NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2010)

Provision/Clause Number and Title
(Click on the provision/clause number to see the full text)

7.1.3-1	**Post-Government Employment Certification (Pre-Award) (May 2009)**
7.1.3-2	**Post-Government Employment Certification (Post-Award) (May 2009)**
7.3.1-6	**Identification and Delivery of Proposals (March 2009)**
7.3.2-15	**Mission Capability – Proposal Instructions (June 2010)**
7.3.2-21	**Description/Specifications/Work Statement (October 2008)**
7.3.2-45	**Preamble to Contractor Representations and Certifications (November 2009)**
7.3.2-46	**Integrity and Fitness Representations and Certifications (November 2009)**
7.3.2-48	**Certification of Registration in Central Contractor Registration (CCR) (February 2010)**
7.3.2-49	**Small Disadvantaged Business Concern Certification** **(**(This clause has been deleted.)
7.3.2-53	**FDIC Contracting Capacity**
7.3.2-55	**Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (November 2009)**
7.3.2-57	**Public Release of Contract Award and Advertising and Publicity Information (December 2008)**
7.3.2-67	**Environmental Protection**
7.3.2-70	**Legal Representation (April 2009)**
7.3.2-71	**FDIC Contracting Capacity - BOAs/RBOAs/BPAs (July 2009)**

7.3.2-72 **FDIC Contracting Capacity - Contracts/Task Orders/Delivery Orders (July 2009)**

7.3.2-73 **Compliance with 12 CFR Part 366 and Application of 12 CFR Part 367 (September 2009)**

7.3.3-2 **Contractor Use of AbilityOne - Mandatory Source of Goods or Services (July 2009)**

7.4.2-2 **Off-site Processing and Storing of FDIC Information (June 2010)**

7.5.1-2 **Protecting Sensitive Information (September 2010)**

7.5.1-3 **Access to FDIC Information Systems (June 2010)**

7.5.2-3 **Alternate 1 - Background Investigations (May 2009)**

7.5.4-7 **Rights in Data-Special Works (January 2010)**

7.5.4-8 **Rights in Data-Existing Works (January 2010)**

7.5.6-2 **Subcontracting Reporting (November 2010)**

7.5.6-3 **Subcontracting Reporting (BOAs/RBOAs/BPAs) (November 2010)**

7.5.6-4 **Approved Subcontractor and Consent to Subcontract (February 2010)**

7.5.6-4 **Alternate 1 - Approved Subcontractors and Consent to Subcontract (May 2009)**

7.5.8-1 **Liability Insurance (April 2010)**

7.5.8-7 **Fidelity Bond Coverage (April 2010)**

7.5.8-9 **Errors and Omissions Insurance (August 2009)**

7.5.8-10 **Contractor Indemnification** (This clause has been deleted.)

7.5.11-14 **Convict Labor**

7.5.12-1 **Buy American Act - Supplies (October 2009)**

7.5.12-2 **Buy American Act Certificate (October 2009)**

7.5.12-3 **Buy American Act-Free Trade Agreements-Israeli Trade Act (October 2009)**

7.5.12-4 **Buy American Act – Free Trade Agreements- Israeli Trade Act Certificate (October 2009)**

7.5.12-5 **Trade Agreements (October 2009)**

7.5.13-5 **Payment Under Fixed Price Awards (June 2009)**

7.5.13-8 **Invoice Preparation and Submission (Center for Financial Research-Visiting Scholars Program) (October 2008)**

7.5.13-13 **Content of Invoice (September 2010)**

7.5.13-15 **Electronic Invoice Preparation and Submission (CORFD/RECVR/SUBSD) (July 2010)**

7.6.7-1 **FDIC Property (July 2010)**

Full text versions of the provisions/clauses are on the following pages

BELOW ARE FULL TEXT VERSIONS OF THE PROVISIONS & CLAUSES

7.1.3-1 Post-Government Employment Certification (Pre-Award) (May 2009)

Prescription:

Per PGI 1.313, 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.

(Ref.-PAB 2009-04)

7.1.3-2 Post-Government Employment Certification (Post-Award) (May 2009)

Prescription:

Per PGI 1.313, 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.

(Ref.-PAB 2009-04)

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

(Ref.-PAB 2009-03)

7.3.2-15 Mission Capability - Proposal Instructions (June 2010)

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), (c), and/or (d), 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 subfactors. Do not merely reiterate the objective or reformulate the requirements specified in the solicitation.

