	Y									A				
7.4.3-12	Use and Possession Prior to Completion	N	I	C	4.304	Y									A				
7.4.3-13	Measurements	N	I	C	4.304	Y									R				
7.4.3-14	Layout of Work	N	I	C	4.304	Y									A				
7.4.3-15	Availability and Use of Utility Services	N	I	C	4.304	Y									A				
7.4.3-16	Use of Premises	N	I	C	4.304	Y									R				
7.4.3-17	Operations and Storage Areas	N	I	C	4.304	Y									A				
7.4.3-18	Heat	N	I	C	4.304	Y									R				

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7.4.3-19	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvement	N	I	C	4.304	Y									A				
7.4.3-20	Health and Safety	N	I	C	4.304	Y									R				
7.4.3-21	Cleanup	N	I	C	4.304	Y									A				
7.4.3-22	Use of Equipment by the FDIC	N	I	C	4.304	Y									R				
7.5.1-01	Privacy Act	N	I	C	5.108	Y			A	A	A	A	A	A		A			
7.5.1-02	Protecting Sensitive Information	N	H	C	5.108	N			A	A	A	A	A	A	A	A			
7.5.1-03	Access to FDIC Information Systems	N	H	C	5.108	N			A	A	A	A	A	A					
7.5.2-01	Background Investigation Questionnaires	N	L	P	5.204	N	A	A											A
7.5.2-02	RESERVED																		
7.5.2-03	Background Investigations	N	H	C	5.204	N			A	A	A	A	A	A	A				
7.5.2-03 Alternate 1	Background Investigations	N	H	C	5.204	N			A	A	A	A	A	A	A				
7.5.2-04	Contractor Submittal of Current Personnel	N	H	C	5.204	N			A	A	A	A	A	A	A	A			
7.5.2-05	RESERVED																		
7.5.2-06	RESERVED																		
7.5.2-07	RESERVED																		

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7.5.2-08	Risk Level Designation (Functional Responsibility)	Y	H	C	5.204	N			A	A	A	A	A	A	A				
7.5.2-09	RESERVED																		
7.5.2-10	Risk Level Designation (Labor Category)	Y	H	C	5.204	N			A	A	A	A	A	A	A				
7.5.2-11	Identification/Access Badges	N	H	C	5.204	N			A	A	A	A	A	A					
7.5.2-12	Contractor Notification of Departing Personnel	N	H	C	5.204	N			A	A	A	A	A	A	A	A			
7.5.2-13	Use of FDIC Premises by Contractor Personnel	N	H	C	5.204	N			A	A	A	A	A	A					
7.5.3-01	Section 508, Information and Communication Technology (CIT)	N	I	C	5.304	N				R	R	R	R	R	R				
7.5.3-02	RESERVED																		
7.5.4-01	Authorization and Consent	N	I	C	5.405	Y			A	A	A	A		A	R				
7.5.4-02	Notice and Assistance Regarding Patent	N	I	C	5.405	Y			A	A	A	A		A	R				

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	and Copyright Infringement																		
7.5.4-03	Patent Indemnity	N	I	C	5.405	Y			A	A	A	A		A	R				
7.5.4-04	Patent Rights—Retention by the Contractor	N	I	C	5.405	Y			A	A	A	A		A	A				
7.5.4-05	Patent Rights—Acquisition by the FDIC	N	I	C	5.405	Y			A	A	A	A		A	A				
7.5.4-06	FDIC Rights in Data—General	N	I	C	5.405	Y			A	A	A	A		A	A				
7.5.4-07	Rights in Data—Special Works	N	I	C	5.405	Y			A	A	A	A		A	A				
7.5.4-08	Rights in Data—Existing Works	N	I	C	5.405	Y			A	A	A	A		A	A				
7.5.4-09	Commercial Computer Software—Restricted Rights	N	I	C	5.405	Y			A	A	A			A					
7.5.5-01	Option Period	Y	I	C	5.504	N			A	A	A	A	A	A	A	A	A		
7.5.5-02	Notice of Exercise of Option	Y	I	C	5.504	N			A	A	A	A	A	A	A	A	A		
7.5.6-01	Prohibition on Subcontracting	N	I	C	5.604	Y			A	A	A	A	A	A	A	A	A		
7.5.6-02	Subcontracting Reporting	Y	I	C	5.604	N			A				A	A	A	A	A		

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7.5.6-03	Subcontracting Reporting (BOAsRBOAs or BPAs)	Y	I	C	5.604	N				A	A								
7.5.6-04	Approved Subcontractors and Consent to Subcontract	Y	I	C	5.604	N			R	R	R	R	R	R	R	R	R		
7.5.6-04 Alternate 1	Approved Subcontractors and Consent to Subcontract	Y	I	C	5.604	N			A	A	A	A	A	A	A	A	A		
7.5.6-05	Subcontracting Plan Compliance	N	I	C	5.604	Y			A	A	A	A	A	A	A	A	A		
7.5.6-06	Evaluation of Subcontracting Plan	N	M	P	5.604	N	A	A											A
7.5.8-01	Liability Insurance	Y	I	C	5.807	N			A	A	A	A	A	A	A	A	A		
7.5.8-02	Certificates of Insurance	Y	I	C	5.807	N			A	A	A	A	A	A	A				
7.5.8-03	Insurance for Equipment/Tools	N	I	C	5.807	Y			A	A	A	A	A	A	A				
7.5.8-04	Notice to the FDIC on Damage	N	I	C	5.807	Y			A	A	A	A	A	A	A				
7.5.8-05	Cost of Insurance	N	I	C	5.807	Y			A	A	A	A	A	A	A				
7.5.8-06	Payment and/or Performance Bonds	N	I	C	5.807	Y			A	A	A	A	A	A	R				A
7.5.8-07	Fidelity Bond Coverage	Y	I	C	5.807	N			A	A	A	A	A	A	A				

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7.5.8-08	RESERVED				5.807														
7.5.8-09	Errors and Omissions Insurance	Y	I	C	5.807	N			A	A	A	A	A	A	A				
7.5.8-10	RESERVED																		
7.5.8-11	Liability to Third Persons	N	I	C	5.807	Y			R	R	R	R	R	R	R				
7.5.8-12	Pledges of Assets	N	I	C	5.807	Y			A	A	A	A	A	A	A				
7.5.9-01	FDIC Exempt from Federal, State, and Local Taxes	N	I	C	5.904	Y			R	R	R	R	R	R	R	R	R		
7.5.10-01	Warranty of Construction	N	I	C	5.1008	Y									R				
7.5.10-02	Guarantees	N	I	C	5.1008	Y									R				
7.5.11-01	Service Contract Act of 1965	N	I	C	5.1105	Y			A	A	A	A	A	A					
7.5.11-02	Davis Bacon Act	N	I	C	5.1105	Y									R				
7.5.11-03	Contract Work Hours and Safety Standards Act Overtime Compensation	N	I	C	5.1105	Y			A	A	A	A	A	A	R				
7.5.11-04	Payrolls and Basic Records	N	I	C	5.1105	Y									R				
7.5.11-05	Apprentices and Trainees	N	I	C	5.1105	Y									R				

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7.5.11-06	Compliance With Copeland Act Requirements	N	I	C	5.1105	Y									R				
7.5.11-07	Subcontracts (Labor Standards)	N	I	C	5.1105	Y									R				
7.5.11-08	Contract Termination - Debarment	N	I	C	5.1105	Y									R				
7.5.11-09	Compliance With Davis-Bacon and Related Act Regulations	N	I	C	5.1105	Y									R				
7.5.11-10	Disputes Concerning Labor Standards	N	I	C	5.1105	Y									R				
7.5.11-11	Certification of Eligibility	N	I	C	5.1105	Y									R				
7.5.11-12	Withholding of Funds	N	I	C	5.1105	Y									R				
7.5.11-13	Notice to the FDIC of Labor Disputes	N	I	C	5.1105	Y									R				
7.5.11-14	RESERVED																		
7.5.12-01	Buy American - Supplies	N	I	C	5.1206	Y			A	A	A	A	A	A	A				
7.5.12-02	Buy American Certificate	N	K	P	5.1206	N	A	A											

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7.5.12-03	Buy American—Free Trade Agreements—Israeli Trade Act	Y	I	C	5.1206	N			A	A	A	A	A	A	A				
7.5.12-04	Buy American—Free Trade Agreements — Israeli Trade Act Certificate	Y	K	P	5.1206	N	A	A											
7.5.12-05	Trade Agreements	N	I	C	5.1206	Y			A	A	A	A	A	A	A				
7.5.12-06	Trade Agreements Certificate	N	K	P	5.1206	N	A	A											
7.5.12-07	Restrictions on Certain Foreign Purchases	N	I	C	5.1206	Y			A	A	A	A	A	A	A				
7.5.13-01	Method of Payment - Electronic Fund Transfer (EFT)	N	G	C	5.1306	N			R	R	R	R	R	R	R				
7.5.13-02	Method of Payment-Third Party	N	G	C	5.1306	N			A	A	A	A	A	A	A				
7.5.13-03	Payments Under Labor-Hour Awards	N	I	C	5.1306	Y			A	A	A	A	A	A	A				
7.5.13-04	Payment Under Time and Materials Awards	Y	I	C	5.1306	N			A	A	A	A	A	A	A				
7.5.13-05	Payments Under Fixed Price Awards	N	I	C	5.1306	Y			A	A	A	A	A	A	A				

Provision or Clause Number *	Provision or Clause Title	Editing required? (Y/N)	Clause Section * (B, C, D, E, F, G, H, I, J, K, L, M)	Provision or Clause?* (P,C)	Prescribed in PGI	Incorporated by Reference	Request for Quotation	Request for Proposal	Contracts	Basic Ordering Agreement (BOA)	Blanket Purchase Agreement (BPA)	GSA Awards= FSS	Consultant Agreements	Simplified Procurement Order	Construction Contract	Task Order (Services)	Delivery Order (Goods)	Interagency Agreement	Request for Task Order Proposal
7.5.13-06	Compensation Ceiling - Contract or Task Order	Y	G	C	5.1306	N			A	A	A	A	A						
7.5.13-07	Compensation Ceiling – BOA or BPA	Y	G	C	5.1306	N				A	R								
7.5.13-08	Invoice Preparation and Submission (Center for Financial Research-Visiting Scholars Program)	N	G	C	5.1306				A	A	A	A	A	A					
7.5.13-09	Travel Expenses (Non-Reimbursable)	N	I	C	5.1306	Y			A	A	A	A	A	A	A				
7.5.13-10	Travel Expenses (Reimbursable)	N	I	C	5.1306	Y			A	A	A	A	A	A	A				
7.5.13-11	Fees and Expenses of Subcontractors	N	I	C	5.1306	Y			A	A	A	A	A	A	A				
7.5.13-12	Schedule for Invoicing	Y	G	C	5.1306	N			R	R	R	R	R	R	R	R	R		
7.5.13-13	Content of Invoice	Y	G	C	5.1306	N			R	R	R	R	R	R	R	R	R		
7.5.13-14	Electronic Invoice Preparation and Submission (CORHQ Business Unit)	Y	G	C	5.1306	N			A	A	A	A	A	A	A	A	A		
7.5.13-15	Electronic Invoice Preparation and Submission (CORFD/RECVR/SUBSD)	Y	G	C	5.1306	N			A	A	A	A	A	A	A	A	A		

Provision or Clause Number *	Provision or Clause Title	Editing required? (Y/N)	Clause Section * (B, C, D, E, F, G, H, I, J, K, L, M)	Provision or Clause?* (P,C)	Prescribed in PGI	Incorporated by Reference	Request for Quotation	Request for Proposal	Contracts	Basic Ordering Agreement (BOA)	Blanket Purchase Agreement (BPA)	GSA Awards= FSS	Consultant Agreements	Simplified Procurement Order	Construction Contract	Task Order (Services)	Delivery Order (Goods)	Interagency Agreement	Request for Task Order Proposal
7.5.13-16	RESERVED																		
7.5.13-17	Right to Offset Contract Payments Against Delinquent Obligations	N	I	C	5.1306	Y			R	R	R	R	R	R	R				
7.5.13-18	Prompt Payment	N	I	C	5.1306	Y			A	A	A	A	A	A	A				
7.5.14-01	Disputes	N	I	C	5.1405	N			R	R	R	R	R	R	R				
7.5.14-02	Notice and Certification of Claims	N	I	C	5.1405	Y			R	R	R	R	R	R	R				
7.6.3-01	Place of Manufacture	N	K	P	6.304	N	A	A											
7.6.3-02	Contractor Return, Destruction and Retention of FDIC Information	N	I	C	6.304	N			A	A	A	A	A	A	A				
7.6.4-01	Inspection and Acceptance	Y	E	C	6.410	N			R	R	R	R	R	R		R	R	R	
7.6.4-02	Inspection and Acceptance (Construction)	Y	E	C		N									R				
7.6.4-03	Risk of Loss or Damage	N	I	C	6.410	Y			R	R	R	R	R	R	R				
7.6.4-04	Fair Inclusion of Minorities and Women	N	I	C	6.410	N			A	A	A	A	A	A	A				
7.6.5-01	Changes	N	I	C	6.509	Y			R	R	R	R	R	R		R	R		
7.6.5-02	Changes (Construction)	Y	I	C	6.509	Y									R				

Provision or Clause Number *	Provision or Clause Title	Editing required? (Y/N)	Clause Section * (B, C, D, E, F, G, H, I, J, K, L, M)	Provision or Clause?* (P,C)	Prescribed in PGI	Incorporated by Reference	Request for Quotation	Request for Proposal	Contracts	Basic Ordering Agreement (BOA)	Blanket Purchase Agreement (BPA)	GSA Awards= FSS	Consultant Agreements	Simplified Procurement Order	Construction Contract	Task Order (Services)	Delivery Order (Goods)	Interagency Agreement	Request for Task Order Proposal
7.6.5-03	Stop Work Order	N	I	C	6.509	Y			R	R	R	R	R	R		R	R		
7.6.5-04	Suspension of Work	N	I	C	6.509	Y									R				
7.6.5-05	Assignment of Claims	N	I	C	5.1306	Y			R	R	R	R	R	R	R				
7.6.6-01	Termination for Convenience of the FDIC	N	I	C	6.606	Y			R	R	R	R	R	R	R	R	R		
7.6.6-02	Termination for Default	N	I	C	6.606	Y			R	R	R	R	R	R		R	R		
7.6.6-03	Termination For Default Damages	N	I	C	6.606	Y									R				
7.6.6-04	Excusable Delays	N	I	C	6.606	Y			R	R	R	R	R	R	R	R	R		
7.6.7-01	FDIC Property	N	I	C	6.708	Y			A	A	A	A	A	A	A				

APPENDIX A: ACRONYMS

ADP	**Automatic Data Processing**
AGC-CLO	**Assistant General Counsel of the Corporate and Legal Operations**
AO	**Approving Official**
APC	**Agency Program Coordinator**
APM	**Acquisition Policy Manual**
APS	**Automated Procurement System**
ASB	**Acquisition Services Branch**
BAA	**Buy American Act**
BAFO	**Best and Final Offer**
BOA	**Basic Ordering Agreement**
BPA	**Blanket Purchase Agreement**
CAA	**Clean Air Act**
CAFTA	**Central American Free Trade Agreement**
CBA	**Collective Bargaining Agreement**
CD	**Compact Disc**
CEC	**Corporation Ethics Committee**
CFR	**Code of Federal Regulation**
CLU	**Contracting Law Unit**
CMP	**Contract Management Plan**
CPC	**Central Product Classification**
CSB	**Corporate Services Branch**
CWA	**Clean Water Act**
D/OC	**Division/Office Coordinator**
DBA	**Davis-Bacon Act**
DIT	**Division of Information Technology**
DIT ISPS	**Division of Information Technology Information Security and Privacy Staff**
DOA	**Division of Administration**
DOF	**Division of Finance**
DOF/AP	**Division of Finance/Accounts Payable**
DOL	**Department of Labor**
DRR	**Division of Resolutions and Receivership**
DUNS	**Data Universal Numbering System**
EAS	**Electronic Access System**
EIT	**Electronic and Information Technology**
EO	**Executive Order**
EVM	**Earned Value Management**
FAR	**Federal Acquisition Regulation**
FDI Act	**Federal Deposit Insurance Act**
FDIC	**Federal Deposit Insurance Corporation**

FDL	**FDIC Digital Library**
FFP	**Firm Fixed Price**
FOIA	**Freedom of Information Act**
FOIA-PA	**Freedom of Information Act-Privacy Act**
FPI	**Federal Prison Industries**
FSS	**Federal Supply Schedule**
FTA	**Free Trade Agreement**
GPA	**Government Procurement Agreement**
GSA	**General Services Administration**
IAA	**Inter-Agency Agreement**
ID	**Identification**
ISM	**Information Security Manager**
ISPS	**Information Security and Privacy Staff**
IT	**Information Technology**
JNCP	**Justification for Non-Competitive Procurement**
JWOD	**Javits-Wagner-O'Day Act**
MCC	**Merchant Category Code**
MOU	**Memoranda of Understanding**
MWOB	**Minority and Women-Owned Business**
NAFTA	**North American Free Trade Agreement**
NFE	**New Financial Environment**
NIST	**National Institute of Standards and Technology**
OCFI	**Office of Complex Financial Institutions**
OMWI	**Office of Minority and Women Inclusion**
OIG	**Office of Inspector General**
OMB	**Office of Management and Budget**
OPM	**Office of Personnel Management**
PA	**Privacy Act**
PBA	**Performance-Based Acquisition**
PBM	**Performance-Based Management**
P-Card	**Purchase Card**
PEM	**Price Evaluation Memorandum**
PGI	**Procedures, Guidance and Information**
PII	**Personally Identifiable Information**
PMO	**Program Management Office**
PPA	**Prompt Payment Act**
PR	**Procurement Requisition**
PTA	**Privacy Threshold Analysis**
PWS	**Performance Work Statement**
QAP	**Quality Assurance Plan**
QASP	**Quality Assurance Surveillance Plan**
RBOA	**Receivership Basic Ordering Agreement**
RFP	**Request for Proposal**
RFQ	**Request for Quotation**
RUP	**Rational Unified Process**

SAA	**Subsidiary Agency Agreement**
SAM	**System for Award Management**
SCA	**Service Contract Act**
SDB	**Small Disadvantaged Business**
SEPS	**Security and Emergency Preparedness Section**
SOO	**Statements of Objectives**
SOW	**Statement of Work**
SRR	**Selection Recommendation Report**
SSL	**Secure Socket Layer**
SSN	**Social Security Number**
SSP	**Source Selection Plan**
T&M	**Time and Materials**
TAA	**Trade Agreements Act**
TDO	**Term Determining Official**
TEO	**Technical Evaluation Official**
TEP	**Technical Evaluation Panel**
U.S.C.	**United States Code**
USPS	**United States Postal Service**
VFMG	**Vendor File Maintenance Group**
VPAT	**Voluntary Product Accessibility Template**
WDOL	**Wage Determinations OnLine**
WTO GPA	**World Trade Organization's Government Procurement Agreement**

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APPENDIX B: APPROVALS MEMORANDUM AND MATRIX

Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429-9990 Deputy to the Chairman and Chief Operating Officer

February 20, 2007

TO: Division and Office Directors
/S/
FROM: John F. Bovenzi
Deputy to the Chairman and
Chief Operating Officer
/S/
Steven O. App
Deputy to the Chairman and
Chief Financial Officer

SUBJECT: Revised Procurement-Related Delegations and Re-delegations of Authority Limits

Introduction

This memorandum outlines procurement-related delegations of authority, including revised delegations in effect as of December 5, 2006.[1] In brief, the execution of contracts with dollar values over $20 million will now require Board approval, and certain dollar limits have increased for re-delegations of authority on procurement-related actions.

The revised limits on delegations and re-delegations, and the procedures outlined in this memo, are effective for any procurement action, including purchase orders, contracts, and modifications executed after December 5, 2006. The April 11, 2005, memorandum that established procurement procedures associated with the elimination of Expenditure Authority is hereby rescinded and replaced in its entirety by this memorandum.

New Board-approved Delegations of Authority Governing Contracting

The FDIC Board approved a case on December 5, 2006, to provide a process for review and approval of significant contract activities by the FDIC Board. The newly revised delegations require Board approval for all contract actions with a total value of $20 million or greater,[2] prior to the evaluation of proposals from potential contractors. This approval will be obtained through

[1] The procedures in this memorandum apply only to those procurement actions the FDIC contemplates awarding in its Corporate capacity. The procedures do not apply to legal referrals or those contracts that the FDIC contemplates awarding in either its Receivership or Conservatorship capacities.
[2] The value of a contract is determined by including all years of contract performance, that is, by aggregating the dollar value of the base period with the dollar value of all contract options and any subsequent modifications.

submission of a case addressed to the Board of Directors, prepared jointly by the Division of Administration, Acquisition Services Branch and the program office. The primary supporting

documentation for the case will be the Acquisition Plan.[3] If the proposed contract action is non-competitive, the case will also be supported by an approved Justification for Non-Competitive Procurement (JNCP). An amended request for approval must be submitted to the Board if the subsequent negotiated award amount or period of performance exceeds the prior Board-approved amount or period of performance by more than 15%. Board approval of the revised contract amount or period of performance must be received prior to award.

Additionally, a request to the Board is required after contract award when subsequent modifications to the contract increase the total contract value to 115% (cumulative) or more of the Board-approved original award amount, or increase the proposed project schedule or period of performance by more than 15% (cumulative). Such requests to the Board will be supported by the revised acquisition plan. Finally, Board approval is also required when the value of any contract valued at less than $20 million will be modified to increase the value to $20 million or greater. In such instances, Board approval must be received prior to issuance of the modification.

Revised Policy Regarding Other Approval Thresholds

While adding a requirement for Board approval of specific high dollar contracting actions, FDIC senior management has concurrently raised dollar thresholds for approval levels for certain contract decision documents. Our experience with the current approval levels indicates sound business practices are consistently utilized in making decisions for FDIC contracts. Hence, we are now raising the dollar amounts of these approval levels to improve administrative efficiencies without compromising good oversight practices.

