

Guide to Judiciary Policy

Vol. 14: Procurement

Ch. 1: Overview

Appx. 1Z: Glossary of Procurement Terms

Acceptance of Offer – In contract law, the act accepting an offer (e.g., awarding a contract based on an offer under a request for proposals).

Acceptance of Work – The act of an authorized representative by which the judiciary, for itself or as an agent of another, assumes ownership of existing identified products tendered or approves specific services rendered as partial or complete performance of the contract.

Acceptance Period – The number of calendar days available to the judiciary for awarding a contract from the date specified in the solicitation for receipt of offers.

Acceptance Procedures – The process followed by judiciary personnel during acceptance of a product or service.

Acquisition – See: Procurement. Generally, the terms “acquisition” and “procurement” may be used interchangeably. However, when the term “acquisition” is used to refer to the entire procurement lifecycle, including the activities below, “procurement” only refers to the process of conducting a procurement.

- Defining agency requirements;
- Budgeting and planning for the procurement of those requirements,
- Maintaining and operating what was procured, and
- Final disposal, disposition, or retirement of what was procured.

Acquisition Management Office (AMO) – The office within the Administrative Office of the U.S. Courts’ (AO) Department of Administrative Services (DAS) responsible for providing procurement and acquisition management support for the AO and judiciary organizations nationwide and for executing the judiciary’s acquisition and procurement program. The chief of AMO serves as the Judiciary Procurement Executive (PE).

Acquisition Lifecycle – See: Procurement Lifecycle.

Acquisition Planning – See: Procurement Planning.

Adequate Price Competition – This situation exists when two or more responsible offerors, competing independently, submit reasonable priced offers that satisfy the judiciary’s expressed requirement. A statement of the facts must support any finding that the price is unreasonable. If there was a reasonable expectation (based on market research or other assessment) that two or more responsible offerors, competing

independently, would submit priced offers in response to the solicitation's expressed requirement, even though only one offer is received from a responsible offeror and if:

- (a) based on the offer received, the contracting officer can reasonably conclude that the offer was submitted with the expectation of competition, e.g., circumstances indicate that:
 - (1) the offeror believed that at least one other offeror could submit a meaningful offer, and
 - (2) the offeror had no reason to believe that other potential offerors did not intend to submit an offer; or
- (b) the determination that the proposed price is based on adequate price competition is reasonable.

Price analysis must clearly demonstrate that the proposed price is reasonable in comparison with current or recent prices for the same or similar items, adjusted to reflect changes in market conditions, economic conditions, quantities, or terms and conditions under contracts that resulted from adequate price competition.

Administrative Change – A unilateral contract modification, in writing, that does not affect the substantive rights of the parties (e.g., a change in the paying office or the appropriation data).

Advertisement – Any single message prepared for placement in communication media, regardless of the number of placements.

Advertising Material – Material designed to acquaint the judiciary with a prospective contractor's present products, services, or potential capabilities, or designed to stimulate the government's interest in buying such products or services.

Affiliates – Contractors so related that one either directly or indirectly controls or has the power to control the other, or a third party controls or has the power to control both.

Aggregate – The whole considered with respect to all its parts (i.e., the contract with all its modifications).

Amendment – A change in a solicitation before contract award.

AMO – See: Acquisition Management Office

Analysis of Trade-Off – The process of identifying and analyzing feasible qualities that satisfy or exceed requirement for judiciary requirements. **See also:** Trade-Off.

Annual Bond or Annual Offer Guarantee – A single bond or offer guarantee in place of separate bonds or guarantees to secure all of an offeror's or contractor's obligations under offers submitted or contracts entered into during a specific fiscal year.

Antideficiency Act – Refers to 31 U.S.C. § 1341, 31 U.S.C. § 1342, and 31 U.S.C. § 1517. The Act prohibits federal employees from obligating or expending federal funds in advance or in excess of an appropriation, and from accepting voluntary services. Federal employees who violate provisions of the Antideficiency Act are subject to sanctions under 31 U.S.C. § 1349(a) and 31 U.S.C. § 1350.

As Written – Any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information. Also referred to as in writing.

Assisted Acquisition – A type of interagency procurement where a servicing agency performs procurement activities on a requesting agency's behalf, such as awarding and administering a contract, task order, or delivery order.

Bailment Contract – A type of interagency procurement where a servicing agency performs procurement activities on a requesting agency's behalf, such as awarding and administering a contract, task order, or delivery order.

Base Year or Base Period – The initial contract term during which the judiciary will procure a specific product and/or service.

Basic Quantities – The quantity of a product or service that the judiciary will procure. **See also:** Optional Quantities.

Basic Terms and Conditions – **See:** Contract Clause.

Best and Final Offer (BAFO) – A final opportunity for offerors in the competitive range to revise offers.

Best Value – The expected outcome of a procurement that, in the judiciary's estimation, provides the greatest overall benefit in response to the requirement.

Bid – This term is not used, since the sealed bid process is not applicable to the judiciary. **See:** Offer or Solicitation.

Bid Bond – **See:** Offer Bond.

Bid Sample – **See:** Offer Sample.

Bidder – This term is not used, since the sealed bid process is not applicable to the judiciary. **See:** Offeror.

Bilateral – The equal agreement of both sides, the contractor and contracting officer, and accomplished by signature of both parties.

Bilateral Modification – A contract modification that the contractor and the contracting officer sign. Bilateral modifications are used to:

- (a) make negotiated equitable adjustments resulting from the issuance of a change order,
- (b) definitize letter contract, and
- (c) reflect other agreements of the parties modifying the terms of contracts.

Boiler Plate – A pre-approved format that must be used as it is presented as opposed to a shell document, which allows for fill-in information.

Bona Fide Needs Rule – Provides that a fiscal year appropriation may be obligated only to meet a legitimate or bona fide need arising in the fiscal year for which the appropriation was made.

Bond – A written instrument executed by an offeror or contractor (the principal), and a second party (the surety), to assure fulfillment of the principal's obligations to a third party (the judiciary), identified in the bond. If the principal's obligations are not met, the bond assures payment, to the extent stipulated, of any loss sustained by the obligee.

Brand-Name – A product description when only one brand-name will satisfy the requirement. A brand-name description limits competition to only those sources able to provide the particular brand-name. Since competition is limited, a justification for other-than-full-and-open-competition must be processed and approved before making the purchase.

Brand-Name or Equal – A product description that includes a brand-name followed by the phrase "or equal". This means that the particular brand-name will satisfy the requirement, but an equal product also will be considered.

Budget Considerations – Budget rules and issues that need to be considered during planning.

Cancellation – To annul or invalidate. This is used as in cancellation of a solicitation (before award) or the cancellation of a contract (within a contractually specified time) of the total requirements of all remaining program years of a multi-year contract. Cancellation results when the contracting officer:

- (a) notifies the contractor that the judiciary no longer needs the requirement,
- (b) notifies the contractor of non-availability of funds for contract performance for any subsequent program year; or

- (c) fails to notify the contractor that funds are available for performance of the succeeding program year requirement.

Change-of-Name Agreement – A legal instrument executed by the contractor and the judiciary that recognizes the legal change of name of the contractor without disturbing the original contractual rights and obligations of the parties. A change-of-name agreement involves only a change of the contractor's name. The rights and obligations of the parties remain unaffected. The agreement must be executed by the contracting officer and the contractor modifying all existing contracts between the parties to reflect the change of name. When more is involved than just changing the name, **see also:** Sample Novation Agreement (Appx. 7B).

Change Order – A written order signed by the contracting officer, directing the contractor to make a change that the Changes clause authorizes the contracting officer to order without the contractor's consent.

Change Within Scope – A change allowed within the area covered by the procurement.

Claim – A written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under contract clause that provides for the relief sought by the claimant. When a claim is in dispute refer to the language of the contract.

Clarification – Limited communication with an offeror for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in an offer.

Clause – See: Contract Clause.

CO – See: Contracting Officer.