The proposal must address the following:
Subfactor 1. (For example Management Plan) (_____ page maximum)
Subfactor 2. (For example Technical Approach) (_____ page maximum)
Subfactor 3. (For example Key Personnel)(_____ page maximum)

[USE ONE OF THE VERSIONS OF (b) BELOW IF FDIC INFORMATION MAY BE PROCESSED OR STORED OFF-SITE IN A NON-FDIC FACILITY (E.G. CONTRACTOR PERSONNEL WORK FROM THEIR COMPANY OFFICE OR A SERVICE PROVIDER PROCESSES FDIC DATA AT THEIR LOCATION).

- IT SECURITY PLAN: USE THIS VERSION OF (b) WHEN THE INFORMATION MAY BE BOTH ELECTRONIC AND PAPER FORM.

- PHYSICAL/ENVIRONMENTAL SECURITY PLAN: USE THIS VERSION OF (b) WHEN THE INFORMATION WILL BE PAPER FORM ONLY.]

(b) IT Security Plan.
The offeror must provide an IT Security Plan as a separate section of the Mission Capability volume. The IT Security Plan must describe the controls, processes, procedures and training of personnel that the Contractor will follow to ensure appropriate security of FDIC information. A template to assist with the format and documentation requirements of the IT Security Plan is

available at the FDIC website:
(www.fdic.gov/buying/goods/acquisition/index.html). In lieu of using the template, the offeror may modify and submit its existing IT Security Plan, provided the modified Plan accommodates the requirements of the FDIC. Also, in place of an IT Security Plan, the Contractor may provide a copy of any information technology-based, independent security audit or review covering the systems on which and the facilities where FDIC information will be processed and stored. Examples would include a "Statement on Auditing Standards No. 70 Type II (SAS 70 Type II)" or "International Organization for Standards/International Electro-technical Commission 17799 Assessment (ISO/IEC 17799)."

(b) Physical/Environmental Security Plan.
The offeror must provide a Physical/Environmental Security Plan as a separate section of the Mission Capability volume. The Physical/Environmental Security Plan must describe the controls, processes, procedures and training of personnel that the Contractor will follow to ensure appropriate security of FDIC information. A template to assist with the format and documentation requirements of the Physical/Environmental Security Plan is available at the FDIC website: (www.fdic.gov/buying/goods/acquisition/index.html). The template document on this website is entitled "IT Security Plan Template". However, the offeror must complete only the cover page, index, executive summary, and Section 2.1.6, Physical and Environmental Protection (PE). In lieu of using the template, the offeror may modify and submit its existing Physical/Environmental Security Plan, provided the modified Plan accommodates the requirements of the FDIC. Also, in place of a Physical/Environmental Security Plan, the Contractor may provide a copy of any independent security audit or review covering the systems on which and the facilities where FDIC information will be processed and stored. Examples would include a "Statement on Auditing Standards No. 70 Type II (SAS 70 Type II)" or "International Organization for Standards/International Electro-technical Commission 17799 Assessment (ISO/IEC 17799)."

[USE (c) BELOW IF SUBCONTRACTING IS PERMITTED.]

(c) 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;
(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;
(5) Description of work to be performed 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) SDB certification, if any, of subcontractor; and
(8) Provide your rationale and a policy for subcontracting on this contract, including how you will meet your proposed subcontracting commitments.

(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 (d) BELOW AS A SEPARATE PARAGRAPH UNDER THIS SECTION IF THIS IS A FOLLOW-ON/RE-COMPETE CONTRACT]

(d) 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.

(Ref.-PAB 2010-02 & PAB 2010-06)

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 an SOW or an 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.

7.3.2-45 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.

(Ref.-PAB 2009-09)

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 yes, 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 (12 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, explain below.)

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 (12 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 yes, 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.

(Ref.-PAB 2009-11)

7.3.2-48 Certification of Registration in Central Contractor Registration (CCR) (February 2010)

Prescription:
Per PGI 3.112 or PGI 3.218, insert provision 7.3.2-48, Certification of Registration in Central Contractor Registration (CCR), in solicitations for awards over $100,000.

Provision:

(a) The offeror certifies that it is registered in the Central Contractor Registration (CCR) at www.CCR.gov, and that all information in CCR 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 Central Contractor Registration (CCR) at www.CCR.gov, and will enter correct information in CCR, including its socio-economic status.

[ ] Yes [ ] No

(c) The socio-economic groups in CCR 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

(Ref.-PAB 2010-02)

7.3.2-49 Small Disadvantaged Business Concern Certification (This clause has been deleted.)

(Ref.-PAB 2010-02)

7.3.2-53 FDIC Contracting Capacity (This clause has been replaced by new clauses 7.3.2-71 and 7.3.2-72)

(Ref.-PAB 2009-05)

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.