Revised Procedures for Initiating New Procurement Activity

The revised dollar limits[4] applicable to delegations and re-delegations of authority with respect to initiating new procurement activity are outlined below and in the attachment to this memo. While no Board approval is required to *initiate* a new procurement activity, as noted above, Board approval must be secured prior to the evaluation of proposals for new procurements with a total value of $20 million or greater.

The initiation of **competitive** procurement actions must be approved by the program Division/Office Director or their designee.

[3] All key information regarding the proposed contract is included in the Acquisition Plan, including background and description of the requirement, information regarding the acquisition strategy, sources being solicited, proposed cost of the procurement, and the timeline of the procurement action.

[4] For purposes of determining the appropriate approval threshold, the dollar value of the proposed contracting action includes the value of all modifications and potential options. Contract modifications shall be approved at the level consistent with the dollar value of the modification itself; however, if proposed modifications individually or cumulatively increase the total value of the contract to a level of 115% or greater than the original contract value, it must be approved at the level consistent with the new aggregate value (the original value of the contract plus the value of all modifications.) For example, a proposed contract modification of $1 million on an existing $10 million contract would be approved at the $1 million level since the modification represents only 10 percent of the originally approved contract's value. In contrast, if the modification were for $2 million—20 percent of the approved original contract value, the contract modification would have to be approved at the $12 million level.

The initiation of **non-competitive** procurement actions must be processed in accordance with the Acquisition Policy Manual (APM) and the approval thresholds outlined below.

- Actions valued at less than $500,000 shall be approved by the Program Manager and the Contracting Officer.
- Actions valued at over $500,000 but less than $1 million shall be approved by the program Deputy Division/Office Director and the ASB Assistant Director.
- Actions valued at $1 million but less than $2 million shall be approved by the program Division/Office Director and the ASB Deputy Director.
- Actions valued at $2 million and above shall be approved by the program Division/Office Director, their respective Deputy to the Chairman, and the ASB Deputy Director.

Revised Procedures for Executing Award Decision Documents

The new dollar limits applicable to delegations and re-delegations of authority with respect to executing award decision documents are outlined below and in the attachment to this memo. As noted above, the Board of Directors has no involvement in actual award decisions. However, the Board's approval must be secured in the following instances:

For new procurements, Board approval must be secured:

- Prior to the evaluation of proposals for new procurement actions with contract values that equal or exceed $20 million.
- Prior to award for contracting actions previously approved by the Board, if either the actual award amount or the period of performance will exceed the Board-approved award amount or the period of performance by more than 15%.

With respect to modifications to existing contracts, Board approval must also be secured:

- Before issuance of any proposed modification(s) for contracts previously approved by the Board if, after award, the proposed modification(s), in combination with all previously approved modifications, will increase either the Board-approved contract value or the period of performance by more than 15%.
- Before issuance of any proposed modification(s) if, after award, the value of the contract not previously approved by the Board increases to $20 million or greater.

For **competitive** procurements, the award approval thresholds are as follows:

- Actions valued at less than $500,000 shall be approved by the program Division/Office Program Manager and the Contracting Officer.
- Actions valued at $500,000 up to $1 million shall be approved by the program Deputy Division/Office Director and the ASB Assistant Director.
- Actions valued at $1 million up to $2 million shall be approved by the program Division/Office Director and the ASB Deputy Director.
- Actions valued at $2 million and above shall be approved by the program Division/Office Director, their respective Deputy to the Chairman, and the ASB Deputy Director

For non-competitive procurements with an approved JNCP, the award decision document shall be approved by the Contracting Officer and the ASB Assistant Director, except for those instances in which the negotiated price will exceed the approved JNCP amount by greater than 15% (cumulative). In those cases, the award decision document shall be approved at a level consistent with the new aggregate amount, in accordance with the above thresholds.

These delegations may be retained at higher levels, but may not be re-delegated below the levels outlined in this memo.

Contract Assessment Report

The requirement to produce and deliver to the Board a semi-annual Contract Assessment Report remains unchanged. This report includes three parts: 1) a description of all proposed new contracts and contract modifications valued at $5 million or more that are in the planning process; 2) a discussion of all contracts and contract modifications valued at $5 million or more that were executed during the preceding six months, including the basis for determining that those procurement actions represented a good value for FDIC; and 3) an assessment of contractor or agency performance on all active contracts valued at $5 million or more. The DOA Director shall submit the semi-annual report to the Board within 45 days of the end of each reporting period. The reporting periods end March 31 and September 30 of each year.

In the event a procurement action valued at $5 million or more is initiated and ready for award without having been addressed in the preceding Contract Assessment Report, the proposed action will be reported separately to the Board by DOA a minimum of thirty (30) calendar days prior to the anticipated award date. This supplemental report to the Board will summarize the anticipated contract action and include a description of the goods or services, the contract dollar value, critical milestone dates and points of contact in ASB and the program Division or Office.

Controlling Authority

The FDIC APM, including applicable Interim Acquisition Policy Memoranda, remains the authority for contracting at the FDIC. Policies or procedures not specifically addressed in this memorandum remain unchanged.

Questions regarding this memorandum should be addressed to Trisha Bursey, Assistant Director, Acquisition Services Branch, Division of Administration, 703-562-2214.

Attachment

ATTACHMENT

REVISED APPROVAL LEVELS FOR PROCUREMENT-RELATED ACTIVITY

Type of Action	Competitive or Non-competitive Actions	New Dollar Limits*	Approval Level & Notes
Initiate a Procurement	Competitive		
		Unlimited amount	Division/Office Director or designee
	Non-Competitive		
		<$500,000	Program Manager and Contracting Officer
		≥$500,000 to <$1 Million	Deputy Division/Office Director and ASB Assistant Director
		≥$1 Million to <$2 Million	Division/Office Director and ASB Deputy Director
		≥$2 Million	Division/Office Director, their respective Deputy to the Chairman, and ASB Deputy Director
Board Approval	Competitive or Non-Competitive		
		>$20 Million*	Board approval must be received prior to evaluation of proposals/issuance of proposed modification(s)
	Negotiated Award Amount or Period of Performance		
		>15%**	Board approval must be requested again and received prior to award
Execute Award Decision Documents	Competitive		
		<$500,000	Program Manager and Contracting Officer
		≥$500,000 to <$1 Million	Deputy Division/Office Director and ASB Assistant Director
		≥$1 Million to <$2 Million	Division/Office Director and ASB Deputy Director
		≥$2 Million	Division/Office Director, their respective Deputy to the Chairman, and ASB Deputy Director
	Non-Competitive		
	If <15%*	Unlimited amount (with approved JNCP)	Contracting Officer and the ASB Assistant Director
	If >15%*	Various	Same thresholds applicable to initiating a non-competitive procurement (outlined above) apply to the new aggregate amount

* total contract or cumulative modification amount
** increase in amount or period of performance

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Approvals Matrix – Corporate Capacity

Document/Action	Threshold	Preparer		Concurrence					Approval Authority							
See General and specific notes on Pages 2 and 3		PM/OM	CS/CO	PM/OM	OMWI	LEGAL	ASB Asst Dir	ASB Deputy Dir	CO	ASB Asst Dir	ASB Deputy Dir	PM	Program Deputy Division/Office Director	Program Division/Office Director	Deputy to the Chairman(7)	Board of Directors
Acquisition Plan (AP) (1) Ref: APM 2.106/PGI 2.106	≥$1M - ≤$5M	X	X		X	X				X						
	>$5M	X	X		X	X	X				X					
Justification for Non-Competitive Procurement (JNCP) Ref: COO/CFO Memo of 2/20/2007, APM 2.206/PGI 2.206	>$5,000 to ≤$100,000 (MTF)	X	X						X			X				
	>$100,000 to <$500,000	X	X						X			X				
	≥$500,000 to <$1M	X	X							X			X			
	≥$1M to <$2M	X	X				X				X			X		
	≥$2M	X	X				X				X			X	X	
Solicitation List Ref: APM 3.205/PGI 3.205	>$100,000	X	X		X				X							
Solicitation (RFP/RFQ) Ref: APM 5.1503/PGI 5.1503	<$1M		X	X					X							
	≥$1M		X	X		X				X						
Source Selection Plan (1) Ref: APM 3.206/PGI 3.206	>$100,000 to ≤$1M	X	X						X							
	>$1M to <$5M	X	X		X	X				X						
	≥$5M	X	X		X	X	X				X					
Selection Recommendation Report (SRR) Ref: FDIC COO/CFO Memo dtd 2/20/07; APM 3.214/ PGI 3.214	>$100,000 to <$500,000		X						X			X				
	≥$500,000 to <$1M		X	X						X			X			
	≥$1M to <$2M		X	X			X				X			X		
	≥$2M		X	X			X				X			X	X	

Approvals Matrix – Corporate Capacity

Document/Action	Threshold	Preparer		Concurrence					Approval Authority							
See General and specific notes on Pages 2 and 3		PM/OM	CS/CO	PM/OM	OMWI	LEGAL	ASB Asst Dir	ASB Deputy Dir	CO	ASB Asst Dir	ASB Deputy Dir	PM	Program Deputy Division/Office	Program Division/Office Director	Deputy to the Chairman(7)	Board of Directors
Price Evaluation Memorandum (PEM) for a negotiated amount >15% of that in an approved JNCP. (2) Ref: FDIC COO/CFO Memo dtd 2/20/2007; PGI 3.204	>$100,000 to <$500,000		X						X			X				
	≥$500K to <$1M		X	X						X			X			
	≥$1M to <$2M		X	X			X				X			X		
	≥$2M		X	X			X				X			X	X	
PEM for a negotiated amount ≤ 15% of that in an approved JNCP. (3) Ref FDIC COO/CFO Memo dtd 2/20/2007; PGI 3.204	>$100,000 to <$500,000	X	X						X			X				
	≥$500K	X	X							X						
PEM for Simplified Procurements	>$10,000 to ≤$100,000	X	X						X			X				
Contract Awards (4) / Modifications (5)	All Dollars		X			X			X							
Board Approval - for new awards or a modification that increases contract value above the threshold (6)	≥$20M	X	X			X	X	X								X
Board Approval - for a negotiated amount greater than that previously approved by Board (6)	>15% increase in previous board approved amount/period	X	X			X	X	X								X

Approvals Matrix – Corporate Capacity

Document/Action	Threshold	Preparer		Concurrence					Approval Authority							
See General and specific notes on Pages 2 and 3		PM/OM	CS/CO	PM/OM	OMWI	LEGAL	ASB Asst Dir	ASB Deputy Dir	CO	ASB Asst Dir	ASB Deputy Dir	PM	Program Deputy Division/Office Director	Program Division/Office Director	Deputy to the Chairman(7)	Board of Directors
Ratification of Unauthorized Contractual Commitments (Recommendation Report) Ref: APM 1.211/PGI 1.211	≤$10,000		X			X				X						
	>$10,000		X			X	X				X					
Assignment of Claims Ref: APM 6.507/PGI 6.507	All		X			X			X							
Contracting Officer Final Decision - Protest or Claim Ref: APM 5.14/PGI 5.14	All		X	X		X	X	X	X							
Determine Offeror Non-Responsive Ref: APM 3.209(d)/PGI 3.209(d)	All		X	X		X				X						
Stop Work Order/Suspension of Work Ref: APM 6.508/PGI 6.508	All		X	X		X				X						

Approvals Matrix – Corporate Capacity

General Guidance:

A. Approval thresholds are aggregate with the exception of modifications which are approved at the dollar level of the mod itself, unless the mod will individually or cumulatively increase the total contract value by more than 15% of the original contract value.

B. See Division/Office Delegations on the Legal Division Web site at: Legal: Corporate Delegations of Authority. Some Divisions/Offices have instituted more restrictive approval thresholds.

C. The signature page of each document shall only contain the names of the preparer(s) with the appropriate recommendation, and those of the appropriate Approval Authorities. Concurrence shall be noted by signing/initialing the route sheet.

D. The respective ASB Assistant Director must review/concur on all documents that will be submitted to the ASB Deputy Director.

E. ASB Deputy Director must review/concur on all documents that will be submitted to the DOA Division Director.

Specific Footnotes:

(1) A separate Source Selection Plan is not required, **IF** the selection procedures are clearly described in the acquisition plan. If an acquisition plan is not required, or if the acquisition plan does not sufficiently address source selection planning, then a separate source selection plan is required.

(2) For modifications, the thresholds apply to the cumulative amount of the contract.

(3) For modifications, the thresholds apply to the amount of the increase, not the cumulative amount of the contract.

(4) Contract awards do not require legal review, unless substantial changes occur after legal review of the solicitation.

(5) Contract modifications do not require legal review, unless they involve an action listed in APM 5.1503(b)

(6) Board Approval shall be obtained before award or before issuance of modification. All Board Cases shall be supported by the new or revised acquisition plan, and the approved JNCP for non-competitive requirements. Ref: FDIC COO/CFO Memo dtd 2/20/2007

(7) The Chief Operating Officer (COO) has been delegated approval authority for the Office of Minority & Women Inclusion (OMWI), the Office of Legislative Affairs (OLA), and the Office of Ombudsman (OO). The Chief Financial Officer (CFO) has been delegated approval authority for the Division of Finance (DOF), the Division of Administration (DOA), and the Corporate University (CU). Both COO and CFO are delegated approval authority for those offices and/or divisions not listed above; and as such, both will have to approve those.

Approvals Matrix – Corporate Capacity

Additional Thresholds:

Subject:	APM Reference	PGI Reference	Threshold
Background Investigations	3.110/3.215/5.2	3.110/3.215/5.2	See APM/PGI
Buy American Act	5.12	5.12	>$10,000 (Micro-Purchase Threshold)
Commercial Goods/Services using Simplified Procurement Procedures	3.1	3.1	<$5,000,000
Competition Requirements	2.203/2.206/3.104/3.204	2.203/2.206/3.104/3.204	>$10,000
Contract Bundling	2.202		>$2,000,000
Contract Management Plan	6.404	6.404	>$1,000,000
Contractor Performance Evaluation	6.408	6,408	>$0
Davis Bacon Act	5.11	5.11	>$2,000
Earned Value Management	4.204	4.204	>$3,000,000 (CIRC)
Financial Capability Review	3.110/3.215	3.110/3.215	>$1,000,000
Insurance Requirements	5.8	5.8	See APM/PGI
Integrity and fitness representations and certifications	3.110/3.215	3.110/3.215	>$100,000
OM Nomination/Appointment	6.405	6.405	All Awards
Performance Based Acquisitions (when apropriate)	4.103	4.103	>$1,000,000
Requirements Package Checklist	2.107	2.107	>$100,000
Service Contract Act	5.11	5.11	>$2,500
Simplified Procurement Threshold in Emergency Situations	3.5	3.5	$250,000/$10,000,000
Simplified Procurements	3.1	3.1	< $100,000
Solicitation List	3.105/3.205	3.105/3.205	>$0
Subcontracting Plan (when subcontracting permitted)	5.6	5.6	>$500,000
Trade Agreements Act	5.12	5.12	See APM/PGI

Approvals Matrix – Receivership or Conservatorship Capacity

Document/Action	Threshold	Preparer		Concurrence						Approval Authority				
See General and specific notes on Pages 2 and 3		PM/OM	CS/CO	PM/OM	Program Office (1)	OMWI	Legal	ASB Assistant Director	ASB Deputy Director	Contracting Officer	ASB Assistant Director	ASB Deputy Director	Program Office (1)	Board of Directors
Acquisition Plan (AP)(2) Ref: APM 2.106/ PGI 2.106	≥$1M - ≤$5M	X	X			X	X				X			
	>$5M & all RBOAs	X	X			X	X	X				X		
Justification for Non-Competitive Procurement (JNCP) APM 2.206 /PGI 2.206	>$5000 to ≤$100,000 (MTF)	X	X							X				
	>$100,000 to <$500,000	X	X							X				
	≥$500,000 to <$1M	X	X								X			
	≥$1M to <$2M	X	X					X				X		
	≥$2M and all RBOAs	X	X					X				X		
Solicitation List Ref: APM 3.205/PGI 3.205	>$100,000	X	X			X				X				
Solicitation (RFP/RFQ) Ref: APM 5.1503/ PGI 5.1503	<$1M		X	X						X				
	≥$1M and all RBOAs		X	X			X				X			

Approvals Matrix – Receivership or Conservatorship Capacity

Document/Action	Threshold	Preparer		Concurrence						Approval Authority				
See General and specific notes on Pages 2 and 3		PM/OM	CS/CO	PM/OM	Program Office (1)	OMWI	Legal	ASB Assistant Director	ASB Deputy Director	Contracting Officer	ASB Assistant Director	ASB Deputy Director	Program Office (1)	Board of Directors
Source Selection Plan (2) Ref: APM 3.206/PGI 3.206	>$100,000 to ≤$1M	X	X							X				
	>$1M to <$5M	X	X			X	X				X			
	≥$5M and all RBOAs	X	X			X	X	X				X		
Selection Recommendation Report (SRR) APM 3.214/PGI 3.214	>$100,000 to <$500,000		X							X				
	≥$500,000 to <$1M		X	X							X			
	≥$1M to <$2M		X	X				X				X		
	≥$2M and all RBOAs		X	X				X				X		
Price Evaluation Memorandum (PEM) for a negotiated amount >15% of that in an approved JNCP. (3) PGI 3.204	>$100,000 to <$500,000		X							X				
	≥$500K to <$1M		X	X							X			
	≥$1M and all RBOAs		X	X				X				X		

Approvals Matrix – Receivership or Conservatorship Capacity

Document/Action	Threshold	Preparer		Concurrence						Approval Authority				
See General and specific notes on Pages 2 and 3		PM/OM	CS/CO	PM/OM	Program Office (1)	OMWI	Legal	ASB Assistant Director	ASB Deputy Director	Contracting Officer	ASB Assistant Director	ASB Deputy Director	Program Office (1)	Board of Directors
PEM for a negotiated amount ≤ 15% of that in an approved JNCP. (4) PGI 3.204	>$100,000 to <$500,000	X	X							X				
	≥$500K	X	X								X			
PEM for Simplified Procurements	>$10,000 to ≤$100,000	X	X							X				
Contract Awards (5) / Modifications (6)	All Dollars		X				X			X				
Board Approval - for new awards or a modification that increases contract value above the threshold (7)	≥$20M	X	X				X	X	X					X
Board Approval - for a negotiated amount greater than that previously approved by Board (7)	>15% increase in previous board approved amount/period	X	X				X	X	X					X

Approvals Matrix – Receivership or Conservatorship Capacity

Document/Action	Threshold	Preparer	Concurrence					Approval Authority		
See General and specific notes on Pages 2 and 3		CS/CO	PM/OM	OMWI	LEGAL	ASB Assistant Director	ASB Deputy Director	Contracting Officer	ASB Assistant Director	ASB Deputy Director
Ratification of Unauthorized Contractual Commitments (Recommendation Report) Ref: APM 1.211/PGI 1.211	≤$10,000	X			X				X	
	>$10,000	X			X	X				X
Assignment of Claims Ref: APM 6.507/PGI 6.507	All	X			X			X		
Contracting Officer Final Decision - Protest or Claim Ref: APM 5.14/PGI 5.14	All	X	X		X	X	X	X		
Determine Offeror Non-Responsive Ref: APM 3.209(d)/PGI 3.209(d)	All	X	X		X				X	
Stop Work Order/Suspension of Work Ref: APM 6.508/PGI 6.508	All	X	X		X				X	

Approvals Matrix – Receivership or Conservatorship Capacity

General Guidance:

A. These approval thresholds apply to FDIC receivership related contract actions in its Receivership or Conservatorship capacity that are for goods or services in support of activities related to potential failing or failed financial institutions.
B. Approval thresholds are aggregate with the exception of modifications which are approved at the dollar level of the mod itself, unless the mod will individually or cumulatively increase the total contract value by more than 15% of the original contract value.
C. The signature page of each document shall only contain the names of the preparer(s) with the appropriate recommendation, and those of the appropriate Approval Authorities. Concurrence shall be noted by signing/initialing the route sheet.
D. The respective ASB Assistant Director must review/concur on all documents that will be submitted to the ASB Deputy Director.

Specific Footnotes:

(1) "Concurrence" and "Approval" for each action listed herein shall be obtained by the program office, based upon the program office's established procurement authority delegations. This is the responsibility of the program office to obtain the proper concurrence and approval from their managers. RBOAs shall be treated by each office, for concurrence and approval purposes, as being at an "unlimited" dollar value (Board of Directors approval not required).

(2) A separate Source Selection Plan is not required, **IF** the selection procedures are clearly described in the acquisition plan. If an acquisition plan is not required or if the acquisition plan does not sufficiently address source selection planning then a separate source selection plan is required.
(3) For modifications, the thresholds apply to the cumulative amount of the contract.
(4) For modifications, the thresholds apply to the amount of the increase, not the cumulative amount of the contract.

(5) Contract awards do not require legal review, unless substantial changes occur after legal review of the solicitation.

(6) Contract modifications do not require legal review, unless they involve an action listed in APM 5.1503(b).

(7) Board Approval shall be obtained before award or before issuance of modification. All Board Cases shall be supported by the new or revised acquisition plan, and the approved JNCP for non-competitive requirements.

