

NEW AND REVISED PROVISIONS AND CLAUSES
Covering changes that have occurred after release of the March 2011 version of the PGI
(from PAB 2011-04 and onward)

Provision/Clause Number and Title
(Click on the provision/clause number to see the full text)

- 7.3.2-11** **Pricing Proposal (Firm-Fixed-Price) (April 2011)**
- 7.3.2-12** **Pricing Proposal (Time-and-Material or Labor Hour)(April 2011)**
- 7.3.2-15** **Mission Capability – Proposal Instructions (March 2011)**
- 7.3.2-22** **Evaluation of Pricing (April 2011)**
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- 7.3.2-70** **Legal Representation (Deleted)**
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Full text versions of the provisions/clauses are on the following pages

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BELOW ARE FULL TEXT VERSIONS OF THE PROVISIONS & CLAUSES

7.3.2-11 Pricing Proposal (Firm-Fixed-Price) (April 2011)

Prescription:

Per PGI 3.112 or 3.218, insert provision 7.3.2-11, *Pricing Proposal (Firm-Fixed-Price)*, in solicitations that will result in firm fixed priced contracts. For RBOAs, include the version of paragraph (a) that includes volume rebate proposal instructions. For awards greater than \$1,000,000, include paragraph (d).

Provision:

Offerors shall submit an original and one (1) copy of the Pricing Proposal. (No page limitation.)

(a) Pricing Schedule. Offerors shall complete and submit the Pricing Schedule provided as Attachment ____ to this solicitation. Instructions for completing the Pricing Schedule are provided in Attachment ____.

[INCLUDE THE FOLLOWING PARAGRAPH (a) IN ALL RBOAs.]

(a) Pricing Schedule and Volume Rebate. Offerors shall complete and submit the Pricing Schedule provided as Attachment ____ to this solicitation. Instructions for completing the Pricing Schedule are provided in Attachment _____. Offerors shall also provide in the Pricing Proposal a rebate percentage for each Tier level above the Base Tier level, as specified in clause 7.3.2-74 Volume Rebate.

[IF TRAVEL COSTS WILL NOT BE REIMBURSED, USE THE FOLLOWING PARAGRAPH (b)]:

(b) Travel costs will not be reimbursed separately; factor travel costs into the firm fixed price you propose.

[IF TRAVEL COSTS WILL BE REIMBURSED, USE THE FOLLOWING PARAGRAPH (b)]:

(b) Travel costs will be reimbursed in accordance with FDIC Contractor Travel Reimbursement Guidelines found at <http://www.fdic.gov/buying/goods/acquisition/index.html>. If the Contractor must be in the Washington, D.C., area overnight, the Contractor is required to stay at the Seidman Center providing space is available. If space is not available the Contracting Officer will authorize the contractor to obtain alternate lodging. For

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reimbursement, the Contractor must submit written evidence regarding the unavailability of lodging at the Seidman Center with their invoice.

(c) Sales Tax Exemption. FDIC is a Federal Government corporation and is exempt from State sales tax. Therefore, it is not required to pay sales tax on invoices submitted to it and, if included, the amounts will be deducted from the total amount invoiced.

[INCLUDE THE FOLLOWING FOR CONTRACTS OF \$1,000,000 OR MORE.]

(d) Bank Reference & Certified Financial Statements. Offerors must provide a bank reference together with a certified Balance Sheet and Income Statement prepared by an independent auditor for the offeror, or an acceptable equivalent, for the current and preceding two (2) fiscal years. If the offeror cannot provide these statements, explain why, and provide other suitable proof of the offeror's financial responsibility.

(Ref.-PAB 2011-05)

7.3.2-12 Pricing Proposal (Time-and-Material or Labor Hour) (April 2011)

Prescription:

Per PGI 3.112 or 3.218, insert provision 7.3.2-12 *Pricing Proposal (Time-and-Material or Labor Hour)*, in solicitations for time-and-material or labor hour contracts. For RBOAs, include the version of paragraph (a) that includes volume rebate proposal instructions. For awards greater than \$1,000,000, include subparagraph (f).

Provision:

Offerors shall submit an original and one (1) copy of the Pricing Proposal. (No page limitation.)

(a) Pricing Schedule. Offerors shall complete and submit the Pricing Schedule provided as Attachment ___ to this solicitation. Instructions for completing the Pricing Schedule are provided in Attachment ____.

[INCLUDE THE FOLLOWING PARAGRAPH (a) IN ALL RBOAs.]

(a) Pricing Schedule and Volume Rebate. Offerors shall complete and submit the Pricing Schedule provided as Attachment ___ to this solicitation. Instructions for completing the Pricing Schedule are provided in Attachment _____. Offerors shall also provide in the Pricing Proposal a rebate percentage for each Tier level above the Base Tier level, as specified in clause 7.3.2-74 Volume Rebate.

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[IF SUBCONTRACTING IS NOT PERMITTED, INCLUDE THE FOLLOWING PARAGRAPH (b)]:

(b) Subcontracting is not permitted under this solicitation.