Commercial Item – Any item, other than real property, that is of a type customarily used for non-governmental purposes and that has been sold, leased, or licensed to the general public; or has been offered for sale, lease, or license to the general public. The term also includes installation services, maintenance services, repair services, and other services if:

- (a) Such services are procured for support of a commercial item, regardless of whether such services are provided by the same source or at the same time as the item; and
- (b) The source of such services provides similar services contemporaneously to the public under terms and conditions similar to those offered to the federal government.

Commercial Item also includes products (commercial products) and services (commercial services) of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions, such as commercial training. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed or a specific outcome to be achieved. For purposes of these services:

- (a) Catalog price means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and
- (b) Market prices means current prices that are established during ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

Commercial Item Offer – An offer of a commercial off-the-shelf item that the vendor wishes to see introduced in the government's supply system as an alternate or a replacement for an existing product. This term does not include innovative or unique configurations or uses of commercial items that are being offered for further development and that may be submitted as an unsolicited offer. The term also includes an offer of commercial services as described under the definition of commercial item.

Commercial Use Agreements – Requests by contractors for procurement and contracting officials to sign agreement to terms and conditions not specified in the procurement or contractual document.

Compensation – A payment or reimbursement whether monetary or otherwise.

Competition Threshold – For the judiciary, **see:** Guide, Vol. 14, § 325.15.10. **Note:** For GSA federal supply schedules and other federal agency contracts refer to those agency contracts or their regulations.

Competitive Procedures – The procedures under which the judiciary enters into a contract under full and open competition.

Competitive Range – The offerors selected who have a reasonable chance of being awarded a contract after offer evaluation, based on total cost and other factors stated in the solicitation. The competitive range is established for the purpose of conducting oral or written discussions with these offerors and for requesting best and final offers.

Compliance – Meeting all technical, contractual, and price/cost requirements of a solicitation. A synonym for conformance.

Component – Any item supplied to the judiciary as a part of an end item or of another component.

Composite Rating – The combined representation of an offer's technical merit after considering all evaluation factors, significant sub-factors, and their relative importance.

Computer Database – A collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer Software – Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer databases or computer software documentation.

Computer Software Documentation – Information, including computer listings and printouts in human-readable form that:

- (a) documents the design or detail of computer software,
- (b) explains its capabilities, or
- (c) provides operating instructions for using it.

Conflict of Interest – Because of other activities or relationships with other persons:

- (a) a person or organization is unable or potentially unable to render impartial assistance or advice to the judiciary,
- (b) a person's or organization's objectivity in performing the contract work is or might be otherwise impaired, or
- (c) a person or organization has an unfair competitive advantage.

Conformance – Meeting all technical, contractual, and price/cost requirements of a solicitation. A synonym for compliance.

Consent of Surety – An acknowledgment by a surety that its bond continues to apply to the contract as modified.

Consideration – In contract law, consideration is something of value. It may be money, an act, or a promise. It is one of the key elements required to have a binding contract.

Construction – Construction, alteration, or repair of any public building or public work in the United States.

Construction Contract – Any contract for construction.

Construction Work – The construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other on-site functions incidental to the actual construction.

Construction, Alteration, or Repair – All types of work done on a particular building or work at the building site, including without limitation:

- altering, remodeling, installation (if appropriate) on the site of the work of items fabricated offsite;
- painting and decorating;
- transporting materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor; and
- manufacturing or furnishing materials, articles, products, or equipment on the site of the building, or work by persons employed by the contractor or subcontractor.

Constructive Change – A government action or inaction that constitutes an unauthorized modification of contract requirements. The contracting officer may be required to follow ratification procedures, before considering formalization of the modification. This must be avoided.

Consultant – A person who provides views or opinions on problems but does not supervise or carry out operating functions. The person or business entity serves primarily as an adviser to an officer or instrumentality of the judiciary, rather than an officer or employee who carries out the judiciary's duties and responsibilities. Generally, a consultant has a high degree of broad administrative, professional, or technical knowledge or experience that must make the advice distinctively valuable to the agency.

Consultant Conflict of Interest – **See:** Conflict of Interest.

Continued Portion of the Contract – The portion of a partially terminated contract that the contractor must continue to perform.

Contract – A mutually binding legal relationship obligating the seller to furnish the products or services and the buyer to pay for them. It is any understanding that can be legally enforced, formed by two or more parties who promise to perform or to refrain from performing some act. For purposes of judiciary procurement, a contract exists when there is a bilateral agreement; a unilateral order (such as a purchase order) by the judiciary that becomes effective upon performance by the other party; or a binding order under an agreement. A contract includes all types of commitments that obligate the judiciary to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; delivery orders or task orders, issued under Blanket Purchase Agreements (BPAs); orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts **do not include** grants and cooperative agreements.

Contract Action – An action resulting in a contract, including contract modifications for additional products or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued under the Changes clause, or funding and other administrative changes.

Contract Administration – Management of a contract to ensure that the judiciary receives the products and services specified within established costs and schedules.

Contract Administration File – File that contains the documentation supporting all actions reflecting the basis for and the performance of contract administration responsibilities. Included are the copy of the contract and all modifications, together with official record copies of supporting documents executed by the contract administration office.

Contract Administration Office – An office that performs assigned post-award functions related to the administration of contracts.

Contract Administrator – An individual who acts as an agent for the contracting officer in administration matters. The contracting officer is the signature authority for any administration actions.

Contract Clause – A term or condition used in solicitations and contracts and applying before and after contract award.

Contract Closeout – Action taken to close the contract and dispose of the contract file after receipt of evidence of physical contract completion.

Contract Date – The effective date of a contract or modification.

Contract Elements – To be legally enforceable, a contract must include the following: an offer, an acceptance, consideration, execution by competent parties, legality of purpose, and clear terms and conditions.

Contract Modification – Also referred to as a modification. Any written change in the terms of a contract. **See:** Modification.

Contract Option – **See:** Option.

Contract Price – The award price of a contract. The total amount of a contract for the term of the contract (excluding options, if any).

Contract Specialist – An individual who assists the contracting officer and completes procurement actions up to the point of signature. The actual final approval and signature is accomplished by a certified contracting officer.

Contracting – Purchasing, renting, leasing, or otherwise obtaining products or services from non-federal sources. Contracting includes description (but not determination) of products and services required, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration. It does not include making grants or cooperative agreements.

Contracting Action – An action resulting in a contract, including contract modifications for additional products or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued under the contract Changes clause, or funding and other administrative changes.

Contracting by Negotiation – Contracting using offers and discussions. The procedure includes the receipt of offers, permits bargaining, and usually affords offerors an opportunity to revise their offers before award of a contract.

Contracting Office – An office that awards or executes a contract for products or services and performs post-award functions not assigned to a contract administration office. Any contracting office that the procurement is transferred to, such as another division of the judiciary.

Contracting Officer (CO) – A person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. A single contracting officer may be responsible for duties in any or all of these areas. A person who has direct purchasing authority or has been delegated purchasing authority. The CO is the only judiciary employee who is delegated authority to legally commit the judiciary to the purchase of products and services. The judiciary COs are delegated authority under the Contracting Officers Certification Program (COCP). **See:** Guide, Vol. 14, § 140.

Contracting Officers Certification Program (COCP) – The judiciary's program for certifying contracting officers. **See:** Guide, Vol. 14, § 140.

Contracting Officer's Representative (COR) – An individual to whom the CO delegates certain contract administration responsibilities. The CO makes the delegation in writing with a copy furnished to the contractor. The designation does not include any authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract. At the judiciary, the designation was previously referred to as COTR.

Contractor – Any individual or other legal entity that directly or indirectly (e.g. through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a judiciary contract, including a contract for carriage under government or commercial bills of lading, or conducts business or reasonably may be expected to conduct business, with the judiciary as an agent or representative of another contractor.

Contractor-Acquired Property – Property acquired or otherwise provided by the contractor for performing a contract and to which the judiciary has title.

Contractor Offer Information – Any of the following information submitted to the judiciary as part of or in connection with an offer to enter into a judiciary procurement contract, if that information has not been previously disclosed publicly:

- (a) cost or pricing data;
- (b) indirect costs and direct labor rates;
- (c) proprietary information about manufacturing processes, operations, or techniques marked by the contractor consistent with applicable law or regulation; and
- (d) information marked by the contractor as contractor offer information, consistent with applicable law or regulation.