Approvals Matrix – Receivership or Conservatorship Capacity

Additional Thresholds:

Subject:	APM/PGI Reference	Threshold
Background Investigations	3.110, 3.215, 5.2	See APM/PGI
Buy American Act	5.12	>$10,000 (Micro-Purchase Threshold)
Commercial Goods/Services using Simplified Procurement Procedures	3.1	<$5,000,000
Competition Requirements	2.203, 2.206, 3.104, 3.204	>$10,000
Contract Bundling	2.202	>$2,000,000
Contract Management Plan	6.404	>$1,000,000
Contractor Performance Evaluation	6.408	>$0
Davis Bacon Act	5.11	>$2,000
Earned Value Management	4.204	>$3,000,000 (CIRC)
Financial Capability Review	3.110/3.215	>$1,000,000
Insurance Requirements	5.8	See APM/PGI
Integrity and fitness representations and certifications	3.110/3.215	>$100,000
OM Nomination/Appointment	6.405	All Awards
Performance Based Acquisitions (when appropriate)	4.103	>$1,000,000
Requirements Package Checklist	2.107	>$100,000
Service Contract Act	5.11	>$2,500
Simplified Procurement Threshold in Emergency Situations	3.5	$250,000/$10,000,000
Simplified Procurements	3.1	≤ $100,000
Solicitation List	3.105/3.205	>$0
Subcontracting Plan (when subcontracting permitted)	5.6	>$500,000
Trade Agreements Act	5.12	See APM/PGI

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APPENDIX C: FDIC PURCHASE CARD (P-CARD) GUIDE

FEDERAL DEPOSIT INSURANCE CORPORATION
INSURING AMERICA'S FUTURE

Federal Deposit Insurance Corporation

FDIC Purchase Card (P-Card) Guide

1/16/2020

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Chapter 1- Purchase Card Overview, Scope, and Goals

1.1 Overview

The Federal Deposit Insurance Corporation (FDIC) Purchase Card Program (P-Card Program) is established in compliance with the General Services Administration (GSA) SmartPay Program and managed by the Division of Administration, Acquisition Services Branch (DOA/ASB), Policy & Systems Section. The P-Card Guide includes definitions, roles and responsibilities, and processes to address the operation of the P-Card Program.

1.2 Scope

The policies and procedures in the P-Card Guide apply to purchases (transactions) made using the P-Card in Headquarters, Regional Offices and Field Offices. The P-Card may be used by authorized FDIC employees to make official purchases, only for the FDIC, in both its corporate and receivership capacities. The P-Card Program includes convenience checks as a payment method in limited circumstances. The term 'P-Card' throughout the P-Card Guide includes all products issued by the Bank that the FDIC selected to provide purchase cards and convenience checks to authorized FDIC employees ("issuing bank") under the P-Card Program.

1.3 Goals

The goals of the P-Card Program are to achieve savings in administrative time, reduce paperwork, and quickly purchase and receive goods and services needed for mission support. The P-Card Program achieves its goals by facilitating cash management practices through consolidating payments, reducing petty cash funds, and strengthening internal controls.

1.4 Definitions

Billing Cycle – The period in which all purchase transactions, credit and refund transactions made to a cardholder's P-Card account appear on a cardholder's monthly statement. The P-Card monthly billing cycle begins on the 23rd of the month and closes on the 22nd of the next month. If the 22nd of the month falls on the weekend, then the billing cycle will close the Friday before the 22nd.

Convenience Check - A paper check associated with a cardholder's P-Card account.

Merchant Category Code (MCC) – A four-digit number assigned to a business by credit card companies (for instance, VISA, MasterCard) when the business accepts one of these cards as a payment method. The code reflects the primary category in which the merchant does business. The MCC is determined by the business and is used to

classify the business by the type of goods or services it provides. MCCs may be used to restrict or manage the types of business concerns with which FDIC may do business.

Quasi-generic P-Card – A P-Card that is issued for use when confidentiality is required in making purchases before financial institution closings. The FDIC name or U.S. Government emblem is not identified on the P-Card.

Reconciliation Process - The verification of transactions in NFE by the cardholder and the approval of the transactions by the cardholder's P-Card Approving Official.

1.5 Policy, Agreements, Terms and Conditions, and Recurring Purchases

The P-Card is a convenient method for purchasing and paying for goods and services of typically low dollar value. Purchases may be made with the P-Card if:

(1) the cardholder complies with all areas of the P-Card Guide and appropriate sections of *the FDIC's Acquisition Policy Manual (APM)* and *Procedures, Guidance and Information (PGI);*

(2) the purchase does not require or allow a merchant's personnel to have access to the FDIC's network, or unescorted access to FDIC facilities/office, or access to sensitive information (including processing or sharing sensitive information);

(3) the purchase does not require a Statement of Work*; and

(4) the purchase does not involve the signing of an agreement or accepting a merchant's commercial terms and conditions, either on paper or electronically, before making the purchase*.

*Exceptions: When the cardholder or merchant requires a Statement of Work, an agreement to be signed, or commercial terms and conditions to be accepted, it typically is a purchase that more appropriately should be procured by a DOA/ASB Contracting Officer. Before making such purchase, the cardholder must first contact the P-Card Agency Program Coordinator (APC) or a DOA/ASB Contracting Officer to discuss the details of the purchase and determine if the purchase should be made by P-Card or by issuance of a FDIC contract. If the purchase is going to be made by P-Card, the cardholder must obtain, and file in the P-Card file, the Legal Division, Contracting & Risk Management Unit, Contract & Leasing Group's review and approval of the agreement or commercial terms and conditions before making the purchase. The cardholder must include a copy of the Legal Division's approval and the signed agreement and commercial terms and conditions in the P-Card File. The name of the Legal Division, Contracting & Risk Management Unit, Contract & Leasing Group's point of contact is provided on the DOA Buying Goods & Services P-Card Program website at: https://fdicnet.fdic.gov/content/doa/home/buying/purchase-card.html.

Recurring purchases are those in which payments are made to the same merchant, at various intervals (monthly, quarterly, etc.), to accommodate the nature of the goods or services and the merchant's normal commercial business payment practice.

Three examples of a recurring purchase include:

(1) Monthly payments for parking garage spaces for FDIC employees;

(2) Rental of equipment which the FDIC has agreed to pay weekly for a duration of time; or

(3) Employee participation at a non-FDIC facility fitness center in which payments are made monthly.

Recurring purchases with the same merchant are allowed when the cumulative total of any recurring requirement does not exceed $100,000 in a twelve (12) month period. If a recurring purchase may exceed $100,000 within 12 months, the cardholder must contact the APC for guidance before making the purchase. It may be more appropriate for the cardholder's Division/Office to work with a DOA/ASB Contracting Officer to award a contract to obtain the goods or services instead of using the P-Card.

1.6 Authority

1.601 P-Card Program Guiding Principles

FDIC policy and procedures for use of the P-Card are in the P-Card Guide. Whereas most government agencies participating in the General Services Administration (GSA) SmartPay master contract are subject to the Federal Acquisition Regulation, the FDIC is not. In using the GSA SmartPay master contract to obtain goods or services with the P-Card, the FDIC is bound by the terms and conditions of the GSA master contract and the FDIC task order issued against it. The DOA/ASB, Policy and Systems Section, is responsible for the overall management and integrity of the P-Card Program, including the development and implementation of policy and training, and the appointment of cardholders, P-Card Approving Officials, Alternate P-Card Approving Officials, and Division/Office Coordinators.

1.602 One-Time Deviations to P-Card Guide Policy

The ASB Deputy Director, DOA, is authorized to approve one-time deviations to procurement policy, which includes P-Card Guide policy. Such deviations are accomplished through the granting of a waiver, which is processed via email. A cardholder prepares the request for a waiver and must send the request to the APC at PCardProgram@fdic.gov and copy their P-Card Approving Official (PAO) and the DOA/ASB Assistant Director, Policy & Systems Section. The waiver request (email) must follow the format in P-Card Template 11, entitled, 'Request for Waiver to P-Card Guide Policy – Email Template', found on the DOA Buying Goods & Services P-Card

Program website at: https://fdicnet.fdic.gov/content/doa/home/buying/purchase-card.html. The APC or DOA/ASB Assistant Director, Policy & Systems Section, must acknowledge his/her concurrence on the email before submitting the request for waiver to the ASB Deputy Director for approval. Any approval or coordination required from other Divisions or Offices, or waivers to other Directives, must be obtained by the cardholder prior to submission, and must be included in the waiver request. The cardholder must place a copy of the approved waiver request in the P-Card file.

1.7 Roles and Responsibilities

The following roles are associated with the successful operation of the P-Card Program:

1) P-Card Agency Program Coordinator (APC) and Alternate Agency Program Coordinator (Alternate APC);
2) P-Card Division/Office Coordinator (D/OC);
3) P-Card Approving Official (PAO) and Alternate P-Card Approving Official (Alternate PAO); and
4) Cardholder

1.701 P-Card Agency Program Coordinator and Alternate Agency Program Coordinator

1.701(a) P-Card Agency Program Coordinator

The APC is the point of contact for the issuing bank, GSA, and P-Card Program participants, and must handle the following:

(6) Issue Cardholder Appointment Memorandum (Note: The APC will sign a Cardholder Appointment Memorandum for P-Card accounts with a single purchase limit of $10,000 or less. The Assistant Director, Policy & Systems Section will sign a Cardholder Appointment Memorandum for P-Card accounts with a single purchase limit greater than $10,000);

(7) Provide clarification and guidance to P-Card Program participants on P-Card policies and procedures;

(8) Perform day-to-day administrative responsibilities to manage the P-Card Program (e.g., review requests for new P-Card accounts or changes to existing P-Card accounts and maintain controls on P-Card accounts);

(9) Monitor and report P-Card Program activities to FDIC management;

(10) Assist the DOA/ASB Assistant Director, Policy and Systems Section, with developing and implementing P-Card policy;

(11) Oversee all aspects of the P-Card Program billing process;

(12) Ensure regular reviews of the P-Card Program are conducted; and

(13) Represent the FDIC at P-Card Program meetings with GSA and the issuing bank.

1.701(b) <u>P-Card Alternate Agency Program Coordinator</u>

The Alternate APC is the secondary individual who assists the APC in performing the APC duties stated in Section 1.701(a) of the P-Card Guide.

1.702 P-Card Division/Office Coordinator

Each Division/Office may request the APC to appoint one or more P-Card Division/Office Coordinators (D/OCs) to be the APC's primary point of contact to communicate information between the APC and cardholders, PAOs, and Alternate PAOs. A D/OC is not required for each Division/Office. Typically, the APC will suggest a D/OC be appointed for Divisions/Offices who have a large number of cardholders at FDIC Headquarters, Regional Offices and Field Offices.

The D/OC must handle the following:

(1) Ensure cardholders and PAOs or Alternate PAOs within the D/OC's Division/Office verify and approve all P-Card transactions within the time frame established by the APC;

(2) In the cardholder's absence, the D/OC must complete the verification of transactions for the cardholder to ensure there are no delays in the reconciliation process.

(3) Keep an up-to-date list of cardholders, PAOs, and Alternate PAOs within the D/OC's Division/Office and notify the APC of any changes immediately;

(4) Serve as the APC's point of contact to communicate information about the P-Card Program to cardholders, PAOs, and Alternate PAOs within the D/OC's Division/Office;

(5) Ensure cardholders, PAOs, and Alternate PAOs within the D/OC's Division/Office receive P-Card training and understand how to reconcile, verify and approve transactions on monthly statements in the FDIC's New Financial Environment (NFE), and use the issuing bank's electronic access system (EAS);

(6) Review and update, as necessary, the chartfields (accounting codes) that cardholders enter in NFE for charges (transactions) they reconcile on the monthly statement; and

(7) Report suspected P-Card or convenience check misuse to the APC immediately upon becoming aware of possible misuse.

1.703 P-Card Approving Official and Alternate P-Card Approving Official

1.703(a) P-Card Approving Official

The P-Card Approving Official (PAO) is the primary individual who oversees and monitors one or more designated cardholder's compliance with the P-Card Program policy and procedures. The PAO may not be subordinate to any cardholder under their supervisory authority.

The PAO must handle the following:

(1) Request the APC to establish cardholder P-Card accounts, per Section 2.102 of the P-Card Guide;

(2) Request the APC to increase or decrease the cardholder's single purchase limit, monthly purchase limit, or convenience check limit, when appropriate, per Section 2.403 of the P-Card Guide;

(3) Request the APC to remove P-Card personnel from P-Card accounts, per Section 2.402(a) of the P-Card Guide;

(4) Ensure the cardholder receives P-Card training and follows P-Card policies and procedures;

(5) Review the cardholder's P-Card file documentation before approving transactions on the cardholder's monthly statement in NFE. The PAO's review of P-Card file documentation and monthly statement is critical to the control and success of the P-Card Program;

(6) Ensure the cardholder's P-Card file includes required documentation, per Section 3.401 of the P-Card Guide;

(7) Ensure all charges (transactions) are allocated to the correct chartfields (accounting codes) in NFE;

(8) Ensure the cardholder completes the monthly statement reconciliation process in NFE within the billing cycle time frames;

(9) Review all cardholder transactions and complete the monthly statement approval process in NFE within the billing cycle timeframes (or, if unavailable, let the Alternate PAO know in advance that the Alternate PAO must complete the approval process);

(10) Ensure the cardholder clearly describes the purchase (transaction) and business purpose in the P-Card file and the monthly statement in NFE;

(11) Work with Division/Office budget personnel, as appropriate, to complete end-of-fiscal-year accruals for open P-Card obligations;

(12) Report suspected P-Card or convenience check misuse to the APC immediately upon becoming aware of possible misuse.

1.703(b) <u>Alternate P-Card Approving Official</u>

The Alternate P-Card Approving Official (Alternate PAO) is the secondary individual who oversees and monitors one or more designated cardholder's compliance with the P-Card Program policy and procedures. When the primary PAO is not available to review and approve cardholder purchases, the Alternate PAO must assume all duties of the primary PAO, as listed in Section 1.703(a) of the P-Card Guide. The Alternate PAO may not be subordinate to any cardholder under their supervisory authority.

1.704 Cardholder

The cardholder is a FDIC employee designated by their PAO or Alternate PAO, and appointed by the APC or DOA/ASB Assistant Director, Policy and Systems Section. The cardholder may use the P-Card to purchase goods and services for FDIC official business. The cardholder must follow the P-Card Guide and any restrictions cited in the Cardholder Appointment Memorandum when making purchases (transactions). Only a FDIC employee may be appointed as a cardholder. Use of the P-Card by a person other than the employee whose name is embossed on the P-Card is prohibited. The cardholder may also serve as a PAO, Alternate PAO, or D/OC, but the cardholder may not approve their own transactions on the monthly statement in NFE.

The cardholder must handle the following:

(1) Ensure purchases made using their P-Card or convenience check are proper, legal, and reasonable, and satisfy a FDIC official business need;

(2) Follow FDIC P-Card policies and procedures and FDIC Directives when making P-Card purchases;

(3) Safeguard the physical security of their P-Card, and the account number, and ensure the P-Card or P-Card account number is not used by anyone else;

(4) Safeguard unused convenience checks and keep an inventory of convenience checks to prevent loss, theft, or potential forgery;

(5) Ensure P-Card purchases do not exceed the delegated purchase limits stated in the Cardholder Appointment Memorandum;

(6) Ensure the prices paid for purchases are fair and reasonable and do not include sales tax;

(7) Document the reason for using a convenience check as a payment method instead of a P-Card, per Section 3.303 of the P-Card Guide, as applicable.

(8) Ensure all charges are allocated to the correct chartfields (accounting codes) in NFE;

(9) Create a P-Card file for every purchase and provide the P-Card file to the PAO to review before the PAO approves the transaction in NFE;

(10) Prepare and file supporting documentation in the P-Card file, per Section 3.401 of the P-Card Guide;

(11) Ensure a convenience check transaction posts to the cardholder's account promptly, and if a convenience check is lost, request the issuing bank to issue a "stop payment" before re-issuing a convenience check, per guidance stated in Section 3.306 of the P-Card Guide;

(12) Reconcile their monthly statement in NFE within the billing cycle time frames specified by the APC. Per Section 3.503 of the P-Card Guide, if the cardholder cannot verify their transactions within the billing cycle time frames (e.g., due to being out of the office on vacation, etc.), the cardholder must let their D/OC know to complete their verification on their behalf or notify the APC of replacement cardholder who will reconcile the cardholder's transactions. The APC will provide the replacement cardholder with permissions to reconcile the cardholder's transactions. Both cardholders must be assigned to the same PAO;

(13) Ensure the purchase transaction is clearly described in NFE when the cardholder completes the P-Card reconciliation process. Purchase description guidance is provided in Section 3.504(b) of the P-Card Guide;

(14) Respond promptly to inquiries about P-Card purchases that may be received from the issuing bank, APC, auditors, FDIC internal review staff, or the Division of Finance (DOF); and

(15) Report suspected P-Card or convenience check fraudulent activity to the APC and issuing bank immediately upon becoming aware of any fraudulent activity.

1.8 Separation of Duties

Key functions for making purchases (Cardholder role), verifying and approving cardholder purchases (PAO or Alternate PAO role), certifying P-Card invoices (APC role), and verifying and processing P-Card invoices for payment (DOF Accounts Payable role) must not be accomplished by the same FDIC employee on any one transaction. Additionally, the PAO or Alternate PAO must not be subordinate to any cardholder within their approval hierarchy.

The cardholder is not permitted to make purchases on their own behalf (e.g., the cardholder cannot use the P-Card to pay for a training course that he/she plans to attend. If payment for the training class will be made by P-Card, another cardholder must make the purchase.)

1.9 Misuse/Unauthorized Use – Consequences and Penalties

FDIC employees associated with the P-Card Program are responsible for safeguarding FDIC from misuse and unauthorized usage of the P-Card or other products provided by the issuing bank. The FDIC P-Card process includes controls to avoid and detect situations of intentional misuse and unauthorized use. FDIC employees who detect apparent misuse of the P-Card must immediately notify the APC of the possibility of misuse/unauthorized use. Examples of P-Card misuse include, but are not limited to:

(1) Purchases of unauthorized goods or services;

(2) Purchases of goods or services for personal use;

(3) Purchases by individuals other than the authorized cardholder whose name is imprinted on the front of the P-Card and/or convenience checks;

(4) Use of the P-Card account number by other than the authorized cardholder;

(5) Purchases by contractors;

(6) Returns for cash or store credits (All returns must be credited to the cardholder's P-Card account); and

(7) Advance payments to a merchant before receipt of goods or services. (Advance payments would only be authorized in a limited number of specific situations in which advance payments are standard in the industry, (e.g., post office box rentals, subscriptions, tuition, etc.).

The nature and severity of the misuse will determine the corrective actions taken by FDIC, which may range from:

(1) Counseling and retraining;

(2) Cancellation of the P-Card;

(3) Notation in the employee's performance evaluation;

(4) Formal reprimand;

(5) Repayment to the FDIC;

(6) Suspension of employment;

(7) Termination of employment; and

(8) Possible criminal prosecution.

1.10 Liability

The GSA SmartPay master contract defines liability for P-Card transactions. Financial liability for authorized transactions made by an authorized cardholder rests

with the FDIC. If an authorized cardholder uses the P-Card to make an unauthorized purchase, the FDIC is liable for payment and is responsible for taking appropriate action against the cardholder.

Chapter 2 – P-Card Program Training, Appointment, Authority and Administration

FDIC P-Cards, convenience checks, or other products offered by the issuing bank under the P-Card Program may only be issued to FDIC employees that have completed the requirements specified in Section 2.1 of the P-Card Guide (i.e., P-Card training, an application, and an Access Request and Certification System (ARCS) Request for NFE Systems Access). After these requirements have been completed, the DOA/ASB Assistant Director, Policy and Systems Section, or APC, may appoint the individual as a cardholder, PAO, Alternate PAO, or D/OC. Once appointed, the cardholder is authorized to use their P-Card and/or convenience checks to purchase goods and services for the FDIC.

2.1 P-Card Program Training and Appointment Process

2.101 P-Card Program Training Requirements

Training for all participants in the P-Card Program is essential to prevent purchasing process errors and to prevent fraud, waste and abuse within the P-Card Program. All participants in the P-Card Program must complete the FDIC's online Purchase Card Training Course, available through Corporate University. A FDIC employee who is interested in becoming a cardholder, PAO, Alternate PAO, or D/OC must complete the P-Card Training course <u>before</u> submitting a request to the APC to establish a new P-Card cardholder account or to become a PAO, Alternate PAO or D/OC. Thereafter, to remain appointed and to be able to continue to make and approve purchases, cardholders, PAOs, Alternate PAOs, and D/OCs must complete the FDIC's online Purchase Card Training course every three (3) years.

After completing the online P-Card Training Course, FDIC employees must print the training certification for their records. A copy of the training certification must be attached to the application for a P-Card account (as stated in Section 2.102(a)), and the application to become a PAO, Alternate PAO, or D/OC (as stated in Sections 2.102(b) and 2.102(c)).

2.102 Application for a P-Card Account and Application to Become a P-Card Approving Official, Alternate P-Card Approving Official, and Division/Office Coordinator:

2.102(a) <u>Application for a P-Card Account</u>

To request a P-Card account to become a cardholder, the FDIC employee who is asking for a P-Card account must first complete the FDIC's online P-Card Training course. Then, the FDIC employee must complete P-Card Template 1, entitled, '<u>Application for a P-Card Account</u>', and have their proposed P-Card Approving Official (PAO) or Alternate PAO send the completed application to the P-Card Agency Program

Coordinator (APC) at: PcardProgram@fdic.gov. The PcardProgram@fdic.gov email address is monitored by the APC and Alternate APC. If the FDIC employee's Division/Office has a Division/Office Coordinator (D/OC), the D/OC may send the completed P-Card Template 1 to the APC after sending it to the proposed PAO or Alternate PAO. P-Card Template 1 can be found on the DOA Buying Goods & Services P-Card Program website at: https://fdicnet.fdic.gov/content/doa/home/buying/purchase-card.html.

2.102(b) Application to become a P-Card Approving Official (PAO) or Alternate PAO:

To become a P-Card Approving Official (PAO) or Alternate PAO, the FDIC employee who is asking to become a PAO or Alternate PAO must first complete the FDIC's online P-Card Training course. Then, the FDIC employee must complete P-Card Template 2, entitled, 'Application to Become a P-Card Approving Official (PAO) or Alternate PAO', and have their supervisor send the completed P-Card Template 2 to the P-Card Agency Program Coordinator (APC) at: PcardProgram@fdic.gov. The PcardProgram@fdic.gov email address is monitored by the APC and Alternate APC. If the FDIC employee's Division/Office has a Division/Office Coordinator (D/OC), the D/OC may send the completed P-Card Template 2 to the APC after sending it to the employee's supervisor. P-Card Template 2 can be found on the DOA Buying Goods & Services P-Card Program website at: https://fdicnet.fdic.gov/content/doa/home/buying/purchase-card.html.