[IF SUBCONTRACTING IS PERMITTED, WITH SUBCONTRACTOR MARKUP, INCLUDE THE FOLLOWING PARAGRAPH (b)]:

(b) Offeror must identify the markup rate the prime contractor has applied to each subcontractor labor category. Offeror must justify the reasonableness of the subcontractor markup rate(s).

[IF SUBCONTRACTING IS PERMITTED, BUT SUBCONTRACTOR MARKUP IS NOT PERMITTED, INCLUDE THE FOLLOWING PARAGRAPH (b)]:

(b) Subcontracting is permitted under this solicitation; however, markup of the subcontractor labor rates by the prime contractor is not permitted.

(c) For the purpose of proposing on-site and off-site labor rates, the following definitions apply:

(1) On-site - a contractor is working on-site if the major portion of the work activity, measured in labor hours, is performed at or in a facility controlled by FDIC. For these purposes, "controlled" includes facilities owned, leased, rented or occupied by the FDIC, for the purpose of doing business in its corporate, conservatorship, or receivership capacities. For the portion of the work that the Contractor performs at or in a facility controlled by FDIC, FDIC will allow Contractor to utilize standard and existing FDIC equipment and material, including but not limited to computer hardware and software.

(2) Off-site - a contractor is working off-site if the major portion of the work activity, measured in labor hours, is performed at a facility other than one controlled by the FDIC (as defined above), in which the Contractor furnishes any and all materials needed to perform the work, including ,but not limited to, computer hardware and software. FDIC may decide to supply contractor with software to be used in which case no cost or fee will be charged to the contractor. No other fees, costs, or expenses must be paid to a contractor working off-site other than the labor hour rate, unless specifically set forth in this contract.

(d) If the contract includes reimbursable travel, and the Contractor must be in the Washington, D.C., area overnight, the Contractor is required to stay at the Seidman Center providing space is available. If space is not available the Contracting Officer will authorize the contractor to obtain alternate lodging. For

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reimbursement, the Contractor must submit written evidence regarding the unavailability of lodging at the Seidman Center with their invoice.

(e) Sales Tax Exemption. FDIC is a Federal Government corporation and is exempt from State sales tax. Therefore, it is not required to pay sales tax on invoices submitted to it and if included, the amounts will be deducted from the total amount invoiced.

[INCLUDE THE FOLLOWING FOR CONTRACTS OF \$1,000,000 OR MORE.]

(f) References/Financials.

Offerors must provide a bank reference together with a certified Balance Sheet and Income Statement prepared by an independent auditor, or an acceptable equivalent, for the current and preceding two (2) fiscal years. If the offeror cannot provide these statements, explain why, and provide other suitable proof of the offeror's financial responsibility.

(Ref.-PAB 2011-05)

7.3.2-15 Mission Capability - Proposal Instructions (March 2011)

Prescription:

Per PGI 3.112 and PGI 3.218, insert provision 7.3.2-15, *Mission Capability - Proposal Instructions*, in solicitations when mission capability will be evaluated. Include paragraphs (b), (c), and/or (d), when applicable.

Provision:

(a) The Mission Capability Volume must include the information described below. Do not include any pricing information in this volume. Offerors must submit an original and _____ () copies of the Mission Capability Volume. The Mission Capability Volume should be specific and complete. Legibility, clarity and coherence are very important. Your responses will be evaluated against the Mission Capability rating criteria defined in the provision of this solicitation *Evaluation of Mission Capability*. Using the instructions provided below, provide as specifically as possible the actual methodology you would use for accomplishing/satisfying these subfactors. Do not merely reiterate the objective or reformulate the requirements specified in the solicitation.

The proposal must address the following:

- Subfactor 1. (For example Management Plan) (_____ page maximum)
- Subfactor 2. (For example Technical Approach) (_____ page maximum)
- Subfactor 3. (For example Key Personnel)(_____ page maximum)

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[USE ONE OF THE VERSIONS OF (b) BELOW IF FDIC INFORMATION MAY BE PROCESSED OR STORED OFF-SITE IN A NON-FDIC FACILITY (E.G. CONTRACTOR PERSONNEL WORK FROM THEIR COMPANY OFFICE OR A SERVICE PROVIDER PROCESSES FDIC DATA AT THEIR LOCATION).

- IT SECURITY PLAN: USE THIS VERSION OF (b) WHEN THE INFORMATION MAY BE BOTH ELECTRONIC AND PAPER FORM.

- PHYSICAL/ENVIRONMENTAL SECURITY PLAN: USE THIS VERSION OF (b) WHEN THE INFORMATION WILL BE PAPER FORM ONLY.]

(b) IT Security Plan.

The offeror must provide an IT Security Plan as a separate section of the Mission Capability volume. The IT Security Plan must describe the controls, processes, procedures and training of personnel that the Contractor will follow to ensure appropriate security of FDIC information. A template to assist with the format and documentation requirements of the IT Security Plan is available at the FDIC website:

(www.fdic.gov/buying/goods/acquisition/index.html). In lieu of using the template, the offeror may modify and submit its existing IT Security Plan, provided the modified Plan accommodates the requirements of the FDIC. Also, in place of an IT Security Plan, the Contractor may provide a copy of any information technology-based, independent security audit or review covering the systems on which and the facilities where FDIC information will be processed and stored. Examples would include a "Statement on Auditing Standards No. 70 Type II (SAS 70 Type II)" or "International Organization for Standards/International Electro-technical Commission 17799 Assessment (ISO/IEC 17799)."