Contribution – A concept, suggestion, or idea presented to the government for its use with no indication that the source intends to devote any further effort to it on the government's behalf.

Cost – The amount of money (estimated before award, actual after award) incurred for performance consistent with contract terms and conditions.

Cost Analysis – The review and evaluation of the separate cost elements and proposed profit of an offeror's or contractor's cost or pricing data — and the judgmental factors applied in projecting from the data to the estimated costs to form an opinion on the degree to which the proposed costs represent what the contract will probably cost, assuming reasonable economy and efficiency.

Cost Evaluation Panel (CEP) – The individuals responsible, during the source selection process, for performing the total cost evaluation of offers submitted in response to a solicitation.

Cost or Pricing Data – All facts as of the time of price agreement that prudent buyers and sellers would reasonably expect to significantly affect price negotiations. Cost or pricing data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projection, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include such factors as:

- (a) supplier quotations;
- (b) nonrecurring costs;
- (c) information on changes in production methods and in production or purchasing volume;
- (d) data supporting projections of business prospects and objectives and related operating costs;
- (e) unit-cost trends such as those associated with labor efficiency;
- (f) make-or-buy decisions;
- (g) estimated resources to attain business goals;
- (h) information on management decisions that could have a significant bearing on costs; and
- (i) historical actual costs for the same or similar items.

Cost Realism – Measuring the degree to which estimated or projected costs will represent actual costs of contract performance.

Cost-Reimbursable Contract – A contract that provides for payment of allowable incurred costs to the extent prescribed in the contract.

Court Unit – A term used to refer to courts of appeals, circuit offices, district courts, bankruptcy courts, bankruptcy administrator offices, and probation and pretrial services offices, along with their constituent units.

Data – Recorded information, regardless of form or the medium on which it may be recorded. The term includes technical data and computer software. The term does not

include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

Day – For purposes of the notification process, means calendar day. When it is designated as a working day or business day, then the period will include any day which is not a Saturday, Sunday, or legal holiday.

Debarment – An action taken by a debarring official to exclude a contractor from government contracting and government-approved subcontracting for a reasonable, specified period.

Debarred – Excluded from government contracting and government-approved subcontracting for a reasonable, specified period of time commensurate with the seriousness of the offense or failure, or the inadequacy of performance.

Debriefing – Discussions with a losing offeror about the strengths and weaknesses of its offer as compared to the award criteria.

Defect – Any condition or characteristic in any products or services furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

Deficiency – Any part of an offer that fails to satisfy the judiciary's requirements.

Delegated Procurement Level – The COCP Level of the contracting officer which describes the authority which is delegated to that contracting officer.

Delegation Level – **See:** Delegated Procurement Level.

Delegation of Procurement Authority – Authority to contract for judiciary products and services.

Delivery Order – An order for products placed against an established contract or with government sources.

Delivery Schedule – Specifics in the procurement for the delivery mode, where and when the product is to be delivered.

Descriptive Literature – Information furnished by offerors as a part of their offers to describe the products offered, such as cuts, illustrations, drawings, and brochures that shows the characteristics or construction of a product or explains its operation. The term includes only information required to determine acceptability of the product. It excludes other information such as that furnished in connection with the qualifications of an offeror or for use in operating or maintaining equipment.

Designated Transition Procurement Official – An individual who is assigned the contracting officer duties during the transition program as specified in the Guide.

Desirable Items/Features – Items or features that may represent value to the judiciary, but are not mandatory for an offer to be in compliance with a solicitation.

Deviation – A request for a change from the prescribed procedures. To be effective, the deviation must be approved on a signed waiver from the PE.

Direct Acquisitions – A type of interagency acquisition where a requesting agency places an order directly against a servicing agency's indefinite-delivery contract. The servicing agency manages the indefinite-delivery contract but does not participate in the placement or administration of an order.

Director – Refers to the Director of the Administrative Office of the United States Courts.

Discount for Prompt Payment – An invoice payment reduction voluntarily offered by the contractor, in conjunction with the Discounts for Prompt Payment clause, if payment is made by the judiciary before the due date. The due date is calculated from the date of the contractor's invoice. If the contractor has not placed a date on the invoice, the due date is calculated from the date the designated billing office receives a proper invoice, provided the judiciary annotates such invoice with the date of receipt at the time of receipt. When the discount date falls on a Saturday, Sunday, or legal holiday when judiciary offices are closed and judiciary business is not expected to be conducted, payment may be made on the following business day and a discount may be taken.

Discussions – Oral or written communications between the judiciary and an offeror that involve information essential for determining the acceptability of an offer and provide an offeror an opportunity to revise or modify its offer. In negotiations, it occurs after establishment of the competitive range that may, at the contracting officer's discretion, result in the offeror being allowed to revise its proposal. **See also:** Best and Final Offer (BAFO).

DUNS – Data Universal Numbering System (**Note:** In April 2022, the federal government stopped using the DUNS number to uniquely identify entities.) **See:** Unique Entity Identifier.

Effective Competition – **See:** Adequate Price Competition.

Electronic Funds Transfer (EFT) – Any transfer of funds, other than a transaction originated by cash, check, or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes Automated Clearing House transfers, Fedwire transfers, and transfers made at automatic teller machines and point-of-sale terminals. For purposes of compliance with 31 U.S.C. § 3332 and implementing regulations at 31 CFR part 208, the term "electronic funds transfer" includes a governmentwide commercial purchase card transaction.

Ethics – See: Procurement Integrity and Ethics.

Evaluated Optional Items/Features – Items/features that must be offered and evaluated, but that the judiciary may acquire at its option at a date later than contract award.

Evaluation Criteria – See: Evaluation Factors.

Evaluation Factors – The standards by which the value of an offer is assessed. The aspects of an offer are evaluated quantitatively or qualitatively to arrive at an integrated assessment as to which offer can provide the best solution to meet the judiciary's requirements as described in the solicitation. The terms evaluation factors and evaluation criteria are used interchangeably. **See:** Guide, Vol. 14, § 210.70.50.

Evaluation Panel – A panel of requirement activity individuals, usually with technical knowledge and experience, to rate the offers using the evaluation criteria specified in the solicitation. **See:** Guide, Vol. 14, § 210.70.40.

Excess Property – Any personal property under the control of the judiciary that is determined to be not required for its needs and for the discharge of its responsibilities.

Execution – The final consummation of a contract action including all formalities (e.g., signature and any necessary approvals) needed to complete the action.

Expert – A person who is specially qualified by education and experience to perform difficult and challenging tasks in a particular field beyond the usual range of achievement of competent persons in that field. An expert is regarded by other persons in the field as an authority or practitioner of unusual competence and skill in a professional, scientific, technical, or other activity.

Fair Market Price – See: Fair and Reasonable Price.

FedBizOpps – FBO has moved to www.sam.gov and is known as Contract Opportunities.

Federal Supply Schedule (FSS) – Publications issued by the General Services Administration (GSA) schedule contracting office containing the information for placing delivery or task orders under indefinite delivery contracts (including requirements contracts) established with commercial firms to obtain commonly used commercial products and services associated with volume buying. Ordering officers issue delivery or task orders directly to the schedule contractors. **See also:** GSA Advantage!.

Fee – The portion of total remuneration to a contractor over and above allowable costs. Also called profit.

Fidelity Bond – A bond to assure the faithful performance of an employee's duties to his or her employer and the employer's clients. The bond is used to cover losses such as employee thefts or embezzlements.

Firm Fixed-Price Contract – A contract that provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. **See also:** Fixed-Price Contract.

Firmware – Hardware-embedded and hardware-oriented programming that is used for machine control, error recovery, mathematical functions, applications programs, and the like, including firmware furnished with a computer, commercially available proprietary firmware acquired separately, and all related vendor documentation and manuals.

Fixed-Price Contract – A contract that provides for a firm price, or in appropriate cases, an adjustable price.

F.o.b. (Free on Board) – Used in conjunction with a physical point to determine:

- (a) the responsibility and basis for payment of freight charges; and
- (b) unless otherwise agreed, the point where title for goods passes to the buyer or consignee.