(Ref.-PAB 2009-02 & PAB 2009-09)

7.3.2-57 Public Release of Contract Award and Advertising and Publicity Information (December 2008)

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 their services under this Contract.

(c) The Contractor may not issue or sponsor any advertising or publicity that states or implies the FDIC endorses, recommends or prefers the Contractor's services. Contractor may not use the FDIC's logo or other FDIC material or refer to the FDIC in its advertising and publicity materials without the prior written approval from the Contracting Officer and the FDIC Office of Public Affairs. All requests for such action must be submitted at least 30 days prior to the scheduled release of advertising or publicity materials, to the FDIC Contracting Officer who will coordinate with the FDIC Office of Public Affairs. The Contracting Officer will notify the Contractor of the final decision.

(d) The Contractor agrees to include this clause in all its subcontracts under this contract.

(Ref.-PAB 2008-02)

7.3.2-67 Environmental Protection (This clause has been deleted.)

(Ref.-PAB 2009-05)

7.3.2-70 Legal Representation (April 2009)

Prescription:

Per PGI 3.112 or PGI 3.218 insert clause 7.3.2-70, *Legal Representation*, 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.

Clause:

(a) Relationship of Contractor and FDIC Legal Division

The Contractor is hereby designated as a limited agent of the FDIC Legal Division for the sole purpose of assisting the FDIC Legal Division in providing legal services relating to this Contract and ancillary to the performance of the Contractor's duties under this Contract. This designation is in addition to other designations created elsewhere in this Contract and is not intended to supplant the relationships with FDIC personnel created elsewhere in this Contract.

(b) Contact Points

(1) The FDIC shall designate an FDIC Legal Division Attorney to serve as the Contractor's primary point of contact with the FDIC Legal Division.

(2) Contractor shall designate one member of its staff to serve as the FDIC Legal Division's primary point of contact with Contractor.

(c) Contractor's Authority

(1) *Subject to the provisions of this Clause*, Contractor has the limited authority to select, direct, monitor and pay outside counsel for necessary legal services, including initiating litigation, on legal matters arising from Contractor's obligations under this Contract when:

(i) The estimated legal fees do not exceed $50,000; and

(ii) The value of the transaction or the amount of the claims involved in the matter is not greater than $500,000.

For all other legal matters, the Contractor must obtain approval from the FDIC Legal Division to retain outside counsel.

Notwithstanding this limited grant of authority, the FDIC reserves the right to direct and control any legal matter and to modify these procedures, in its discretion.

(2) The Contractor shall not commence any litigation or other legal proceedings, or continue any pre-existing litigation or other legal proceedings:

(i) Involving the foreclosure of a mortgage or deed of trust on single family residential property;

(ii) Against any financial institution identified by the FDIC in writing to the Contractor;

(iii) Against any insured depository institution that is in conservatorship or receivership;

(iv) Against any financial institution identified to the Contractor by the FDIC in which the FDIC, in any capacity, has existing obligations to provide assistance or indemnities;

(v) In connection with any matter involving one or more of the Special Issues listed in paragraph (h) below; or

(vi) Against any state or federal banking regulator,

without the prior written approval of the FDIC Legal Division.

(3) Contractor shall notify the FDIC Legal Division about legal matters that are not within the general authority granted to the Contractor and shall coordinate with FDIC Legal Division the selection, retention, direction and monitoring of outside counsel, to the extent and in the manner it requests. To the extent that Contractor is required to obtain approval from the FDIC Division of Resolutions and Receiverships on particular matters or cases, which require the concurrence of the FDIC Legal Division under the delegations of authority, then Contractor shall obtain said concurrence from the FDIC Legal Division.

(4) The FDIC may direct and control any legal action (including litigation, arbitration, or alternative dispute resolution procedure) relating to any matter, upon written notice to the Contractor. Upon receipt of notice, the Contractor shall promptly provide the FDIC Legal Division with copies of all pleadings and other pertinent documents and correspondence. The Contractor shall continue to direct the legal action and protect the FDIC's interests, and shall continue to process payments to outside counsel, until the FDIC Legal Division actually takes control of the action.

(5) The FDIC Legal Division has sole authority to determine outside counsel conflicts-of-interest. If the Contractor perceives or is notified of any actual, apparent or potential conflicts-of-interest involving outside counsel, Contractor shall notify the FDIC Legal Division immediately.

(6) The Contractor is prohibited from hiring any law firm (or any employee, partner or shareholder thereof) which has any financial interest in the Contractor without the prior written approval of the FDIC Legal Division. Financial interest includes, but is not limited to, ownership interest. The prohibition applies to the entire law firm regardless of whether an individual other than the employee, partner or shareholder with the financial interest in the Contractor is expected to perform the legal services.

