

an unfair competitive advantage or such concurrent or subsequent activity would raise a significant appearance of impropriety. These additional limitations, when imposed, will be disclosed to the contractor prior to entering into the contract.

(b) *Waivers.* The Contractors' Conflicts Committee and the Outside Counsels' Conflicts Committee may grant waivers from the limitations imposed by paragraph (a) of this section. Circumstances which may be sufficient to warrant the granting of a waiver are:

(1) Evidence of an established effective screening mechanism which would eliminate the likelihood of the contractor obtaining any undue advantage; or

(2) An open or competitive bidding procedure in which the contractor's work for the RTC would provide no competitive advantage.

§ 1506.10 Communications with RTC employees.

(a) *Prohibitions.* During the course of any contractor selection process by the RTC (including any contractor selection process using procedures other than competitive procedures), a competing contractor, its related entities, and employees, representatives, agents, or consultants of the competing contractor or its related entities shall not:

(1) Directly or indirectly make any offer or promise of future employment or business opportunity to, or engage directly or indirectly in any discussion of future employment or business opportunity with, any RTC employee with personal or direct responsibility for that procurement, and competing contractors who wish to discuss employment opportunities with an employee should inquire prior to engaging in such discussions whether the employee has personal or direct responsibility for the contractor selection process in which the contractor will be or is competing;²

²Employees who have no personal or direct responsibility for the selection of a contractor may engage in employment discussions if they disqualify themselves from subsequent participation in any matter in which the contractor has an interest. See 18 U.S.C. 208(a) and 12 CFR 1605.15(b)

(2) Offer, give, or promise to offer or give, directly or indirectly, any money, gratuity, or other thing of value to any RTC employee, except as permitted by rules of the Corporation;³ or

(3) Solicit or obtain, directly or indirectly, from any RTC employee, prior to the award of the contract, any proprietary or source selection information regarding such contractor selection process.

(b) *Competing contractor.* For purposes of this section, "competing contractor" with respect to any contractor selection process (including a process using procedures other than competitive procedures) means any entity that is, or is reasonably likely to become, a competitor for or recipient of a contract or subcontract under such contractor selection process, and includes any other person acting on behalf of such entity.

(c) *Certification.* The RTC shall not award a contract or agree to a modification of a contract unless the officer or employee of the competing contractor responsible for the bid, offer, or proposal submits with it a written certification that:

(1) The officer or employee is aware of the prohibitions of paragraph (a) of this section and, to the best of that officer's or employee's knowledge and belief, he or she has no information concerning a violation or possible violation of paragraph (a) of this section; and

(2) Each officer, employee, agent, representative, and consultant of such competing contractor who participated personally and substantially in the preparation and submission of such bid, offer, proposal, or modification of such contract has certified to the responsible officer or employee that he or she:

(i) Is familiar with and will comply with the requirements of paragraph (a) of this section; and

(ii) Has no information of any violations or possible violations of paragraph (a) of this section and will report immediately to the officer or employee

³Employees of the RTC are prohibited from soliciting or accepting anything of value from anyone having business with the RTC or the FDIC. See 12 CFR 1605.8.

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of the competing contractor responsible for the bid, offer, or proposal for any contract or modification of such contract any subsequently gained information concerning a violation or possible violation of paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 3205-0001)

§ 1506.11 Confidentiality of information.

(a) *Nonpublic information defined.* Any information identified by the RTC as confidential or provided by the RTC to its attorneys in an attorney-client relationship, shall be deemed to be nonpublic until the RTC determines otherwise, in writing, or the information becomes part of the body of public information from a source other than the contractor.

(b) *Prohibitions.* The contractor and its related entities are prohibited from:

(1) Disclosing nonpublic information to anyone except as required to perform the contractor's obligations pursuant to the contract; and

(2) Using or allowing the use of any nonpublic information to further any private interest other than as contemplated by the contract.

(c) *Contractor's responsibility.* The contractor is required to take appropriate measures to ensure the confidentiality of nonpublic information and to prevent its inappropriate use. Such measures may include:

(1) Notifying all employees, related entities, subcontractors, and other persons to whom the contractor may need to disclose nonpublic information to perform its responsibilities under the contract of the requirement of confidentiality and limitations as to the use of nonpublic information; and

(2) Requiring each person to whom nonpublic information is provided to execute a certification that such person understands the limitations on disclosure and use and will maintain the confidentiality of the information and not use it other than as contemplated by the contract.

(d) The Corporation shall establish a recordkeeping system, which shall serve the purposes of the RTC with respect to the Privacy Act and the Free-

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dom of Information Act. Materials designated by the RTC shall be eligible for protection under applicable law.

§ 1506.12 Source selection information.

(a) *Prohibition.* During the conduct of any contractor selection process by the RTC, no person who is given authorized or obtains unauthorized access to source selection information regarding the contractor selection process shall knowingly disclose such information, directly or indirectly, to any person other than a person authorized to receive such information by the Executive Director of the Resolution Trust Corporation or his or her designee, the General Counsel of the FDIC or his or her designee, or the RTC's contracting officer.

(b) *Permitted disclosures.* The Executive Director of the Resolution Trust Corporation or his or her designee, the General Counsel of the FDIC or his or her designee, or the RTC's contracting officer, in accordance with internal procedures developed by the Corporation, may authorize persons or classes of persons to obtain access to proprietary or source selection information when access is essential to the contractor selection process.

§ 1506.13 Use of consultants.

(a) *Contingent fees.* Contractors are prohibited from obtaining the services of a consultant or advisor to assist in obtaining a contract with the RTC pursuant to an agreement in which payment of the consultant or advisor would be contingent on the contractor obtaining the contract.

(b) *Disclosure.* When submitting any bid, offer, or proposal to the RTC, a contractor shall include information about payments, agreements to pay or arrangements for obtaining the services (other than engineering, technical, legal, and accounting services) of consultants or advisors to assist in obtaining the contract that were made by the contractor or a related entity.

§ 1506.14 Use of information.

The RTC may utilize any information from any source, including information obtained under this part, in the contractor selection process.