

gain not contemplated by the contract; and

(2) The use of personal relationships or improper influence to gain unfair competitive advantage in obtaining contracts with the RTC.

(c) *Scope.* These regulations apply to contracts for services entered into by the RTC, after the effective date of these regulations, with law firms, accounting firms, investment banking firms, real estate brokers, appraisers, asset managers, property managers, leasing agents, and others performing similar services on behalf of the RTC. Except for contracts for legal, accounting, or investment banking services, contracts with a single contractor attributable to the Corporation, a single conservatorship, or a single consolidated field office, in which payments over the course of one year are not expected to aggregate in excess of \$25,000, are not subject to these regulations. Further, these regulations shall not apply to contracts for day-to-day operations, routine maintenance, or the provision of electronic data processing services for the RTC, and shall not apply to real estate brokers' commissions resulting from nonexclusive offerings.

§ 1506.2 Definitions.

As used in this part:

(a) *Competing property* means real property which has the same general character as an asset which is the subject of a contract between the contractor and the RTC, is in the same geographic market as defined in the solicitation, and in which the contractor or a related entity has 25 percent or greater ownership interest.

(b) *Contractor* means the individual or entity submitting an offer to perform services for the RTC or having a contractual arrangement with the RTC to perform services but does not include special government employees. For the purposes of §§ 1506.6, 1506.7, and 1506.8, *contractor* includes a subcontractor.

(c) *Defalcation* means:

(1) Any default on any obligation to pay principal or interest to an insured depository institution; or

(2) Any act that was intended to cause a loss to an insured depository institution; or

(3) A borrower's entering into a loan agreement with an insured depository institution, the making of which was an unsafe or unsound action of the institution on the basis of facts that the borrower knew or should have known, and the borrower's default on such loan in the amount of \$50,000 or more.

(d) *Default* means:

(1) A delinquency of 90 or more days as to payment of principal or interest on a loan or advance from an insured depository institution; or

(2) A failure to comply with the terms and conditions of a contract with the FDIC, the FSLIC, or the RTC, or an insured depository institution, other than a loan or advance.

(e) *FDIC* means the Federal Deposit Insurance Corporation in its corporate or receivership capacity or as conservator of an insured depository institution.

(f) *FSLIC* means the former Federal Savings and Loan Insurance Corporation and the Federal Savings and Loan Insurance Corporation Resolution Fund.

(g) *Loss* means:

(1) An obligation as to which there is a continuing legal claim that is owed to an insured depository institution, or to Federal deposit insurance funds, FSLIC, or to the RTC that is 12 months or more delinquent as to principal or interest; or

(2) An obligation to pay an outstanding, unsatisfied, final judgment based on any legal theory in favor of any insured depository institution, Federal deposit insurance funds, FSLIC, or the RTC.

(h) *Management official* means those individuals within a contractor's organization who have substantial responsibility for the direction and control of the contractor's policies and operations. With respect to partnerships that have a management committee or executive committee which has been given such responsibilities, this means only the members of those committees and, if no such committee exists, this means each of the general partners.

(i) *Material obligation* means an obligation which, if not satisfied, would cause a loss of \$50,000 or more.

(j) *Organizational conflict of interest* means a situation in which:

(1) Performance of a previous contract with the RTC or the Oversight Board, by the contractor or a related entity, may provide the contractor with an unfair competitive advantage in obtaining this contract; or

(2) The contractor or any related entity has an interest or relationship which could adversely affect the contractor's ability to perform under the contract or to represent the RTC.

(k) *Pattern or practice of defalcation* means:

(1) There are two or more instances of defalcation as defined in § 1506.2(c)(1) with respect to which there are continuing legal claims in an aggregate amount in excess of \$50,000; or

(2) There are two or more instances of defalcation as defined in § 1506.2(c)(2) or § 1506.2(c)(3).

(l) *Key employee* means an individual who participates personally and substantially, through decision, approval, disapproval, recommendation, or the rendering of advice, in the negotiation and performance of, and monitoring for compliance under the contract with the RTC.

(m) *Personal conflict of interest* means a business or financial interest of an individual, his or her spouse, minor child or other person with whom the individual has a close personal relationship, which could adversely affect the individual's ability to perform under the contract or represent the interests of the RTC.

(n) *Related entity* means a contractor's management officials; any individual or entity that controls or is controlled by or is under common control with the contractor; and any other entity that it controlled by any of a contractor's management officials and that will perform work pursuant to the contract. For purposes of this part, an individual or entity shall be presumed to have control of a company or organization if the individual or entity directly or indirectly, or acting in concert with one or more individuals or entities, or through one or more subsidiaries, owns or controls 25 percent or more of its equity, or otherwise controls its management or policies. A subfranchiser entity shall not be regarded as related to a contractor that is its master franchiser if the subfran-

chiser is independently owned and operated.

(o) *RTC* means, collectively, the Corporation, the Resolution Trust Corporation as receiver, and the Resolution Trust Corporation as conservator. The *Corporation* means the Resolution Trust Corporation acting as an instrumentality of the United States, and not as conservator or receiver for an insured depository institution.

(p) *RTC employee* means a director, officer, or employee of the RTC, including a special government employee, or an employee of any other government agency who is properly acting on behalf of the RTC.

(q) *Source selection information* means information related to a particular contract or contractor selection process, including any such contract or process using procedures other than competitive procedures, which, if not available to the public, and, if obtained by a contractor, would give an advantage in the contract selection process.

(r) *Special government employee* means any employee serving the RTC with or without compensation for a period not to exceed 130 days during any 365-day period on a full-time or intermittent basis.

(s) *Subcontractor* means any individual or entity with whom the contractor has entered or intends to enter into a contract to perform services within the scope of this part in order to fulfill the contractor's obligation under its contract with the RTC.

(t) *Substantial loss to the Federal deposit insurance funds* means a loss of more than \$50,000 to the funds maintained by a Federal deposit insurance agency for the protection of depositors.

§ 1506.3 Contractors' Conflicts Committee and Outside Counsels' Conflicts Committee.

(a) *Designation.* The Board of Directors of the Corporation will designate officials of the FDIC or Corporation as members of a Contractors' Conflicts Committee, which will resolve issues of conflict of interest affecting independent contractors, other than law firms, which arise under these regulations.