Office of Inspector General

September 2009
Report No. EVAL-09-007

Evaluation of the FDIC's Solicitation and Award of the National Owned Real Estate Management and Marketing Services Receivership Basic Ordering Agreement

This is a redacted version of a previously issued report. The original version of this report contained sensitive procurement-related information.

Office of Evaluations

Office of Evaluations

Background and Purpose of Evaluation

In November 2008, the FDIC awarded the National Owned Real Estate Management and Marketing Services Receivership Basic Ordering Agreement (ORE RBOA) to two asset management companies (C.B. Richard Ellis (CBRE) and Prescient, Inc.) to assist the FDIC in the acquisition, research, preparations for management, marketing, and final disposition of all types of real property. Recent news articles have discussed alleged conflicts of interest between the FDIC and one of the asset management companies and suggested that the FDIC awarded the contract to this firm at compensation rates higher than the industry norms. Although the FDIC maintains that these allegations are unfounded, as a precaution, the FDIC Chairman asked our office to independently evaluate the process leading to the award of the subject agreement.

The overall objective of our review was to ensure that the FDIC followed its established policies in soliciting and awarding the ORE RBOA. Specifically, we evaluated whether the FDIC:

- Implemented controls designed to achieve reasonable competition in the solicitation,
- Carried out a solicitation and evaluation process that included controls to avoid entering into a contract with an organization that presents an unmitigated conflict of interest, and
- Selected contractors on the basis of the best value to the Corporation.

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Evaluation of the FDIC's Solicitation and Award of the National Owned Real Estate Management and Marketing Services Receivership Basic Ordering Agreement

Results of Evaluation

The FDIC followed its established acquisition procedures to achieve reasonable competition and to avoid unmitigated conflicts of interest. Based on our review of file documentation and e-mail activity and interviews with FDIC officials, we identified no indications of improper contact or influence associated with this procurement action. The Corporation also took steps contemplated in the FDIC's Acquisition Policy Manual (APM) to reach a best value decision, such as establishing technical criteria, convening a technical evaluation panel (TEP), and documenting the TEP's review of technical proposals. However, the FDIC could have benefited from developing overall or unit cost estimates against which it could evaluate proposed rates, and better documented a competitive price range and efforts to assess price reasonableness.

CBRE rates for certain key tasks were generally within, but were near the high end of, the range of offeror rates that the FDIC received under this solicitation. As a result, the overall estimated cost of the CBRE contract is substantially higher than the cost of the Prescient contract. Contract file documentation stated that the FDIC's rationale for selecting CBRE was CBRE's exceptional technical capability, ability to manage complex commercial assets, and ability to market FDIC assets to a broad pool of global buyers. However, we found limited documentation (such as a comparison to market rates or an FDIC cost estimate) to support the FDIC's assessment of the reasonableness of CBRE rates for certain key areas, in particular, monthly asset management fees.

The FDIC also made mathematical errors in calculating best and final offer pricing amounts. In this regard, we found that the rates in CBRE's executed contract were about 13 percent higher than the rates used to justify the FDIC's best value decision in selecting CBRE as one of the winning bidders. Notwithstanding, the FDIC maintained that CBRE still represented the best value for the FDIC.

We also identified several procedural and documentation exceptions associated with this procurement warranting management's attention.

By way of explanation, DOA officials indicated that at the time of the ORE RBOA solicitation effort, the FDIC experienced an unexpected surge in field contracting activity in response to multiple bank failures. Further, the FDIC's Dallas Office, which managed the solicitation, had only two employees to address the additional workload. Since that time, the DOA has hired six new employees in Dallas to handle the extra workload.

Based on the limited scope of our review, we are not making recommendations to address our findings. Management should, however, take steps to obtain the various documents that are required, by policy, to be maintained to ensure there is a complete record of the ORE RBOA procurement. Further, in light of the significant volume of contracting activity that the Corporation faces, management should ensure that personnel involved in procurement actions remain mindful of the risk associated with not properly documenting the actions taken to follow key contracting principles—particularly with respect to documenting best value decisions.