F.o.b. destination (Free on Board at destination) – Delivery, free of expense to the judiciary, to a destination specified in the purchase document (i.e., the seller or consignor delivers the goods on seller's or consignor's conveyance at destination). Cost of shipping and risk of loss are borne by the seller or consignor.

F.o.b. origin (Free on Board at origin) – The seller or consignor places the goods on the conveyance by which they are to be transported. The judiciary pays for the pick-up, transportation, and delivery to the required destination. Cost of shipping and risk of loss are borne by the judiciary.

Form, Fit, and Function Data – Data relating to an item component, or process that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements; except that for computer software, it means data identifying origin, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulas, and machine-level flow charts of the computer software.

Formal Source Selection – A structured, compartmented process that uses a source selection panel for evaluating offers and selecting the source(s) for contract award. The source selection panel is frequently structured to include at least three individuals to accomplish offer evaluation, comparative analysis of the offers, and source selection.

The source selection authority is at a management level above that of the contracting officer.

Fraud – Acts of fraud or corruption or attempts to defraud the government or to corrupt its agents; which constitute a cause for debarment or suspension; and which violate the False Claims Act.

Freedom of Information Act – Does not apply to the judiciary. However, as a matter of policy, and to the extent that it is in the best interest of the judiciary, procurement documents that would be released under FOIA may be released upon request.

Full and Open Competition – All responsible sources are permitted to compete for a procurement.

Functional Requirement – A requirement in which the judiciary describes functions to be performed and offerors propose appropriate solutions.

General Accounting Office (GAO) Protest – A procurement protest made to the General Accounting Office. **See also:** Judiciary Protest.

General Wage Determination – Contains prevailing wage rates for the types of service designated in the determination, and is used in contracts performed within a specified geographical area. General wage determinations contain no expiration date and remain valid until modified, superseded, or canceled by a notice in the Federal Register by the Department of Labor. Once incorporated in a contract, a general wage determination normally remains effective for the term of the contract. When options are exercised an updated wage determination must be requested from the Department of Labor and modified into the contract.

Gifts – **See:** Gratuities or Gifts.

Go/No-Go Standard – A standard of comparison defined so that proposals either satisfy an evaluation factor completely or fail to meet it.

Government – Also referred to as entity of the government. Any entity of the legislative or judicial branch, any executive agency, military department, government corporation, or independent establishment, the U.S. Postal Service, or any non-appropriated-fund instrumentality of the Armed Forces.

Governmentwide Acquisition Contract (GWAC) – A task order or delivery order contract for information technology established by one agency for governmentwide use that is operated:

- (a) by an executive agent designated by the Office of Management and Budget (OMB), or

- (b) under a delegation of authority issue by the General Services Administration (GSA).

The Economy Act does not apply to orders under a GWAC.

Governmentwide Point of Entry (GPE) – A daily publication that lists the government's proposed contract actions, contract awards, subcontracting leads, sales, surplus property, and foreign business opportunities. **See also:** sam.gov.

Gratuities or Gifts – Items of value given to judiciary employees.

GSA Advantage! – An on-line shopping service that enables purchasing offices to search product information, review delivery options, place orders directly with contractors and pay contractors for orders using the purchase card. The service may be accessed through the GSA Federal Supply Service (FSS) page.

GSA Competition Threshold – The threshold at which GSA contract actions must be competed (\$10,000).

Hire – See: Leasing.

In Writing – See: As Written.

Incumbent Contractor – Current contractor on an ongoing contractual requirement program.

Ineligible – Excluded from contracting and subcontracting under statutes, executive orders, or regulations of government agencies, such as the Davis-Bacon Act, the Service Contract Act, and the Walsh-Healey Public Contracts Act.

Information Technology – Any equipment, or interconnected system(s) or subsystem(s) of equipment, that is used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the agency. The term "information technology" includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources.

Inherently Governmental Function – A function that is so intimately related to the public interest as to mandate performance by government employees. An inherently governmental function includes activities that require either the exercise of discretion in applying government authority (i.e., the act of governing), or the making of value judgments related to government monetary transactions and entitlements, and in making decisions for the government.

Inspection – Examining and testing products or services (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether they conform to contract requirements.

Insurance – A contract that provides that, for a stipulated consideration, one party undertakes to indemnify another against loss, damage, or liability arising from an unknown or contingent event.

Integrity – **See:** Procurement Integrity and Ethics.

Interagency Agreement (IA) – A document authorizing the obligation of appropriated funds to provide goods or services to, or obtain goods or services from, another federal agency. (**Note:** This definition does not include IAs for details of personnel by the judiciary to or from another federal agency. **See:** Guide, Vol. 12, § 510.70 (Interagency Agreements and Memoranda of Understanding (MOU)).)

Interagency Agreement (IA) Determination and Finding – A document for Economy Act IAs, which is prepared by the requesting office and signed by the CO, to explain how:

- (a) using an IA to obtain products or services under the Economy Act (31 U.S.C. § 1535) is in the judiciary's best interest; and
- (b) the products or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise.

See: Guide, Vol. 14, § 550.40.20 (Economy Act Determination and Finding).

Interested Party – A prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract. For the purpose of filing a protest, an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by failure to award a contract.

Invitation for Bid (IFB) – This term is not used in the judiciary, because it refers to sealed bidding procedures. Outside the judiciary, it is a contracting officer's invitation to vendors to respond with a bid.

Invoice – A contractor's bill or written request for payment under the contract for products delivered or services performed. **See also:** Proper Invoice.

Invoice Payment – A judiciary disbursement of monies to a contractor under a contract or other authorization for products or services accepted by the judiciary. This includes payments for partial deliveries that have been accepted by the judiciary and final cost or fee payments where amounts owed have been settled between the judiciary and the contractor.

Javits-Wagner-O'Day Act (JWOD) – Requires the judiciary to purchase products or services on the Procurement List, at prices established by the Committee, from JWOD participating nonprofit agencies if they are available within the period required. Also National Industries for the Blind (NIB) and NISH.

JIT Funds – Judiciary Information Technology Funds.

Judiciary-Furnished Property – Property in the possession of, or directly acquired by, the judiciary and subsequently made available to the contractor. It includes materials or other property to contractors in performance of their contracts when doing so will result in significant economies, standardization, expedited production, or when it is otherwise in the judiciary's interest.

Judiciary Organizations – **See:** Guide, Vol. 14, § 110.40(a) for a list of Judicial Branch organizations to which Guide, Vol. 14 (Procurement) applies.

Judiciary Property – All property owned by or leased to the judiciary or acquired by the judiciary under the terms of the contract. It includes both judiciary-furnished property and contractor-acquired property. **See also:** Judiciary-Furnished Property.

Judiciary Protest – A procurement protest made to the contracting office. **See also:** General Accounting Office (GAO) Protest.

Judiciary Purchase Card Program – A purchase card, similar to a commercial credit card, issued to authorized judiciary personnel to use to acquire and to pay for products and services. **See:** Guide, Vol. 14, § 140 (Contracting Officers Certification Program (COCP)) as it relates to purchase card authorized use. **See also:** Judiciary Purchase Card Program Manual.

Judiciary's Small Purchase Threshold – \$100,000. **See:** Guide, Vol. 14, § 325.05.

Justification for an Exception to Fair Opportunity (JEFO) – A document to justify and obtain approval for contract solicitations that limit competition for Delivery Order or Task Orders. **See:** Guide, Vol. 14, § 410.30.73.

Justification for Limited Open Market Competition (JLOC) – A document to justify and obtain approval for contract solicitations that use other than Full and Open Market Competition. **See:** Guide, Vol. 14, § 335.60.30.

Labor-Hour Contract – A variation of the time-and-materials contract, differing only in that materials are not supplied by the contractor.

Late Offer – An offer received in the office designated in the RFP, RFQ, or RFI after the exact time set for receipt.

Leasing – Also referred to as rent or hire. Procurement from private or commercial sources other than by purchase.

Limited Rights – The rights of the judiciary in limited rights data, as provided in a Limited Rights Notice if included in a data rights clause of the contract.

