

(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.

The Outside Counsels' Conflicts Committee appointed by the General Counsel of the FDIC, or designee, will resolve issues of conflict of interest relating to law firms.

(b) *Authority.* The Contractors' Conflicts Committee and the Outside Counsels' Conflicts Committee may delegate their authority to resolve conflicts of interest issues which arise under these regulations.

(c) *Referrals to the Board of the Corporation.* The Contractors' Conflicts Committee and the Outside Counsels' Conflicts Committee may make referrals of and recommendations to the Board of Directors of the Corporation with respect to situations in which a Committee determines that a very significant conflict of interest exists but, nevertheless, the contractor should be engaged because the contractor has special expertise not otherwise available or the engagement is otherwise in the best interests of the government.

(d) *Decisions.* Decisions issued either by the Contractors' Conflicts Committee itself, or the Board of Directors of the Corporation itself on matters referred to it by the Contractors' Conflict Committee shall be in writing and shall include statements of the bases for the decisions. Such decisions shall be filed with the Executive Secretary of the Resolution Trust Corporation and shall be made available to the public upon request, with such redactions as may be required to protect the privacy interests of identifiable individuals or confidential business information.

§ 1506.4 Qualification of contractors.

(a) *Requirements.* The RTC shall not enter into a contract with any contractor unless the contractor and its related entities meet minimum standards of competence, integrity, fitness, and experience. In addition to presenting evidence (on a form or forms to be furnished by the RTC for that purpose) of competence and experience, the contractor shall provide a list of any instance during the preceding five years in which there was a default by the contractor or any of its related entities on any material obligation to an insured depository institution, and shall

be required to certify to the following items:

(1) That neither the contractor nor any of its related entities has been convicted of a felony;

(2) That neither the contractor nor any of its related entities has been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by any federal banking agency;

(3) That neither the contractor nor any of its related entities has demonstrated a pattern or practice of defalcation under § 1506.2(k)(1);

(4) That neither the contractor nor any of its related entities has caused a substantial loss to Federal deposit insurance funds;

(5) That neither the contractor nor any of its related entities, nor any entity that during the past five years was a related entity of the contractor or those who control the contractor, has failed to satisfy an obligation to pay principal or interest at its full value owed to any Federal deposit insurance funds, FSLIC, or the RTC;

(6) That neither the contractor nor any of its related entities are currently in default on any obligation(s) to the FDIC, the FSLIC, or the RTC;

(7) That neither the contractor nor any of its related entities:

(i) Is currently a party to an administrative or judicial proceeding in which any of them is alleged to have engaged in fraudulent activity or has been charged with the commission of a felony or which seeks a remedy that would prevent or materially interfere with its ability to perform on the contract; or

(ii) Is subject, to their knowledge, to an administrative or criminal investigation relating to fraudulent activity or the commission of a felony;

(8) That, during the past five years, neither the contractor nor any of its related entities has been held liable for fraud, dishonesty, misrepresentation, or breach of fiduciary duty;

(9) That neither the contractor nor any of its related entities is currently excluded from Federal procurement or nonprocurement programs;

(10) That neither the contractor nor any of its related entities is subject to