(b) Physical/Environmental Security Plan.

The offeror must provide a Physical/Environmental Security Plan as a separate section of the Mission Capability volume. The Physical/Environmental Security Plan must describe the controls, processes, procedures and training of personnel that the Contractor will follow to ensure appropriate security of FDIC information. A template to assist with the format and documentation requirements of the Physical/Environmental Security Plan is available at the FDIC website:

(www.fdic.gov/buying/goods/acquisition/index.html). The template document on this website is entitled "IT Security Plan Template". However, the offeror must complete only the cover page, index, executive summary, and Section 2.1.6, Physical and Environmental Protection (PE). In lieu of using the template, the offeror may modify and submit its existing Physical/Environmental Security Plan, provided the modified Plan accommodates the requirements of the FDIC. Also, in place of a Physical/Environmental Security Plan, the Contractor may provide a copy of any independent security audit or review covering the systems on which and the facilities where FDIC information will be processed and stored. Examples would include a "Statement on Auditing Standards No. 70 Type II (SAS 70 Type II)" or "International Organization for Standards/International

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Electro-technical Commission 17799 Assessment (ISO/IEC 17799).”

[USE (c) BELOW IF SUBCONTRACTING IS PERMITTED.]

(c) Subcontracting Plan. The offeror must provide a subcontracting plan for any portion of the work proposed to be subcontracted. Offerors are encouraged to subcontract with Minority or Woman Owned Business (MWOBs) and Small Disadvantaged Business (SDBs).

The subcontracting plan must provide at least the following;

- (1) Name, address and Dun and Bradstreet Number (DUNS) of the subcontractor;
- (2) Summary of capabilities of the subcontractor;
- (3) Description of roles of Key Personnel of the subcontractor;
- (4) Estimated percentage of work to be performed by the subcontractor;
- (5) Description of work to be performed by the subcontractor;
- (6) Minority or Woman Owned Business (MWOB) designation of the subcontractor, i.e., Women-Owned, Minority-Owned. If Minority-Owned, also provide the subcontractor’s ethnic/racial category from the following list:
 - Asian-Pacific American
 - Subcontinent Asian (Asian-Indian) American
 - Black American
 - Hispanic American
 - Native American
 - Other than one of the preceding
- (7) SDB certification, if any, of subcontractor; and
- (8) Provide your rationale and a policy for subcontracting on this contract, including how you will meet your proposed subcontracting commitments. Include information on efforts undertaken by the Contractor to include subcontractors that are minority-owned, women-owned or small disadvantaged businesses.

(Note: Do NOT include any labor rates in the Subcontracting Plan. Estimated compensation to the subcontractor, including detailed information concerning labor categories and labor rates, must be included in the Pricing Volume.)

[INCLUDE (d) BELOW AS A SEPARATE PARAGRAPH UNDER THIS SECTION IF THIS IS A FOLLOW-ON/RE-COMPETE CONTRACT]

(d) If the offeror proposes to hire any incumbent key personnel, the offeror must include a copy of the incumbent personnel’s resume and a letter of commitment from the individual. Do not include any pricing information (e.g., proposed salary, etc.) in the letter of commitment.

(Ref.-PAB 2010-02, PAB 2010-06 & PAB 2011-04)

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7.3.2-22 Evaluation of Pricing (April 2011)

Prescription:

Per PGI 3.112 or PGI 3.218, insert provision 7.3.2-22, *Evaluation of Pricing*, in all solicitations. The provision may be tailored by the Contracting Officer to accommodate the contract type and pricing arrangement. For RBOAs, the Contracting Officer must provide weights for the volume rebate tier levels, for evaluation purposes.

Provision:

Price proposals will be evaluated with respect to completeness, reasonableness, and realism. The Contracting Officer may also evaluate the Overall Evaluated Price (OEP) for each offeror.

Completeness. Offerors must submit their proposed prices in accordance with the Pricing Schedule. Offerors must submit fully loaded labor rates. Offers failing to propose a price for all mandatory labor categories may receive no further consideration and may be eliminated.

Reasonableness. FDIC will evaluate prices for labor rates using one or more of the following techniques.

- (a) Comparing the proposed prices to those of other offerors.
- (b) Comparing the proposed prices to FDIC's independent estimate and those in other FDIC contracts.
- (c) Comparing the proposed prices to the prices in the company's GSA Schedule or commercial price list.

Prices that are extreme (high or low) may be judged unreasonable.

Realism. Labor rates that do not reflect a reasonable compensation for the skill required in a labor category will be considered unrealistic.

Overall Evaluated Price (OEP): The OEP will be computed based on the total of the following:

- (a) The offeror's proposed labor rates for each labor category multiplied by the number of labor hours.
- (b) The FDIC-reimbursed travel costs.