(d) Contractor's Duties

(1) The Contractor shall consult with the FDIC Legal Division concerning pleadings, case strategies, or the performance of outside counsel, as necessary or as the FDIC Legal Division may request, and shall provide any information it requests.

(2) The Contractor shall immediately notify the FDIC Legal Division of any adverse judgment entered in connection with any matter under this Contract.

(3) The Contractor shall obtain the prior written approval of the FDIC Legal Division before filing an appeal of any judgment entered in connection with any matter under this Contract.

(4) The FDIC and the Contractor acknowledge that the parties have a common interest in the conduct of legal affairs in support of the Contractor's liquidation and servicing activities under the Contract. They further acknowledge that the sharing of confidential and privileged information is sometimes necessary to the performance of the duties of the Contractor. The Contractor shall preserve the confidentiality of all information and documents it receives from the FDIC, FDIC in-house attorneys or outside counsel retained by or on behalf of the FDIC. The Contractor is authorized and required to take all actions necessary to protect all privileges available to the FDIC including, but not limited to, the attorney-client and work product privileges. Contractor agrees to supply FDIC with information and documents needed to protect FDIC's interests in the matters subject to this Contract.

(5) The Contractor is not an authorized agent of the FDIC for acceptance of service of process on the FDIC in any capacity, or on any other regulatory agency or financial institution. If the Contractor is served with a summons, complaint, subpoena or any other legal document that concerns the FDIC, the Contractor shall immediately notify the FDIC Legal Division and comply with its instructions regarding the handling of the documents.

(e) Procedures for Selection of Outside Counsel and Payment of Legal Fees
The Contractor shall:

(1) Only select firms to perform legal services from the FDIC List of Counsel Available (the "LCA"), *except* for the following limited matters: clear title actions and similar routine legal proceedings frequently used in connection with single-family-mortgage loan servicing. For these limited matters, Contractor may select firms that are not LCA firms, including inherited firms – firms that performed legal work for the failed financial institution prior to its failure - but these firms must still comply with the integrity and fitness requirements of 12 CFR Part 366 and must have no conflicts-of-interest with FDIC (see paragraph (c)(5)). Information about Part 366 and conflicts-of-interest is available at http://www.fdic.gov/buying/legal/outside/chap2.html. The Legal Division will supply Contractor with a copy of the LCA.

(2) Use the following factors as selection criteria: the firm's capacity, cost, subject matter expertise, geographic location and reputation, and whether any conflicts-of-interest exist.

(3) Document the selection of a law firm, using the criteria in (2) above, to perform the legal services.

(4) Send a referral letter retaining the law firm to perform the legal services, and retain a copy of the referral letter in the case file.

(5) Monitor legal expenses to determine when estimated legal fees and expenses are expected to meet or exceed the $50,000 limit referenced in paragraph (c)(1)(i) above; establish a budget for each matter upon initiating a new matter or electing to continue a pre-existing matter, and retain copies of all budgets and estimates of legal fees in the case files.

(6) Direct outside counsel to send its fee bills to Contractor in a timely manner.

(7) Review outside counsel fee bills and make adjustments, as appropriate, before payment.

(i) Contractor is expected to make prudent business decisions in authorizing use of legal counsel and reviewing fee bills for payment. Fees charged by an LCA firm must be in accord with the fee schedule established in its legal services agreement with the FDIC. Contractor must provide written certification on the invoices it submits to FDIC that the legal services were authorized, the legal work was performed, and that the fees are reasonable and appropriate for payment. Markup of legal fees by Contractor is not permitted.

(ii) Contractor will make timely payment directly to outside counsel, unless directed otherwise by FDIC Legal Division. FDIC Legal Division may direct that fee bills related to specific matters or fee bills exceeding certain amounts must be reviewed and approved by FDIC Legal Division prior to payment by the Contractor.

(iii) Unless provided otherwise in the Contract, the legal fees paid by Contractor for legal services obtained under the terms of this Contract are a reimbursable expense under the payment clause of this Contract.

(iv) The FDIC Legal Division always retains the right to audit fee bills and to disallow or recover any fees or expenses.

(8) Notify the FDIC Legal Division immediately, in the event that a dispute relating to law firm performance or fees and expenses claimed by outside

counsel arises. The FDIC Legal Division, working in conjunction with the Contractor, will resolve the dispute pursuant to Legal Division policies and procedures.