2.102(c) Application to become a P-Card Division/Office Coordinator:

To become a P-Card Division/Office Coordinator (D/OC), the FDIC employee who is asking to become a D/OC must first complete the FDIC's online P-Card Training course. Then, the FDIC employee must complete P-Card Template 3, entitled, 'Application to Become a P-Card Division/Office Coordinator (D/OC)', and have their supervisor send the completed application to the P-Card Agency Program Coordinator (APC) at: PcardProgram@fdic.gov. The PcardProgram@fdic.gov email address is monitored by the APC and Alternate APC. P-Card Template 3 can be found on the DOA Buying Goods & Services P-Card Program website at: https://fdicnet.fdic.gov/content/doa/home/buying/purchase-card.html.

2.103 NFE Systems Access for Cardholder, PAO, Alternate PAO, and D/OC

A cardholder, PAO, Alternate PAO, or D/OC must submit an ARCS request in the Access Request and Certification System (ARCS) to be assigned NFE systems access to perform P-Card program duties in NFE. Instructions for submitting an ARCS request for NFE access can be found on the DOA Buying Goods & Services P-Card Program website at: https://fdicnet.fdic.gov/content/dof/home/financial-mgmt/nfe/training-index.html#PCARD. The NFE profile/role to select on the ARCS request, and the reason the access is needed, is stated below:

P-Card Program Role	**Profile/Role to Select in ARCS for NFE Production Environment** **(i.e., "Profile – Production")**	**Reason the Profile/Role is Needed**
Cardholder	PCard Holder – Profile – Production	To allow the cardholder to verify their P-Card transactions to complete the P-card reconciliation process.
P-Card Approving Official (PAO) or Alternate PAO	PCard Approver – Profile - Production	To allow the PAO or Alternate PAO to approve P-Card transactions that cardholders have verified in NFE to complete the P-card reconciliation process.
Division/Office Coordinator (D/OC)	PCard Coordinator – Profile – Production	To allow the D/OC to view only their group of cardholders' profile page, and to review and update chartfields (accounting codes) that the cardholder uses for their P-Card transactions.

The requestor's supervisor must approve the ARCS request after submitting an application for a P-Card account (cardholder), or an application to become a PAO, Alternate PAO or D/OC. After the requestor's supervisor approves the ARCS, it will automatically route to the APC. The APC will hold off on approving the ARCS until after the APC completes a review of the application for a P-Card account, or to become a PAO, Alternate PAO or D/OC. If the application is approved, the APC will approve the requestor's ARCS request. If the application is denied, the APC will reject (not approve) the requestor's ARCS request.

2.2 Authority (Cardholder Appointment Memorandum and Purchase Card and Convenience Check Limits)

2.201 Cardholder Appointment Memorandum

After the P-Card account is established by the APC, the APC will issue a Cardholder Appointment Memorandum, signed by either the APC or the DOA/ASB Assistant Director, Policy & Systems Section. The Cardholder Appointment Memorandum confirms that the cardholder is delegated the authority to make authorized purchases for the FDIC using the P-Card and also convenience checks when the cardholder's P-Card account includes convenience checks. The APC will sign the Cardholder Appointment

Memorandum for a P-Card account with a single purchase limit of $10,000 or less. The DOA/ASB Assistant Director, Policy & Systems Section will sign the Cardholder Appointment Memorandum for a P-Card account with a single purchase limit of greater than $10,000. The Cardholder Appointment Memorandum specifies the cardholder's purchase limits (i.e., single purchase limit, convenience check limit, if applicable, and monthly purchase limit) and any specific restrictions placed on the use of the P-Card or convenience checks. The Cardholder Appointment Memorandum also includes the name of the cardholder's designated PAO or Alternate PAO.

If the APC makes a permanent change to the cardholder's P-Card account (e.g., a permanent (not temporary) change to the cardholder's purchase limits or designated PAO or Alternate PAO), the APC will issue a new Cardholder Appointment Memorandum, which will show the new P-Card account information.

The APC will send a scanned copy of the Cardholder Appointment Memorandum to the cardholder, and will copy the cardholder's PAO and Alternate PAO. The cardholder must review the Cardholder Appointment Memorandum and notify the APC at: PcardProgram@fdic.gov if the Cardholder Appointment Memorandum has any errors in the cardholder's Division/Office, location, purchase limits, or PAO or Alternate PAO name. The cardholder must keep a copy of their Cardholder Appointment Memorandum in the P-Card file.

2.202 Purchase Card and Convenience Check Limits

The DOA ASB Assistant Director, Policy and Systems Section, and the APC, establish the purchase limits for each P-Card account. No other FDIC employee has this authority, unless specifically delegated by the DOA/ASB Assistant Director, Policy and Systems Section. The purchase limits associated with the cardholder P-Card account are specified in the Cardholder Appointment Memorandum, and are explained below:

2.202(a) Single Purchase Limit

The single purchase limit (SPL) is the maximum amount the cardholder may charge for any single P-Card transaction. The SPL includes all costs associated with a purchase, including shipping and handling charges, surcharges, or credit card processing fees. The cardholder is subject to the specific SPL set forth in their Cardholder Appointment Memorandum. Neither the cardholder nor the merchant is permitted to split a single purchase into smaller amounts in order to avoid exceeding the SPL threshold. The SPL for a cardholder is generally not more than $2,500, unless a higher limit is justified due to organization business needs.

For recurring purchases addressed in Section 1.5 of the P-Card Guide, two SPLs apply and the cardholder must comply with both. The first SPL applies to the total overall amount of payments to be made to the merchant for the goods or services because this is the total FDIC obligation for which the cardholder is committing. The cardholder must have, or obtain, this initial SPL before reaching agreement with the merchant to provide

the goods or services for a stated period of time. The second SPL applies to each payment made to the merchant during the period of the agreement. Depending on the amount of each periodic payment to the merchant, the cardholder may or may not need their SPL increased for the duration of the agreement.

Examples – Assume for both of the following examples the cardholder's Cardholder Appointment Memorandum includes a SPL of $10,000:

Example 1: The cardholder plans to purchase employee participation at a non-FDIC facility fitness center for twelve months at a total cost of $48,000. The merchant will invoice the cardholder $4,000 monthly for twelve months. The cardholder's PAO must first request a temporary increase to the cardholder's SPL to increase the SPL from $5,000 to $48,000, in order for the cardholder to be provided an initial SPL that covers the cumulative amount of the purchase, $48,000 (12 X $4,000 = $48,000). The cardholder's SPL can be returned to its permanent amount of $5,000 to cover the monthly payments of $4,000.

Example 2: The cardholder plans to purchase employee participation at a non-FDIC facility fitness center for twelve months at a total cost of $72,000. The merchant will invoice the cardholder $6,000 monthly for twelve months. The cardholder's PAO must first request a temporary increase to the cardholder's SPL to increase the SPL from $5,000 to $72,000, in order for the cardholder to be provided an initial SPL that covers the cumulative amount of the purchase, $72,000 (12 X $6,000 = $72,000). The cardholder's PAO must also request a permanent increase to the cardholder's SPL from $5,000 to $6,000 to cover the monthly payments of $6,000.

2.202(b) Convenience Check Limit

The convenience check limit is the maximum amount the cardholder is authorized to spend on a purchase that is paid for using a convenience check ("convenience check transaction"). The convenience check limit may not exceed the cardholder's SPL. The cardholder must adhere to the specific convenience check limit that is printed on the front of their checks and also specified in their Cardholder Appointment Memorandum. The cardholder does not have the authority to alter the check limit amount that is printed on the front of the convenience check. A cardholder's convenience check limit is generally not more than $500 - $2,500, unless a higher limit is justified due to organization business needs. A convenience check transaction is posted against the cardholder's P-Card account and applied to the cardholder's authorized purchase limits. The cardholder must not write a check that exceeds their convenience check limit. The cardholder must monitor and reconcile cleared convenience checks against their authorized monthly purchase limit.

2.202(c) Monthly Purchase Limit

The monthly purchase limit (MPL) is the maximum cumulative amount the cardholder may charge in any single monthly billing cycle (i.e., all purchase card and convenience

check transactions combined.) The cardholder is subject to the specific monthly purchase limit set forth in their Cardholder Appointment Memorandum. The MPL for a cardholder is generally not more than $5,000 - $10,000, unless a higher limit is justified due to organization business needs. The cardholder must keep track of the purchases they make during the billing cycle so they don't exceed their monthly purchase limit.

2.3 Administrative Procedures for Establishing a P-Card Account and Replacement P-Cards

2.301 Establishing a P-Card Account

The DOA/ASB P-Card Program Administrators (i.e., the APC, Alternate APC and Assistant Director, Policy and Systems Section) strive to review, approve, and process a request for a new P-Card account within three (3) business days from the date all requirements of Section 2.1 of the P-Card Guide have been met. To expedite processing, it is important for the requestor to submit all of the required information (stated in Section 2.1 of the P-Card Guide) at one time to the PcardProgram@fdic.gov email address.

2.301(a) P-Card Program APC Review Process

After the requirements of Section 2.1 of the P-Card Guide have been met, the APC will review the request for a P-Card account. For a P-Card account that will have a SPL of $10,000 or less, the APC will make the decision to approve or deny the request, taking into consideration the reason a P-Card account is needed, the reasonableness of the purchase limits based on purchases planned, and the number of P-Card accounts the requestor's Division/Branch/Section already has established. For a P-Card account that will have a SPL of greater than $10,000, the APC will review the request, and if the APC concurs with the establishment of the P-Card account, the APC will recommend approval to the DOA/ASB Assistant Director, Policy & Systems Section. The DOA/ASB Assistant Director, Policy & Systems Section will then review the request and make the decision to approve or deny the request. If the request for a P-Card account is denied, the APC will inform the requestor of the reason for not approving the request.

After the request for a P-Card account is approved, the APC will process the application for a P-Card account through the issuing bank's Electronic Access System (EAS). The APC will notify the requestor that the request is approved and advise the cardholder their P-Card, and convenience checks, if applicable, will be mailed to them within 7-10 business days. The APC will also issue a Cardholder Appointment Memorandum to the cardholder, which delegates the cardholder the authority to make authorized purchases for the FDIC using the P-Card and/or convenience checks, if applicable, and specifies the cardholder's purchase limits.

2.302 Distribution of P-Card and Convenience Checks, Cardholder Activation Process, Replacement P-Cards, and Ordering Convenience Checks

Within 7-14 business days after the APC establishes the cardholder's P-Card account, the issuing bank will mail the P-Card and associated convenience checks, if applicable, directly to the cardholder at the work address specified during account set-up. Upon receipt of a P-Card, the cardholder must contact the issuing bank and follow the issuing bank's instructions for P-Card activation. As an added measure to monitor P-Card activity on a real-time basis, the cardholder is encouraged to register for access to the issuing bank's Electronic Access System (EAS) to obtain online access to their P-Card account. Access to the issuing bank's EAS will permit the cardholder to view P-Card transactions and dispute inaccurate or fraudulent charges before the end of the billing cycle. The cardholder may also use the EAS to view their statement when it is available for download. Instructions on how to register in the issuing bank's EAS are available on the DOA Buying Goods & Services P-Card Program website at: https://fdicnet.fdic.gov/content/doa/home/buying/purchase-card.html.

When a P-Card expires, the issuing bank will send the cardholder a new one. The cardholder must call the issuing bank if a replacement P-Card is not received before the expiration date listed on the current P-Card. If the cardholder's P-Card account includes convenience checks and more checks are needed, the cardholder must call the issuing bank to request additional convenience checks.

2.4 Changes to P-Card Account and P-Card Roles

This section of the P-Card Guide describes the process P-Card Program personnel must follow to request any of the changes described below:

(1) Change to P-Card account to update Work Address, Employee Name Change, or Email Address/Network ID) – See Section 2.401 and P-Card Template 4;

(2) Change to P-Card role due to resignation, reassignment, or removal of P-Card personnel – See Section 2.402 and P-Card Template 4;

(3) Change to purchase limit(s) – See Section 2.403 and P-Card Template 5; and

(4) Change to P-Card account to remove or add convenience checks – See Section 2.404 and P-Card Template 5.

The DOA/ASB P-Card Program Administrators (i.e., the APC, Alternate APC and Assistant Director, Policy and Systems Section) strive to review, approve, and process a change to a P-Card account or P-Card role within three (3) business days from the date all requirements for the applicable change have been met, per Section 2.4 of the P-Card Guide.

2.401 Change to P-Card Account to Update Work Address, Employee Name, or Email Address/Network ID

P-Card Program personnel (the cardholder, PAO, Alternate PAO, and D/OC) must complete P-Card Template 4, entitled, 'P-Card Account or P-Card Role Change Request' and send it to the APC immediately to inform the APC of a change to the following account information:

(1) Work address;

(2) Employee name; or

(3) FDIC email address/network ID (which often occurs after an employee's name changes).

The completed P-Card Template 4 must be submitted to the APC at: PcardProgram@fdic.gov. The person who submits the completed template must copy the P-Card Program personnel who are associated with the P-Card account (e.g., if the cardholder's name changes, the cardholder must copy their designated PAO, Alternate PAO, and D/OC; if a PAO's name changes, the PAO must copy all cardholders assigned to the PAO, and Alternate PAOs and D/OCs for the cardholder P-Card accounts). The APC will notify the issuing bank so the changes will be made in the issuing bank's system. The issuing bank will send a new P-Card and convenience checks, if applicable, to the cardholder if their name changes. If the cardholder's work address changes, future P-Cards, convenience checks, if applicable, and P-Card correspondence will be mailed to the cardholder's new work address.

2.402 Change to P-Card Account Due to Resignation, Reassignment, or Removal of Purchase Card Program Personnel

2.402(a) Removal of Cardholder (P-Card Account Cancellation):

When the cardholder plans to resign from the FDIC, or will be reassigned to another Division/Office, the cardholder must notify the PAO and Alternate PAO of their planned departure date. The PAO must immediately notify the APC, in writing, by completing P-Card Template 4, entitled, 'P-Card Account or P-Card Role Change Request', of the need to cancel the cardholder's P-Card account due to the cardholder's resignation, reassignment to another Division/Office, or when the PAO determines the cardholder no longer requires a P-Card.

The completed P-Card Template 4 must include the effective date for the P-Card account cancellation. The effective date should be at least one billing cycle in advance of an employee's pending resignation or reassignment to ensure all transactions made by the cardholder can be reconciled, verified and approved before the cardholder resigns, or is reassigned to another Division/Office, or the account is cancelled for other

reasons. Untimely cancellation of the cardholder's P-Card account for a separating employee increases the risk of unauthorized use of a P-card.

The PAO must send the completed P-Card Template 4 to the APC (and copy the respective Alternate PAO and cardholder) at: PcardProgram@fdic.gov.

In addition to the PAO notifying the APC of the effective date for cancelling the cardholder's P-Card, the following steps must be taken in support of the cardholder's resignation or reassignment to another Division/Office:

(1) FDIC pre-exit clearance procedures for FDIC employees must be followed;

(2) The cardholder and the PAO must jointly destroy the cardholder's P-Card and convenience checks; and

(3) The cardholder must provide all P-Card files and supporting documentation to the PAO.

The APC will cancel the cardholder's P-Card account and will submit written confirmation of the cancellation to the cardholder, PAO, Alternate PAO, and D/OC.

2.402(b) Removal of P-Card Approving Official (PAO) or Alternate PAO:

When a PAO or Alternate PAO plans to resign from the FDIC, or will be reassigned to another Division/Office, or will be removed from the PAO role, the PAO's supervisor or Alternate PAO's supervisor must notify the APC, in writing, by completing P-Card Template 4, entitled, 'P-Card Account or P-Card Role Change Request'. The completed P-Card Template 4 must include the effective date for the PAO or Alternate PAO to be removed from cardholder P-Card account(s). The effective date should be at least one billing cycle before the PAO or Alternate PAO's departure, reassignment, or removal, so a new PAO or Alternate PAO can be trained and appointed to the PAO or Alternate PAO role. The PAO's supervisor, Alternate PAO's supervisor or D/OC must send the completed P-Card Template 4 to the APC (and copy the respective PAO or Alternate PAO) at: PcardProgram@fdic.gov.

The PAO's supervisor, or Alternate PAO's supervisor, must also complete P-Card Template 2 for a PAO or Alternate PAO to replace the departing (removed) PAO or Alternate PAO (per Section 2.102(b) of the P-Card Guide). The departing PAO or Alternate PAO must transition all P-Card files and supporting documentation to the newly appointed PAO or to the D/OC assigned to the P-Card account(s) if a new PAO has not been appointed before their departure, reassignment, or removal of PAO duties.

2.402(c) Removal of P-Card Division/Office Coordinator:

When a D/OC plans to resign from the FDIC, or will be reassigned to another Division/Office, or will be removed from the D/OC role, the D/OC's supervisor must notify the APC, in writing, by completing P-Card Template 4, entitled, 'P-Card Account or P-Card Role Change Request'. The completed P-Card Template 4 must include the

effective date for the D/OC to be removed. The effective date should be at least one billing cycle before the D/OC's departure, reassignment, or removal, so a new D/OC can be trained and appointed to the D/OC role. The D/OC's supervisor must send the completed P-Card Template 4 to the APC at: PcardProgram@fdic.gov.

The D/OC's supervisor must also complete P-Card Template 3 for another employee within their Division/Office become a D/OC to replace the departing (removed) D/OC (per Section 2.102(c) of the P-Card Guide). The departing D/OC must transition all P-Card files and supporting documentation to the newly appointed D/OC, or to the applicable PAO if a new D/OC has not been appointed, before their departure, reassignment, or removal of D/OC duties.

2.403 Temporary or Permanent Change to Purchase Limit(s)

At any time after a P-Card account is established, the APC may change the cardholder's purchase limits temporarily, or permanently.

Temporary changes to purchase limits are typically requested to allow the cardholder to make a one-time purchase that currently exceeds their current SPL. Temporary changes to purchase limits are rarely needed because the APC encourages Divisions and Offices to first seek other alternatives including having another cardholder who has a higher SPL within their Division/Office to make the purchase.

Permanent changes to purchase limits are typically requested to accommodate the Division/Office's buying needs when the PAO or Alternate PAO determines the cardholder will need to make purchases that are less than or more than their current SPL or their MPL on a regular basis going forward.

2.403(a) Change to Cardholder's Purchase Limit(s)

To request the APC to make a temporary or permanent change to the cardholder's single purchase limit, convenience check limit, or monthly purchase limit, the cardholder's PAO or Alternate PAO must first complete and approve P-Card Template 5, entitled, 'Cardholder Purchase Limit and Convenience Check Change Request', and send the completed template to the APC at: PcardProgram@fdic.gov. The APC will review the purchase limit change request for completeness, and consider the justification for the need to change the cardholder's purchase limit(s). For P-Card accounts with a SPL of $10,000 or less, the APC will approve or deny the purchase limit change request. For P-Card accounts with a SPL greater than $10,000 (current SPL or proposed new SPL), the APC will review the request and recommend that the DOA/ASB Assistant Director, Policy & Systems Section either approve or deny the purchase limit change request. The DOA/ASB Assistant Director may approve, deny, or recommend other procurement options. A purchase limit change request must be approved by the APC or DOA/ASB Assistant Director, Policy & Systems Section, before the cardholder makes the purchase or commitment to a merchant.

Although most changes to cardholder purchase limits are requested by the PAO or Alternate PAO, the APC may also, occasionally, recommend a change to the cardholder's purchase limits based on P-Card usage, on-going P-Card reviews, or other reasons, in an effort to reduce risk under the P-Card Program. In these cases, the APC will notify or request the PAO or Alternate PAO's concurrence before making any change to the cardholder's purchase limits.

2.404 Remove or Add Convenience Checks

2.404(a) Change to P-Card Account to Remove Convenience Checks

If the cardholder's P-Card account includes convenience checks and the cardholder or PAO determines the cardholder no longer needs convenience checks, the PAO or Alternate PAO must request the APC to update the P-Card account to remove convenience checks. Specifically, the PAO or Alternate APC must complete P-Card Template 5, entitled, 'Cardholder Purchase Limit and Convenience Check Change Request', and send the completed template to the APC at: PcardProgram@fdic.gov. Before completing P-Card Template 5, the PAO must confirm with the cardholder that all convenience checks issued by the cardholder have posted to their P-Card account (i.e., all checks have cleared).
Upon receipt of the completed P-Card Template 5, the APC will make the changes to the P-Card account and will notify the issuing bank and cardholder that the convenience checks have been removed (cancelled) from the P-Card account. Immediately thereafter, the cardholder and the PAO must jointly destroy unused convenience checks. The APC will also issue a new Cardholder Appointment Memorandum to the cardholder that shows the changes to the cardholder's P-Card account (i.e., the new Cardholder Appointment Memorandum will state the P-Card account does not include convenience checks).

2.404(b) Change to P-Card Account to Add Convenience Checks

If convenience checks are not initially requested when a P-Card account is established, convenience checks may be requested after a P-Card account is established if the PAO or Alternate PAO determines the cardholder requires convenience checks. To request convenience checks to be added to a cardholder's P-Card account, the PAO or Alternate PAO must complete P-Card Template 5, entitled, 'Cardholder Purchase Limit and Convenience Check Change Request', and send the completed template to the APC at: PcardProgram@fdic.gov.

Upon receipt of the completed P-Card Template 5, the APC will consider the reason convenience checks are needed, the reasonableness of the proposed convenience check purchase limit based on purchases planned, and the number of P-Card accounts with convenience checks the requestor's Division/Branch/Section already has established. For P-Card accounts with a SPL of $10,000 or less, the APC will approve or deny the request to add convenience checks to a P-Card Account. For P-Card

accounts with a SPL of greater than $10,000, the APC will review the request, and recommend that the DOA/ASB Assistant Director, Policy & Systems Section either approve or deny the request. The DOA/ASB Assistant Director, Policy & Systems Section will approve or deny the request. If the request to add convenience checks to a P-Card Account is denied, the APC will inform the requestor of the reason for not approving the request.

After the request to add convenience checks is approved, the APC will process the request through the issuing bank's Electronic Access System (EAS). The APC will notify the requestor that the request is approved and advise the cardholder their convenience checks will be mailed to the cardholder's work address within 7-10 business days. The APC will also issue a new Cardholder Appointment Memorandum to the cardholder that shows the changes to the cardholder's P-Card account (i.e., the new Cardholder Appointment Memorandum will state the P-Card account includes convenience checks and the cardholder's purchase limits stated in the Cardholder Appointment Memorandum will be updated to include the convenience check limit).