[INCLUDE THE FOLLOWING PARAGRAPH IN ALL RBOAs. CONTRACTING OFFICERS MUST ASSIGN WEIGHTS FOR EACH TIER AND THE TOTAL OF ALL TIERS MUST AMOUNT TO 100%.]

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Volume Rebate: For evaluation purposes only, the following weights have been assigned to the revenue tiers specified in clause 7.3.2-74 Volume Rebate. For Tiers 1 and above, FDIC will multiply the mid-range dollar amount of each tier times its assigned weight, and then multiply the results times the offeror’s proposed percentage.

Revenue Tiers

	Weight	
Base Tier:	_____ %	(fill-in)
Tier 1:	_____ %	(fill-in)
Tier 2:	_____ %	(fill-in)
Tier 3:	_____ %	(fill-in)
Tier 4:	_____ %	(fill-in)
Tier 5:	_____ %	(fill-in)

(Ref.-PAB 2011-05)

7.3.2-49 Small Business Representation (June 2011)

Prescription:

Per PGI 3.112 or PGI 3.218, insert provision 7.3.2-49, *Small Business Representation*, in all solicitations.

Provision:

(a) NAICS code and size standard:

(1) The North American Industry Classification System (NAICS) code for this acquisition is identified on the cover page of the solicitation.

(2) The small business size standard is _____ [insert size standard].

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b) Representation.

(1) This acquisition is not a Small-Business Set-Aside. However, for general statistical purposes, the offeror represents as part of its quote or offer that it [] is, [] is not a small business concern.

(Ref.-PAB 2011-08)

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**7.3.2-53 Certification Regarding Fair Inclusion of Women and Minorities
(August 2011)**

Prescription:

Per PGI 3.112 and PGI 3.218, insert provision 7.3.2-53, *Certification Regarding Fair Inclusion of Women and Minorities*, in all solicitations for awards over \$100,000, except Task Orders issued under FDIC BOAs/RBOAs/BPAs.

Provision:

(a) The Contractor certifies to the following: [] Yes [] No

- (1) It is committed to equal opportunity in employment and contracting.
- (2) It has made and will continue to make, or will make during the course of this contract, a good faith effort to ensure, to the maximum extent possible, the fair inclusion of minorities and women in its workforce and in the workforces of its applicable subcontractors,
- (3) For purposes of this certification,
 - “minority” shall have the meaning set forth in Section 342 (g) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010); and
 - “Applicable Subcontractor” refers to all tiers of subcontractors under this contract whose subcontract exceeds \$100,000 in value; and
 - “Good faith effort,” may include actions by the contractor intended to identify and, if present, remove barriers to minority and women within its workforce or expand employment opportunities for minorities and women within its workforce. Efforts to remove such barriers or expand employment opportunities may include, but are not limited to, recruiting minorities and women, providing job-related training, or other activity that could lead to those results.

(b) If the Contractor answers “No” to paragraph (a) above, an explanation must be provided:

(Ref.-PAB 2011-09)

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7.3.2-70 Legal Representation (Deleted)

(Ref.-PAB 2009-04, PAB 2010-03 & PAB 2011-06)

7.3.2-74 Volume Rebate (April 2011)

Prescription:

Insert clause 7.3.2-74 *Volume Rebate* in all RBOAs. The Contracting Officer shall provide fill-in information prior to issuing the solicitation. In the award document(s), the Contracting Officer shall add the negotiated rebate percentages to this clause. The number of tiers and the dollar ranges of the tiers are established at the discretion of the Contracting Officer.)

Clause:

A pricing range of \$0 to \$_____ (fill-in) represents FDIC's best current estimate as to the dollar amount of work that will generate across all Task Orders annually throughout the RBOA period (including all option periods), and is designated the Base Tier range. The annual 12 month period for this RBOA runs from _____ (fill-in date) to _____ (fill-in date). If, in any annual 12 month period, the Contractor performs work across all Task Orders that amounts to more than the maximum limit of the Base Tier range, a rebate shall be paid by the Contractor to FDIC.

The following revenue tiers apply to this RBOA:

<u>Revenue Tiers</u>			<u>Rebate Percentage</u>
Base Tier:	\$ 0	to \$ _____ (fill-in)	0.0%
Tier 1:	\$ _____	to \$ _____ (fill-in)	* %
Tier 2:	\$ _____	to \$ _____ (fill-in)	* %
Tier 3:	\$ _____	to \$ _____ (fill-in)	* %
Tier 4:	\$ _____	to \$ _____ (fill-in)	* %
Tier 5:	\$ _____	to \$ _____ (fill-in)	* %

* Instructions for proposing rebate percentages are contained in provisions 7.3.2-11 and/or 7.3.2-12. Negotiated percentages will be included in this clause in the award document.