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ACRONYMS IN THE REPORT

AP	Acquisition Plan
ASB	Acquisition Services Branch
APM	Acquisition Policy Manual
BAFO	Best and Final Offer
CBRE	C.B. Richard Ellis
CEFile	Contract Electronic File
CLU	Contract Law Unit
DOA	Division of Administration
DRR	Division of Resolutions and Receiverships
FDIC	Federal Deposit Insurance Corporation
OIG	Office of Inspector General
ORE	Owned Real Estate
ORE RBOA	National Owned Real Estate Management and Marketing Services Receivership Basic Ordering Agreement
RAC	Receivership Assistance Contract
RFP	Request for Proposal
SRR	Selection Recommendation Report
TEP	Technical Evaluation Panel

Federal Deposit Insurance Corporation
3501 Fairfax Drive, Arlington, VA 22226
Office of Inspector General

DATE: September 1, 2009

MEMORANDUM TO: Sheila C. Bair
Chairman

[Signed]
FROM: Jon T. Rymer
Inspector General

SUBJECT: *Evaluation of the FDIC's Solicitation and Award of the National Owned Real Estate Management and Marketing Services Receivership Basic Ordering Agreement*
(Report No. EVAL-09-007)

We have completed a review of the subject procurement. In November 2008, the FDIC awarded the National Owned Real Estate Management and Marketing Services Receivership Basic Ordering Agreement (ORE RBOA) to two asset management companies to assist the FDIC in the acquisition, research, preparations for management, marketing, and final disposition of all types of real property. News articles discussed alleged conflicts of interest between the FDIC and one of the asset management companies and suggested that the FDIC awarded the contract to this firm at compensation rates higher than industry norms. Although FDIC management maintains that these allegations are unfounded, as a precaution, you asked our office to independently evaluate the process leading to the award of the subject agreement.

EVALUATION OBJECTIVE AND APPROACH

The overall objective of our review was to ensure that the FDIC followed its established policies in soliciting and awarding the ORE RBOA. Specifically, we evaluated whether the FDIC:

- Implemented controls designed to achieve reasonable competition in the solicitation,
- Carried out a solicitation and evaluation process that included controls to avoid entering into a contract with an organization that presents an unmitigated conflict of interest, and
- Selected contractors on the basis of the best value to the Corporation.

To accomplish our objective, we identified and reviewed relevant policies and procedures, interviewed FDIC officials associated with the procurement, and reviewed relevant documentation maintained in contracting files and provided to us during our evaluation. Details on our objective, scope, and methodology are provided in the Appendix.

BACKGROUND

The FDIC acquires owned real estate (ORE) through financial institution closings or by discovery.[1] Property types include, but are not limited to, commercial improved properties that are income producing such as retail shopping centers, hotels, resorts, and apartments. In addition, the FDIC acquires land developments, farm land, improved residential properties, condominiums, and vacant land and lots. Prior to the RBOA awards, Division of Resolutions and Receiverships (DRR) staff in the Dallas Regional Office managed these properties.

In order to leverage DRR staff, DRR requested the Division of Administration (DOA) to solicit contract services to expose ORE properties to the broadest market possible and to dispose of the properties at the highest possible return within a reasonable period of time. In May 2008, DOA began procurement efforts and in November 2008 signed ORE RBOAs with C.B. Richard Ellis (CBRE) and Prescient, Inc. The contracts have an initial term of 3 years and may be extended at the sole discretion of the FDIC, for up to three 2-year option periods. FDIC cost scenarios for the two awardees estimated total contract costs of [redacted], respectively.

The Federal Deposit Insurance Act (12 U.S.C. 1819(a)) empowers the FDIC to enter into binding agreements and contracts. The Act also permits the FDIC to develop a procurement program to acquire goods and services. The FDIC Board of Directors delegated authority to establish policies and procedures for the procurement program to the Director, DOA. DOA's Acquisition Services Branch (ASB) is responsible for overseeing the implementation of the procurement program throughout the FDIC, except for Legal Division procurements.

The *FDIC Acquisition Policy Manual* (APM), Circular 3700.16, establishes policies and procedures for (a) procuring goods and services on behalf of the Corporation in its corporate, receivership, and conservatorship capacities; and (b) identifying roles and responsibilities for all FDIC employees involved in the pre-solicitation, solicitation, proposal evaluation, award, and contract administration phases of the procurement process. The FDIC substantially revised the APM in August 2008.[2]

For the ORE RBOA, the initial solicitation and acquisition planning was performed under a prior version of the APM, Revision 3, dated May 31, 2004, which had also been supplemented by a number of interim acquisition policy memoranda. Of significance to this review, the policies set forth in the current APM require the FDIC to:

