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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 FDIC or their successors;

(c) The contractor has demonstrated a pattern or practice of defalcation;

(d) The contractor has caused a substantial loss to Deposit Insurance Fund (or any predecessor deposit insurance fund);

(e) The contractor has failed to disclose, pursuant to 12 CFR 366.6, a material fact to the FDIC;

(f) The contractor has failed to disclosed any material adverse change in the representations and certifications provided to FDIC under 12 CFR 366.6;

(g) The contractor has miscertified its status as a minority and/or woman owned business (MWOB);

(h) The contractor has a conflict of interest that was not waived by the Ethics Counselor or designee;

(i) The contractor has been subject to a final enforcement action by any federal financial institution regulatory agency, or has stipulated to such action;

(j) The contractor is debarred from participating in other federal programs;

(k) The contractor has been convicted of, or subject to a civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, or conspiracy to do the same;

(2) Violation of federal or state antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging, or conspiracy to do the same;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstructing of justice, or conspiracy to do the same;

(4) Commission of any other offense indicating a breach of trust, dishonesty or lack of integrity, or conspiracy to do the same;

(l) The contractor's performance under previous contract(s) with FDIC or RTC has resulted in:

(1) The FDIC or RTC declaring such contract(s) to be in default; or

(2) The termination of such contract(s) for poor performance; or

(3) A violation of the terms of a contract that would have resulted in a default or termination of the contract for poor performance if that violation had been discovered during the course of the contract; or

(m) The contractor has engaged in any conduct:

(1) Indicating a breach of trust, dishonesty, or lack of integrity that seriously and directly affects its ability to meet standards of present responsibility required of an FDIC contractor; or

(2) So serious or compelling in nature that it adversely affects the ability of a contractor to meet the minimum ethical standards required by 12 CFR part 366.

[61 FR 68560, Dec. 30, 1996, as amended at 71 FR 20528, Apr. 21, 2006]

§ 367.7 Suspensions.

(a) The Ethics Counselor may suspend a contractor for any of the causes in § 367.8 using the procedures established in this section.

(b) Suspension is an action to be imposed when there exists adequate evidence of one or more of the causes set out in § 367.8. This includes, but is not limited to, situations where immediate action is necessary to protect the integrity of the FDIC contracting program and/or the security of FDIC assets during the pendency of legal or investigative proceedings initiated by FDIC, any federal agency or any law enforcement authority.

(c) The duration of any suspension action shall be for a temporary period pending the completion of an investigation and such other legal proceedings as may ensue.

(d) A suspension shall become effective immediately upon issuance of the notice specified in § 367.13(b).

(e) Contractors suspended from FDIC contracting programs are prohibited from entering into any new contracts with the FDIC for the duration of the period of suspension. The FDIC shall

not solicit offers from, award contracts to, extend or modify existing contracts, award task orders under existing contracts, or consent to subcontracts with such contractors. Suspended contractors are also prohibited from conducting business with FDIC as agents or representatives of other contractors.

§ 367.8 Causes for suspension.

(a) Suspension may be imposed under the procedures set forth in this section upon adequate evidence:

(1) Of suspension by another federal agency;

(2) That a cause for exclusion under § 367.6 may exist;

(3) Of the commission of any other offense indicating a breach of trust, dishonesty, or lack of integrity that seriously and directly affects the minimum ethical standards required of an FDIC contractor; or

(4) Of any other cause so serious or compelling in nature that it adversely affects the ability of a contractor to meet the minimal ethical standards required by 12 CFR part 366.

(b) Indictment for any offense described in § 367.6 is adequate evidence to suspend a contractor.

(c) In assessing the adequacy of the evidence, FDIC will consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated and what inferences can reasonably be drawn as a result.

§ 367.9 Imputation of causes.

(a) Where there is cause to suspend and/or exclude any affiliated business entity of the contractor, that conduct may be imputed to the contractor if the conduct occurred in connection with the affiliated business entity's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(b) Where there is cause to suspend and/or exclude any contractor, that conduct may be imputed to any affiliated business entity, key employee, or management official of a contractor who participated in, knew of or had reason to know of the contractor's conduct.

(c) Where there is cause to suspend and/or exclude a key employee or management official of a contractor, that cause may be imputed to the contractor if the conduct occurred in connection with the key employee or management official's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(d) Where there is cause to suspend and/or exclude one contractor participating in a joint venture or similar arrangement, that cause may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(e) Where there is cause to suspend and/or exclude a subcontractor, that cause may be imputed to the contractor for which the subcontractor performed services, if the conduct occurred for or on behalf of the contractor and with the contractor's knowledge, approval, or acquiescence. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

§§ 367.10–367.11 [Reserved]

§ 367.12 Procedures.

(a) FDIC shall process suspension and exclusion actions as informally as practicable, consistent with its policy of providing contractors with adequate information on the grounds that give rise to the proposed action and affording contractors with a reasonable opportunity to respond.

(b) For purposes of determining filing dates for the pleadings required by this part, including responses, notices of appeal, appeals and requests for reconsideration, the provisions relating to the