2.405 Report Lost or Stolen Purchase Card, Convenience Checks, and Fraudulent Activity

The cardholder must promptly report a lost or stolen P-Card or convenience check, or if they believe their P-Card account number or any convenience check has been compromised or used in a fraudulent manner. The cardholder must first notify the issuing bank by calling the toll-free phone number listed on the back of the P-Card. Additionally, the cardholder must notify, in writing via email, their designated PAO and Alternate PAO and the APC at: PCardProgram@fdic.gov. The cardholder must inform the issuing bank that their P-Card account includes convenience checks when convenience checks are associated with the cardholder's P-Card account.

Per Section 3.602(b) of the P-Card Guide, to dispute a fraudulent charge, the cardholder must complete the issuing bank's dispute form, entitled, 'Cardholder Statement of Questioned Item', which can be found on the DOA Buying Goods & Services P-Card Program website at: https://fdicnet.fdic.gov/content/doa/home/buying/purchase-card.html, and send the completed form to the issuing bank at the address listed on the form.

When reporting a lost or stolen P-Card or convenience check, or fraudulent activity, the issuing bank may ask the cardholder to answer questions about the cardholder's P-Card or convenience check activity to help the issuing bank identify any fraudulent purchase attempts (e.g., recent transactions, recent checks that have cleared, etc.). Once the issuing bank confirms the information, it will cancel the cardholder's P-Card. The issuing bank may place a "stop payment" on lost or stolen checks. When the cardholder's P-Card is cancelled, if convenience checks are associated with the P-Card account, the convenience checks also become invalid. The cardholder and PAO must jointly, and promptly, destroy the cancelled P-Card and unused convenience checks associated with the cancelled P-Card account. The issuing bank will issue a new P-

Card and convenience checks, as applicable, to the cardholder. The replacement P-Card and convenience checks will be associated with the new P-Card account number.

A P-Card that is reported lost or stolen is immediately blocked from additional transactions. If charges are made before the P-Card is blocked or cancelled, the cardholder must dispute any fraudulent (unauthorized) charges, per Section 3.602(b) of the P-Card Guide.

Chapter 3 - Operational Guidance and Procedures for Using P-Card and Convenience Checks

3.1 Permissible, Prohibited and Restricted Use

The use of a P-Card or convenience check is authorized strictly for the purchase of goods or services for official FDIC business. To differentiate the P-Card from a personal credit card, the P-Card is specifically designed to show the Great Seal of the United States and the words “United States of America”. The Purchase Card also shows the words, “GSA SmartPay 3”, “U.S. Government Tax Exempt”, and “Purchase”.

3.101 Permissible Use

Goods and services for FDIC business which do not exceed the cardholder’s single purchase limit and are not specifically prohibited or restricted by the Cardholder Appointment Memorandum, P-Card Guide, law, FDIC directive, or Merchant Category Code, may be purchased from any merchant who accepts the P-Card as a payment method. The cardholder must ensure that a purchase is compliant with all applicable FDIC directives and guidelines and document the P-Card file with required supporting documentation, per Section 3.401 of the P-Card Guide.

Some examples of permissible P-Card purchases are:

(1) Purchases for the FDIC or a Division/Office to show expressions of sympathy or acknowledge personal events when authorized and approved under FDIC Directive 2800.1, *Expressions of Sympathy and Acknowledgment of Personal Events* (https://fdicnet.fdic.gov/content/dam/DOA/documents/rim/directives/2000/2800-1.doc) (e.g., Up to $80.00 for a floral arrangement, fruit basket, or donation to a charitable organization in the event of the hospitalization or lengthy illness of an employee; up to $80.00 for a floral arrangement or fruit basket upon the birth or adoption of a child by an employee and his/her spouse; or up to $80.00 for the purchase of a memory box in the event of the death of an employee or death of an employee’s family member.)

(2) External training courses when authorized and approved under FDIC Directive 2600.1, *FDIC Learning and Professional Development Policy* (https://fdicnet.fdic.gov/content/dam/DOA/documents/rim/directives/2000/2600-1.doc);

(3) FDIC-owned motor vehicle maintenance repair services and fuel;

(4) Merchandise from the FDIC Online Store to fulfil Acknowledgement of Excellence awards, when authorized under FDIC Directive 2420.1, *Rewards and Recognitions Program* (https://fdicnet.fdic.gov/content/dam/DOA/documents/rim/directives/2000/2

420-1.doc). However, the cardholder is prohibited from making a purchase from the FDIC Online Store for an Acknowledgement of Excellence award on his or her own behalf. Per FDIC Directive 2420.1 ('FDIC Rewards and Recognition Program'), only designated contacts within each Division/Office are permitted to make purchases from the FDIC Online Store. (Note: If the FDIC Online Store is not operational for employee's use, the cardholder is not permitted to purchase merchandise from any other merchant for the purpose of fulfilling an Acknowledgement of Excellence award);

(5) Food or beverages for FDIC-Sponsored Retirement Receptions for retiring employees located in FDIC Regional or Field Offices, when such food or beverages are purchased per FDIC Directive 3400.1, 'Request for Catering Services for Official Business Meetings, Conferences and Functions'. Under FDIC Directive 3400.1, food for FDIC-Sponsored Retirement Receptions may include: Non-alcoholic beverages such as punch and coffee, sheet cake, cookies, fruit, cheese, and vegetable platters. (Note: The P-Card may not be used to pay for food or beverages for retirement receptions at FDIC Headquarters locations); and

(6) Off-site conference and meeting rooms with conference support, including related telecommunications costs, when authorized and approved under FDIC Directive 1010.2, Conference, Meeting and Symposium Planning Polices Procedures, and Approval Requirements for Using FDIC Funds for These Activities and How To Guide-Conference Planning processes are followed: http://fdic01/division/doa/buying/goods/conferenceplanning.html. There are specific guidelines in FDIC Directive 1010.2 and How To Guide-Conference Planning about who is permitted to pay for any expenses associated with a conference, as well as what expenses are permitted when approved on form FDIC 2600/22, 'Conference Request'.

3.102 Prohibited Use

The P-Card or a convenience check must **not** be used for the following purchases, as such purchases are prohibited:

(1) 'Split Purchase' – The cardholder or merchant must not break up a larger or higher value purchase (or requirement) so it "fits" under the cardholder's single purchase limit. This means the cardholder or merchant may not place two or more separate orders for goods or services, or invoice or pay for a purchase in separate transactions, to avoid exceeding the cardholder's single purchase limit or the FDIC's competition threshold ($10,000). This practice is strictly prohibited. Indicators of a 'split purchase' may include sequential invoice numbers, receipts close in time—for example, minutes apart—and sequential purchase transactions with similar items purchased the same day or within a few days of each other;

(2) A purchase that would require a merchant's personnel to have access to the FDIC's network, or unescorted access to FDIC facilities/office, or access to sensitive information (including processing or sharing sensitive information);

(3) A purchase of food or beverages for routine meetings as such expenses are considered personal expenses. This includes meals and/or refreshments served at routine meetings with members of the same organizational group or frequent gatherings by the same group of individuals *(e.g., staff meetings, mentor/mentee meetings, meetings with detailees, meetings to recognize employees for various reasons such as an anniversary of employment, successful completion of a project/assignment, personal celebratory meetings, etc.).* A meeting should be scheduled in a manner that would avoid costs to the FDIC. Scheduling a meeting during what is typically an employee's breakfast time or lunch time does not mean food, meals or refreshments can be purchased and categorized as "official business" or "routine meeting";

(4) A purchase of alcohol beverages;

(5) A purchase that involves official travel expenses (e.g., transportation expenses, lodging, meals, or vehicle rentals), as travel expenses are not authorized to be paid using the P-Card. The FDIC has a Travel Card Program for reimbursement of official travel expenses;

(6) A purchase that involves local transportation expenses incurred while conducting business on behalf of the FDIC while not in travel status (e.g., transit train, metro train, mileage reimbursement, toll fares, parking costs, etc.), as these expenses are to be paid through the Division of Finance's Petty Cash Reimbursement Program;

(7) A purchase that involves travel expenses incurred by non-FDIC individuals. The FDIC's Division of Finance has a travel reimbursement process for invitational travel, as set forth in Chapter 12.D of the Regular Duty Travel Regulations (e.g., travel authorized for persons who are not FDIC employees but who must travel to participate in activities directly related to official FDIC business). The Regular Duty Travel Regulations can be found on DOF's website at: https://fdicnet.fdic.gov/content/dof/home/travel/Reg-duty-travel-regs.html

(8) A purchase that involves the signing/acceptance of a software license agreement;

(9) A purchase that involves third party payment processing (e.g., PayPal), as this payment method is considered high risk and cannot be disputed;

(10) A purchase for professional licenses, certifications, or memberships, as these expenses are to be paid for per FDIC Directive 2660.3, 'FDIC Professional Dues Reimbursement Program'. (Reimbursement claims procedures for licenses, certifications, and memberships are outlined on DOF's website under the Employee Supplemental Payment System (ESPS), Professional Dues Reimbursement Program);

(11) A purchase of a membership to a wholesale club (e.g., SAM's Club, Costco, BJ's Wholesale Club, etc.). Also, the cardholder must not use a personal membership to pay for goods or services at wholesale clubs using the P-Card or a convenience check;

(12) A purchase of a retail membership (e.g., Amazon Prime Membership);

(13) A purchase that involves the cardholder using rewards or incentives for personal use or private gain. Although registration and participation in a merchant's incentive program, such as "rewards points/dollars", is permitted when using the P-Card, a cardholder is prohibited from using rewards or incentives for personal use or private gain. Any earned rewards or incentives are property of the FDIC and may only be used for official business purposes. The rewards or incentives must be used for future government purchases or to benefit the FDIC in some way;

(14) A purchase of a grocery delivery or personal shopper service fee (e.g., Peapod by Giant, ShopRite from Home, FreshDirect Delivery, Instacart, DoorDash, TomThumb.com, etc.);

(15) A purchase of a long term rental or lease of land or buildings;

(16) A purchase of telecommunications (telephone) services, unless specifically authorized by, and purchased by, the Chief Information Officer Organization (CIOO);

(17) A cash advance from a bank teller or automated teller machine (ATM); and

(18) A payment to a FDIC or government employee for any reason.

3.103 Restricted Use

Only specifically designated cardholders are authorized to purchase the goods or services described in this section, unless special approval is obtained from the responsible Division/Office and the APC, and documented in the cardholder's P-Card file.

3.103(a) <u>Information Technology Goods or Services</u>

Only designated Chief Information Officer Organization (CIOO) cardholders are authorized to purchase information technology (IT) goods (e.g., IT hardware/software) or services, including maintenance agreements and extended warranties. CIOO cardholders include cardholders within the CIOO's Division of Information Technology (DIT), the Office of Chief Information Security Officer (OCISO), and the Office of CIO Management Services (OCMS). Cardholders outside of CIOO should instruct division and office requestors to contact their CIOO representative to purchase information technology goods or services. It is important for cardholders within CIOO to be mindful of the prohibition against making a P-Card purchase that would require a merchant's personnel to have access to the FDIC's network, or unescorted access to FDIC facilities/office, or access to sensitive information (including processing or sharing

sensitive information).

3.103(b) Facilities Management Goods or Services

Only designated cardholders in the DOA Corporate Services Branch (CSB), are authorized to purchase items associated with facilities management. Examples of facilities management goods or services include:

(1) Office furniture, artwork, and related goods or services;

(2) Building repairs, carpet repair, reconfiguration of work stations;

(3) Locksmith services or duplicate keys;

(4) Equipment purchase, maintenance, and repairs; and

(5) Cable television (TV) services.

It is important for a DOA/CSB cardholder to be mindful that FDIC has many contracts in place for facilities management. The cardholder must not make a purchase to obtain goods or services that are already within scope of an existing FDIC contract. It is important for cardholders within DOA/CSB to be mindful of the prohibition against making a P-Card purchase that would require a merchant's personnel to have access to the FDIC's network, or unescorted access to FDIC facilities/office, or access to sensitive information (including processing or sharing sensitive information).

3.103(c) Periodicals, Books, and Subscription Goods or Services

Only designated cardholders in the DOA/CSB, Library and Public Information Center Unit are authorized to purchase periodicals or subscription-related goods or services. Requestors outside of DOA/CSB must contact a designated DOA/CSB library cardholder to purchase the periodical or subscription on their behalf. See FDIC Directive 3020.2, *Ordering Videos, Books and Periodical/Newspaper Subscriptions in Print or Non-print Format* (https://fdicnet.fdic.gov/content/dam/DOA/documents/rim/directives/3000/3020-2.doc) and FDIC Directive 1330.2, *Requesting Commercially Available On-line Information Services* (https://fdicnet.fdic.gov/content/dam/DOA/documents/rim/directives/1000/1330-2.doc) for a more detailed description of periodicals or subscription services purchasing requirements.

3.103(d) Goods or Services to Support Outside Counsel

Only designated cardholders in the Legal Division, Contracting & Risk Management Unit, Outside Counsel Management Group, are authorized to purchase goods or services to support outside counsel services. It is important for cardholders within the Legal Division to be mindful of the prohibition against making a P-Card purchase that would require a merchant's personnel to have access to the FDIC's network, or

unescorted access to FDIC facilities/office, or access to sensitive information (including processing or sharing sensitive information).

3.103(e) Resolution and Receivership Goods and Services

Only designated cardholders in the Division of Resolutions and Receiverships (DRR), DOA, and specifically assigned cardholders from other FDIC Divisions, are authorized to purchase goods or services to support the FDIC's resolution and receivership activities. Examples of resolution and receivership goods and services include:

(1) Food and beverages (meal service) for the closing team for the first night of a Failed Financial Institution closing, if appropriate, per Section 4 ('Facilities Manager') of DRR's Failed Financial Institution Closing Manual.

(2) Locksmiths, building repairs, etc. for assets in receivership; and

(3) Asset liquidation services to manage and dispose of assets held by the FDIC in its receivership capacity, or receivership assets that have been assigned to the FDIC in its corporate capacity;

It is important for the cardholder to be mindful that the FDIC has many contracts in place to complete the FDIC's resolution and receivership functions. The cardholder must not make a purchase to obtain goods or services that are already within scope of an existing FDIC contract. It is important for cardholders within DRR also to be mindful of the prohibition against making a P-Card purchase that would require a merchant's personnel to have access to the FDIC's network, or unescorted access to FDIC facilities/office, or access to sensitive information (including processing or sharing sensitive information).

3.2 Purchasing Procedures

A purchase may only be made by the authorized cardholder whose name is imprinted on the P-Card or convenience check. The cardholder is the only individual who (1) has the delegated procurement authority to contact a merchant and request a merchant to provide a price quote for goods or services, which are within the cardholder's P-Card purchase limits, and (2) may pay for goods or services using the cardholder's P-Card or a convenience check. The preferred payment method is the P-Card. In limited circumstances, a convenience check can be issued for the payment method. The cardholder must also follow guidance set forth in Section 3.3 of the P-Card Guide for a purchase made using a convenience check.

3.201 Considerations Before Making a Purchase

Before making a purchase, the cardholder must consider the following:

(1) FDIC Existing Awards: Determine if the FDIC has awarded a contract for

the required goods or services and, if so, the cardholder must consult with the FDIC Contracting Officer and/or Oversight Manager assigned to the contract to determine if the goods or services should be acquired under the contract. When the FDIC has awarded a contract for goods or services, the cardholder must not use their P-Card to purchase the same goods or services that are covered within the scope of services of the contract. The goods or services must be purchased and paid for under the FDIC contract;

(2) Reputational Risk and Public Perception: Exercise sound business judgment and be mindful of reputational risk and public perception associated with making a purchase using the FDIC's purchase card. When choosing a merchant to make a purchase from, the cardholder must carefully consider public perception and the optics of making a purchase from the merchant and the goods or services being purchased for business purposes to ensure the purchase will not adversely affect the reputation of the FDIC. For example, consider geographic location, specific site/facility, merchant business name, what the merchant is primarily known for selling, etc. The cardholder must carefully consider any direct or indirect harm to public confidence in the FDIC as a result of making a purchase. The cardholder should consider whether the purchase would adversely impact the public's perception of and confidence in the FDIC. If the cardholder has questions about reputational risk or optics of a potential purchase he/she plans to make using the P-Card, the cardholder should consult in advance with their PAO or the APC.

(3) Information Security and Privacy: Determine any FDIC information security and privacy requirements associated with the purchase of goods or services. A purchase that would require a merchant's personnel to have access to the FDIC's network, or unescorted access to FDIC facilities/offices, or access to sensitive information (including processing or sharing sensitive information), is prohibited. The cardholder should consult with their Division/Office Information Security Manager (ISM) to address any information security and privacy requirements, and then contact the DOA/ASB Assistant Director who processes contracts for their Division/Office. The list of FDIC ISMs is on the FDIC Chief Information Officer Organization (CIOO) website at: https://fdicnet.fdic.gov/content/dit/home/itgovernance/itsecurityprivacy/divisionalismprogram/listofisms.html

(4) FDIC Directives: Determine if the purchase is authorized under applicable FDIC directives and the P-Card Guide and if additional documentation is required by FDIC directives or guidance;

(5) Cardholder Purchase Limits: Determine if the purchase is within the single purchase limit, monthly purchase limit or convenience check limit authorized for the cardholder. The cardholder must inform the merchant of the maximum amount the cardholder authorizes for a purchase at the time the purchase is made, before the merchant provides the goods or services, to ensure the purchase amount does not exceed the cardholder's P-Card purchase limits. As stated in Sections 2.202(a) and 3.102 of the P-Card Guide, neither the cardholder nor the merchant is permitted to split a single

purchase into smaller amounts in order to avoid exceeding the SPL threshold;

(6) Statutory Mandates: Determine if a statutory mandate applies to the purchase (e.g., Section 508 of the Rehabilitation Act, Davis-Bacon Act (DBA), Service Contract Act (SCA), or Buy American Act (BAA)/Trade Agreements Act (TAA); and

(7) Mandatory Sources: Determine if one of the mandatory sources applies to the purchase:

- Contractor's AbilityOne Program, formally Javits-Wagner-O'Day (JWOD)
- Federal Prison Industries (FPI).

To determine the applicability of a specific statutory requirement (Section 508 of the Rehabilitation Act, DBA, SCA or BAA/TAA), see the procedures in Section 3.205 of the P-Card Guide.

To determine the applicability of mandatory sources the cardholder must review the purchase threshold as discussed below.

3.202 Purchase of Goods and Services of $3,500 or Less

The AbilityOne Program is the only mandatory source for goods and services of $3,500 or less. If the goods or services can be purchased from the mandatory source (AbilityOne), then the cardholder must make the purchase from them and document the P-Card file accordingly. See Section 3.204 of the P-Card Guide for further guidance.

3.203 Purchase of Goods and Services Above $3,500

The AbilityOne Program and FPI have been designated as mandatory sources for goods and services above $3,500. If the goods or services can be purchased from either of the mandatory sources (AbilityOne or FPI), then the cardholder must make the purchase utilizing the mandatory source and document the P-Card file accordingly. See Section 3.204 of the P-Card Guide for further guidance.

If the goods and services cannot be satisfied by AbilityOne or FPI, the cardholder must document the P-Card file as addressed in Section 3.204 of the P-Card Guide, specifying that the mandatory sources did not carry the same or similar products, and proceed to acquire the goods or services from optional sources such as GSA Federal Supply Schedule (FSS) contracts or commercial contractors. See Section 3.206 of the P-Card Guide for additional information.

3.204 Mandatory Sources

3.204(a) AbilityOne Program

The AbilityOne Program, formerly known as the JWOD Program, is a unique federal procurement program that generates employment and training opportunities for people

who are blind or have other severe disabilities. The program is a mandatory source of supply for FDIC (41 USC §46 et seq.).

The AbilityOne Program provides products such as office and general supplies; cleaners, hardware, paints and other industrial items; clothing and textile products; and services such as administrative services (temporary or full-time), janitorial/custodial, grounds maintenance, switchboard or mailroom operation, warehousing and distribution, food services, and laundry services. Information on available products may be found at http://www.abilityone.gov.

The cardholder may not purchase products that are the same, or essentially the same, as those available from the AbilityOne Program from other sources, unless AbilityOne has provided a purchase exception. Services that are available from AbilityOne industries are only mandatory if FDIC has purchased them before, and the service has been added to the AbilityOne Procurement List.

Products may be ordered with the P-Card at http://www.abilityone.com. The list of products and services, additional sources for AbilityOne products, and ordering instructions may also be found at http://www.abilityone.gov.

The cardholder must annotate in the P-Card file that AbilityOne has been considered, and whether goods or services will be ordered from AbilityOne.

3.204(b) Federal Prison Industries

FDIC is subject to the requirements of Title 18 USC 4124, and therefore must consider FPI when purchasing goods above $3,500. However, the cardholder is not obligated to purchase goods from FPI that do not meet the requirements of FDIC, are not currently available, or are not available at fair market prices.

Prior to ordering goods listed in the FPI schedule (http://www.unicor.gov), the cardholder must conduct market research to determine whether the FPI item is comparable to the goods available from the private sector that best meet FDIC business needs in terms of price, quality, and time of delivery.

If the FPI item is acceptable to FDIC in terms of price, quality, and time of delivery, the cardholder must purchase the item from FPI following the ordering procedures at http://www.unicor.gov. The cardholder must feel comfortable that they are paying a fair price for the FPI item, and may request assistance from a DOA/ASB Contracting Officer if the price does not seem reasonable.

If the FPI item is not comparable to goods available from commercial sources in terms of price, quality, and time of delivery, the cardholder may then acquire the item using the procedures in Section 3.206 of the P-Card Guide. The cardholder must include, in the P-Card file, documentation explaining the reasons for not using FPI.

3.205 Applicability of Statutory Requirements

The cardholder is responsible for compliance with certain statutory mandates when purchasing goods and services. These requirements are also linked to the dollar value of the procurement. Applicable statutory requirements include:

3.205(a) Section 508 of the Rehabilitation Act

The definition of Information and Communication Technology (ICT) is as follows: Information technology and other equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or transmission of electronic data and information, as well as any associated content.