The rebate amount shall be calculated by summing the dollar amounts of all work performed (including that of subcontractors and any pass-through costs) during the annual 12 month period and multiplying it by the rebate percentage

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designated for the revenue tier range that contains the dollar amount of work performed. For example; assume the dollar amount of all work performed during a 12 month period is \$35,800,000; Tier 3 has a range of \$30,000,001 to \$40M; and the rebate percentage for Tier 3 is 5.0%. The amount of the rebate due FDIC is \$1.79M calculated as follows: ($\$35.8M \times 5.0\% = \$1.79M$)

No later than 60 days after the end of the annual 12 month period, the Contractor must submit to the Contracting Officer documentation identifying the dollar amounts of all work performed during the annual 12 month period. The documentation must identify dollar amounts applicable to each Task Order, and totaled at the RBOA level. Failure of the Contractor to include all dollar amounts for work performed during the annual 12 month period shall result in a recalculation of the rebate due FDIC. Rebates shall be paid annually by check made payable to FDIC and are due 90 days after the end of the annual 12 month period. In the event the rebate is not paid by the required due date or the Contractor fails to include dollar amounts for all work performed, FDIC may take other actions to obtain the rebate, such as offsetting other payments due the Contractor on any outstanding invoices.

(Ref.-PAB 2011-05)

7.3.3-3 Applicable FAR 8(a) Clauses (June 2011)

Prescription:

Per PGI 3.306, insert clause *7.3.3-3 Applicable FAR 8(a) Clauses*, in all solicitations and awards issued under the 8(a) Business Development Program. Contracting Officers must follow the guidance in the prescriptions of FAR 19.811-3 in order to select and incorporate the appropriate FAR clauses. The FAR clauses that do not apply must be deleted from clause 7.3.3-3 by the Contracting Officer. FAR clause 52.219-14, Limitations on Subcontracting, must always be included. One or more of the other FAR clauses must also be included, the choice of which depends on whether the acquisition is sole source or competitive.

Clause:

The following FAR clauses are incorporated into the contract:

[FOLLOW THE GUIDANCE IN THE PRESCRIPTION AND FAR 19.811-3. EDIT THE CLAUSE TO REMOVE THE FAR CLAUSES THAT DO NOT APPLY.]

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52.219-11 -- Special 8(a) Contract Conditions.

As prescribed in 19.811-3(a), insert the following clause:

Special 8(a) Contract Conditions (Feb 1990)

The Small Business Administration (SBA) agrees to the following:

- (a) To furnish the supplies or services set forth in this contract according to the specifications and the terms and conditions hereof by subcontracting with an eligible concern pursuant to the provisions of section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).
- (b) That in the event SBA does not award a subcontract for all or a part of the work hereunder, this contract may be terminated either in whole or in part without cost to either party.
- (c) Except for novation agreements and advance payments, delegate to the FDIC the responsibility for administering the subcontract to be awarded hereunder with complete authority to take any action on behalf of the Government under the terms and conditions of the subcontract; provided, however, that the FDIC shall give advance notice to the SBA before it issues a final notice terminating the right of a subcontractor to proceed with further performance, either in whole or in part, under the subcontract for default or for the convenience of the Government.
- (d) That payments to be made under any subcontract awarded under this contract will be made directly to the subcontractor by the FDIC.
- (e) That the subcontractor awarded a subcontract hereunder shall have the right of appeal from decisions of the Contracting Officer cognizable under the "Disputes" clause of said subcontract.
- (f) To notify the FDIC Contracting Officer immediately upon notification by the subcontractor that the owner or owners upon whom 8(a) eligibility was based plan to relinquish ownership or control of the concern.

(End of Clause)

52.219-12 -- Special 8(a) Subcontract Conditions.

As prescribed in 19.811-3(b), insert the following clause:

Special 8(a) Subcontract Conditions (Feb 1990)

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(a) The Small Business Administration (SBA) has entered into Contract No. _____ [insert number of contract] with the FDIC to furnish the supplies or services as described therein. A copy of the contract is attached hereto and made a part hereof.

(b) The _____ [insert name of subcontractor], hereafter referred to as the subcontractor, agrees and acknowledges as follows:

(1) That it will, for and on behalf of the SBA, fulfill and perform all of the requirements of Contract No. _____ [insert number of contract] for the consideration stated therein and that it has read and is familiar with each and every part of the contract.

(2) That the SBA has delegated responsibility, except for novation agreements and advance payments, for the administration of this subcontract to the FDIC with complete authority to take any action on behalf of the Government under the terms and conditions of this subcontract.

(3) That it will not subcontract the performance of any of the requirements of this subcontract to any lower tier subcontractor without the prior written approval of the SBA and the designated Contracting Officer of the FDIC.

(4) That it will notify the FDIC Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(c) Payments, including any progress payments under this subcontract, will be made directly to the subcontractor by the FDIC.

(End of Clause)

52.219-14 -- Limitations on Subcontracting.

As prescribed in 19.508(e) or 19.811-3(e), insert the following clause:

Limitations on Subcontracting (Dec 1996)

(a) This clause does not apply to the unrestricted portion of a partial set-aside.

(b) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for --

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- (1) Services (except construction). At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.
- (2) Supplies (other than procurement from a nonmanufacturer of such supplies). The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.
- (3) General construction. The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.
- (4) Construction by special trade contractors. The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

(End of Clause)

52.219-17 -- Section 8(a) Award.