(1) Establish reasonable competition as the preferred method of source selection;
(2) Enable innovative and creative tailoring of procurement processes to meet individual requirements, so that the right contractor is selected for each requirement; and
(3) Select contractors on the basis of the best value to the FDIC.[3]

[1] The FDIC acquires ORE by discovery when research of a failed institution's records identifies additional assets that were not included in the receivership's balance sheet when the receivership was established.
[2] The August 2008 version of the APM is the FDIC's official policy document for the acquisition of goods and services, and is supplemented by a Procedures, Guidance, and Information document.
[3] When using the best value methodology, the Contracting Officer evaluates all offerors' quotes, integrating past performance, key evaluation factors and sub-factors and price, to determine which quotation represents the best value to the FDIC.

According to DOA officials, at the time of the ORE RBOA solicitation effort, the FDIC experienced an unexpected surge in field contracting activity in response to multiple bank failures. Further, its Dallas Office, which managed the solicitation, had only two employees to address the additional workload. Since that time, the DOA has hired six new employees in Dallas to handle the extra workload.

EVALUATION RESULTS

Controls to Achieve Reasonable Competition

Establishing reasonable competition as the preferred method of source selection is one of the key principles set forth in the APM. The APM states that contracting officers and program offices must use competition in acquisitions to the maximum extent possible. Through competition, the FDIC is able to compare the value of competing technical proposals and prices in order to determine which proposal affords the best value. Reasonable competition also means soliciting a sufficient number of sources to obtain an adequate market response so that an analysis of the fairness and reasonableness of individual offers can be performed. The FDIC's Interim Acquisition Policy # 2004-9, *Implementing Acquisition Planning,* established the Acquisition Plan as the principal written document used to support the acquisition process and stated that the Acquisition Plan should clearly demonstrate, among other elements, that goals for competition and utilization of minority and small disadvantaged businesses are supported.

The FDIC took the following steps to generate reasonable competition.

- In February 2008, the FDIC conducted market research in the form of a Notice of Sources Sought published in *FedBizOpps,* the *Wall Street Journal*, and *The New York Times*. This market research was used to partially develop the sources for solicitation list, as well as sources suggested by the Program Office (DRR), the Contracting Officer, and the Office of Diversity and Economic Opportunity.
- The FDIC sent solicitations to 33 firms, which included five Minority and Women Owned Businesses.
- The FDIC received 18 proposals in response to the Request for Proposal (RFP) on July 17, 2008.
- The technical evaluation panel (TEP) evaluated proposals based on a 2-step technical approach utilizing a technical point scoring methodology and asked eight firms to make oral presentations.
- The FDIC reviewed offeror price proposals to establish price competition and price reasonableness. We discuss price evaluation later in this report.
- After evaluating the top eight firms' technical and price proposals, the FDIC requested Best and Final Offers (BAFOs) from these firms and awarded contracts to two firms—CBRE and Prescient.

Controls to Prevent Entering into Contracts with Organizations with Unmitigated Conflicts of Interest

Federal Regulations at 12 C.F.R. Part 366 establish minimum standards of integrity and fitness for FDIC contractors, including regulations governing conflicts of interest. The FDIC's APM Revision 3, Section 1.B.5.a., provides procedures for ensuring that contractors meet minimum standards of competence, experience, integrity, and fitness. The Contracting Officer must ensure that all offerors submit completed *FDIC Integrity and Fitness Representations and Certifications* in proposals for services estimated to cost greater than $25,000.

The certification requires the contractor to answer conflict of interest questions related to personal, business, or financial interests; litigation against the FDIC; FDIC asset sales; and participation in future contracts for which the contractor may have an unfair competitive advantage.

12 CFR Part 366, also states that no person will perform services under an FDIC contract, and no contractor will enter into any contract with the FDIC if that person:

1. Has been convicted of a 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 FDIC, or their successors;
3. Has demonstrated a pattern or practice of defalcation regarding obligations; or
4. Has caused a substantial loss to any federal deposit insurance fund.

The FDIC complied with controls to prevent entering into contracts with organizations with unmitigated conflicts of interest. Specifically, the FDIC

- Checked selected bidders against the "debarred list" of contractors to ensure that certain firms that are prevented from entering into contracts with the FDIC are not awarded contracts and
- Obtained *FDIC Integrity and Fitness Representations and Certifications* for all of the bidders as part of the RFP.