All purchases of ICT conducted using the FDIC P-Card, regardless of the dollar value of the purchase, must conform to guidance on Section 508 of the Rehabilitation Act of 1973.

If the P-card is being used for the purchase, development, or maintenance of ICT, the items or services must, at the time of delivery, be in compliance with the following:

1) Section 508 of the Rehabilitation Act and the Architectural and Transportation Barriers Compliance Board's (Access Board's) Information and Communication Technology Standards and Guidelines (36 CFR Part 1194) - https://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-ict-refresh/final-rule ;

2) FDIC regulation 12 CFR §352.5 - http://www.fdic.gov/regulations/laws/rules/2000-7400.html#2000part352.5; and

3) FDIC Directive 2711.1, Information and Communication Technology (ICT) Accessibility Pursuant to Section 508 of the Rehabilitation Act of 1973 - https://fdicnet.fdic.gov/content/dam/DOA/documents/rim/directives/2000/2711.1.pdf

The specific procedures and requirements implementing Section 508 are outlined on the FDIC's Section 508 Center of Excellence Website. Questions regarding Section 508 may be addressed to Section508@fdic.gov.

3.205(b) Davis-Bacon Act and Service Contract Act

P-Card purchases for services over $2,500 are subject to the SCA, and purchases for construction projects over $2,000 are subject to the requirements of the DBA. The SCA was enacted to ensure that government contractors compensate their blue-collar service workers and some white-collar service workers fairly. It does not cover bona fide executive, administrative, or professional employees. For purposes of the DBA, construction includes alteration or repair of public buildings and public works.

Prior to the purchase of services subject to the DBA or SCA, the cardholder must obtain a Department of Labor (DOL) wage determination. This can be obtained from the DOL website, https://beta.sam.gov/. The cardholder must either download the wage determination or submit an electronic Form 98 to request the wage determination from the DOL. Once the appropriate wage determination is acquired, the cardholder must notify the merchant providing the services that DBA or SCA apply and provide the merchant with the specific wage determination number, revision number and the date of the revision. A template for merchant notification is found on the DOA Buying Goods & Services P-Card Program website at: https://fdicnet.fdic.gov/content/doa/home/buying/purchase-card.html. The cardholder must place a copy of the wage determination in the P-Card file.

3.205(c) Buy American Act and Trade Agreements Act

The BAA requires FDIC to buy American-made goods when it procures goods for use in the United States. The BAA applies to contracts with a value greater than the micro-purchase threshold[5], currently $10,000, and applies to contracts entered into by FDIC in its corporate capacity only. It also applies to contracts for services when these involve furnishing goods. The BAA does not apply to FDIC contracts procuring construction or IT that is a commercial item. The BAA restricts the purchase of supplies that are not domestic end products. For manufactured end products, the BAA uses a two-part test to define a domestic end product:

(1) The article must be manufactured in the United States; and

(2) The cost of domestic components must exceed fifty (50) percent of the cost of all the components.

In order to determine the applicability of the BAA, the cardholder must ask the merchant to identify the place of manufacture and the cost of domestic components. If the item fits the criteria above, the cardholder may proceed with the purchase. If the criteria are not met, the cardholder may not purchase the item unless an exception to the BAA exists, or an evaluation has been performed in accordance with the guidance provided in PGI Chapter 5.12.

Although rare, the TAA may also be applicable to P-Card purchases over $25,000. Further information may be found in PGI Chapter 5.12. The provisions of the BAA and TAA have already been covered by GSA during their contracting process. Therefore, the cardholder may wish to consider using GSA contracts when there are questions regarding the applicability of these laws. The cardholder may contact DOA/ASB, Policy and Systems Section, for assistance with BAA/TAA questions.

[5] Micro-purchase threshold: The micro-purchase threshold is defined at 41 USC 428(f). In accordance with Section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375), the micro-purchase threshold is currently designated at $10,000.

3.206 Optional Sources

If it is determined that the goods or services cannot be acquired from mandatory sources, the cardholder may consider optional sources such as GSA FSS or commercial sources.

3.206(a) Federal Supply Schedule

GSA has determined the prices of goods and fixed-price services under schedule contracts to be fair and reasonable. Therefore, the cardholder may place orders with the schedule contractor that can provide the goods or service that represents the best value to the government when considering price and other factors, providing the following procedures are followed.

(1) *Placing Orders*: The cardholder may place orders less than $10,000 with any FSS contractor that provides the required goods or services. To place an order over $10,000, but less than the maximum order threshold for goods or services that do not require a statement of work with a GSA FSS contractor, the cardholder must consider reasonably available information about the goods or service offered under Multiple Award FSS contracts. This may be accomplished by surveying at least three FSS contractors through the GSA Advantage online shopping service at http://www.gsaadvantage.gov, or by reviewing the catalogs or pricelists of at least three FSS contractors. Review of product information, including pricing and availability, will allow the cardholder to determine which contractor represents the best value to FDIC. This decision must then be documented in the P-Card file.

(2) *Justification for Limited Sources or Brand Name Items*: If the cardholder determines that only one GSA contract source should be considered, or when an item peculiar to only one manufacturer (e.g., a particular brand name, product, or a feature of a product, peculiar to one manufacturer) is required, the P-Card file must be documented with the reason for limited sources. A brand name item, whether available on one or more schedule contracts, is an item peculiar to one manufacturer. Brand name specifications must not be used unless the particular brand name, product, or feature is essential to FDIC requirements, and market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, FDIC business needs. Circumstances that may justify limiting sources, include:

- Only one source is capable of responding due to the unique or specialized nature of the work;
- The new work is a logical follow-on to an original FSS order, provided that the original order was placed in accordance with the applicable FSS ordering procedures. The original order must not have been previously issued under sole source or limited source procedures; or
- An urgent and compelling need exists, and following the ordering procedures would result in unacceptable delays.

The cardholder must document in the P-Card file the basis for the best value decision (e.g., price, delivery, quality of product/service, etc.) or if it is determined that only one merchant's product satisfies FDIC business needs, the rationale for limiting consideration to only one contractor.

3.206(b) Commercial Sources

When FDIC's business needs cannot be met through the mandatory or optional sources discussed above, the cardholder may consider commercial sources.

3.207 Identifying Sources

The cardholder may use the following tools to identify potential sources: the Program Office, the Office of Minority and Women Inclusion (OMWI), the System for Award Management (SAM) database (http://www.sam.gov), trade publications, GSA schedules, etc., once it has been determined that one of the mandatory sources is not a viable choice for the goods or services.

The cardholder is encouraged to contact minority and women-owned businesses (MWOBs) and small disadvantaged businesses (SDBs) when locating sources to fulfill FDIC requirements. The cardholder may contact OMWI's Minority and Women Business and Diversity Inclusion Branch to identify MWOB or SDB merchants that may be able to provide required goods or services.

3.208 Competition

A P-Card purchase of $10,000 or below does not require competition. A P-Card purchase of $10,000 or below may be made with any merchant who can provide the required goods or services. The cardholder is encouraged to rotate purchases among qualified merchants, when possible. Through this process, the cardholder provides many merchants the opportunity to provide goods or services to the FDIC and allows the FDIC to find new sources for existing purchases, broadening the merchant base.

A P-Card purchase above $10,000 requires competition. As a general rule, at least three competitive price quotes should be sought for purchases over $10,000. In circumstances where only two qualified merchants can be identified, reasonable competition can be obtained by soliciting the two merchants. By competing a requirement among merchants, the cardholder is more likely to pay a fair and reasonable price for the goods or services being purchased. The cardholder must request price quotes from at least three merchants who can reasonably be expected to provide the required goods or services. The cardholder must ask merchants to provide a quote inclusive of shipping and handling costs when possible. The cost of shipping, when billed separately, must be considered when evaluating merchant price quotes. The cardholder must place the order with the merchant that offers the lowest price for the required goods or services, or otherwise provides the best value to the FDIC. The

cardholder's basis for selecting the merchant must be addressed in the cardholder's 'Price Reasonableness Determination for P-Card Purchase > $10,000 Memorandum' (P-Card Template 8), per Section 3.211 of the P-Card Guide.

3.209 Non-Competitive P-Card Purchase Above $10,000

3.209(a) Acceptable Reason(s) for Limiting Competition

Although competition is preferred for purchases above $10,000, there could be situations that may require limiting competition. Acceptable reasons for limiting competition may include, but are not limited to:

(1) When the need for the goods or services is of such a compelling urgency (e.g., an unforeseen or uncontrollable event, but does not include poor planning) that a delay in making the purchase would adversely affect the FDIC;

(2) When only one merchant can meet the specific needs of the FDIC. Examples may include:

   (a) When the goods or services requires special patent rights, copyrights or other proprietary information with a specific merchant;

   (b) When a source (merchant) is mandated by law to provide the goods or perform the services.

(3) When a merchant offers the benefits of historical expertise (e.g., a previous FDIC merchant or contractor) or systems compatibility to provide the goods or services, which other merchants could not provide as cost-effectively or as timely.

3.209(b) Non-competitive P-Card Purchase > $10,000 Memorandum

For any purchase that is above $10,000 and not competed, the cardholder must complete P-Card Template 6, entitled, 'Non-Competitive P-Card Purchase > $10,000 Memorandum', to explain why competition is limited. The cardholder must obtain the PAO's approval of the completed P-Card Template 6 before making a non-competitive purchase. The cardholder must file the approved P-Card Template 6, 'Non-Competitive P-Card Purchase > $10,000 Memorandum', in the P-Card file. P-Card Template 6 can be found on the DOA Buying Goods & Services P-Card Program website at: https://fdicnet.fdic.gov/content/doa/home/buying/purchase-card.html.

3.210 Justification for 'Non-Routine Event' Food Purchase

Food (including beverages) purchases for routine meetings are prohibited, as stated in Section 3.102(3) of the P-Card Guide. The cardholder may purchase food that will be provided during the ordinary course of a non-routine, official conference, meeting,

luncheon, dinner, or other function (a "non-routine event"), provided the cardholder complies with:

(1) FDIC Directive 1010.2 ('Conference, Meeting, and Symposium Planning Policies, Procedures, and Approval Requirements for Using FDIC Funds for These Activities') and How To Guide-Conference Planning processes.

(2) FDIC Directive 3400.1 ('Request for Catering Services for Official Business Meetings, Conferences and, Functions'); and

(3) guidance on food purchases as provided in the P-Card Guide. Specific sections are listed below, for reference:

- 3.101(5), "Permissible Use";
- 3.102(3) and (4), "Prohibited Use";
- 3.103(e)(1), "Resolution and Receivership Goods and Services";
- 3.201(2), "Reputational Risk and Public Perception";
- 3.210, "Justification for 'Non-Routine Event' Food Purchase"; and
- 3.401(16) and (17), "Document Purchase (Transaction) in P-Card File",

When Form 2600/22 (Conference Request) is approved per FDIC Directive 1010.2 and How To Guide-Conference Planning processes, and food or beverages described on Form 2600/22 will be paid using the P-Card, the cardholder must file the approved Form 2600/22 in the P-Card File. When Form 2600/22 is not required to be completed, before using the P-Card to purchase food (including beverages) for a non-routine event, the cardholder must complete P-Card Template 7, entitled, 'Justification for a 'Non-Routine Event' Food Purchase Memorandum', found on the DOA Buying Goods & Services P-Card Program website at:
https://fdicnet.fdic.gov/content/doa/home/buying/purchase-card.html.
The cardholder must complete P-Card Template 7, 'Justification for a 'Non-Routine Event' Food Purchase Memorandum', and obtain the PAO's approval before making a food purchase for a 'non-routine event'. The cardholder must file the approved P-Card Template 7 in the P-Card file. There are two exceptions to not completing P-Card Template 7: (1) If the food purchase is described on an approved Form 2600/22, the cardholder is not required to complete P-Card Template 7, and instead must file approved Form 2600/22 in the P-Card File; and (2) if the food purchase is to support Resolution and Receivership Goods and Services as specified in Section 3.103(g)(1) of the P-Card Guide (i.e., food for the closing team for the first night of a Failed Financial Institution). Instead, when reconciling the transaction in NFE, the cardholder must state in the 'Description/Business Purpose' data field that food was purchased for the closing team for the first night of a Failed Financial Institution (e.g., 'Food – Closing Team meal on 1st Night of Closing').

3.211 Price Reasonableness Determination for P-Card Purchase

The cardholder must use judgement to ensure the purchase amount is fair and reasonable. This assurance is usually obtained through competition. However, if quotes are requested or received from only one merchant, or if the prices were not

similar enough to be considered competitive, the cardholder must use some other method to determine that a fair and reasonable price is paid. This may include personal or historical pricing knowledge, or comparing the merchant's proposed price to advertised prices in the newspaper, on the Internet, merchant catalogs, or reviewing GSA pricing schedules. The cardholder may also use other techniques to confirm the merchant's price is fair and reasonable.

For a purchase that is above $10,000, regardless of whether the purchase is competed or not, the cardholder must complete P-Card Template 8, entitled, 'Price Reasonableness Determination for P-Card Purchase > $10,000 Memorandum', which can be found on the DOA Buying Goods & Services P-Card Program website at: https://fdicnet.fdic.gov/content/doa/home/buying/purchase-card.html.

3.212 Sales Tax Exemption

Purchases for official United States Government purposes are not subject to state or local sales tax. The P-Card and convenience checks are designed to enable merchants to readily identify FDIC tax-exempt status by including the phrase "U.S. GOVT TAX EXEMPT". Further, the P-Card account number is the tax exemption number recognized by most states.

3.212(a) Inform Merchant of Sales Tax Exemption

To avoid being charged state or local sales tax, the cardholder must inform the merchant of the FDIC's tax exempt status for the purchase (transaction) before completion of the sale. If the merchant does not accept instructions to waive the sales tax, the cardholder must try to buy the goods or services from another merchant who does not charge sales tax. The cardholder may provide a copy of the FDIC Standard Letter of Exemption from Sales and Use Taxes, or a State Sales and Use Tax Exemption Certificate to the merchant, which can be found on the DOA Buying Goods & Services P-Card Program website at: https://fdicnet.fdic.gov/content/doa/home/buying/purchase-card.html.

3.212(b) Exceptions to Paying Sales Tax

The cardholder is authorized to proceed with a purchase and pay the sales tax only if time is of the essence in making the purchase as a result of an urgent and compelling business need, and no other merchants are readily available. In such cases, the circumstances for paying sales tax must be documented by the cardholder and kept with the purchase receipts in the P-Card file.

3.212(c) Sales Tax Charges

If sales tax is included on a merchant's invoice, the cardholder must ask the merchant to reverse the entire charge amount and re-run the transaction without the sales tax. If the transaction has already processed and the merchant refuses to reverse the sales

tax charge, the FDIC pays the tax. Sales tax is not a disputable charge so it's important for the cardholder to confirm that the merchant has not added sales tax to the purchase amount before completion of the sale, per Section 3.215(b) of the P-Card Guide. The cardholder must document, in the P-Card file, the action that was taken to attempt to get the sales tax reversed.

3.213 Shipping and Handling Fees, Including Return Fees

Before making a purchase, the cardholder must determine shipping and handling fees and factor these fees into their evaluation and the total cost of the purchase. Shipping and handling fees make up the total purchase amount. The total purchase amount, including shipping and handling fees, must not exceed the cardholder's single purchase limit. The cardholder must choose the delivery method that best meets the FDIC's business needs and must track their purchases.

Some merchants have different return policies for items purchased over the Internet (online) or by telephone versus items purchased on-site at store locations. The cardholder must make sure that the merchant's return policy is favorable before completing the purchase. The merchant's return policy must provide the cardholder a credit in the same amount as the purchase amount.

3.214 Credit Card Processing Fee or Surcharge

Before making a purchase, the cardholder must determine if the merchant will add a credit card processing fee (service fee), or surcharge, to the purchase amount. When faced with a merchant intending on assessing a credit card processing fee or surcharge for a transaction, it is recommended that the cardholder ask the merchant to waive the fee, but note that the merchant is not required to waive the fee; consider other merchants that offer the same or similar goods or services, which do not assess a fee; or seek alternative payment methods that would result in a lower price for the FDIC (e.g., the cardholder could contact a DOA/ASB Contracting Officer to award a contract or purchase order). The level of such market research action taken should be commensurate with mission needs, the value and risks associated with the purchase, etc.

(1) A credit card processing fee or surcharge makes up the total purchase amount and the cardholder must factor such fee into their evaluation and total cost of the purchase. The total purchase amount, including credit card processing fee or surcharge, must not exceed the cardholder's single purchase limit.

3.215 Purchase Method (In-Store, Phone, Internet or Mail Order)

3.215(a) Verify Payment Platform and Secure Website

The cardholder may make an in-store purchase or a purchase over the telephone, Internet, or mail order. An in-store purchase is one that is made in person at a merchant's business. When making a purchase by phone, Internet, or mail order for goods or services, the cardholder must determine if the payment will be processed using a third party payment platform (e.g., PayPal) before making the purchase. If the merchant will only accept payment using a third party payment platform, consider other alternatives, including purchasing the goods or services from another merchant. Per Section 3.102 of the P-Card Guide, purchases that are processed by a third party (e.g., PayPal) are prohibited. For Internet (online) orders, the cardholder must verify that the website is secure. A secure website uses encryption and authentication standards to protect the confidentiality of information sent during web transactions. Most web browsers are configured by default to use a secure socket layer (SSL) for secure sites and to warn you when you enter or leave a site using SSL. Most web browsers also display a security icon, usually a small locked padlock, when it is a secure website. The cardholder must check the URL (website address) to make sure the website is secure. A secure website starts with https://, instead of just http://.

3.215(b) Review Sales Draft (Receipt)

Upon authorization of the charge, the merchant must present the cardholder with a sales draft for signature or require the cardholder to acknowledge acceptance of the transaction amount. Before signing the sales draft, or acknowledging acceptance of the transaction amount, the cardholder must confirm the accuracy of the amount to be billed before completing the purchase transaction, and ensure sales tax, or other fees the cardholder did not agree to, are not included in the purchase amount.

3.215(c) Keep Copy of Receipt and Delivery Confirmation

In the P-Card file, the cardholder must keep a receipt issued for an in-store purchase and a receipt for a purchase made using the telephone, Internet or mail order, which can be an electronic copy or email confirmation of an order placed. The cardholder must also include in the P-Card file a copy of an email that confirms the date of shipment and delivery of the goods or services purchased, or other documentation that confirms the delivery of the goods or services. The cardholder's documentation must include the date, office location, and name of the FDIC employee who acknowledged delivery of the goods or services. If the goods or services are delivered or performed in the same office where the cardholder is located, the cardholder should be the FDIC employee who acknowledges delivery of the goods or services. During the P-Card reconciliation process, the receipt, order confirmation, and/or acknowledgement of delivery of the goods or services will be used to verify and support the charges on the cardholder's monthly statement of account. The cardholder must document the P-Card file with the date of purchase, total purchase amount for the

transaction, the merchant selected to provide the goods or services, and the merchant's point of contact, including phone number and/or email address, if applicable. If this information is printed on the receipt, that will satisfy the P-Card file documentation requirements.

If the merchant sends a receipt and order confirmation for the purchase to an FDIC employee other than the cardholder, the cardholder must obtain the receipt and order confirmation from the FDIC employee. This sometimes occurs when a cardholder makes a purchase for an FDIC employee to attend a training course using Professional Learning Account (PLA) funds.

3.215(d) Keep Copy of Division/Office's Request for a Purchase

If the cardholder makes a purchase in response to another FDIC employee or Division/Office's request, the cardholder must include in the P-Card file a copy of the employee or Division/Office's request for the purchase.

3.215(e) Keep Copy of Legal Division's Approval of Agreement or Terms and Conditions

Per Section 1.5 of the P-Card Guide, if the purchase will involve the signing of an agreement by the merchant or cardholder, or acceptance of commercial terms and conditions, either on paper or electronically, the cardholder must obtain, and file in the P-Card file, the Legal Division, Contracting & Risk Management Unit, Contract & Leasing Group's review and approval of the agreement or commercial terms and conditions before making the purchase. The cardholder must include a copy of the signed agreement and commercial terms and conditions in the P-Card File. Refer to guidance stated in Section 1.5 of the P-Card Guide before making a purchase that involves the signing of an agreement between the merchant and the cardholder or accepting a merchant's commercial terms and conditions. The name of the Legal Division, Contracting & Risk Management Unit, Contract & Leasing Group's point of contact is provided on the DOA Buying Goods & Services P-Card Program website at: https://fdicnet.fdic.gov/content/doa/home/buying/purchase-card.html.

3.216 Declined Purchase

The issuing bank uses electronic authorization methods to confirm whether or not the purchase transaction amount is at or below the cardholder's single purchase limit, and whether the cardholder's cumulative purchases have exceeded the monthly purchase limit. If the transaction does not pass these tests, the merchant's point of sale authorization device will decline the transaction.

If a purchase (transaction) is declined, it may mean the cardholder has exceeded their single purchase limit (SPL) or monthly purchase limit (MPL). The cardholder should verify the amount of the purchase and review their Cardholder Appointment Memorandum to confirm their SPL and MPL. If the purchase amount is greater than the cardholder's SPL or MPL, the cardholder will need to purchase the goods or services for

an amount that is less than the cardholder's SPL or MPL. If the goods or services cannot be purchased at an amount less than the cardholder's SPL or MPL, the cardholder must request another cardholder within their Division/Office who has the appropriate purchase limits to make the purchase. If that is not possible, the cardholder's PAO may request a temporary increase to the cardholder's SPL or MPL, if necessary, by following procedures set forth in Section 2.403 of the P-Card Guide.

If the cardholder is certain their SPL or MPL was not exceeded with the attempt of making the purchase, the cardholder should contact the issuing bank by calling the toll-free phone number listed on the back of the P-Card. The issuing bank will inform the cardholder the reason the purchase was declined. If necessary, depending on the information provided to the cardholder by the issuing bank, the cardholder may need to contact the APC at: PcardProgram@fdic.gov to help resolve the matter.

