

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

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)**
- 7.3.2-21** **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** **Minority and Women-Owned Business Representations
(March 2009)**
- 7.3.2-49** **Small Disadvantaged Business Concern Certification
(November 2009)**
- 7.3.2-53** **FDIC Contracting Capacity**
- 7.3.2-55** **Certification and Disclosure Regarding Payments to Influence
Certain Federal Transactions (March 2009)**
- 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)**

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 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)**
- 7.5.1-2** **Protecting Sensitive Information (March 2009)**
- 7.5.2-3** **Alternate 1 - Background Investigations (May 2009)**
- 7.5.6-3** **Subcontracting Reporting (BOAs/RBOAs/BPAs) (July 2009)**
- 7.5.6-4** **Alternate 1 - Approved Subcontractors and Consent to Subcontract (May 2009)**
- 7.5.8-9** **Errors and Omissions Insurance (August 2009)**
- 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)**
- 7.5.8-11** **Contractor Indemnification (This clause has been deleted.)**
- 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)**
- 7.5.13-15** **Electronic Invoice Preparation and Submission (CORFD/RECVR/SUBSD) (June 2009)**

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

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

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

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

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

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

(Ref.-PAB 2009-03)

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.

(Ref.-PAB 2008-01)

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

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

(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:

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

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

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

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

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

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

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

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:

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

(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.)

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

(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 preceding 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

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

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 2009-09)

7.3.2-48 Minority and Women-Owned Business Representations (Mar 2009)

Prescription:

Per PGI 3.112 or PGI 3.218, insert provision 7.3.2-48, *Minority and Women-Owned Business Representations*, in solicitations for awards over \$100,000.

Provision:

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

(b) If a minority-owned business:

(1) Check the appropriate box below indicating ethnicity.

Hispanic or Latino Not Hispanic or Latino

(2) Check the appropriate box below indicating racial category.

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

- American Indian/Alaska Native Black or African American
 Asian Native Hawaiian or Other Pacific Islander

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

(d) If offeror is a minority or women-owned business where did it hear about FDIC contracting opportunities?

- Convention/Procurement Fair
 Minority and/or Women's Organization
 Personal Contact
 Current Solicitation
 Other (explain) _____

(Ref.-PAB 2009-02)

7.3.2-49 Small Disadvantaged Business Concern Certification (November 2009)

Prescription:

Per PGI 3.112 or PGI 3.218, insert provision 7.3.2-49, *Small Disadvantaged Business Concern Certification*, in solicitations for awards over \$100,000.

Provision:

The offeror certifies that it is is not a small disadvantaged business concern, as defined in 13 Code of Federal Regulations, Chapter 1, Part 124, which may be found at:

http://www.access.gpo.gov/nara/cfr/waisidx_09/13cfr124_09.html.

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

(Ref.-PAB 2009-09)

7.3.2-53 FDIC Contracting Capacity (This clause has been replaced by new clauses 7.3.2-1 and 7.3.2-72)

(Ref.-PAB 2009-05)

7.3.2-55 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (MAR 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.

Provision:

(a) The offeror certifies that, to the best of its knowledge and belief, the following statements are true:

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.

Yes No

(2) No non-appropriated funds (including profit or fee received under a covered Federal Transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the solicitation associated with this certification.

Yes No

If the offeror has checked the "No" box in (a)(2) above, indicating that any funds other than Federal appropriated funds (including profit or fee received under a covered Federal Transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, "Disclosure of Lobbying Activities" (available upon request) to the Contracting Officer.

(b) The offeror certifies that it will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure, and when required, a completed OMB Standard Form LLL is a prerequisite for making or entering into this contract imposed by 31 U.S.C. § 1352. Any person who makes an expenditure prohibited under the contract provision entitled "Limitation on Payments to Influence Certain Federal Transactions", or who fails to file or amend the discloser form to be filed or amended with this certification, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each failure.

(Ref.-PAB 2009-02)

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

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

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 2009-09)

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.

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

(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:

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

(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.

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

(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

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

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.

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

(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.

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

(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 Duhme* doctrine, and 12 U.S.C. § 1823(e)
- Emergency Economic Stabilization Act of 2008
- Employee benefit litigation

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

- 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 FIRREA, 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

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

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:

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

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

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

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)

7.5.1-2 Protecting Sensitive Information (March 2009)

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-

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

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 and all Key Personnel working on the contract each must sign a confidentiality agreement, the two forms of which 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. The Contractor must deliver the confidentiality agreements signed by Key Personnel to the Contracting Officer no later than five (5) business days after starting performance and prior to receiving any sensitive information. 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.

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

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.-PAB 2009-02)

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)

7.5.6-3 Subcontracting Reporting (BOAs/RBOAs/BPAs) (July 2009)

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.

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

Clause:

If subcontracting is approved at the task order level, the Contractor must submit a subcontracting report, on a _____ (monthly, quarterly, or semi-annual) 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 or Women Owned Business (MWOB) or Small Disadvantaged Business (SDB), including ethnicity].
- c. North American Industry Classification System (NAICS) Code and corresponding geographic location of the subcontractor's place of performance.
- d. Period covered by Report.
- e. Description of work performed by subcontractor during the report period.
- f. Total compensation paid to subcontractor cumulative to date.
- g. Percentage completion toward Subcontracting Plan goals.

The subcontracting report shall be provided to the Contracting Officer in electronic format.

(Ref.-PAB 2009-05)

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)

7.5.8-9 Errors and Omissions Insurance (August 2009)

Prescription:

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

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)

7.5.11-14 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

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

(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.

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

“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

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

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

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

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)

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

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

_____	_____
_____	_____
_____	_____

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

[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:

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

(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

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

(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.

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

“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)

7.5.8-11 Contractor Indemnification (This clause has been deleted.)

(Ref.-PAB 2009-01)

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

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

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)

**7.5.13-15 Electronic Invoice Preparation and Submission
(CORFD/RECVR/SUBSD) (June 2009)**

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 pdf format. The file should include the exact same information that has been submitted physically via mail in the past. (FDIC only wants one electronic file because we will be uploading the single pdf into a database and we only want one file associated with an invoice. However, if the size of a single pdf file exceeds 30 MB, the invoice may either be submitted as two pdf files, with neither pdf file exceeding 30 MB, or it may be submitted as a zip file that does not exceed 30 MB. If two pdf files are used, each email must clearly identify that the invoice has been separated into two pdf files to accommodate the size limitation. If a zip file is used, the individual files inside the zip file must be kept to a minimum and each must have a descriptive file name, such as "Invoice cover page", "Timesheets", etc.)

(d) Contractor must not include more than one electronic invoice in the same email. (For example, if a Contractor has four task orders, a separate email with a single invoice must be submitted for each of the four task orders.)

NEW AND REVISED PROVISIONS AND CLAUSES
(Covering the period of August 2008 to November 2009)

(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 calling the Dallas Accounts Payable Unit directly at (972) 761-8098, or sending an email to the email address shown in paragraph (a) of this clause. 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)