We obtained and reviewed CBRE's and Prescient's *FDIC Fitness and Integrity Representations and Certifications* associated with the ORE RBOA and verified that both firms reported that they did not have any conflicts of interest and had not caused a substantial loss to the Deposit Insurance Fund.

Finally, we requested a listing of all e-mail activity between the FDIC and the CBRE Internet domains during the time period May 15, 2008 thorough December 16, 2008, and we selected a sample of e-mails for detailed review. We identified no indications of improper contact or influence. We also verified with ASB officials involved in the solicitation that they were not subject to undue influence from senior FDIC officials to award the RBOA to CBRE.

Controls to Ensure that Contractors Selected are the Best Value to the Corporation

During the ORE RBOA solicitation and evaluation period, DOA was transitioning from its existing APM Revision 3, dated May 31, 2004, to a revised APM issued in August 2008. ASB had also supplemented its 2004 procedures with a number of interim acquisition policy memoranda. We verified with an ASB official that contract solicitations that were in process during the transition to the new APM were expected to follow the existing APM through contract award. Thus, DOA's solicitation and evaluation process should have been carried out in accordance with the existing APM Revision 3 procedures and applicable interim acquisition policy memoranda. Still, given the evolving nature of the guidance, we considered both the old and new APM guidance in conducting our review.

The old and new APM guidance provided DOA flexibility in selecting a methodology for evaluating technical and cost factors in arriving at a best value decision. Traditionally, the FDIC considered a combination of technical, price, and other factors in making a best value decision and generally assigned a greater weight to technical factors.[4] Interim acquisition policy memoranda also allowed for best-value assessment approaches based on:

- Technical Weighting or "Points System": Points are assigned for specific technical criteria but not for past performance or price.
- Price/Past Performance Trade-Off: Proposals are evaluated against minimum technical requirements and graded either "pass" or "fail." Proposals that "pass" are then evaluated for Past Performance and Price.
- "Color-Coded" Approach: Color ratings that represent how well an offeror meets technical performance or capability requirements are coupled with a confidence rating for past performance, and a determination of reasonableness, realism, and completeness for price.[5]

The August 2008 APM notes that the use of color coding is the primary best value approach used by the FDIC; however, the APM notes that other descriptive methods such as technical points may also be used.

The FDIC's Evaluation Methodology

The FDIC used a combination of best value methodologies in its evaluation of offers. In both the acquisition plan and the RFP that was issued to prospective offerors, the FDIC stated the following:

> In making the best value determination, the FDIC will consider the written information, oral presentation, price, and other factors identified in this RFP with technical factors

[4] For example, 60 percent technical scores to 40 percent price scores or 70 percent technical scores to 30 percent price scores. DOA indicated that the FDIC and other agencies bound by the Federal Acquisition Regulations (FAR) have moved away from establishing a specific technical-to-cost weighting in order to allow contracting officials to use greater judgment in making a best value decision.
[5] The APM presents the following color ratings and associated definitions: Blue-Exceptional, Green-Acceptable, Yellow-Marginal, and Red-Unacceptable.

given greater weight than the evaluation of price. It shall be the FDIC's sole discretion to determine which proposal represents the best value to the FDIC.

Similar language was included in the selection recommendation report (SRR), which documents the basis for the FDIC's best value and award decision.

The best value approach used for the ORE RBOA employed attributes of multiple best value approaches described in the APM. The older version of the APM, section 1.A.5., *APM Deviations*, stated that "Adherence to the APM promotes procedural consistency and protects the integrity of FDIC's contracting process. When departures from APM requirements are necessary or desirable, the Associate Director, ASB, may authorize waivers for the deviations." Thus, DOA did have the latitude to deviate from the APM. However, we did not see any waiver authorizations for departures from the APM for the ORE RBOA solicitation. DOA officials stated that the evaluation methodology departure was not significant enough to require a waiver.

Technical Evaluation

The APM requires the FDIC to establish evaluation factors to be used to evaluate offeror proposals in the acquisition plan or source selection plan and to disclose those factors to potential offerors in the RFP. The acquisition plan (AP), RFP, and SRR presented the following technical evaluation criteria, as shown in Table 1.