Limited Rights Data – Data, other than computer software, developed at private expense.

Limited Source Justification (LSJ) – A document to justify and obtain approval for limiting sources in a procurement that exceeds the GSA's micro-purchase threshold at either the order or BPA level. **See:** Guide, Vol. 14, § 310.50.63 (Limiting Sources on Orders Placed Under Federal Supply Schedules) and § 310.50.66 (Limiting Sources Based on Item Particular to One Manufacturer (Brand Name)).

Liquidated Damages – A contractual remedy which may be used when there are delays in contract delivery or performance and when such delays are solely attributable to the contractor.

List of Parties Excluded From Federal Procurement and Non-procurement Programs – A list compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about parties, debarred, suspended, or voluntarily excluded under the Non-procurement Common Rule, those proposed for debarment, and determined to be ineligible.

Lowest Price Technically Acceptable – An evaluation process that is appropriate when best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price.

Market Research – Collecting and analyzing information about capabilities within the market to satisfy judiciary needs.

Memorandum of Agreement (MOA) – A document describing the specific responsibilities and actions to be taken by the judiciary and the other federal agency to achieve the agreement's goals. (**Note:** MOAs by themselves may not be used to obligate funds. An accompanying IA, contract, or other lawful instrument is needed to do so.)

Memorandum of Understanding (MOU) – A document describing very broad concepts of mutual understanding, goals, and plans shared by the parties. MOUs establish an understanding between the judiciary and another federal agency. (**Note:** MOUs by themselves may not be used to obligate funds; an accompanying IA, contract, or other lawful instrument is needed to do so. This definition does not include MOUs for details of personnel by the judiciary to or from another federal agency. **See:** Guide, Vol. 12, § 510.70 (Interagency Agreements and Memoranda of Understanding (MOU)).)

Micro-Purchase Threshold – This is not a judiciary term. However, a micro-purchase threshold does apply to the judiciary when purchasing from another agency contract. Then, the judiciary must abide by the terms of the other agency's contract, including its micro-purchase threshold for competitive purposes.

Minor Nonconformance – A nonconformance that is not likely to materially reduce the usability of the products or services for their intended purpose, or is a departure from established standards having little bearing on the effective use or operation of the products or services.

Modification – A written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity or other provisions of an existing contract whether made unilaterally under a provision in the contract or bilaterally by the parties to the contract. It includes such bilateral actions as supplemental agreements, and such unilateral actions as change orders, administrative changes, notice of termination, and exercise of options.

Must – This is imperative.

National Industries for the Blind (NIB) – A nonprofit agency designated to represent people who are blind in government contracting under the Javits-Wagner-O'Day Act.

Negotiation – An exchange, in either a competitive or sole source environment, between the judiciary and offerors that are undertaking with the intent of allowing the offeror to revise its proposal. The discussion between the contracting officer and the offeror will determine final terms, conditions, prices, etc. acceptable to both parties.

NISH – A nonprofit agency designated to represent participating nonprofit agencies serving people with severe disabilities other than blindness in government contracting under the Javits-Wagner-O'Day Act.

No-Cost Contract – A contract between the judiciary and a vendor under which no monetary payment is made by the judiciary for the vendor's performance. Under a typical no-cost contract, instead of receiving compensation from the judiciary, the vendor charges and retains fees (assessed against third parties) for its services or an alternative form of consideration is present.

No-Cost Settlement – A termination settlement at no cost to the judiciary or the contract.

Noncompetitive Open Market Threshold – **See:** Open Market Small Purchase Threshold With or Without Competition.

Nonconforming Products or Services – Products or services that do not conform in all respects to contract requirements.

Nonpersonal Services Contract – A contract under which the personnel rendering the services are not subject, either by the contract's term or the manner of its administration, to the supervision and control usually prevailing in relationships between the judiciary and its employees.

Nonseverable services – Services that constitute a specific, entire job with a defined end-product that cannot feasibly be subdivided for separate performance in each fiscal year, essentially a single undertaking which, by its nature, cannot be separated for performance in separate fiscal years. Contracts for nonseverable services should be financed entirely out of the appropriation current at the time of award, notwithstanding that performance may extend into future years. Examples of nonseverable services include studies, reports, overhaul of an engine, and painting a building.

Novation Agreement – A legal instrument executed by the contractor (transferor); successor in interest (transferee); or government; by which, among other things, the transferor guarantees delivery or performance of the contract, the transferee assumes all obligations under the contract, and the government recognizes the transfer of the contract and related assets. A novation agreement involves recognizing a third party as the successor in interest when the third party's interest arises out of the transfer of all of the contractors' assets, or the entire portion of the assets involved in performing the contract. **See:** Guide, Vol. 14, Appx. 7B (Sample Novation Agreement).

Offer – A response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. A response to a request for quotations is a quote not an offer. **See also:** Request for Information, Request for Proposals, and Request for Quotations. An offer may be made in response to a solicitation or may be unsolicited. **See also:** Solicitation and Quote.

Offer Bond – A bond given to serve as an offer guarantee in connection with an individual offer or with offers submitted during a specific fiscal year.

Offer Evaluation – An integrated assessment, using total cost and other evaluation factors and standards, of each offeror's ability to satisfy the requirements of a solicitation. It is the process of examining each proposal against the requirements of the solicitation and rating its response to each factor identified in the solicitation based on an assessment of merit and/or compliance with established requirements.

Offer Guarantee – A firm commitment, such as an offer bond, a postal money order, a certified check, a cashier's check, an irrevocable letter of credit, or certain bonds or notes of the United States, accompanying an offer as assurance that the offeror will, upon acceptance of the offer, execute required contractual documents and promptly provide necessary bonds.

Offer Sample – A sample to be furnished by an offeror with its offer to show the characteristics of the product offered.

Offeror – Any person who has submitted an offer. An offeror is one who is offering a product or service for a price.

Office of the General Counsel (OGC) – An office of the Administrative Office of the U.S. Courts that provides legal advice and opinions.

Open Market – Pricing received that is not specific to any contractual agreement, i.e., not on a GSA schedule, a judiciary wide contract, or a contract from another federal agency.

Open Market Small Purchase Threshold With or Without Competition – The judiciary has established an open market small purchase threshold of \$10,000. Open market purchases for \$10,000 or less may be made without obtaining competitive quotations when the contracting officer determines the price to be reasonable.

Option – A unilateral right in a contract by which, for a specified time, the government may elect to purchase additional products or services called for by the contract, or may elect to extend the term of the contract.

Optional Quantities – Quantities in addition to basic quantities that the judiciary may acquire at its option.

Optional Periods – Time beyond the base period during which the judiciary may acquire products or services at its option.

Oral Presentation – A meeting at which an offeror presents information to evaluators and the contracting officer that validates its offer.

Organizational Conflict of Interest – **See:** Conflict of Interest.

Outlying Area – The group of U.S. commonwealths, territories, and islands listed below:

- (a) Commonwealths
 - Puerto Rico
 - Northern Mariana Islands
- (b) Territories
 - American Samoa
 - Guam
 - U.S. Virgin Islands
- (c) Minor Outlying Islands
 - Baker Island

- Howland Island
- Jarvis Island
- Johnston Atoll
- Kingman Reef
- Midway Islands
- Navassa Island
- Palmyra Atoll
- Wake Atoll

Partial Payments – Payments for accepted products and services that are only a part of the contract requirements are authorized under law. Although partial payments generally are treated as a method of a payment and not as a method of contract financing, using partial payments can assist contractors to participate in judiciary contracts without, or with minimal, contract financing.

Past Performance – A contractor's performance evaluations. It is relevant information, for future source selection purposes, regarding a contractor's actions under previously awarded contracts. It includes, for example, the contractor's record of conforming to contract requirements and to standards of good workmanship; the contractor's record of forecasting and controlling costs; the contractor's adherence to contract schedules, including the administrative aspects of performance; the contractor's history of reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the contractor's business-like concern for the interest of its customer.

Patent Infringement Bond – A bond given as security for a contractor's obligations under a patent clause.

Payment – Is an essential contract element (i.e., consideration). It satisfies the judiciary's obligation to compensate the contractor according to the terms of the contract.

