

§ 366.4 Disqualification of contractors.

(a) *Disqualifying conditions.* No person shall perform services under an FDIC contract and no contractor shall enter into any contract with the FDIC if that person or contractor:

- (1) Has been convicted of any felony;
- (2) Has been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation or their successors;
- (3) Has demonstrated a pattern or practice of defalcation regarding obligations; or
- (4) Has caused a substantial loss to Federal deposit insurance funds.

(b) *Contractors with disqualifying conditions arising prior to contract award.* (1) A contractor which has any of the disqualifying conditions identified in paragraph (a) of this section prior to the award of an FDIC contract is disqualified and is prohibited from entering into contracts with the FDIC.

(2) If after submitting an offer but prior to award, a contractor discovers that it has any of the disqualifying conditions identified in paragraph (a) of this section, it shall notify the FDIC in writing within 10 days or prior to award, whichever is earlier.

(c) *Disqualifying conditions that arise or are discovered after contract award.* A contractor must notify the FDIC in writing within 10 days after discovering that it or any person performing services under an FDIC contract has any of the disqualifying conditions identified in paragraph (a) of this section. Such notification shall contain a detailed description of the disqualifying condition and may include a statement of how the contractor intends to resolve such condition. The FDIC, after receipt of such notification or other discovery of the contractor's disqualifying condition, shall take such action as it determines is in the FDIC's best interests, including that:

(1) The FDIC may notify the contractor in writing of the corrective actions, if any, which the contractor must take to eliminate the disqualifying condi-

tion. Corrective actions must be completed by the contractor not later than 30 days after notification is mailed by the FDIC unless the FDIC, at its sole discretion, determines that it will be in the best interests of the FDIC to grant the contractor an extension of time in which to complete such corrective action;

(2) The FDIC may immediately declare any contracts with such contractor in default, terminate the contracts, and order an immediate transfer of duties and responsibilities under the contracts; or

(3) The FDIC may declare any contracts with such contractor in default and temporarily waive such default in order to allow an orderly transfer of duties and responsibilities under the contracts.

(d) *Reconsideration of decisions.* Decisions issued by the FDIC may be reconsidered upon application by an affected party to the Chairman or the Chairman's designee. Such requests shall be in writing and contain the bases for the request. The FDIC, at its discretion and after determining that it is in its best interests, may stay any corrective or other actions ordered by it pending reconsideration of a decision.

§ 366.5 Contractor conflicts of interest.

(a) *General.* The FDIC will not award contracts to contractors that have conflicts of interest associated with a particular contract or permit contractors to continue performance under existing contracts when such contractors have conflicts of interest, unless such conflicts are eliminated by the contractor or are waived by the appropriate FDIC official.

(b) *Waivers.* Waivers of conflicts of interest will only be granted when, in light of all relevant circumstances, the interests of the FDIC in the contractor's participation outweigh the concern that a reasonable person may question the integrity of the FDIC's operations.

(c) *Conflicts of interest arising prior to contract award (1) Requests for review of conflicts of interest.* (i) A contractor, with its offer, may request a determination as to the existence of a conflict of interest, may request that the conflict of interest, if any, be waived in

accordance with paragraph (b) of this section, or may propose how the contractor could eliminate the conflict.

(ii) If after submitting an offer, but prior to award, a contractor discovers that it has a conflict, it shall notify the FDIC in writing within 10 days or prior to award, whichever is earlier. The contractor, with its notice, may make such requests or proposals regarding the conflict or potential conflict as are described in paragraph (c)(1)(i) of this section.

(2) *Review by the FDIC.* (i) Subject to the restrictions set forth in paragraphs (c)(2)(ii) and (c)(3) of this section, the appropriate FDIC official, at his or her sole discretion, may determine whether a conflict of interest exists, may waive the conflict of interest in accordance with paragraph (b) of this section, or may approve in writing a contractor's proposal to eliminate a conflict of interest.

(ii) For contractors other than law firms and sole practitioner lawyers, the FDIC may consider a contractor's conflict or potential conflict of interest only if the FDIC first determines that the contractor's offer is the most advantageous of all received.

(3) *Pre-bid requests and pre-bid review for contractors other than law firms and sole practitioner lawyers.* A request for pre-bid review must be in writing and describe in detail the conflict or potential conflict of interest. The request may provide a proposal for elimination of the conflict or request a waiver of the conflict. The FDIC may perform a pre-bid review of conflicts of interest only if it first determines, at its sole discretion, that the participation of the contractor in the bidding process is necessary to provide adequate competition.

(d) *Conflicts of interest that arise or are discovered after contract award.* A contractor shall notify the FDIC in writing within 10 days after discovering that it has a conflict of interest. Such notification shall contain a detailed description of the conflict of interest and state how the contractor intends to eliminate the conflict. The FDIC, after receipt of such notification or other discovery of the contractor's conflict or potential conflict of interest, shall take such action as it determines

is in the FDIC's best interests, including that:

(1) The FDIC may notify the contractor in writing of its finding as to whether a conflict of interest exists and the basis for such determination; whether or not a waiver will be granted; or whether corrective actions may be taken in order to eliminate the conflict of interest. Corrective actions must be completed by the contractor not later than 30 days after notification is mailed by the FDIC unless the FDIC, at its sole discretion, determines that it is in the best interests of the FDIC to grant the contractor an extension in which to complete such corrective action;

(2) The FDIC may immediately declare any affected contracts with such contractor in default, terminate the contracts, and order an immediate transfer of duties and responsibilities under such contracts; or

(3) The FDIC may declare any affected contract with such contractor in default and temporarily waive such default in order to allow an orderly transfer of duties and responsibilities under such contract.

(e) *Reconsideration of decisions.* Decisions issued pursuant to this part may be reconsidered by the Chairman or the Chairman's designee upon application by the contractor. Such requests shall be in writing and shall contain the bases for the request. The FDIC, at its discretion and after determining that it is in its best interests, may stay any corrective or other actions ordered by the FDIC pending reconsideration of a decision.

§ 366.6 Information required to be submitted.

(a) *Initial submission.* Every offer submitted to the FDIC by any contractor shall include a completed Representations and Certifications Form and such other information as the FDIC may deem appropriate to permit it to make a determination with respect to disqualifying conditions or conflicts of interest. The Representations and Certifications Form shall require that the contractor provide the following:

(1) Certifications that, to the best of the contractor's knowledge, the contractor is not disqualified from service