

Guide to Judiciary Policy

Vol. 14: Procurement

Ch. 3: Purchasing Methods

[§ 310 Procurement Sources](#)

[§ 310.10 Sources of Supply](#)

[§ 310.20 Workshop for People Who are Blind or Severely Disabled](#)

[§ 310.30 Randolph-Sheppard Act](#)

[§ 310.40 Judiciary-Wide Contracts](#)

[§ 310.50 GSA Federal Supply Schedules](#)

[§ 310.60 Other Federal Agency Contracts](#)

[§ 310.70 Open Market](#)

[§ 310.80 Vendors Offering Services for Public Use](#)

[§ 315 Publicizing Open Market Procurement Actions](#)

[§ 315.10 Policy](#)

[§ 315.20 Methods of Publicizing Procurement Notices](#)

[§ 320 Contractor Qualifications](#)

[§ 320.10 Responsible Prospective Contractors](#)

[§ 320.20 Determining Responsibility or Non-Responsibility](#)

[§ 320.30 Debarment, Suspension, and Ineligibility](#)

[§ 320.40 Period of Debarment](#)

[§ 320.50 Procedural Requirements for Debarment](#)

[§ 320.60 Causes for Suspension](#)

[§ 325 Small Purchase Procedures](#)

[§ 325.10 Applicability](#)

[§ 325.15 Open Market With or Without Competition](#)

[§ 325.20 Competitive Small Purchase Procedures](#)

[§ 325.25 Purchase of Services](#)

[§ 325.30 Soliciting Under Small Purchase Procedure](#)

[§ 325.35 Basis for Award](#)

[§ 325.40 Receipt and Evaluation of Quotations](#)

[§ 325.45 Ordering Methods Under Small Purchase Procedures](#)

[§ 325.50 Administration of Small Purchases](#)

[§ 325.55 Termination and Cancellation of Purchase Orders](#)

[§ 325.60 Closing Out Purchase Orders](#)

[§ 330 Standard Competitive Contracting Procedures](#)

[§ 330.10 Applicability](#)

[§ 330.13 Pre-Offer Conference](#)

[§ 330.16 Amendment of Solicitations](#)

[§ 330.20 Cancellation of Solicitations](#)

- [§ 330.23 Disclosure and Use of Information](#)
- [§ 330.26 Receipt of Offers](#)
- [§ 330.30 Failure to Acknowledge Amendments](#)
- [§ 330.33 Mistakes in Offers](#)
- [§ 330.36 Evaluation of Offers](#)
- [§ 330.40 Selection for Award](#)
- [§ 330.43 Discussions with Offerors](#)
- [§ 330.46 Rejection of All Offers](#)
- [§ 330.50 Award Without Discussions](#)
- [§ 330.53 Award with Discussions](#)
- [§ 330.56 Conduct of Discussions](#)
- [§ 330.60 Competitive Range](#)
- [§ 330.63 Best and Final Offers](#)
- [§ 330.66 Selection and Negotiation](#)
- [§ 330.70 Award](#)
- [§ 330.73 Award Debriefing](#)

[§ 335 Other than Full and Open Competition](#)

- [§ 335.10 In General](#)
- [§ 335.20 Circumstances Permitting Other than Full and Open Competition](#)
- [§ 335.30 Justification for Other Than Full and Open Competition](#)
- [§ 335.40 Award Procedures](#)

[§ 340 Unsolicited Offers](#)

- [§ 340.10 Definition](#)
- [§ 340.20 Judiciary Points of Contact](#)
- [§ 340.30 Content of Unsolicited Offers](#)
- [§ 340.40 Receipt and Initial Review](#)
- [§ 340.50 Evaluation](#)
- [§ 340.60 Criteria for Acceptance and Negotiation of an Unsolicited Offer](#)
- [§ 340.70 Prohibitions](#)
- [§ 340.80 Limited Use of Data](#)

[§ 345 Price Negotiations](#)

- [§ 345.10 Establishing Negotiation Objectives](#)
- [§ 345.20 Negotiation](#)
- [§ 345.30 Detailed Pricing Information](#)
- [§ 345.40 Price Analysis](#)
- [§ 345.50 Cost Analysis](#)
- [§ 345.60 Negotiation Memorandum](#)

[§ 350 Judiciary Protest Procedures](#)

- [§ 350.10 Policy](#)
- [§ 350.20 Procedural Requirements](#)

§ 310 Procurement Sources

§ 310.10 Sources of Supply

§ 310.10.10 In General

When acquiring products and services, procuring officials must consider the following sources:

(a) Mandatory Sources

- Excess property available within the judiciary, or
- Workshops for people who are blind or severely disabled.

(b) Non-Mandatory Sources

- Existing judiciary contracts,
- GSA federal supply schedule contracts,
- Other federal agency contracts, or
- Open market.