3.217 Handling Returns for Damaged or Unacceptable Goods or Services or Other Reasons

The cardholder must promptly return damaged or unacceptable goods, or notify the merchant of unacceptable services, and work with the merchant to obtain proper credit. The cardholder must obtain, and include in the P-Card file, proof that the item was returned (e.g., a receipt, credit voucher, or a screen-shot of the credit or refund transaction showing on the cardholder's monthly statement, etc.). All returns must be credited to the cardholder's P-Card account unless the merchant issued a replacement item or performed the services satisfactorily. The condition of the damaged or unacceptable item(s), or unacceptable services and the date the item was returned, must be documented in the cardholder's P-Card file. The cardholder must review the monthly statement to verify that the merchant properly credited the cardholder's P-Card account for a returned item or for services that were not performed satisfactorily. The cardholder must document the P-Card file with the date the credit was applied to the cardholder's P-Card account.

If the merchant is unwilling to accept a returned item, or apply a credit to the cardholder's account for a returned item or unacceptable services, the cardholder must follow the procedures outlined in Section 3.6 of the P-Card Guide, 'Incorrect Charge, Fraudulent Charge, and Dispute Procedures'.

3.3 Purchasing Procedures Using a Convenience Check as Payment Method

In addition to following the procedures stated in Section 3.2 of the P-Card Guide, the cardholder must also follow the procedures stated below when a convenience check will be used to pay for a P-Card purchase:

3.301 Determine if Convenience Check Can Be Used as Payment Method

The cardholder is only permitted to use a convenience check as a payment method for purchasing goods or services when the P-Card is not accepted by the merchant and no reasonable alternative merchant is available who accepts the P-Card, and the merchant will not accept a purchase order (i.e., purchase order or contract issued by a DOA/ASB Contracting Officer). Before making a purchase for goods or services using a convenience check as a payment method, the cardholder must make reasonable and maximum efforts to find and use a merchant who accepts the P-Card.

3.302 Reasons to Limit Convenience Check Usage

A convenience check is the least preferred payment method for purchasing goods and services. Due to the cost and risks associated with convenience checks, the number of checks written should be kept to a minimum. The cardholder must be mindful that convenience checks are very much like cash. A service charge fee ("convenience check fee") is applied to each convenience check, which equates to two percent (2%) of the purchase amount. When a purchase is paid using a convenience check, MCCs cannot be blocked, the cardholder's purchase limits cannot be verified, and the cardholder has no dispute rights as it does with P-Card purchases. Extra precaution must be exercised in their use and convenience checks should be used as a payment method of last resort.

3.303 Actions Cardholder Must Complete Before Convenience Check Usage

Before making a purchase using a convenience check as a payment method, the cardholder must:

(1) Document the reasons for using a convenience check as the payment method and the efforts made to find a merchant who accepts the P-Card or a purchase order (i.e., purchase order or contract issued by a DOA/ASB Contracting Officer), per Section 3.301 of the P-Card Guide. The cardholder must complete, and file in the P-Card file, P-Card Template 9, entitled, 'Justification for Convenience Check Payment Method Memorandum', which can be found on the DOA Buying Goods & Services P-Card Program website at: https://fdicnet.fdic.gov/content/doa/home/buying/purchase-card.html.

(2) Obtain the following information from the merchant, which DOF requires to meet IRS reporting requirements:

(a) Merchant's legal business name used for IRS purposes;

(b) Merchant's legal business address used for IRS purposes;

(c) Merchant's contact information (i.e., phone number and/or email address);

(d) Merchant's 9-digit Tax Identification Number; and

(e) Merchant's completed IRS W-9 Form.

The cardholder must document Items (2)(a)–(d) in P-Card Template 9, ‘Justification for Convenience Check Payment Method Memorandum’ and attach a copy of the Merchant’s completed IRS W-9 Form to the completed P-Card Template 9.

3.304 Convenience Check Writing Instructions

Convenience checks are pre-numbered, and the cardholder must account for each consecutively numbered check. Convenience checks must be used in sequential order.

If the cardholder voids a convenience check before issuing it to a merchant, the cardholder must document the reason for voiding the convenience check and shred the voided convenience check. Cursive writing must only be used for the original signature block of the convenience check. The cardholder must write legibly, in print hand-writing only, the following information on the convenience check:

Date Block	Write the date the purchase is made.
“Pay to the Order of” Block	Write the merchant’s legal business name that is used for IRS purposes as it appears on the merchant’s IRS W-9 Form. Do not abbreviate.
$ Block	Write the dollar amount of purchase (in numbers), which must not exceed the cardholder’s convenience check limit.
_____ **Dollars Block**	Write (in long form) the dollar amount of purchase.
For Block	Write a brief description of goods or services purchased and the merchant’s invoice number, if applicable.
Signature Block	Provide cardholder’s signature.

Writing convenience check information in legible, print handwriting is important. The issuing bank employees physically scan convenience check information. If the scanner cannot read the handwriting, payee information will be garbled. The accounting trail is obliterated and the cardholder will not be able to identify the purchase (transaction) when it’s time to reconcile the cardholder’s statement (e.g., the issuing bank will show the name of the merchant as ‘illegible payee’ on the cardholder’s statement). This will make record keeping more difficult. Also, DOF will not be able to complete its reporting to the IRS and will need to reach out to the cardholder for more information.

3.305 Convenience Check Log [Optional Tool]

P-Card Template 10, entitled, 'Convenience Check Log', is provided as an optional tool the cardholder may choose to complete and maintain to track, in a single spreadsheet, convenience checks issued. Maintaining a Convenience Check Log is optional because the data fields on the Convenience Check Log also appear on P-Card Template 9, entitled, 'Justification for Convenience Check Payment Method Memorandum', which the cardholder must complete before issuing a convenience check, per Section 3.303. P-Card Template 10 ('Convenience Check Log') can be found on the DOA Buying Goods & Services P-Card Program website at: https://fdicnet.fdic.gov/content/doa/home/buying/purchase-card.html.

3.306 Monitor Timeliness of Convenience Check Posting to P-Card Account

The cardholder must monitor the timeliness of a convenience check being posted to their P-Card account. P-Card Template 9 ('Justification for Convenience Check Payment Method Memorandum') and P-Card Template 10 ('Convenience Check Log') include an area for the cardholder to enter the date a convenience check posts to the cardholder's P-Card account. Ideally, after check issuance, the convenience check transaction should appear on the next billing statement. If the convenience check does not appear on the next billing statement, the cardholder must contact the merchant. If a merchant advises they lost a convenience check issued by the cardholder, the cardholder must request the issuing bank to issue a "stop payment" on the convenience check. After the issuing bank makes a "stop payment", the cardholder may re-issue a convenience check to the merchant. The cardholder must include documentation in the P-Card file if a "stop payment" is issued. P-Card Templates 9 and 10 include an area for the cardholder to document the date a "stop payment" was issued, if applicable.

3.4 Record Keeping

3.401 Document Purchase (Transaction) in P-Card File

The cardholder must create and keep a P-Card file for every purchase (transaction) the cardholder makes using their P-card or convenience check. The cardholder may keep the P-Card file in an electronic or paper format. The cardholder's P-Card file documentation is required for the cardholder and the PAO to complete their monthly P-Card reconciliation process. The P-Card file is subject to P-Card audits and internal reviews.

The cardholder must keep the following information in the P-Card file, and ensure the P-Card file is easily accessible for the PAO, Alternate PAO, APC, Alternate APC, or others who may inquire about a P-Card purchase:

(1) A copy of the Cardholder Appointment Memorandum, per Section 2.201 of the P-Card Guide;

(2) Description of goods or services purchased (Transaction Description) that the cardholder will enter in NFE to reconcile the P-Card monthly statement, per Section 3.504(b) of the P-Card Guide. Also, specify a description of all the goods or services purchased that make up the purchase amount;

(3) Brief explanation of the business purpose for the purchase, per Section 3.504(b) of the P-Card Guide;

(4) If the goods purchased are to support a FDIC employee or Division/Office, document the name(s) of the FDIC employee(s), or Division/Office, who received the goods or who the purchase was made for (e.g., expression of sympathy purchases, Professional Learning Account training purchases, etc.), and include a copy of the employee or Division/Office's request for the purchase, per Section 3.215(d) of the P-Card Guide;

(5) Date of Purchase;

(6) Total purchase amount for the transaction;

(7) Merchant selected to provide the goods or services;

(8) Merchant's point of contact, including phone number and/or email address, if applicable;

(9) A copy of the Legal Division's approval of an agreement that the merchant and/or cardholder will sign, or commercial terms and conditions to be accepted, if applicable, and a copy of the signed agreement and terms and conditions, per Sections 1.5 and 3.215(e) of the P-Card Guide;

(10) Mandatory source review/justification documentation, per Section 3.204 of the P-Card Guide;

(11) A copy of the Department of Labor wage determination for a purchase subject to the Davis-Bacon Act or Service Contract Act, per Section 3.205(b) of the P-Card Guide;

(12) Name(s) of merchant(s) the cardholder requested quotes from, and a copy of the cardholder's request for price quote;

(13) Price quote(s) received (include merchant name(s) and their price quotes);

(14) For a P-Card purchase that is $10,000 or above, a statement that explains why the merchant was selected (e.g., merchant offered lowest price for the goods or services), per Section 3.208 of the P-Card Guide. This statement can be included in the cardholder's completed P-Card Template 8, '<u>Price Reasonableness Determination for P-Card Purchase > $10,000 Memorandum</u>', which must be included in the P-Card file;

(15) A completed P-Card Template 6, '<u>Non-Competitive P-Card Purchase > $10,000 Memorandum</u>', if the purchase is greater than $10,000 and not competed among at least three merchants, per Section 3.209 of the P-Card Guide;

(16) For a P-Card purchase that is for food (including beverages), a completed Form 2600/22 (Conference Request) when food or beverages described on

Form 2600/22 will be paid using the P-Card, per Section 3.210 of the P-Card Guide. FDIC Directive 1010.2 and How To Guide-Conference Planning processes describe when Form 2600/22 is required.

(17) For a P-Card purchase that is for food (including beverages) and Form 2600/22 is not required, a completed P-Card Template 7, 'Justification for a 'Non-Routine Event' Food Purchase Memorandum', per Section 3.210 of the P-Card Guide.

(18) For a P-Card purchase that is $10,000 or above, a completed P-Card Template 8, 'Price Reasonableness Determination for P-Card Purchase > $10,000 Memorandum', per Section 3.211 of the P-Card Guide;

(19) If sales tax was paid, the cardholder must include a statement confirming the action that was taken to try to get the sales tax reversed, per Section 3.212 of the P-Card Guide;

(20) A receipt for the purchase and invoice (if the merchant provided an invoice), per Section 3.215 of the P-Card Guide;

(21) Date the goods or services were delivered, including a copy of an email confirmation of delivery of goods, if applicable, per Section 3.215 of the P-Card Guide;

(22) Date and name and office location of the FDIC employee who acknowledged the delivery of the goods or services, per Section 3.215 of the P-Card Guide;

(23) If the purchase was returned, file proof that the item was returned and the cardholder's P-card account was credited for the refund (e.g., a receipt for the returned purchase, credit voucher, a screen-shot of the credit or refund transaction showing on the cardholder's monthly statement, etc.), per Section 3.217 of the P-Card Guide.

(24) A completed P-Card Template 9, 'Justification for Convenience Check Payment Method Memorandum', with a copy of the merchant's completed IRS W-9 Form attached, if the purchase is made using a convenience check as a payment method, per Section 3.303 of the P-Card Guide;

(25) A copy of an approved waiver request email (P-Card Template 11 format), if the cardholder obtained approval for a one-time deviation to any FDIC directive or P-Card Guide policy, per Section 1.602 of the P-Card Guide;

(26) Optional: A completed P-Card Template 10, 'Convenience Check Log'. Per Section 3.305 of the P-Card Guide, maintaining a Convenience Check Log is optional.

3.402 P-Card File Retention

All D/OC, PAO, Alternate PAO, and cardholder P-Card files which support purchase transactions must be kept for five (5) years after the purchase date.

All administrative records and correspondence relating to the P-Card Program that are kept by the APC must be retained for five (5) years after the cardholder P-Card account is cancelled/inactivated.

3.5 Billing and Payment Procedures

3.501 Master Invoice

The FDIC's P-Card Program is a centrally billed account, which means all charges are billed directly to the FDIC and paid directly by the FDIC. Each month, the issuing bank sends a master invoice to the FDIC for payment. The master invoice amount totals all cardholder transactions made during the monthly billing cycle. The master invoice typically includes several hundred transactions to be reconciled by the cardholders who made the purchases. The cardholder and PAO must complete the reconciliation process timely. The FDIC cannot pay the master invoice until after cardholders and PAOs complete the reconciliation process for every transaction included on the master invoice (100% reconciliation is required; there are no exceptions to this. The cardholder and PAO must complete the reconciliation of all transactions). The FDIC must pay the master invoice timely to avoid paying prompt payment interest to the issuing bank. The APC authorizes payment of the master invoice in NFE upon verification and approval of 100% of the transactions by the cardholders and PAOs.

3.502 Monthly Statement

The P-Card monthly billing cycle begins on the 23rd of the month and closes on the 22nd of the next month. If the 22nd of the month falls on the weekend, then the billing cycle will close the Friday before the 22nd.

On/about the 22nd of each month, after the issuing bank sends the master invoice to the FDIC, the NFE system will send auto-generated email notifications to cardholders who have P-Card transactions posted on their account during the current billing cycle. The email notification will summarize the number of transactions and transaction amounts that the cardholder made during the current billing cycle. The cardholder must keep track of purchases made, and credits posted, to their P-Card account during the billing cycle. Cardholders who do not receive an auto-generated NFE email notification when they have incurred charges or credits during the billing cycle must notify the APC. Cardholders may also view their monthly charges through the issuing bank's Electronic Access System.

3.503 Reconcile and Verify all Charges on Monthly Statement in NFE

For instructions on how to reconcile P-Card transactions in NFE, the cardholder and PAO should refer to the P-Card reconciliation instructions contained in Job Aids found on the DOA Buying Goods & Services P-Card Program website at: https://fdicnet.fdic.gov/content/doa/home/buying/purchase-card.html.

All transactions (including correct charges, incorrect charges, fraudulent charges, disputed charges, credit transactions, charges that are missing required P-Card File supporting documentation, etc.) on the cardholder's master statement must be verified and approved in NFE by the cardholder and PAO as part of the P-Card reconciliation process during the billing cycle in which the charge appears on the monthly statement.

The cardholder should use their default chartfields (accounting codes) to reconcile and verify an incorrect charge, fraudulent charge, and disputed charge. The cardholder must follow the procedures outlined in Section 3.6 of the P-Card Guide, 'Incorrect Charge, Fraudulent Charge, and Dispute Procedures'.

If the cardholder cannot approve the cardholder's transactions within the billing cycle time frames (e.g., due to being out of the office on vacation, etc.), the cardholder must let the APC know the name of another cardholder who will reconcile the cardholder's transactions. The APC will provide the replacement cardholder with permissions to reconcile the cardholder's transactions. Both cardholders must be assigned to the same PAO.

3.504 Cardholder and P-Card Approving Official Review of Monthly Statement (Reconciliation Process in NFE)

3.504(a) Overview of Reconciliation Process in NFE

The cardholder must review and verify all transactions in NFE promptly after receipt of notice that transactions have been posted to NFE. As part of this process, the cardholder must change the status of each transaction on their monthly statement in NFE from "Staged" to "Verified". The PAO must promptly approve transactions that have been verified by the cardholder. Before changing a transaction from 'Verified' to 'Approved', the PAO must verify (1) the cardholder's P-Card file includes complete documentation which shows the cardholder's purchase is adequately justified and the cardholder followed P-Card policies and procedures, and (2) the cardholder's description of the purchase (transaction), entered in the monthly statement in NFE and the P-Card file, appropriately shows the goods or services purchased and business purpose, per Section 3.504(b) of the P-Card Guide. The cardholder and PAO reconciliation process must be accomplished within ten (10) business days after the statement has been posted to NFE, or as otherwise directed by the APC.

To complete the reconciliation process, the cardholder and PAO should refer to instructions stated in the Reconciliation Process Job Aids found on the DOA Buying Goods & Services P-Card Program website at:
https://fdicnet.fdic.gov/content/doa/home/buying/purchase-card.html.

3.504(b) Examples of Descriptions/Business Purpose to Add for Monthly Statement Reconciliation

On the cardholder's monthly statement in NFE, the cardholder must enter a description for the purchase that includes as much detail as possible (e.g., specific description of the goods or services purchased and reason for making the purchase (i.e., business purpose). If the goods purchased are to support a FDIC employee or Division/Office, the cardholder must document the name(s) of the FDIC employee(s), or Division/Office, who received the goods or who the purchase was made for (e.g., expression of sympathy purchase, Professional Learning Account training purchase, Library subscription purchase, etc.). Appropriate 'Description/Business Purpose' examples are provided in this Section below.

On the cardholder's monthly statement, a convenience check fee will appear as a separate transaction (not included as part of the same transaction as the convenience check purchase). This means the cardholder must reconcile two transactions on their monthly statement in NFE for a purchase paid using a convenience check (i.e., one transaction is for the actual purchase and one transaction is for the convenience check fee associated with the purchase). For a convenience check fee transaction, the "Merchant" field on the statement in NFE is pre-populated with the following information: "*FINANCE CHARGE* CASH ADV". The cardholder must add the following information in the "Description/Business Purpose" field for a convenience check fee transaction:

(1) Check Number,

(2) "Check Fee", and

(3) a description of the goods or services purchased and reason for making the purchase (i.e., business purpose).

The cardholder must enter the Check Number on both convenience check fee transactions that appear on the statement (e.g., the transaction that is for the purchase amount and the transaction that is for the check fee).

The cardholder's description of goods or services purchased and the reason for the purchase (i.e., business purpose) appears on FDIC P-Card reports (NFE WebFocus P-Card reports). The NFE WebFocus P-Card reports are useful for P-Card Administrators and others (e.g., PAOs, Alternate PAOs, D/OCs, supervisors, budgeting staff, auditors, Division/Office internal review staff, etc.) to gain an understanding of the goods or services purchased.

Below are examples of appropriate 'Descriptions/Business Purpose' text the cardholder may enter in NFE on their statement:

- **Example 1(a)** – Cardholder purchased a Plain Writing training class for a FDIC employee to attend and paid with a P-Card, using the FDIC employee's Professional Learning Account (PLA) funds.

  Description Example: "PLA – Plain Writing Training Class – Joan Smith"

➢ **Example 1(b)** – Cardholder purchased a Plain Writing training class for a FDIC employee to attend and paid with a Convenience Check, using the FDIC employee's Professional Learning Account (PLA) funds. Description/Business Purpose Example for the transaction that is for the purchase amount: "Check #, PLA – Plain Writing Training Class – Joan Smith" Description/Business Purpose Example for the transaction that is for the check fee: "Check # Check Fee for PLA – Plain Writing Training Class – Joan Smith"
➢ **Example 2** – Cardholder purchased flowers for a FDIC employee as an expression of sympathy when the employee's father died. Description/Business Purpose Example: "Flowers – Exp. Of Sympathy-Joan Smith (father died)"
➢ **Example 3** – Cardholder purchased coffee mug from the FDIC Online Store to recognize a FDIC employee with Acknowledgement of Excellence award. Description/Business Purpose Example: "AoE Award – Coffee Mug – Joan Smith"
➢ **Example 4** – DOA/CSB cardholder purchased hand soap to place in the pantries throughout the FDIC's Virginia Square office building. Description/Business Purpose Example: "Hand soap – Virginia Square pantries"
➢ **Example 5** – DOA/CSB cardholder purchased fitness club memberships for New York Regional Office employees. Description/Business Purpose Example: "Fitness Club Memberships – NYRO employees"
➢ **Example 6** – DOA/CSB cardholder purchased a couch and two end tables to be placed in lobby of San Francisco Regional Office. Description/Business Purpose Example: "Furniture (couch & two end tables) – SFRO lobby"
➢ **Example 7** – RMS cardholder purchased a sheet cake for a retirement reception for a FDIC employee located in a FDIC Field Office. Description/Business Purpose Example:

"Sheet Cake – Jane Smith's retirement reception"
➢ **Example 8** – DOA/CSB Library Staff cardholder purchased a Dunn & Bradstreet subscription to be used by 40 DIR employees. Description/Business Purpose Example: "Dunn & Bradstreet subscription - DIR employees' use"
➢ **Example 9** – DOA/CSB cardholder purchased Direct TV Service for FDIC's San Francisco Regional Office. Description/Business Purpose Example: "Direct TV Service – SFRO"
➢ **Example 10** – DOA/CSB cardholder purchased a portable heater to satisfy a reasonable accommodation request for a DRR employee. Description/Business Purpose Example: "Reasonable Accommodation – Heater for DRR employee"

3.6 Incorrect Charge, Fraudulent Charge, and Dispute Procedures

An incorrect charge may include an item not received, an incorrect price, unacceptable goods or services, or other unresolved discrepancy on the monthly statement. A fraudulent charge may include a charge that appears on the cardholder's statement which was not authorized by the cardholder. Before disputing a purchase card transaction, the cardholder must determine if the transaction is an incorrect charge or a fraudulent charge. A fraudulent charge must be disputed. An incorrect charge does not need to be disputed if the cardholder can resolve the matter with the merchant. A convenience check charge, a convenience check fee, and sales tax cannot be disputed.