Table 1: Technical Evaluation Criteria Used in the FDIC's Best Value Decision

	Points		
Technical Evaluation Criteria	**AP**	**RFP**	**SRR**
Written Information:			
Demonstrate satisfactory past performance	[redacted]	20	[redacted]
Qualified and appropriately organized contract team	[redacted]	30	[redacted]
Oral Presentation:			
Evidence of understanding technical requirements in the SOW	[redacted]	30	[redacted]
Provide satisfactory management plan for performance of tasks	[redacted]	30	[redacted]
Demonstrate adequate procedures for administration	[redacted]	20	[redacted]
Total Points	[redacted]	130	[redacted]

Source: AP, RFP, and SRR.

Although the evaluation factors were consistent between the AP, RFP, and SRR, the technical point weightings differed between each document, as shown in Table 1. We did not perform evaluation procedures to determine whether these changes had any impact on the TEP's assessment of written proposals or oral presentations. The points from the RFP indicated that the written proposal would represent 38 percent of the overall technical score, while the SRR indicated that the written proposal represented only [redacted] percent in the FDIC's evaluation of the overall technical score. DOA officials stated that they recomputed the technical scores using the points from the RFP and concluded that the technical evaluation results would not have been any different.

Price Evaluation

As discussed above, the ORE RBOA RFP stated that price would be a factor in making a best value decision, but indicated that technical factors would be given greater weight than the evaluation of price in making the best value decision. Due to the inability to predict the exact number of bank failures or assets that would be acquired by the FDIC that would require contractor services, offerors' proposed prices were evaluated against a scenario developed by the FDIC that took into consideration a defined number of assets [redacted], an estimated length of time to sell the assets [redacted], and estimated quantities for set-up fees and closing support. All offerors were therefore evaluated against the same assumptions.

Table 2 presents technical score and price information (based on the [redacted] pricing scenario) for each of the offerors.

Table 2: Offeror Technical Score and Price Information

Offeror	**Technical Score**	**Initial Price**	**BAFO Price in SRR**	**Revised or Corrected Price**
Offeror #1 (Winning Bidder)	100.00%	100.00%	100.00%	100.00%(2)
Offeror #2 (Winning Bidder)	77.55%	47.41%	71.22%	65.39%(3)
Offeror #3	54.08%	51.08%	76.59%	68.41%(4)
Offeror #4	53.06%	54.48%	89.11%	
Offeror #5	52.04%	35.54%	51.88%	
Offeror #6	47.96%	79.45%	84.56%	
Offeror #7	45.92%	32.79%	57.27%	
Offeror #8	42.86%	32.38%	Eliminated(1)	

Source: OIG Analysis of SRR and DOA electronic spreadsheets.

Notes: (1) The offeror submitted incomplete pricing and was eliminated from consideration.
(2) The price scenario supporting the SRR was apparently miscalculated. DOA provided a price scenario schedule (created on 12/16/08) that agreed with the executed contract rates. This revised scenario was $[redacted] million, approximately 13 percent higher than the SRR amount.
(3) DOA provided a price scenario schedule (created on 10/31/08) showing a total of $[redacted]. We identified several cells in the schedule that were populated with incorrect management fee rates, which increased the scenario price by $[redacted] to $[redacted].
(4) Scenario spreadsheets created by DOA on 10/21 and 10/31/08 show $[redacted].

We made the following observations related to the FDIC's price analysis:

- Prior to evaluating the price proposals, the FDIC did not develop an overall cost estimate or unit cost estimates for the functions to be performed under the contract. The APM does not require a contract ceiling for RBOAs because of the uncertainty surrounding bank failures and the level of assets in liquidation. Still, it may have been prudent for the FDIC to develop unit cost estimates for certain contract functions such as asset set-up fees, monthly asset management fees, and sales commission amounts.

- DOA stated that it relied on the competition between the offerors' price proposals to determine cost reasonableness. The APM notes that price competition normally ensures reasonable prices. However, in this case, the FDIC awarded the RBOA to the highest offeror, whose bid was over 50 percent higher than that of the other winning bidder and the average bid of other offerors. DOA noted that the winning bidder lowered its bid substantially (28%) during the BAFO process. As discussed later, the FDIC clearly stated in the SRR its rationale for paying more for CBRE's asset management and marketing services than for Prescient's services.

- We verified that ASB did not establish a specific weighting of technical merit to price or document a competitive range for making the best value decision.

    - We acknowledge that the APM does not require ASB to define a specific technical-to-price weighting. DOA officials stated that the FDIC and other FAR-based agencies have moved away from establishing a specific technical-to-cost ratio. We also reviewed a solicitation request for proposal from a large FAR-based agency and verified that the agency used a tradeoff analysis of technical-to-cost similar to the ORE RBOA solicitation without a specific technical-to-cost weighting factor. The FAR-based agency also utilized an independent government cost estimate to assess price reasonableness.