Payment Bond – A bond which assures payments as required by law to all persons supplying labor or material in the prosecution of the work provided for in the contract.

PE – See: Procurement Executive.

Penal Amount or Penal Sum – The amount of money specified in a bond as the maximum payment for which the surety is obligated or the amount of security required to be pledged to the judiciary in lieu of a corporate or individual surety for the bond.

Performance-Based Contracting – Structuring all aspects of a procurement around the purpose of the work to be performed with the contract requirements provided in clear, specific, and objective terms which contain measurable outcomes. This is as opposed to either the manner by which the work is to be performed or broad and imprecise statements of work.

Performance Bond – A bond which secures performance and fulfillment of the contractor's obligations under the contract.

Performance Measures – Standards by which a contractor's work can be measured.

Performance Schedule – Specifics in the procurement for the delivery mode, where and when the service is to be performed.

Personal Services Contract – A contract that, by its express terms or as administered, makes the contractor personnel appear to be, in effect, government employees. The judiciary uses this type of contract very cautiously.

PLO – See: Procurement Liaison Officer.

PO – See: Purchasing Office.

Post-Award Conference – A meeting of judiciary and contractor representatives after award of a contract and before commencement of work to discuss significant elements of administering the contract including any unusual or significant contract requirements (e.g., labor clause requirements).

Post-Award Letter – A letter or other written form of post-award orientation. It must identify the judiciary representative responsible for administering the contract and cite any unusual or significant contract requirements.

Post-Award Orientation – A post-award conference, letter, or other form of written communication to aid both the judiciary and contractor personnel to achieve a clear and mutual understanding of all contract requirements, and to identify and resolve potential problems.

Preliminary Meeting – A meeting to prepare judiciary representatives for a post-award conference. Purposes include to:

- establish an understanding of conference roles and responsibilities,
- develop a conference agenda,
- form a unified judiciary team, and
- identify any unusual or significant contract requirements.

Price – Cost plus any fee or profit applicable to the contract type; the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit. The amount paid for a product or service.

Price Analysis – The process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.

Price-Related Factors – Elements that are quantified and used with price to determine the most advantageous offer for the judiciary. They include:

- (a) foreseeable costs or delays to the judiciary resulting from such factors as differences in inspection, locations of products, and transportation;
- (b) changes made, or requested by the offeror, in any of the provisions of the RFQ, if the change does not constitute grounds for offer rejection;
- (c) advantages or disadvantages to the judiciary that might result from making more than one award; and
- (d) federal, state, and local taxes which are not exempted.

Prime Contractor – A firm that is the responsible contractor under a contract, but who has portions of the products or services provided by one or more sub-contractors.

Procurement – All stages involved in the process of procuring products or services, beginning with the determination of a need for products or services and ending with contract completion or closeout. It involves the procuring by purchase order, delivery order, task order, or contract of products or services with appropriated funds, by and for the use of the judiciary, through purchase or lease, whether the products or services are already in existence or must be created, developed, demonstrated, and evaluated. Procurement begins at the point when judiciary needs are established and includes the description of requirements to satisfy judiciary needs, solicitation and selection of sources, award, financing, performance, administration, and those technical and management functions directly related to the process of fulfilling judiciary needs by procurement.

Procurement Action – See: Procurement Activity.

Procurement Activity – Action taken that leads to an award of a procurement or administration of an existing procurement.

Procurement Agent – An individual who acts as an agent for the contracting officer. The contracting officer is the final signature authority for any actions.

Procurement Authority – Delegated authority as a certified contracting officer to process procurements. **See:** Guide, Vol. 14, § 140.

Procurement Executive (PE) – The judiciary official delegated the authority to manage the direction of the judiciary's comprehensive procurement program, including the development, maintenance, and implementation of the judiciary's unique procurement policies and procedures; Chief of the Acquisition Management Office (AMO).

Procurement Integrity and Ethics – Statutory and ethical standards to ensure procurements are conducted fairly and without prejudice.

Procurement Liaison Officer (PLO) – A delegated official in the court unit or FPDO, who has procurement oversight authority.

Procurement Lifecycle – The period covering all procurement-related activities. The life cycle begins when agency needs are established and ends with disposal of the products.

Procurement Officer – (As used in the interim transition period for a person who is not a certified contracting officer) a person designated by the chief judge or federal public defender to conduct procurement activities during the transition to the Contracting Officers Certification Program. During the transition period, the procurement officer is the same as a contracting officer. **See:** Contracting Officer.

Procurement Official – Includes any individual who has participated personally and substantially in the conduct of a procurement. The classes of employees listed in Guide, Vol. 14, Ch. 1 are considered procurement officials depending on the circumstances prevailing in a given case. **See also:** Designated Transition Procurement Official.

Procurement Planning – The process by which the efforts of all personnel responsible for significant aspects of a procurement are coordinated and integrated in a comprehensive plan to fulfill needs of the judiciary in a timely manner and at a reasonable cost. It includes developing the overall strategy for managing the procurement. For the benefits of procurement planning, **see:** Guide, Vol. 14, Ch. 2 (Procurement Planning and Preparations).

Procurement Sensitive Information – Information prepared or developed by the judiciary for use in conducting a procurement. It must not be released or disclosed to anyone outside of those having an official procurement need to know. The disclosure of this information to a competing offeror may jeopardize the integrity or successful completion of the procurement. Inappropriately released documents may prejudice or bias the award, or otherwise adversely impact a competitive procurement.

Procurement Sensitive Information Legend – This document contains procurement sensitive information related to the conduct of a federal agency procurement, the disclosure of which is restricted by the Office of Federal Procurement Policy Act. The unauthorized disclosure of such information may subject both the discloser and the recipient of the information to contractual, civil and/or criminal penalties as provided by law. Do not copy enclosed materials.

Procurement Strategy – The set of decisions that determines how products or services will be procured, including contracting methods.

Procurement Team – Judiciary members of the procurement team including representatives of the requesting office and purchasing office.

Procuring IA – An IA in which the judiciary is obtaining goods or services from another federal agency and is reimbursing it for the costs of those goods or services.

Product Descriptions – Are usually described by a common generic description of the item. However, they are not as qualitative or quantitative as a specification and usually describe the end-product in terms of performance or standard commercial name (e.g., copier).

Products – All property and rights or interest in property of any kind except real property (i.e., ownership).

Professional Services – Services rendered by persons who are members of a particular profession or possess a special skill and who are not officers or employees of the contractor. These services are generally acquired to obtain information, advice, opinions, alternatives, conclusions, recommendations, training, or direct assistance, such as studies, analyses, evaluations, liaison with government officials, or other forms of representation.

Program Manager (PM) – The key management official who represents the program office in formulating requirements and managing pre-solicitation activities. In some organizations the program manager or another management official is designated as the procurement manager for a specific procurement.

Proper Invoice – A bill or written request for payment which meets the minimum standards specified in the terms and conditions contained in the contract for invoice submission. **See also:** Invoice.

Property – **See:** Judiciary Property or Contractor-Acquired Property.

Proposal – Except as it is used in request for proposal (RFP), this term is not applicable to the judiciary. The term offer is used instead. **See:** Offer.

Proprietary – Information owned by an individual or corporation.

Proprietary Information – Information in an offer or otherwise submitted to the judiciary by an offeror in response to a solicitation or during the conduct of a procurement that has been marked as proprietary information consistent with applicable laws and regulations.

Protest – A written objection by an interested party to any of the following:

- (a) a solicitation or other request for offers for a contract for the procurement of products or services;
- (b) an award or proposed award of a contract;
- (c) a cancellation of the solicitation or other request; or

- (d) a termination or cancellation of an award of the contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.

Protest After Award – A protest filed after contract award.

Protest Before Award – A protest filed before contract award.

Provision – See: Solicitation Provision.

Purchasing Office – An organizational element, comprised of one or more contracting officers, responsible for the purchase of products, services and equipment, real property, design and construction and related services, and mail transportation.

Purchase Order – An offer by the government to buy products or services, including construction and research and development, upon specified terms and conditions, using small purchase procedures.