As prescribed in 19.811-3(c), insert the following clause:

Section 8(a) Award (Dec 1996)

(a) By execution of a contract, the Small Business Administration (SBA) agrees to the following:

- (1) To furnish the supplies or services set forth in the contract according to the specifications and the terms and conditions by subcontracting with the Offeror who has been determined an eligible concern pursuant to the provisions of section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).
- (2) Except for novation agreements and advance payments, delegates to the FDIC the responsibility for administering the contract with complete authority to take any action on behalf of the Government under the terms and conditions of the contract; provided, however that the contracting agency shall give advance notice to the SBA before it issues a final notice terminating the right of the subcontractor to proceed with further performance, either in whole or in part, under the contract.
- (3) That payments to be made under the contract will be made directly to the subcontractor by the contracting activity.

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(4) To notify the FDIC Contracting Officer immediately upon notification by the subcontractor that the owner or owners upon whom 8(a) eligibility was based plan to relinquish ownership or control of the concern.

(5) That the subcontractor awarded a subcontract hereunder shall have the right of appeal from decisions of the cognizant Contracting Officer under the "Disputes" clause of the subcontract.

(b) The offeror/subcontractor agrees and acknowledges that it will, for and on behalf of the SBA, fulfill and perform all of the requirements of the contract.

(c) The offeror/subcontractor agrees that it will not subcontract the performance of any of the requirements of this subcontract to any lower tier subcontractor without the prior written approval of the SBA and the cognizant Contracting Officer of the FDIC.

(End of Clause)

52.219-18 -- Notification of Competition Limited to Eligible 8(a) Concerns.

As prescribed in 19.811-3(d), insert the following clause:

Notification of Competition Limited to Eligible 8(a) Concerns (June 2003)

(a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) Program and which meet the following criteria at the time of submission of offer --

(1) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and

(2) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA.

(b) By submission of its offer, the Offeror represents that it meets all of the criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation will be made to the Small Business Administration, which will subcontract performance to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(d)

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(1) Agreement. A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply in connection with construction or service contracts.

(2) The _____ [insert name of SBA's contractor] will notify the FDIC Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(End of Clause)

Alternate I (Apr 2005). If the competition is to be limited to 8(a) concerns within one or more specific SBA regions or districts, add the following subparagraph (a)(3) to paragraph (a) of the clause:

(3) The offeror's approved business plan is on the file and serviced by _____ [Contracting Officer completes by inserting the appropriate SBA District and/or Regional Office(s) as identified by the SBA].

Alternate II (Dec 1996). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502-2(c), delete subparagraph (d)(1).

(Ref.-PAB 2011-07)

7.3.3-4 Contract Execution - 8(a) Business Development Program (June 2011)

Prescription:

Per PGI 3.306, insert clause 7.3.3-4 *Contract Execution - 8(a) Business Development Program*, in all solicitations and awards issued under the 8(a) Business Development Program.

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Clause:

(a) Even though the 8(a) Contractor's name is listed as the Contractor in block 17a of the award cover page, the prime Contractor is the SBA.

(b) The SBA district office designated for this contract is:
_____.

[AS REQUIRED BY FAR 19.811-1(b)(1), INCLUDE PARAGRAPH (c) IN SOLE SOURCE ACQUISITIONS.]

(c) The authority for use of other than full and open competition is 41 U.S.C. 253(c)(5).

(Ref.-PAB 2011-07)

7.5.2-12 Contractor Notification of Departing Employee (August 2012)

Prescription:

Per 5.204, insert the following clause in all awards where a Contractor or Subcontractor employee may be issued an FDIC badge, granted FDIC network access, or receive any of the following: FDIC property/equipment (including laptop or network access token), Personally Identifiable Information (PII), parking permits, office keys, access cards and/or building passes.

Clause:

No later than the date of departure of a Contractor or Subcontractor employee who has been issued an FDIC badge, granted FDIC network access, or receive any of the following: FDIC property/equipment (including laptop or network access token), Personally Identifiable Information (PII), parking permits, office keys, access cards and/or building passes, the Contractor must notify FDIC of the employee's departure. The notification shall be emailed to the Oversight Manager and must include the following:

- (a) Contract number;
- (b) Contractor name (and Subcontractor name, if departing employee works for a Subcontractor);
- (c) Departing employee name; and
- (d) Date of departure.

(Ref.-PAB 2012-06)

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7.5.6-2 Subcontracting Reporting (March 2012)

Prescription:

Per PGI 5.605, insert clause 7.5.6-2, *Subcontracting Reporting*, in awards when subcontracting is approved.

Clause:

If subcontracting is approved under this award, the Contractor must submit a subcontracting report, on a quarterly basis, addressing the following for each subcontractor:

- a. Subcontractor's Name, Address, and DUNS number.
- b. Subcontractor's type of business concern [Minority Owned (including ethnicity), Women Owned, Small Business, Small Disadvantaged Business, Small Business Administration 8(a), Historically Underutilized Business Zones(HUBZones), Veteran Owned, and/or Service Disabled Veteran Owned Business].
- c. Estimated percentage of the contract work to be performed by the subcontractor. (Applicable only to awards with Subcontracting Plans.)
- d. Description of work performed by subcontractor during the report period and dates, or range of dates, performance was accomplished.
- e. Compensation paid to subcontractor during reporting period.
- f. Total compensation paid to subcontractor cumulative to date.
- *g. Percentage completion toward Subcontracting Plan goals. (Applicable only to awards with Subcontracting Plans.)