    - With respect to establishing a competitive range, a DOA official stated that DOA evaluated the initial price bids that were submitted as a result of the RFP and identified a competitive price range for the contract. DOA then required that the BAFO bids fall within that competitive price range to be considered for contract award.[6] DOA indicated that both of the winning bidders were within the competitive price range. However, because DOA did not document this range, we could not independently confirm DOA's assertion.[7]

  We understand the importance of contracting and program officials being able to exercise professional judgment in making a best value decision; however, without some quantifiable basis for assessing technical merit in relation to price or a documented competitive price range, it is difficult to objectively determine whether one offeror's technical capability presents a better value than other offerors proposing more attractive pricing.

- As discussed earlier, the initial evaluated price for CBRE that appeared in the SRR was apparently miscalculated. DOA provided a revised price scenario that was created subsequent to the SRR that was 13 percent higher and agreed with the executed contract rates. The SRR provided the justification for the FDIC's integrated best value decision weighting the results of the technical and price evaluation. However, the revised price is approximately 13 percent higher than the SRR-based price. Lacking documentation

[6] Hypothetical Example: If five offerors submitted bids of $5 million, $25 million, $50 million, $75 million, and $95 million, DOA may establish a reasonable range of $25 to $75 million. The BAFO bids would then need to be within that range to be considered reasonable.
[7] We also noted that the price bids that were used to establish the competitive range were from firms that did not meet the FDIC's technical evaluation criteria, which could raise questions about the reliability of the competitive price range.

supporting what the Corporation considered to be a competitive price range or relative weighting of technical-to-price factors, we were unable to conclude whether the revised price scenario still fell within the parameters of a best value for the Corporation. DOA officials indicated that they had recalculated offerors' technical and cost scores using the corrected scenario pricing and using a traditional 60 percent technical to 40 percent price ratio and determined that CBRE still would have won the contract given its superior technical ability. We did not attempt to verify this calculation.

- The pricing scenario used by ASB only covered a time period of [redacted] This RBOA is potentially a 9-year contract if all options are exercised. Thus, depending on failed asset activity, the almost $[redacted] price difference between CBRE and Prescient could be far greater over the life of the contract.

- Contracting file documentation clearly stated the FDIC's rationale for selecting CBRE due to the company's exceptional technical capability, ability to manage complex commercial assets, and ability to market FDIC assets to a broad pool of global buyers. File documentation noted that CBRE's proposal offered the most comprehensive technical approach of the offerors ([redacted]) and dedicated access to a large commercial real estate services firm, a network of clients on a nationwide basis, and a large residential real estate firm. However, DOA could have better documented its analysis of the reasonableness of contract rates for certain CBRE services. Table 3 presents selected contract rates for CBRE and Prescient.

Table 3: Comparison of Selected Contract Rates

Expense Category(1)	**CBRE**	**Prescient**	**Range of Unsuccessful Offerors(2)**
Closing Support Labor Rate	$250 per hour	$175 per hour	$75 to $266
Asset Set-up Fee • Residential • Commercial	$450 per asset $600 per asset	$150-200 per asset $350-$550 per asset	$150-$2,228 $150-$2,228
Monthly Asset Management Fee • Residential • Commercial	$500 per asset $2,225 per asset	$356.25 per asset $712.50 per asset	$0 to $552 $250 - $1,930
Sales Commission • Residential under $25K • Residential over $25K • Commercial • Incentive for selling in the first 6 months	$5,000 per asset 6 percent of sales price 7 percent of sales price 1.5 to 2 percent, $2,500 for residential < $25K	$1,948 per asset 5.82 percent 5.82 percent 1.9 percent, $485 for residential < $25K	$2,000 - $3,200 4 – 8.95 percent

Source: CBRE and Prescient Contract Price Schedules.
Notes: (1) Table 3 presents those contract rates that were used in the price evaluation pricing scenario.
(2) These offerors failed the technical evaluation criteria and one offeror's rates were substantially higher than others in certain categories.