Quality Assurance – The various functions, including inspection, performed by the judiciary to determine whether a contractor has fulfilled the contract obligations pertaining to quality and quantity.

Quality Requirements – Specific requirements communicated in the procurement to the contractor which will be compared to the delivery of the product or performance of the service and used to evaluate if the contractor met the quality required.

Quotation or Quote – A response to a request for quotation (RFQ) which provides a statement of current prices. It is informational and, unlike an offer, cannot be accepted by the judiciary to form a binding contract. However, the quotation may be used as a basis for a government offer in the form of a purchase order.

Quoter – Any person who submitted a quote.

Ratification – The act of approving an unauthorized commitment by an official who has the delegated procurement authority to do so.

Rating – The application of a scale of words, colors, numbers, signs, or other indicators to denote the degree to which the proposal has met the standard for a technical evaluation factor.

Rating Systems – A rating system suitable for evaluating offers.

Real Property – Means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or plant equipment.

Reasonableness – A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business.

Receiving Report – Written evidence that indicates government acceptance of products delivered or services performed.

Release of Information – Procurement documents released upon request, after determining it is proper to release them.

Rent – See: Leasing.

Request for Information (RFI) – An announcement publicly requesting industry comment on draft specifications or solicitations for products or services.

Request for Proposals (RFP) – A solicitation used to communicate the judiciary's requirements and request vendors submit offers for products or services. Vendors may use the term proposals interchangeably with the term offers.

Request for Quotations (RFQ) – A solicitation for quotes; commonly used under small purchase procedures. Responses to an RFQ are referred to as quotes or quotations, not offers.

Requesting Office – Refers to the organization with the bona fide need and which has initiated the procurement or contracting request.

Responsibility – A determination that a prospective contractor meets the following standards; adequate financial resources to perform a contract or the ability to obtain them; ability to comply with a delivery schedule, taking other business commitments into consideration; a satisfactory performance record on other contracts; a satisfactory record of integrity and business ethics; the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them; the necessary technical equipment and facilities or the ability to obtain them; otherwise qualified and eligible to receive an award under applicable laws and regulations.

Responsible Prospective Contractor – A contractor that meets the criteria for responsibility and is not otherwise debarred. **See:** Responsibility.

Responsible Source – See: Responsible Prospective Contractor.

Responsive Offeror – An offeror whose offer conforms to the solicitation.

Restricted Computer Software – Computer software developed at private expense that is a trade secret, is commercial or financial and confidential or privileged, or is published copyrighted computer software, including minor modifications of this computer software.

Restricted Rights – The rights of the judiciary in restricted computer software, as provided in a Restricted Rights Notice included in a computer software rights clause of the contract, or as otherwise may be included or incorporated in the contract.

RFP – See: Request for Proposals.

RFQ – See: Request for Quotations.

Scope – The area covered by a given activity or subject.

Selection – The selection of an offeror for contract award, with or without discussion of offers, or for final negotiations leading to contract award following discussion of offers.

Service – The performance of identifiable tasks.

Service Contract – A contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish a product. A service contract may be either nonpersonal or personal contract. It can also cover services performed by either professional or nonprofessional personnel whether on an individual or organizational basis. Some of the areas in which service contracts are found include the following:

- (a) maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or modification of products, systems, or equipment;
- (b) routine recurring maintenance of real property;
- (c) housekeeping and base services;
- (d) advisory and assistance services;
- (e) operation of judiciary-owned equipment facilities, and systems;
- (f) communications services;
- (g) architect-engineering;
- (h) transportation and related services; and
- (i) research and development.

Service Contract Labor Standards – Formerly the Service Contract Act of 1965, the Service Contract Labor Standards statute requires that service contracts over \$2,500 contain mandatory provisions regarding minimum wages and fringe benefits, safe and sanitary working conditions, notification to employees of the minimum allowable compensation, and equivalent federal employee classifications and wage rates.

Service Employee – Any person engaged in the performance of a service contract other than any person employed in a bona fide executive, administrative, or professional capacity. The term includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

Servicing IA – An IA in which the judiciary is providing goods or services to another federal agency and is being reimbursed by it for the costs of those goods or services.

Severable Services – Services that are continuing and recurring in nature, and that can be separated into components that independently meet a separate and ongoing need of the government. Common examples are court reporters, court interpreters, local area network and help desk support services, etc. To the extent that a need for a specific portion of a continuing service arises in a subsequent fiscal year, that portion is severable and chargeable to appropriations available in the subsequent FY. Generally, severable services must be charged to the fiscal year(s) in which they are rendered. However, the judiciary has authority to enter into one-year severable service contracts, beginning at any time during the fiscal year and extending into the next fiscal year, and to obligate the total amount of the contract to the appropriation current at the time of the award, provided that performance commences within the same fiscal year as the award.

Shall – An order, promise, or obligation.

Shell – A pre-approved format that allows for fill in information as opposed to a boiler plate, which must be used as it is presented.

Signature or Signed – The discrete, verifiable symbol of an individual which, when affixed to a writing with the knowledge and consent of the individual, indicates a present intention to authenticate the writing. This includes electronic symbols and signatures including digital electronic signatures via the Facility Access Card-Personal Identity Verification (FAC-PIV) used by Contracting Officers that meet the standards of the Judiciary Information Security Framework (JISF).

Small Purchase – A purchase made using less strict contract forms and procedures. Small purchases involve the use of a purchase order, rather than a contract. This procurement has a monetary restriction. **See:** Guide, Vol. 14, § 325.10.10 and § 140.

Small Purchase Threshold – **See:** Judiciary's Small Purchase Threshold.

Software As A Product – Software provided to the judiciary for use on its systems, such as term software licenses and perpetual software licenses. Once the initial software has been delivered, the contractor is deemed to have substantially fulfilled its contractual obligations, so there is no or minimal risk to the government of the vendor failing to perform. This is true even if the software is accompanied by agreements from the vendor to provide standard software support that includes such things as bug fixes, access to software updates, online help. Payment may be made in full at the time of

purchase for software as a product and such payment is not considered an advance payment.

Software As A Service (SaaS) – Purchase of software with significant services from the vendor, such as developing and supporting customized software, or that relies on the vendor or manufacturer to maintain the software on its systems or the web and provide customer access via the vendor's software rather than the user's own system. This can also be referred to as a "software subscription." Purchases of software as a service are considered service contracts and are, therefore, subject to the restrictions on advance payments that generally apply to service contracts.

Sole Source Procurement – A contract for the purchase of products or services that is entered into or proposed to be entered into by the judiciary after soliciting and negotiating with only one source.

Solicitation – An official judiciary request for offers or quotes. It is a document sent to prospective contractors by the judiciary, requesting submission of an offer, quote, or information. It is also the process of issuing a document requesting submission of an offer, quote, or information and obtaining responses. A solicitation in the judiciary is either a Request for Proposals (RFP) or a Request for Quote (RFQ).

Solicitation List – A contracting officer's list of potential sources of products and services.

Solicitation Provision – Term or condition used only in solicitations and applying only before contract award. **See:** Guide, Vol. 14, Appx. 1B (Solicitation Provisions and Contract Clauses).

Source – A potential supplier of products or services to the judiciary including public corporations, private companies, and non-profit organizations.

Source Selection – The process of identifying which offeror(s) will receive a contract in a competitive negotiated procurement. It's the process of choosing the offeror whose offer is most advantageous to the judiciary, total cost and other factors considered when compared with the solicitation's criteria.

Source Selection Authority (SSA) – The government official in charge of selecting the source. This title is most often used when the selection process is formal, and the official is someone other than the contracting officer.

Source Selection Information – Any of the following information prepared or developed for use by the judiciary for the purpose of evaluating an offer the disclosure of which to a competing offeror would jeopardize the integrity or successful completion of the procurement and which is required by statute, regulation, or order to be secured in a source selection file or other facility to prevent disclosure:

- (a) offer prices submitted in response to a judiciary solicitation for offers, or lists of those offer prices before award;
- (b) proposed costs or prices submitted in response to a judiciary solicitation, or lists of those proposed costs or prices;
- (c) source selection plans;
- (d) technical evaluation plans;
- (e) technical evaluations of offers;
- (f) cost or price evaluations of offers;
- (g) competitive range determinations that identify offers that have a reasonable chance of being selected for award of a contract;
- (h) rankings of offers or competitors;
- (i) reports and evaluations of source selection panels, boards, or advisory councils; and
- (j) other information marked as source selection information based on a case-by-case determination by the contracting officer that its disclosure would jeopardize the integrity or successful completion of the judiciary procurement to which the information relates.