3.601 Procedures for Reconciling and/or Disputing Incorrect Charge

3.601(a) Procedures for Reconciling an Incorrect Charge

If an incorrect charge appears on the cardholder's monthly statement, as explained in Section 3.6 above, the cardholder must contact the merchant to reverse the charge (credit the cardholder's account) or correct the issue (e.g., if the item was damaged, the merchant could ship a replacement item to the cardholder). If the merchant agrees to reverse the incorrect charge or take corrective action, the cardholder must not file a dispute with the issuing bank. The cardholder must ensure the merchant agrees to make the correction timely so the correction will appear on, or be resolved by, the cardholder's next monthly statement. A merchant's correction must be made within sixty (60) days of the end of the billing cycle monthly statement on which the incorrect charge transaction appears. If the merchant refuses to reverse the incorrect charge or

take other corrective action, the cardholder must dispute the purchase card transaction per Section 3.601(b) of the P-Card Guide. The cardholder must document the P-Card file with the explanation and resolution of any incorrect charge.
In NFE, the cardholder must reconcile an incorrect charge (transaction) that appears on the cardholder's monthly statement using the cardholder's default chartfields. In the transaction description field, the cardholder must add the following applicable description, depending on whether the incorrect charge will be reversed or corrected by the merchant or if the cardholder disputed the incorrect charge:

- **Example (Incorrect charge that is not disputed)** –
  Description/Business Purpose:
  "Incorrect Charge – Will be reversed on [month] statement"

- **Example (Incorrect charge that is disputed)** –
  Description/Business Purpose:
  "Incorrect Charge Disputed on [Date Dispute Form completed]"

The cardholder must verify on the next billing cycle monthly statement that the credit (reversed charge) was applied, or corrective action was made, for the incorrect charge that appeared on a previous monthly statement. When reconciling the credit transaction, the cardholder must enter the same default chartfields used for the incorrect charge that appeared on a previous monthly statement. In the transaction description field, the cardholder must add the following applicable description, depending on whether the credit is for an incorrect charge that the merchant agreed to apply, or a credit applied by the issuing bank, as a result of the cardholder disputing an incorrect charge:

- **Example (Credit for incorrect charge that is not disputed)** –
  Description/Business Purpose:
  "Credit for Incorrect Charge from [month] statement"

- **Example (Credit for incorrect charge that is disputed)** –
  Description/Business Purpose:
  "Credit for disputed incorrect charge from [month] statement."

3.601(b) Procedures for Disputing an Incorrect Charge

If the merchant refuses to, or does not, reverse an incorrect charge or take other corrective action within sixty (60) days of the end of the billing cycle monthly statement on which the incorrect charge transaction appears, the cardholder must dispute the purchase card transaction by contacting the issuing bank immediately. The cardholder must complete the issuing bank's dispute form, entitled, '*Cardholder Statement of Questioned Item*', which can be found on the DOA Buying Goods & Services P-Card Program website at: https://fdicnet.fdic.gov/content/doa/home/buying/purchase-card.html. The cardholder must send the completed form to the issuing bank at the address listed on the form. In NFE, the cardholder must reconcile the disputed (incorrect charge) transaction that appears on the cardholder's monthly statement. The

cardholder must keep a copy of the completed dispute form ('Cardholder Statement of Questioned Item') in the P-Card file.

3.602 Procedures for Reconciling and/or Disputing a Fraudulent Charge

3.602(a) Procedures for Reconciling Fraudulent Charge

The cardholder must call the toll-free phone number listed on the back of the P-Card to notify the issuing bank immediately upon becoming aware of a fraudulent charge and follow the issuing bank's procedures to dispute a fraudulent charge, which are described in Sections 3.602(a) and 3.602(b) of the P-Card Guide. If the cardholder only becomes aware of a fraudulent charge at the time the cardholder reviews their monthly statement, the cardholder must dispute the fraudulent charge before completing the reconciliation of the monthly statement (note that a convenience check charge and convenience check fee cannot be disputed, per Section 3.603 of the P-Card Guide). In NFE, the cardholder must reconcile any fraudulent transaction that appears on the cardholder's monthly statement and use the cardholder's default chartfields. In the transaction description field, the cardholder must indicate the transaction is a fraudulent charge and the date the cardholder completed and sent the dispute form to the issuing bank, as shown in the example below:

- **Example (fraudulent charge that is disputed)** –
  Description/Business Purpose:
  "Fraudulent Charge-Notified Issuing Bank on [Date Dispute Form completed]"

On the cardholder's next billing cycle's monthly statement, the cardholder must reconcile the credit applied for the fraudulent charge that appeared on a previous monthly statement. In the transaction description field in NFE, the cardholder must use their default chartfields and add a description that states the transaction is for a previously disputed fraudulent charge, as follows:

- **Example (credit for a previously disputed fraudulent charge)** –
  Description/Business Purpose:
  "Credit for Fraudulent Charge from [month] statement"

3.602(b) Procedures for Disputing a Fraudulent Charge

To dispute a fraudulent charge, after calling the toll-free phone number listed on the back of the P-Card to notify the issuing bank of fraudulent activity, the cardholder must complete the issuing bank's dispute form, entitled, '*Cardholder Statement of Questioned Item'*, which can be found on the DOA Buying Goods & Service P-Card Program website at: https://fdicnet.fdic.gov/content/doa/home/buying/purchase-card.html. The cardholder must send the completed form to the issuing bank at the address listed on the form. The issuing bank will process a credit to the cardholder's P-Card account that will appear on the cardholder's next monthly statement. After the cardholder disputes a fraudulent charge, the issuing bank will reverse the charge by processing a credit to the cardholder's P-Card account that will appear on the cardholder's next monthly

statement. The cardholder must keep a copy of the completed dispute form (‘Cardholder Statement of Questioned Item’) in the P-Card file and document the date the credit is applied to the cardholder’s P-Card account to reverse the fraudulent charge.

Per Section 2.405 of the P-Card Guide, when the cardholder notifies the issuing bank of fraudulent activity, the cardholder’s P-Card account will be cancelled and a new P-Card and convenience checks, as applicable, will be issued to the cardholder.

3.603 Incorrect or Fraudulent Convenience Check Charge

A convenience check charge and a convenience check fee transaction may not be disputed under the P-Card Program. If the cardholder issues a convenience check in error, or if the good or service is not delivered or is unacceptable when payment is made with a convenience check, or if the convenience check is written by another individual (i.e., fraudulent activity), the cardholder has no recourse with the issuing bank. Instead, the cardholder must work directly with the merchant to obtain credit. If this does not work, the FDIC is liable for the full amount of the convenience check. The cardholder must reconcile the transaction in NFE.

3.7 Purchase Card Reports

Electronic reports are available from the issuing bank and the APC.

3.8 Purchase Card Program Administrative Points of Contact and Resources

DOA/ASB P-Card Program Administrators can be reached at: PcardProgram@fdic.gov. The email account is monitored by the Agency Program Coordinator and the Alternate Agency Program Coordinator.
For more information pertaining to the FDIC Purchase Card Program policy and procedures, including P-Card templates, please visit the DOA Buying Goods & Services P-Card Program website at: https://fdicnet.fdic.gov/content/doa/home/buying/purchase-card.html.

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APPENDIX D: RECORD OF PGI CHANGES

PGI Changes **Date:**

PGI Reference	PGI Page No.		**Description**

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APPENDIX E: DOCUMENT TYPE DESIGNATOR CODES

A. Solicitations

Code	Description	Usage
Q	Request for Quotation (RFQ)	A document used in *simplified procurements* to communicate requirements to prospective contractors and to solicit quotations from them.
R	Request for Proposal (RFP)	A document sent to prospective offerors to request a *formal proposal* to provide the goods or services required by FDIC, under stated terms and conditions.

B. Awards

Code	Description	Usage
A	Blanket Purchase Agreement (BPA)	Used as a *simplified method* of filling anticipated repetitive needs for supplies or services by establishing an ordering agreement with qualified sources of supply or services, and task orders will then be placed against the BPA. The following are circumstances under which contracting officers may establish a BPA: (1) There is a wide variety of items in a broad class of supplies or services that are generally purchased, but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably. (2) There is a need to provide commercial sources of supply for one or more offices or projects in a given area that do not have or need authority to purchase otherwise. (3) The use of this procedure would avoid the writing of numerous simplified procurement orders. (4) There is no existing contract for the same supply or service that the contracting activity is required to use.
C	Contract	Used when awarding commercial goods or services valued at more than $5,000,000, or when buying other goods and services valued at $100,000 or more, and does not fall into any other contract award type category.

Code	Description	Usage
E	Construction Contract	Used when contracting for the design and subsequent construction of a new FDIC building (i.e., if FDIC were to build a new building such as when FDIC built Virginia Square II); This contract type should not to be used for architect and engineering services, or renovation/refurbishing of existing facilities. These contracts must include applicable construction-specific clauses, such as the Davis-Bacon Act, Contract Work Hours and Safety Standards Act, and Miller Act. Go to PGI 4.3 for specific procedures that must be used when contracting for the design and subsequent new construction of FDIC buildings or facilities.
F	GSA - Federal Supply Schedule Order	Used in conjunction with the program directed and managed by GSA for a *simplified process* for obtaining commercial supplies and services at prices associated with volume buying. FDIC is an optional user of GSA FSS contracts and may place orders against them when it is in the best interest of FDIC. In order to ensure fair opportunity among FSS contractors, the CO must follow the procedures provided at PGI 3.305 when placing orders against FSS contracts. Orders placed against FSS contracts must comply with all terms and conditions of the FSS contract.
G	Basic Ordering Agreement (includes Receivership BOAs (BOAs and RBOAs)	Used to expedite contracting for uncertain requirements for supplies or services when specific items, quantities, and prices are not known at the time the agreement is executed, but a substantial number of requirements for the type of supplies or services covered by the agreement are anticipated to be purchased from the contractor by issuance of Task Orders.
H	Interagency Agreement	Used when an exchange of funds, resources, supplies, or services are made between two or more Federal agencies. IAAs may bind parties to commit funds or resources to a project but do not necessarily involve an exchange of any funds or resources. **NOTE: Only IAAs valued at $5,000,000 or greater must be created in APS (but only *after* the IAA is processed through Legal).** EXAMPLES: 1) An Agreement between FDIC and the Small Business Administration (SBA) regarding procedures to deal with SBA loans inherited from failed financial institutions. 2) FDIC may choose to enter into an interagency agreement with GSA to obtain General Services Administration (GSA) support in the area of architect-engineer services and construction, including project management, award, and administration. (see 3800.10 Memoranda of Understanding and Interagency Agreements).

Code	Description	Usage
L	Consultant Agreement	Used for those services rendered by an individual who is a member of a particular profession or possess a special skill. Consultant services are generally acquired to obtain information, advice, opinions, alternatives, conclusions, recommendations, training, or direct assistance, such as studies, analyses, evaluations, liaison with Government officials, or other forms of representation. **NOTE: Seldom used at FDIC, primarily for specialized DIR economists. If in doubt, please contact ASB, Policy and Systems Section, for guidance.** EXAMPLES: 1) An individual with specialized knowledge as an economist to develop research agenda, provide guidance and advice to FDIC staff concerning publishable research topics and strategies; organize seminars to exchange knowledge and ideas with staff and area research economist; produce publishable research papers. 2) Consultant is tasked with reviewing a formal guidance paper to develop a presentation outline, executive summary of the presentation, and power point slides, to be used by FDIC presenters at a regional seminar hosted by a foreign government. 3) Consultant will support FDICs internal and external analysis and decision making and collaborate with outside economists to ensure the proper breadth of expertise is incorporated into projects. Any resultant products will be of quality suitable for use in FDIC publications.
P	Simplified Procurement Order	Used in lieu of formal contracts when buying commercial goods or services valued at less than $5,000,000, or when buying other goods and services valued at $100,000 or less. In exceptional circumstances it may be appropriate to use simplified procurement orders for requirements normally subject to formal contracting procedures when only limited technical evaluations are necessary. Do not use a simplified procurement order when FDIC can meet its requirements using: (2) Required sources of supply, e.g., Federal Prison Industries and AbilityOne (formerly Javits-Wagner-O'Day Act); (3) Federal Supply Schedule contracts; (4) Existing FDIC contracts; or (5) Other established contracts.
S	Software Licenses and Renewals	Used for the procurement of software through a software license. A software license is a legal instrument governing the use or redistribution of software. A typical software license grants an end-user permission to use one or more copies of software in ways where such a use would otherwise potentially constitute copyright infringement of the software owner's exclusive rights under copyright law.

Code	Description	Usage
T	Conference Agreement	Used for outside contracts, including, but not limited to, purchases for: - use of a non-FDIC conference facility, - a hotel selected to accommodate rooms for all or many conference attendees, - catering/food/meals (when not provided by FDIC's in-house caterer), - speakers, -mementos. Circular 1010.2 establishes policies, procedures, and approval requirements for planning and conducting conferences, meetings, symposiums, or similar events ("conferences").
U	Utility Agreement	Used for agreements with utilities including, but not limited to, electricity, natural or manufactured gas, water, thermal energy, and telephone services.
V	Inherited Bank Contract	Used when a bank closes and an existing contract is still needed by the receivership. The existing contract must be continued as a new contract between the contractor and the FDIC and must be conformed to the maximum extent possible to FDIC clauses and terms and conditions in accordance with the PGI.

APPENDIX F LEGAL/ACQUISITION PARTICIPATION AGREEMENT

I. PURPOSE

This Legal/Acquisition Participation Agreement ("Participation Agreement") establishes standard operating procedures and defines the working relationship and interaction between the Acquisition Services Branch ("ASB"), Division of Administration ("DOA"), and the Contracting and Leasing Group, Legal Division ("CLG"). The spirit and intent of this agreement is to foster a collaborative working relationship whereby the ASB and CLG form a partnership to ensure that contractual actions are awarded and administered in accordance with all applicable statutes, regulations, and policies.

This partnership is intended to enhance the business decisions that best support the FDIC's mission. This collaborative approach ensures a unified focus on customer need and mission accomplishment, resulting in an integrated and unified approach to support our clients.

The FDIC enters into many contracts to accomplish its mission, and acquisition actions often raise significant legal issues. Procurements must comply with federal statutes, regulations, and FDIC policy. In addition, various laws and regulations enacted for purposes other than procurement apply to FDIC acquisitions.

Therefore, in partnership with the ASB, the CLG commits to being actively engaged in all stages of the acquisition process from inception throughout the acquisition lifecycle as described in this agreement. This will enhance the CLG's ability to execute its responsibilities in the exercise of independent professional judgment in providing advice on the legal matters relating to acquisition and in representing FDIC's legal interests.

The ASB agrees to provide CLG with accurate and complete information in sufficient time for review and written counsel and to reasonably consider the recommendations of CLG counsel in advance of making procurement decisions.

II. SCOPE

This Participation Agreement applies to ASB acquisition matters.

III. DEFINITIONS

A. <u>CLG Counsel</u>: FDIC Counsel within the Contracting and Risk Management Unit ("CRMU"), CLG, Corporation Operations Branch ("COB"), Legal Division.

B. Participate or Coordinate: To take part in, to engage in, or be involved in as an active participant in acquisition planning, as an integral part of and member of the acquisition team or Integrated Product Teams (IPT).

C. Program Office: Any organization that delivers a service, whether a business unit, project office, program directorate, or integrated product team, or whether engaged in security, regulation, operations, corporate, receiverships or conservatorships.

D. Represent: To recommend an appropriate legal position for an FDIC office regarding an acquisition matter, and, as appropriate, present the position to other parties, such as in administrative or judicial proceedings, or in communications, discussions, or negotiations with another party during a protest, dispute, or claim.

E. Legal Sufficiency: Determinations of legal sufficiency concern matters that violate law, regulation, or policy as determined by CLG.

IV. RESPONSIBILITIES

A. Coordination among the Program Office, the ASB, and CLG Counsel

1. In general, the ASB will include CLG Counsel in all stages of the acquisition process from inception throughout the acquisition lifecycle, including as a member of the acquisition team or IPT actively engaged in all meetings. If contacted by the Program Office regarding any acquisition matter, CLG Counsel will advise ASB promptly regarding the communications and will refer matters to ASB as appropriate.

2. CLG Counsel will timely respond to the Program Office and ASB in accordance with mutually established timeframes and with accurate and effective legal advice that is consistent with legal mandates and relevant to the FDIC's business discretion. CLG Counsel will coordinate with other counsel in the Legal Division when necessary to resolve acquisition legal issues that involve other practice areas. CLG Counsel will make every effort to meet the timeframes that will be mutually established taking into account the program need dates, CLG Counsel's workload, program requirements, and competing priorities. Where possible, CLG Counsel will be allowed three (3) working days for legal review and written responses. CLG Counsel will seek to accommodate any shorter timeframe as required to meet deadlines.

3. CLG Counsel will describe and interpret legal issues involved in the matter; identify and assess the impact of any legal risk associated with a particular proposed decision; evaluate alternative courses of action; and identify potential illegal or improper actions. CLG Counsel will identify which issues go to legal sufficiency.

4. The Contracting Officer (CO) will document the acquisition file with CLG counsel's opinion and recommendations. In addition, the CO will document the file to reflect the reasoning and basis for the decision rendered when choosing not to follow the CLG Counsel's recommendations on legal issues, and notify counsel of the decision to reject the opinion or recommendation where counsel's signature is not otherwise required for the contract action. The Program Office and ASB may not waive matters of legal sufficiency.

5. ASB will include CLG in meetings that brief the evaluation team members and the Selection Recommendation Report officials on internal procedures, acquisition and evaluation plans, and award recommendations.

B. General Coordination Guidance for Acquisition Actions

ASB agrees to coordinate with CLG Counsel on all acquisition actions, with an estimated total value greater than $1 million (base period plus option periods),[6] and any other matter that has the potential to set a legal precedent, raises novel or complex legal issues.. This does not apply to incremental funding actions and the routine unilateral exercise of options by the FDIC. For matters over the $1 million value threshold and matters identified below, regardless of dollar value, the CO will request legal review by CLG Counsel on any acquisition issue or document to include, but not limited to:

Actions for Legal Participation	Estimated Value Including Options
1. Formal Acquisition Plans	> $1 million
2. Formal Source Selection Plans	> $1 million
3. Selection Recommendation Reports	> $1 million
4. Draft Solicitations, requests for proposals, requests for quotes, requests for task order/delivery order proposals, or any other request for bid. This shall include all parts of the solicitation, including, but not limited to, RFP/RFQ, draft contract, award fee plans, evaluation criteria, pricing schedules, etc.	> $1 million
5. Down select decisions, cancellation of a solicitation, competitive range determinations, notifications of vendor	> $1 million

[6] Zero value Receivership Basic Ordering Agreements (RBOAs) will be treated as having a value in excess of $1 million dollars for purposes of this Agreement.

	Actions for Legal Participation	Estimated Value Including Options
	elimination from process, discussion, clarification or best and final offer letters	
6.	Award documentation, including consensus technical evaluation, cost/price evaluation, final proposal revision evaluation, best value determination, and draft contract/task order (both competitive and noncompetitive actions)	> $1 million
7.	Justifications for Non-Competitive Procurements and awards outside the scope of the contract	All
8.	Amendments to solicitations listed in 4, above, except for administrative amendments, such as incremental funding actions and routine unilateral exercise of options, which do not require legal review	All
9.	Requests for Information and market surveys	All
10.	Software licenses, rights in technical data, copyright or patent issues or other issues involving intellectual property and other non-procurement areas of law affecting acquisitions such as trade secrets, real estate, labor, environmental law, bankruptcy, anti-trust law, and mergers	All
11.	Debriefing materials (before release of written debriefing; talking points for oral debriefing) and participation in debriefings	All
12.	Contract modifications that materially change the terms of the contracts. Administrative modifications do not require legal review	All
13.	Advance authorizations and resultant definitization of the contract	All
14.	Award/Incentive/Disincentive Fee/Term determinations (plans, reports and decisions)	All
15.	Contract terminations for convenience or default, stop work orders, show cause letters, cure notices, letters of concerns, letters of deficiency	All

Actions for Legal Participation	Estimated Value Including Options
16. Contracting Officer's decisions to assess liquidated damages, and responses to requests for equitable adjustments	All
17. Claims, including review of the claim request, negotiated settlement and preparation of the settlement agreement	All
18. Protests (contractor filing and FDIC response including all relevant documents associated with the protest)	All
19. Contractor Novation, changes-of-name, and assignments requests	All
20. Ratifications of unauthorized commitments (contractor filing, internal reports and FDIC response)	All
21. Actions expressly requiring legal review pursuant to statute, regulation, or Executive Orders	All
22. Responses to congressional inquiries, GAO or other agency requests related to acquisition matters	All
23. Draft responses to OIG reports related to acquisition matters	All
24. Determinations of potential and/or actual personal or organizational conflicts of interest	All
25. Requests to change or waive acquisition policy and procedures or standard clauses and provisions that could in ASB's opinion result in legal implications	All
26. Any cases of suspected procurement fraud, misrepresentation, or ethical or criminal violation by any party	All
27. Requests for Contractor Indemnification or Contractor Limitations of Liability	All
28. Debarments and Suspensions	All
29. Non-disclosure Agreements	All

Actions for Legal Participation	Estimated Value Including Options
30. MOUs and MOAs for evaluation of products	All
31. Equipment Lease Agreements	All
32. Decisions on unsolicited proposals	All
33. Interpretation and determination of legal rights under contracts, order or agreements	All
34. Matters concerning application of and compliance with state and local laws	All
35. Tax questions related to acquisitions	All
36. Issues related to export controls or non U.S. Citizens	All
37. Subscription agreements	All

V. REPRESENTATION

A. CLG counsel will provide, in conjunction with other Legal Division counsel, as appropriate, legal support to the Divisions, Offices, and ASB for any protest of an award or other procurement action; and in contract claims, disputes, or controversies by and against the FDIC, including all meetings, negotiations, discussions, or communications on the matter after an action has been filed in an administrative or judicial proceeding. CLG will consult with ASB prior to and throughout the duration of any administrative or judicial proceeding. CLG will solicit from ASB and reasonably consider ASB's advice and opinion on the subject of the administrative or judicial proceeding.

B. CLG counsel will represent the Divisions, Offices, and ASB on behalf of the FDIC in communications, negotiations, and meetings with other parties touching upon the legal rights and obligations of the parties, or where another party, including a government party, is expected to be represented by legal counsel. CLG will consult with ASB prior to and throughout the duration of these events. CLG will solicit from ASB and reasonably consider ASB's advice and opinion on the matter.

VI. EXCEPTIONS AND WAIVERS

Any changes or waivers to this agreement require the approval of both the Senior Counsel for Contracts and Risk Management and the Deputy Director, ASB.

VII. EFFECTIVE DATE AND IMPLEMENTATION

This Participation Agreement is effective immediately upon signature for acquisitions initiated on or after this effective date.

APPROVAL:

Dated: **7/30/2019**

/s/
Senior Counsel,
Contracts and Risk Management Unit

Dated: **7/31/2019**

/s/
Deputy Director Acquisition Services Branch

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