(f) Use of Minority-Owned and Women-Owned Law Firms

The FDIC Legal Division has engaged certain minority-owned and women-owned law firms under legal services agreements to perform legal services for the FDIC. These law firms are identified on the LCA for easy reference. The FDIC has a strong commitment to equal opportunity under the law. The FDIC Legal Division actively encourages the consideration of these law firms to perform legal services.

(g) Periodic Reports

The Contractor shall provide the following monthly reports to the FDIC Legal Division and the Oversight Manager on the 15th of each month:

(1) New Matters Referred. This report lists each new matter referred to outside counsel during the reporting period. This report should identify the law firm retained, the nature of the work, the asset involved, the amount in controversy, a description of the matter and the estimated legal fees.

(2) Activity Report. This report lists each active matter for the reporting period. This report should identify the case name, the matter type, the amount in controversy, the jurisdiction (for litigation matters, the court; for non-litigation matters, the county and state), and the law firm handling the matter.

The FDIC Legal Division will prescribe the format of these reports and any additional information it may require.

(3) The FDIC Legal Division, in its discretion, may request more frequent reports, particularly as to new matters, as well as occasional *ad hoc* reports. The Contractor shall comply with these requests for additional reports in a timely manner.

(h) Special Issues List

The Special Issues List, which is provided for illustrative purposes, includes without limitation:

- Actions involving the Federal Deposit Insurance Corporation and another state or federal financial institution regulator or state or federal agency (e.g. State Attorney General enforcing foreclosure forbearance/ restrictions/ moratorium)
- Agency status of FDIC
- Agricultural and Small Business Administration loans

- Bankruptcy proceedings involving a special issue from this list
- Bridge banks
- Challenges to FDIC conservatorship, receivership or corporate powers
- Challenges to or novel applications of the FDIC claims procedure
- Challenges to and interpretations of FDIC or RTC regulations or policy statements
- Conflicts between insolvent institutions
- Constitutional challenges to actions taken by FDIC officials
- Constitutionality of statutes affecting the FDIC or RTC
- Consumer Protection Financial Regulations/Violations (including federal statutes such as HOEPA and the Truth in Lending Act (TILA), and state consumer protection statutes
- Contracts using legal services/counsel (i.e. existing contracts, such as Loan/Asset Servicing Contracts, which allow use of outside counsel/legal services)
- Crime Control Act of 1990 ("CCA")
- Directors and officers liability
- *D'Oench Duhm*e doctrine, and 12 U.S.C. § 1823(e)
- Emergency Economic Stabilization Act of 2008
- Employee benefit litigation
- Environmental issues including, but not limited to: CERCLA, RCRA, USTs, asbestos, lead-based paints, wetlands, endangered species, and NEPA
- ERISA
- Executory contracts and leases
- Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA")
- Federal Home Loan Bank Board/FSLIC; especially challenges to powers
- Federal Trade Commission Act
- Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"); especially retroactivity of provisions
- Freedom of Information Act
- FSLIC Resolution Fund
- Guaranteed loans
- Historic properties preservation
- Indemnification of employees, officers or directors of failed institutions
- Jurisdiction, removal, or venue
- Least-Cost test; 12 U.S.C. §1823(c) (4)
- Lender liability
- Letters of Credit
- Loan participations
- Multi-receivership sales initiatives (securitizations, auctions)

- Mutual to stock conversions
- National depositor preference
- National impact: issues that may have national impact
- Privacy Act
- Professional liability causes of action
- Pro-rata vs. *pro tanto* settlement bar rule
- Prudential mootness
- Publicity: any case likely to generate publicity
- Punitive damages
- Purchase and Assumption documentation
- Qualified Financial Contracts; including derivatives, repurchase agreements, and swaps
- Racketeer Influenced and Corrupt Organizations Act
- Removal of state court appeals
- Repudiation of Contracts where measure of damages, notice, timing or reasonableness may be at issue
- Retroactivity involving FlRREA, CCA or FDICIA
- Section 1821 (j) of the FDI Act
- Section 1825(b) of the FDI Act
- Securities acts: Securities Act of 1933 and Securities Exchange Act of 1934
- Senior Executives: Lawsuits involving agency executives whether as named parties, deponents or witnesses
- Subsidiaries of failed insured depository institutions
- Tax matters – both income tax and property tax
- Termination of pension plans
- Termination of receiverships
- Tort claims that may implicate the Federal Tort Claims Act
- Trust departments.

(Ref.-PAB 2009-04)

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

(Ref.-PAB 2009-05)

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.

(Ref.-PAB 2009-05)

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.