The Contractor must provide the subcontracting report to FDIC using the FDIC Subcontracting Reporting System (SRS). The SRS is a web-based system that is accessible via the internet at <https://www2.fdic.gov/SRSweb/>. Contractor may access a copy of the SRS Prime Contractor User Guide in the Miscellaneous section of the following webpage:

<http://www.fdic.gov/buying/goods/acquisition/index.html>.

The subcontracting report must be submitted within 15 days after the end of each quarter (i.e., by April 15th for Quarter 1 ending March 31st, by July 15th for Quarter 2 ending June 30th, by October 15th for Quarter 3 ending September 30th, and by January 15th for Quarter 4 ending December 31st).

*(Note: Contractor will not be able to enter into SRS the information required under paragraph g until SRS undergoes a modification/upgrade. Contractor shall nevertheless collect the information so they can complete these requirements once SRS has been modified/upgraded.)

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(Ref.-PAB 2012-01)

7.5.6-3 Subcontracting Reporting (BOAs or RBOAs) (March 2012)

Prescription:

Per PGI 5.605, insert clause 7.5.6-3, *Subcontracting Reporting (BOAs or RBOAs)*, in BOAs, or RBOAs if subcontracting is approved.

Clause:

If subcontracting is approved at the task order level, the Contractor must submit a subcontracting report, on a quarterly basis by task order, addressing the following for each subcontractor:

- a. Subcontractor's Name, address, and DUNS number;
- b. Subcontractor's Type of business concern [Minority Owned (including ethnicity), Women Owned, Small Business, Small Disadvantaged Business (SDB), Small Business Administration 8(a), Historically Underutilized Business Zone (HUBZones), Veteran Owned and/or Service Disabled Veteran Owned Business];
- c. Estimated percentage of the contract work to be performed by the subcontractor. (Applicable only to awards with Subcontracting Plans);
- d. Description of work performed by subcontractor during the report period and dates, or range of dates, performance was accomplished;
- e. Compensation paid to subcontractor during reporting period;
- f. Total compensation paid to subcontractor cumulative to date;
- *g. Percentage completion toward Subcontracting Plan goals. (Applicable only to awards with Subcontracting Plans.)

The Contractor must provide the subcontracting report to FDIC using the FDIC Subcontracting Reporting System (SRS). The SRS is a web-based system that is accessible via the internet at <https://www2.fdic.gov/SRSweb/>. Contractor may access a copy of the SRS Prime Contractor User Guide in the Miscellaneous section of the following webpage:

<http://www.fdic.gov/buying/goods/acquisition/index.html>.

The subcontracting report must be submitted within 15 days after the end of each quarter (i.e., by April 15th for Quarter 1 ending March 31st, by July 15th for Quarter 2 ending June 30th, by October 15th for Quarter 3 ending September 30th, and by January 15th for Quarter 4 ending December 31st).

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*(Note: Contractor will not be able to enter into SRS the information required under paragraph g until SRS undergoes a modification/upgrade. Contractor shall nevertheless collect the information so they can complete these requirements once SRS has been modified/upgraded.)

(Ref.-PAB 2012-01)

7.5.6-5 Subcontracting Plan Compliance (March 2011)

Prescription:

Per PGI 5.605, insert clause 7.5.6-5, *Subcontracting Plan Compliance*, in awards where a Subcontracting Plan is required.

Clause:

The Subcontracting Plan is a material part of the contract and compliance with the Subcontracting Plan is extremely important, especially as it applies to subcontractors that are women-owned, minority-owned and small disadvantaged businesses. The Contractor's failure to comply with and make progress under the Subcontracting Plan may be considered a breach of contract. In addition, failure to achieve the stated subcontracting goals may result in the issuance of a cure notice or show cause letter for purposes of termination for default and/or have a negative and adverse impact on the Contractor's past performance record to be considered during proposal evaluation on future solicitations. FDIC will monitor the performance of the Contractor, including a review of the payments to subcontractors, to ensure appropriate efforts are being made to comply with the Subcontracting Plan.

(Ref.-PAB 2011-04)

7.5.6-6 Evaluation of Subcontracting Plan (March 2011)

Prescription:

Per PGI 5.604, insert provision 7.5.6-6, *Evaluation of Subcontracting Plan*, in solicitations when a Subcontracting Plan is required.

Provision:

The FDIC will evaluate the Contractor's Subcontracting plan and proposed subcontractors, considering the following:

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- (1) The adequacy of the proposed rationale for subcontracting, including information on efforts undertaken by the Contractor to include subcontractors that are minority-owned, women-owned or small disadvantaged businesses.
- (2) The appropriateness of the proposed level of subcontracting for the requirements of the contract (that is, logically balanced on a technical basis).
- (3) The appropriateness of the subcontractor's qualifications, resources and capabilities for the complexity of the work.

(Ref.-PAB 2011-04)

7.5.14-1 Disputes (June 2012)

Prescription:

Per PGI 5.1405, insert clause 7.5.14-1, *Disputes*, in all awards.