Source Selection Panel – The entity responsible for proposal evaluation in a negotiated competitive acquisition. It is usually organized into technical and cost teams.

Source Selection Plan (SSP) – The plan established before solicitation releases to guide the source selection process. It is the document that explains how offerors will be solicited and evaluated to make the selection decision. It contains such information as evaluation factors and sub-factors, evaluation standards, evaluation methodology, evaluators' responsibilities, and final selection procedures. It is the judiciary's statement to itself about how it intends to procure what it needs when contracting including basis for a best value decision; source selection organization; proposal evaluation criteria; and evaluation procedures. The contracting officer's plan to solicit offers will include decisions such as technically acceptable/lowest price or best buy source selection. It is developed with assistance of the evaluation panel, requesting office, and other advisors as needed.

Specification – A description of the essential technical requirements for a material, product, or service. Specifications usually include the product's qualitative and quantitative design, function, or performance requirements and the factors used to determine whether those contract requirements have been met.

Standards – The criteria for determining the effectiveness of the procurement by measuring the performance of the various elements.

Statement of Work (SOW) – A detailed and complete description of requirements prepared for inclusion in a solicitation. A statement of work:

- (a) is used to describe the service to be performed rather than an end-product,
- (b) may contain specifications or other descriptions of requirements,
- (c) is usually used in contracts for services or research and development.
- (d) defines service contract requirements in clear, concise language identifying specific work to be accomplished,
- (e) must be individually tailored to consider the period of performance, deliverable items, if any, and the desired degree of performance. (**Note:** With task order contracts, the SOW for the basic contract need only define the scope of the overall contract. Individual task orders must define specific task requirements.)

Subcontract – Any contract entered into by a subcontractor to furnish products or services for the performance of a prime contract or higher-tier subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

Subcontractor – Any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor. The CO's communication must be to the prime contractor, who will, when applicable, communicate to the subcontractor. No direct communication is accomplished from the CO to the subcontractor. The prime contractor is the primary firm responsible for the contract's delivery or performance.

Sub-Factor – A segment, usually more focused or detailed, of an evaluation factor.

Supplemental Agreement – A contract modification that is accomplished by the mutual action by signature of both contract parties.

Surety – An individual or corporation legally liable for another's debt, default, or failure to satisfy a contractual obligation.

Suspension or Suspended – A disqualification from contracting and subcontracting for a temporary period because a contractor is suspected upon adequate evidence of engaging in criminal, fraudulent, or other seriously improper conduct.

System Award Management (SAM) – The primary government repository for prospective federal awardee and federal awardee information and the centralized government system for certain contracting, grants, and other assistance-related processes. It includes:

- (a) Data collected from prospective federal awardees required for the conduct of business with the government;
- (b) Prospective contractor-submitted annual representations and certifications consistent with FAR subpart 4.12; and
- (c) Identification of those parties excluded from receiving federal contracts, certain subcontracts, and certain types of federal financial and non-financial assistance and benefits. **See:** sam.gov.

Task Order – An order for services placed against an established contract or with government sources.

Tax ID Number – **See:** Taxpayer Identification Number (TIN).

Taxpayer Identification Number (TIN) – The number required by the IRS to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

Technical – Has a broad connotation and includes, among other things, the engineering approach, special manufacturing processes, and special testing techniques.

Technical Analysis – The review, examination, and evaluation of an offer by personnel having specialized knowledge, skills, experience, or capability in engineering, science, management, or other personnel having specialized knowledge of the proposed types and quantities of materials, labor, processes, and other factors provided in the offer(s) to determine the need for and reasonableness of the proposed resources and efforts, assuming reasonable economy and efficiency.

Technical Data – Recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer software documentation) relating to products procured by the judiciary. Such term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration.

Technical Direction – An interpretation of SOW requirements provided by a representative of the CO. Representatives of the CO have no authority to alter the SOW. The SOW can only be altered through use of a contract modification signed by the CO.

Technical Evaluation Panel (TEP) – The individuals responsible, during the source selection process, for performing the evaluation of technical offers submitted in a response to a solicitation.

Technical Leveling – Helping an offeror bring its proposal up to the level of other proposals. This is to be avoided as it adversely effects the competition.

Technical Transfusion – Disclosing technical information from one or more offerors' offers that allows competing offerors to improve their proposals. This is to be avoided as it adversely affects the competition.

Termination for Convenience – The CO may terminate performance of work under the contract in whole or, occasionally, in part, if the CO determines that a termination is in the judiciary's interest.

Termination for Default – The exercise of the judiciary's contractual right to terminate a contract completely or partially because of the contractor's actual or anticipated failure to perform its contractual obligations.

Time and Materials Contract – A contract type that provides payment for contractor's time spent on a task and reimburses the contractor for materials used for the task.

TIN – See: Tax ID Number.

Total Cost – All projected judiciary costs over the product life as a result of implementing an offeror's offered approach. In addition to the contract prices or costs, other elements, such as support and in-house costs over the product life for installing, operating, and disposing of the products are included in total cost.

Trade Off – A term applied during best value evaluation to justify the increase cost of a more desirable quality which meets or exceeds the judiciary's needs.

Transition Procurement Official – See: Designated Transition Procurement Official.

Unacceptable Offer – An offer that does not represent a reasonable initial effort to address the essential requirements of the solicitation, clearly demonstrates that the offeror does not understand the solicitation's requirement, contains such substantial deficiencies or omissions that sufficient correction or improvement to consider the proposal acceptable would require virtually an entirely new proposal, or contains major technical or business deficiencies, omissions, or out-of-line costs which discussions with the offeror could not reasonably be expected to cure.

Unauthorized Commitment – An agreement that is not binding solely because the judiciary representative who made it lacked the procurement authority to enter into that agreement on behalf of the judiciary. **See also:** Ratification.

Uniform Contract Format (UCF) – The format required for preparation of a solicitation.
See: Guide, Vol. 14, Appx. 1A.

Unilateral – Signed by the contracting officer only.

Unilateral Modification – A contract modification that is signed only by the contracting officer. Unilateral modifications are used, for example, to:

- (a) make administrative changes;
- (b) issue change orders;
- (c) make changes authorized by clauses other than a changes clause (e.g., property clause, options clause, suspension of work clause); and
- (d) issue termination notices.

Unique Entity Identifier (UEI) Number – A 12-character alphanumeric field that is the official identifier for doing business with the U.S. government, replacing DUNS Number.

Unlimited Rights – The right of the judiciary in technical data and computer software to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform and display publicly, in any manner and for any purpose, and to have or permit others to do so.

Unsuccessful Offer – An offer that did not result in a procurement award.

Vendor – A term commonly used for source.

Wage Determination – A determination of minimum wages or fringe benefits made under the Service Contract Labor Standards (formerly known as the Service Contract Act of 1965) applicable to the employment in a given locality of one or more classes of service employees. **See also:** General Wage Determination.

Waiver – A document signed by the PE authorizing a deviation from the prescribed procedures.

Walsh-Healey Public Contracts Act – Requires that (unless exempted), all contracts subject to the Act and entered into by any instrumentality of the United States, or by the District of Columbia, for the manufacture or furnishing of materials, products, articles, and equipment in any amount over \$15,000, must include or incorporate by reference the stipulations required by the Act pertaining to such matters as minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions.

Warranty – A promise or affirmation given by a contractor to the government regarding the nature, usefulness, or condition of the products or performance of services furnished under the contract.

Weighting – The technique that assigns percentage or numerical values to evaluation factors and significant sub-factors.

Within the Scope – The area covered by the procurement.

Work Statement – See: Statement of Work.

Working Days – Excludes weekends and U.S. federal holidays.

Written – See: As Written.