(Ref.-PAB 2009-06)

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

(Ref.-PAB 2009-05)

7.4.2-2 Off-site Processing and Storing of FDIC Information (June 2010)

Prescription:

Per PGI 4.205, insert clause 7.4.2-2, *Processing and Storing of FDIC Information*, in all awards in which FDIC information (electronic or paper form) may be processed or stored off site in a non-FDIC facility (e.g., contractor personnel work from their company office, a service provider processes FDIC information at its location).

Clause:

(a) Protection of Information. The Contractor shall implement adequate administrative, technical, physical and procedural security controls 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 collection, use, transmission, and disclosure of FDIC information shall comply with all federal and state privacy laws and FDIC rules and regulations regarding privacy. The Contractor shall further ensure that FDIC PII is separated both physically and logically from Contractor's data. The Contractor shall not use any FDIC information except to the extent necessary to carry out its obligations under the contract. Contractor shall not disclose FDIC information to any third party unless disclosure is authorized in the contract or Contractor obtains the prior written consent of the Contracting Officer.

(b) Control of Information. All FDIC information remains the property of FDIC. At any time, upon request of the Contracting Officer, Contractor shall promptly retrieve and deliver to FDIC all FDIC information, or any portion of information as specified by FDIC, under the Contractor’s control or in its possession. Information shall be provided in a format and on media as agreed by both parties. The Contractor shall not, and shall not permit any other person, to access, transmit, maintain, store, use or disclose the Confidential Information [Sensitive Information] outside of the United States. Upon completion or termination of the contract, or at any time the Contracting Officer requests it in writing, Contractor shall return, erase, or destroy all FDIC information on any media under its control or in its possession, as FDIC directs.

(c) Security Plan. The Contractor shall implement and maintain the approved IT Security Plan, Physical/Environmental Security Plan, or the approved security audit or review, which is hereby incorporated into the contract, for the duration of the contract. The Contractor must demonstrate its continued compliance with the controls, processes and procedures described in the Security Plan (or the security audit or review) throughout the term of the contract, as FDIC may request.

(d) Inspections/Assessments. The Contractor shall allow and cooperate with both scheduled and unannounced inspections and assessments of its facilities, personnel, hardware, software and its security and privacy practices by either the FDIC information technology staff, the FDIC Inspector General, or the U.S. General Accountability Office (GAO). These inspections may be conducted

either by phone, electronically or in-person, on both a pre-award basis and throughout the term of the contract or task order, to ensure and verify compliance with FDIC IT security and privacy requirements.

(e) Monitoring and Incident Response. The Contractor shall monitor its facility and premises for security and privacy incidents and provide the capability to respond to and resolve them effectively and in a timely manner. All security and privacy incidents that involve FDIC information must be immediately reported to FDIC's Computer Security Incident Response Team (CSIRT).

(f) Contact Information. The Contractor shall provide a point of contact (name, telephone number, e-mail address) with whom the Contracting Officer, Oversight Manager, and FDIC Information Security and Privacy Staff may communicate throughout the duration of the contract about information security and privacy issues.

(Ref.-PAB 2010-06)

7.5.1-2 Protecting Sensitive Information (September 2010)

Prescription:

Per PGI 5.107, insert clause 7.5.1-2, *Protecting Sensitive Information*, 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.

Clause:

(a) 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 personally identifiable information (PII), to which they have access. FDIC Circular 1360.9 is available at the FDIC website: www.fdic.gov/buying/goods/acquisition/index.html

(b) Controlling Sensitive Information. All sensitive information, electronic and paper copy, remains the property of FDIC. If Contractor or Contractor Personnel moves or copies sensitive information to Contractor's facilities or equipment, they must maintain and store it separately, both physically and logically, from all non-FDIC information. Upon completion or termination of the contract, or at any time the Contracting Officer requests it in writing, Contractor must return, erase, or destroy all sensitive information on any media under its control or in its possession, as FDIC directs.

FDIC may perform both scheduled and unannounced inspections of Contractor's facilities and equipment to ensure and verify compliance with FDIC security and privacy requirements.

(c) Sensitive Information Defined. 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 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) 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; and

(4) Information about insurance assessments, resolution and receivership activities, as well as enforcement, legal, and contracting activities.