Clause:

Except as otherwise provided in this award, any factual dispute arising under this award, which is not disposed of by agreement, will be decided by the Contracting Officer. The Contracting Officer must, within 60 days, decide the claim or notify the contractor of the date by which the decision will be made. The Contracting Officer will furnish the contractor with a copy of the written decision.

The decision of the Contracting Officer is final and conclusive unless the contractor submits a written request for appeal of the decision to the Division of Administration, Acquisition Services Branch (ASB) Deputy Director, within 60 days from receipt of the Contracting Officer decision. The ASB Deputy Director must, within 30 days, decide the claim or notify the contractor of the date by which the decision will be made. The decision of the ASB Deputy Director is final and conclusive unless a court of competent jurisdiction finds the decision fraudulent, arbitrary and capricious, so grossly erroneous as to imply bad faith, or not supported by substantial evidence. The contractor has 180 days from the date of the ASB Deputy Director's decision to appeal to a court of competent jurisdiction.

Contractor will be afforded an opportunity to be heard and to offer evidence in support of its appeal, if it requests. Pending final decision of a dispute, Contractor remains obligated to proceed diligently with the performance of the contract, in accordance with the Contracting Officer's decision.

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Questions of law may be considered in deciding disputes under the process described above. However, consideration of questions of law by any administrative official, representative or board is not a final decision, and is not to be construed as one.

(Ref.-PAB 2012-02)

7.6.4-4 Fair Inclusion of Women and Minorities (August 2011)

Prescription:

Per PGI 6.410, insert clause 7.6.4-4, *Fair Inclusion of Women and Minorities*, in all awards over \$100,000, except Task Orders issued under FDIC BOAs/RBOAs/BPAs.

Clause:

(a) Contractor confirms its commitment to equal opportunity in employment and contracting. To implement this commitment, the Contractor shall ensure, to the maximum extent possible consistent with applicable law, the fair inclusion of minorities and women in its workforce. The Contractor shall insert the substance of this clause in all subcontracts under this Contract whose dollar value exceeds \$100,000. Within ten business days of a written request from the Contracting Officer, or such longer time as the Contracting Officer determines, and without any additional consideration required from FDIC, the Contractor shall provide documentation, satisfactory to FDIC, of the actions it (and as applicable, its subcontractors) has undertaken to demonstrate its good faith effort to comply with the aforementioned provisions. For purposes of this contract, "good faith effort" may include actions by the contractor intended to identify and, if present, remove barriers to minority and women employment or expansion of employment opportunities for minorities and women within its workforce. Efforts to remove such barriers may include, but are not limited to, recruiting minorities and women, providing job-related training, or other activity that could lead to those results.

(b) The documentation requested by the Contracting Officer to demonstrate "good faith effort" may include, but is not limited to, one or more of the following:

1. The total number of Contractor's employees, and the number of minority and women employees, by race, ethnicity, and gender (e.g., an EEO-1);
2. A list of subcontract awards under the Contract that includes: dollar amount, date of award, and subcontractor's minority and/or gender ownership status;
3. Information similar to that required in item 1, above, with respect to each subcontractor with a subcontract value that exceeds \$100,000; and/or

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4. The Contractor's plan to ensure that minorities and women have appropriate opportunities to enter and advance within its workforce, including outreach efforts.

(c) Consistent with Section 342(c)(3) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010) (Dodd-Frank Act), a failure to demonstrate to the Director of FDIC's Office of Minority and Women Inclusion such good faith efforts to include minorities and women in the Contractor's workforce (and as applicable, the workforce of its subcontractors), may result in termination of the Contract for default, referral to the Office of Federal Contract Compliance Programs, or other appropriate action.

(d) For purposes of this clause, the terms "minority," "minority-owned business" and "women-owned business" shall have the meanings set forth in Section 342(g) of the Dodd-Frank Act.

(e) Contractor must provide the following certification to the Contracting Officer, annually, no later than the anniversary of the effective date of the Contract or ordering agreement.

Contract Number: _____

Contractor Name: _____

Certification Regarding Fair Inclusion of Minorities and Women

The Contractor certifies to the following: [] Yes [] No

- (1) It is committed to equal opportunity in employment and contracting.
- (2) It has made and will continue to make, or will make during the course of this contract, a good faith effort to ensure, to the maximum extent possible, the fair inclusion of minorities and women in its workforce and in the workforces of its applicable subcontractors,
- (3) For purposes of this certification,
 - "minority" shall have the meaning set forth in Section 342 (g) of the Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010); and
 - "Applicable Subcontractor" refers to all tiers of subcontractors under this contract whose subcontract exceeds \$100,000 in value; and
 - "Good faith effort," may include actions by the contractor intended to identify and, if present, remove barriers to minority and women within its workforce or expand employment opportunities for minorities and women within its workforce. Efforts to remove such barriers or expand employment opportunities may include, but are not limited to, recruiting minorities and women, providing job-related training, or other activity that could lead to those results.

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If the Contractor answers "No" to the certification above, an explanation must be provided:

(Ref.-PAB 2011-09)