§ 310.10.20 Market Research and Mandatory Sources

Once the judiciary has defined its requirement, it must perform market research to determine the sources capable of meeting its needs. When it is practicable, the judiciary must use excess property as the first source of supply. Any personal property under the control of the judiciary determined to no longer be required for its needs and the discharge of its responsibilities is considered excess property. If excess property is not available, the judiciary must then check the procurement list maintained by the Committee for Purchase from People who are Blind or Severely Disabled. **See:** § 310.20.

§ 310.10.30 Non-Mandatory Sources

If excess property and the Procurement List for People who are Blind or Severely Disabled cannot meet the requirement, non-mandatory sources should be reviewed, with potential cost to the judiciary as a primary consideration.

§ 310.10.40 Cost Factors to Consider

The following are some cost factors that should be considered when deciding which source will best meet the judiciary's needs: transportation/shipping costs, administrative overhead for procurement, negotiated discounts, trade-in value, and extent of

competition available. The source determination must be documented in the procurement file.

§ 310.10.50 Using Other Agency Contracts

Other federal agency contracts, which include government-wide agency contracts (GWACs), often impose a service charge on agencies to use the contract. This service charge covers the originating agency's administrative expenses associated with awarding and administering the contract. It is commonly expressed as a percentage of the value of the order to be placed. The surcharge must be calculated into administrative overhead when selecting a source.

§ 310.20 Workshop for People Who are Blind or Severely Disabled

§ 310.20.10 Statutory Requirement

The Javits-Wagner-O'Day Act (41 U.S.C. §§ 8501–8506) and the implementing regulations (41 CFR chapter 51), require federal government agencies, including the judiciary, to purchase certain products and services from qualified workshops employing people who are blind or severely disabled. The Committee for Purchase from People who are Blind or Severely Disabled (Committee) determines what products and services are covered and the prices for those products and services. The program, previously called JWOD, has been renamed Ability One.

§ 310.20.20 Available Products or Services

The Committee maintains a procurement list of all products and services required to be purchased from participating nonprofit agencies. The procurement list is published and updated in the Federal Register. The procurement list and additional information about Ability One are available on the Ability One website.

Refer all questions on whether a product or service is on the procurement list to the Committee at the following address and telephone number:

Committee for Purchase from People Who Are Blind or Severely Disabled
Crystal Square 3, Room 403
1735 Jefferson Davis Highway
Arlington, VA 22202-3461
703-603-7740

§ 310.20.30 Procedures

- (a) The statute requires the judiciary to purchase products and services on the procurement list, at prices established by the Committee. Contracting Officers (COs) must obtain products and services from a participating nonprofit agency approved by a central nonprofit agency. The National Industries for the Blind (NIB) has been designated to represent nonprofit

agencies for the blind. The National Institute for the Severely Handicapped (NISH) has been designated to represent participating nonprofit agencies employing persons with other severe disabilities.

- (b) Central nonprofit agencies may authorize a CO to transmit orders for specific products or services, directly to a participating nonprofit agency. The written authorization remains valid until it is revoked by the central nonprofit agency or the Committee. The central nonprofit agency will specify the normal delivery or performance lead time required by the nonprofit agency. The purchasing office must reflect this lead time in its orders (**but see:** § 310.20.40(a)(1)). COs should check GSA federal supply schedules and other commercial vendors' catalogs for Ability One participating nonprofit agencies. A designation of Ability One for their products and services allows COs to order directly from these authorized distributors for those products and services.

§ 310.20.40 Purchase Exceptions

Only if the procurement is granted an exception by the designated central nonprofit agency may purchasing offices acquire products or services on the procurement list from commercial sources. According to Ability One Regulations (41 CFR chapter 51) the following purchase exceptions apply:

- (a) A central nonprofit agency (NIB or NISH) will normally grant a purchase exception for products or services on the Procurement List when **both** of the following conditions are met:
 - (1) the central nonprofit agency or one of its nonprofit agencies cannot furnish a product or service within the period specified, and
 - (2) the product or service is available from commercial sources in the quantities needed and much sooner than it will be available from the nonprofit agency.
- (b) The central nonprofit agency may also grant a purchase exception when the quantity involved is not sufficient to be furnished economically by the nonprofit agency.
- (c) The Committee may also grant a purchase exception for the reasons set forth in paragraphs (a) and (b) of this section.
- (d) The central nonprofit agency is required to obtain the approval of the Committee before granting a purchase exception when the value of the procurement exceeds their authority.

- (e) When the central nonprofit agency grants a purchase exception under the above conditions, it is required to do so promptly and the exception should specify the quantities and delivery period covered by the exception.
- (f) When a purchase exception is granted under paragraph (a) of this section:
 - (1) the CO must initiate commercial purchase actions within 15 days following the date of the purchase exception. The deadline may be extended by the central nonprofit agency (with the concurrence of the Committee, in cases of a procurement exceeding the central nonprofit agency's authority).
 - (2) the CO must furnish a copy of the solicitation to the appropriate central nonprofit agency at the time it is issued, and a copy of the annotated offer abstract upon awarding of the commercial contract.
- (g) Any decision by a central nonprofit agency regarding a purchase exception may be appealed to the Committee by the CO.