(d) Confidentiality Agreement. The Contractor, all key personnel and, at the discretion of FDIC, any designated non-key personnel working on the contract each must sign a confidentiality agreement. When FDIC determines non-key personnel are required to sign confidentiality agreements, the Oversight Manager shall provide the Contractor with a written notice of such and shall identify whether the requirement extends to all categories of non-key personnel or selected categories of non-key personnel. FDIC Form 3700/46, *Confidentiality Agreement (for Contractor)* and FDIC Form 3700/46A, *Confidentiality Agreement (for Contractor Personnel*) are included as attachments to this contract. The company-level confidentiality agreement must be signed by an authorized representative of the Contractor and delivered to the Contracting Officer at the time of award, with the signed contract. Confidentiality agreements for key personnel and designated non-key personnel must be delivered to FDIC no later than five (5) business days after starting performance and prior to receiving any sensitive information. The Contractor must deliver the confidentiality agreements signed by key personnel to the Contracting Officer and those signed by designated non-key personnel to the Oversight Manager.

Key personnel and designated non-Key Personnel who do not sign a confidentiality agreement will not be permitted to perform work on the contract.

(e) 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 its 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.

(Ref.-PABs 2009-02 and 2010-11)

7.5.1-3 Access to FDIC Information Systems (June 2010)

Prescription:

Per PGI 5.107, 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) 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 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 include this clause in all its subcontracts to which the conditions and requirements described in this clause would apply. Contractor also must require its 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.

(c) The FDIC Circulars identified in this clause are available on the FDIC website: www.fdic.gov/buying/goods/acquisition/index.html

(Ref.-PAB 2010-06)

7.5.2-3 Alternate 1 - Background Investigations (May 2009)

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 7.5.2-9, *Risk Level Designation – Entire Contract* 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

(Ref.-PAB 2009-04)

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.

(Ref.-PAB 2010-01)

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.

(Ref.-PAB 2010-01)

7.5.6-2 Subcontracting Reporting (November 2010)

Prescription:

Per PGI 5.605, insert clause 7.5.6-2, *Subcontracting Reporting*, in awards when subcontracting is approved.

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 DUNS number.
b. Subcontractor's type of business concern [Minority Owned (including ethnicity), Women Owned, Small Disadvantaged Business, Veteran Owned, and/or Service Disabled Veteran Owned Business].
c. Estimated percentage of the contract work to be performed by the subcontractor. (Applicable only to awards with Subcontracting Plans.)
d. Description of work performed by subcontractor during the report period and dates, or range of dates, performance was accomplished.
e. Compensation paid to subcontractor during reporting period.
*f. Total compensation paid to subcontractor cumulative to date.
*g. Percentage completion toward Subcontracting Plan goals. (Applicable only to awards with Subcontracting Plans.)

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://www2.fdic.gov/SRSweb/. 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 10 days after the end of each quarter (i.e., by April 10th for Quarter 1 ending March 31st , by July 10th for

Quarter 2 ending June 30th, by October 10th for Quarter 3 ending September 30th, and by January 10th for Quarter 4 ending December 31st.

*(Note: Contractor will not be able to enter into SRS the information required under paragraphs f and g until SRS undergoes a modification/upgrade. Contractor shall nevertheless collect the information so they can complete these requirements once SRS has been modified/upgraded.)

Ref. PAB 2010-13

7.5.6-3 Subcontracting Reporting (BOAs/RBOAs/BPAs) (November 2010)

Prescription:

Per PGI 5.605, insert clause 7.5.6-3, *Subcontracting Reporting (BOAs or RBOAs)*, in BOAs, RBOAs or BPAs if subcontracting is approved.

Clause:

If subcontracting is approved at the task order level, the Contractor must submit a subcontracting report, on a quarterly basis, by task order, addressing the following for each subcontractor:

a. Subcontractor's Name, Address, and DUNS number.
b. Subcontractor's type of business concern [Minority Owned (including ethnicity), Women Owned, Small Disadvantaged Business Veteran Owned and/or Service Disabled Veteran Owned Business].
c. Estimated percentage of the task order work to be performed by the subcontractor. (Applicable only to awards with Subcontracting Plans.)
d. Description of work performed by subcontractor during the report period and dates, or range of dates, performance was accomplished.
e. Compensation paid to subcontractor during reporting period.
*f. Total compensation paid to subcontractor cumulative to date.
*g. Percentage completion toward Subcontracting Plan goals. (Applicable only to awards with Subcontracting Plans.)

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://www2.fdic.gov/SRSweb/. 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 10 days after the end of each quarter (i.e., by April 10th for Quarter 1 ending March 31st , by July 10th for

Quarter 2 ending June 30th, by October 10th for Quarter 3 ending September 30th, and by January 10th for Quarter 4 ending December 31st.

*(Note: Contractor will not be able to enter into SRS the information required under paragraphs f and g until SRS undergoes a modification/upgrade. Contractor shall nevertheless collect the information so they can complete these requirements once SRS has been modified/upgraded.)