As shown, CBRE rates for certain tasks were generally within the range of offers received under the solicitation, but were near the high-end of that range. Regarding ASB's efforts to determine price realism, contract file documentation stated the FDIC performed a price analysis by comparing the offeror's proposed rates against each other and also against other sources. [redacted]. The FDIC was not able to identify a direct comparable source for the administrative management fees. File documentation acknowledged that CBRE's rates were higher but that they were still recommended for award due to the superiority of their technical proposal considering their experience and approach.

Although file documentation stated that the Contracting Officer performed a price analysis comparing hourly rates, administrative management fees, sales commissions, and incentive fees, these analyses were not made available to us for review. Consequently, we could not evaluate the documents supporting the selection of the winning offerors, especially CBRE, whose rates in certain expense categories were higher than most of the other offerors' rates. DOA noted that CBRE's rates were still generally within the range of the unsuccessful offerors.

Moreover, although file documentation indicates that CBRE was selected, in part, based on its expertise with managing and disposing complex commercial properties, our understanding is that, in practice, the FDIC is assigning assets to CBRE and Prescient on a whole-receivership basis, not based on the complexity of the assets in the receiverships.

CONCLUSIONS AND OTHER PROCEDURAL MATTERS

The FDIC followed its established acquisition procedures to achieve reasonable competition and avoid unmitigated conflicts of interest. The Corporation also took steps contemplated in the APM to reach a best value decision, such as establishing technical criteria, convening a TEP, and documenting the TEP's review of technical proposals. However, the FDIC could have benefited from developing overall or unit cost estimates against which it could evaluate proposed rates, and better documented a competitive price range and efforts to assess price reasonableness. DOA also made mathematical errors in calculating BAFO pricing amounts.

We also identified the following procedural and documentation exceptions associated with this procurement that warrant management's attention.

Contract File Documentation

As discussed throughout this report, contract file documentation for this procurement was generally not adequate. Numerous contracting documents were not included in the Contract Electronic File (CEFile), DOA's contract documentation repository. In some cases, DOA was able to provide source solicitation and evaluation documents that were not in CEFile, such as the BAFO submissions and evaluations. In other cases, however, DOA was unsuccessful in locating relevant documentation. The APM notes that the contract file should document the basis for the acquisition and award and should provide a complete background as a basis for informed decisions at each step in the acquisition process. File documentation provides information for reviews and investigations, and furnishing essential facts in the event of litigation or congressional inquires. The documentation is also essential to the Contracting Officer in efficiently and effectively administering the contract.

Approval of Acquisition Plan

The Acquisition Plan that was included in CEFile was undated and did not include signatures indicating approval by the client division (DRR), the Office of Diversity and Economic Opportunity, or the Legal Division.

Evaluation of Technical Proposal

As we stated earlier, the RFP provided for two steps in the technical phase: (1) written information and (2) oral presentation. We found documentation related to the evaluation of the written information, including the TEP memorandum and the Evaluation Sheets, in the official contract file. However, we could not find the written proposal information submitted by the unsuccessful offerors. With regard to step two, we found copies of the presentation materials in the file, but could not find the Evaluation Sheets with narratives from the TEP members in the contract file.

Based on the limited scope of our review, we are not making recommendations to address our findings. Management should, however, take steps to obtain the various documents that are required, by policy, to be maintained in the CEFile to ensure there is a complete record of the ORE RBOA procurement. Further, in light of the significant volume of contracting activity that the Corporation faces, management should ensure that personnel involved in procurement actions remain mindful of the risk associated with not properly documenting the actions taken to follow key contracting principles—particularly with respect to documenting best value decisions.

OBJECTIVE, SCOPE, AND METHODOLOGY

Our objective was to evaluate whether the FDIC followed its established policy in soliciting and awarding the National Owned Real Estate Management and Marketing Services Receivership Basic Ordering Agreement.

To accomplish our objective, we

- Reviewed DOA's *Acquisition Policy Manual* and related policy guidance to understand relevant criteria.

- Interviewed headquarters DOA and DRR officials associated with the solicitation and evaluation effort.

- Reviewed relevant solicitation and evaluation documents that were available in CEFile and other documents outside of CEFile that were provided to us by DOA officials.

Consistent with our objective, the scope of our evaluation was limited to assessing the extent to which the FDIC complied with its established policies and procedures and documented efforts to do so. We also verified the accuracy of cost scenario spreadsheets. We did not perform any qualitative procedures to assess the technical qualifications of the offerors or the FDIC's technical evaluation of offeror proposals.

We performed our evaluation during May and June 2009, in accordance with the *Quality Standards for Inspections*.