Ref. PAB 2009-07 and 2010-13

7.5.6-4 Approved Subcontractors and Consent to Subcontract (February 2010)

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:

Contractor must not engage subcontractors to perform any of its responsibilities without the prior written approval of the FDIC. Subcontractors identified in Contractor's proposal prior to award are deemed approved. Contractor must notify the FDIC of any changes in subcontracting arrangements. If Contractor proposes to add a subcontractor after award, Contractor must obtain consent from the Contracting Officer. 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 DUNS number of the subcontractor;

(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;

(5) Description of work to be performed 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) SDB certification, if any, of subcontractor; 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.

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 must 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.

(Ref.-PAB 2010-02)

7.5.6-4 Alternate 1 - Approved Subcontractors and Consent to Subcontract (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.

(Ref.-PAB 2009-04)

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.

(Ref.-PAB 2010-04)

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.

(Ref.-PAB 2010-04)

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.

(Ref.-PAB 2009-06)

7.5.8-10 Contractor Indemnification (This clause has been deleted.)

(Ref.-PAB 2009-01)

7.5.11-14 Convict Labor (This clause has been deleted.)

(Ref.-PAB 2009-05)

7.5.12-1 Buy American Act - Supplies (October 2009)

Prescription:

Per PGI 5.1206, insert clause 7.5.12-1*, Buy American Act - Supplies*, in all solicitations and awards [Corporate Capacity only] for supplies over $3,000 (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 Act 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 section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), 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) The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States. The component test of the Buy American Act 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 Act Certificate."

(Ref.-PAB 2009-08)

7.5.12-2 Buy American Act Certificate (October 2009)

Prescription:

Per PGI 5.1206, insert provision 7.5.12-2, *Buy American Act 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 Act—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 Act.

(Ref.-PAB 2009-08)

7.5.12-3 Buy American Act-Free Trade Agreements-Israeli Trade Act (October 2009)

Prescription:

Per PGI 5.1206, insert clause 7.5.12-3, *Buy American Act - 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 $194,000, **except** if the acquisition is for information technology that is a commercial item.

Clause:

(a) *Definitions*. As used in this clause—
"**Bahrainian , Moroccan, Omani, or Peruvian end product**" means an article that—
(1) Is wholly the growth, product, or manufacture of Bahrain, Morocco, Oman 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 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 section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), 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, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, Oman, 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*. The Buy American Act provides a preference for domestic end products for supplies acquired for use in the United States. The component test of the Buy American Act 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 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 Act—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 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: SUBSTITUTE THE FOLLOWING PARAGRAPH (c) FOR PARAGRAPH (c) OF THE BASIC CLAUSE IF THE ACQUISITION VALUE IS $25,000 OR MORE BUT LESS THAN $50,000:

(c) Delivery of end products. 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 Act—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: SUBSTITUTE THE FOLLOWING PARAGRAPH (c) FOR PARAGRAPH (c) OF THE BASIC CLAUSE IF THE ACQUISITION VALUE IS $50,000 OR MORE BUT LESS THAN $ 67,826:

(c) Delivery of end products. 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 Act—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.

(Ref.-PAB 2009-08)

7.5.12-4 Buy American Act – Free Trade Agreements- Israeli Trade Act Certificate (October 2009)

Prescription:

Per PGI 5.1206, insert provision 7.5.12-4, *Buy American Act - 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, or Peruvian end product," "commercially available off-the-shelf (COTS) item", "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 Act—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, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act-Free Trade Agreements-Israeli Trade Act":
Free Trade Agreement Country End Products (Other than Bahrainian, Moroccan, Omani, 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 Act—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 Act.
(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 Act—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 $ 67,826:

(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 Act—Free Trade Agreements—Israeli Trade Act":
Canadian or Israeli end products:
LINE ITEM NO. COUNTRY OF ORIGIN

_____ _____
_____ _____
_____ _____
[List as necessary]

(Ref.-PAB 2009-08)

7.5.12-5 Trade Agreements (October 2009)

Prescription:

Per PGI 5.1206, insert clause 7.5.12-5, *Trade Agreements*, in all solicitations and awards [Corporate Capacity only] valued at $194,000 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 country (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 (known in the World Trade Organization as "the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei))", or United Kingdom);
(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, Oman, 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, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or
(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, 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."

(Ref.-PAB 2009-08)

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.

(Ref.-PAB 2009-04)

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.

(Ref.-PAB 2008-01)

7.5.13-13 Content of Invoice (September 2010)

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 Central Contractor Registration (CCR) database. 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 CCR database.

(Ref.-PAB 2010-10)

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.

(Ref.-PAB 2009-04 & PAB 2010-07)

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.

(Ref. PAB 2010-07)