§ 310.20.50 Quality Requirements

In compliance with Ability One regulations (41 CFR 51-6.10 (Quality of Merchandise)) the following applies:

- (a) Products furnished under government specification by nonprofit agencies employing persons who are blind or have other severe disabilities are required to be manufactured in strict compliance with such specifications. Where no specifications exist, products furnished are required to be of a quality equal to, or higher than, similar items available on the commercial market. Products are required to be inspected using nationally recognized test methods and procedures for sampling and inspection.
- (b) Services furnished by nonprofit agencies employing persons who are blind or have other severe disabilities are required to be performed according to government specifications and standards. Where no government specifications and standards exist, the services are required to be performed according to commercial practices.

§ 310.20.60 Quality and Other Noncompliance Complaints

In compliance with Ability One regulations (41 CFR 51-6.11 (Quality Complaints)), the following applies:

- (a) When the quality of a product received is not considered satisfactory by the requesting office, the CO must take the following actions as appropriate:

- (1) For products received from General Services Administration (GSA) supply distribution facilities or a specifically authorized supply source, the CO must notify the supplying agency in writing according to that agency's procedures. The supplying agency will, in turn, provide copies of the notice to the nonprofit agency involved and its central nonprofit agency.
 - (2) For products received directly from nonprofit agencies employing persons who are blind or have other severe disabilities, the CO must address complaints to the nonprofit agency involved, with a copy to the central nonprofit agency with which it is affiliated.
- (b) When the quality of a service is not considered satisfactory by the purchasing office, the CO must address complaints to the nonprofit agency involved with a copy to the central nonprofit agency with which it is affiliated.
 - (c) When the central nonprofit agency or an individual nonprofit agency fails to comply with any of the terms of an order (e.g., quality, timeliness), the CO must make every effort to negotiate an adjustment before taking action to cancel the order. When a CO cancels an order for failure to comply with its terms, the central nonprofit agency must be notified, and, if practicable, requested to reallocate the order. The central nonprofit agency will notify the Committee of any cancellation of an order and the reasons for that cancellation.
 - (d) Disputes between a nonprofit agency and a purchasing office arising out of matters covered in this paragraph, must be resolved, where possible, by the CO and the nonprofit agency, with assistance from the appropriate central nonprofit agency. Disputes which cannot be resolved by these parties must be referred to the Committee for resolution.

§ 310.20.70 Clauses

Solicitations and contracts that require the contractor to purchase products or services on the Procurement List for use in performance of their judiciary contract must include Clause 3-1, Contractor Use of Mandatory Sources of Products and Services. The CO must identify, in the contract, the products or services that must be purchased from any mandatory sources and the specific source to be used.

§ 310.30 Randolph-Sheppard Act

§ 310.30.10 Statutory Requirement

The Randolph-Sheppard Act (20 U.S.C. §§ 107, et seq) and the implementing regulations (34 CFR part 395), require that federal government agencies, including the

judiciary, give priority for the operation of vending facilities on federal property to blind persons licensed by a state agency.

§ 310.30.20 Procedures

A state licensing agency is charged with the responsibility for overseeing the Randolph-Sheppard program. Before initiating any action to obtain vending machines (such as coin-operated copiers and food vending operations), the judiciary organization must:

- (a) obtain any required delegation from GSA, if the building is operated by GSA; and
- (b) inform the state licensing agency of the court's requirements.

§ 310.30.30 Records Maintenance

All procurement files for vending facilities must include a copy of the letter to the particular state licensing agency notifying it of the court's requirements and the response received. If the state licensing agency declines the judiciary's offer, their response must be maintained in the procurement file to substantiate a competitive solicitation. **See:** List of State Licensing Agencies.

§ 310.30.40 Sample Offering Letter

See: Appx. 3A (Sample Offering Letter to Randolph-Sheppard Agency).

§ 310.40 Judiciary-Wide Contracts

§ 310.40.10 In General

The award of national contracts for use on a judiciary-wide basis offers advantages in:

- reduced administrative effort,
- simplified supply of common-use products, and
- obtaining discounts for buying in volume.

§ 310.40.20 National Contract Management

The Procurement Management Division (PMD), of the Administrative Office's (AO) Budget, Accounting, and Procurement Office (BAPO), is responsible for establishing national contracts and designating the activities authorized to place orders. A list of the products and services available under national contracts is available on JNet's Judiciary-Wide Contracts and Blanket Purchase Agreements (BPAs) page. Flexibility in purchasing arrangements is needed to meet judiciary customer service requirements through rapidly changing technologies. Therefore, use of national contracts is not mandatory.

§ 310.40.30 Contract Requirements

- (a) When using national contracts, the delivery/task order must cite the applicable judiciary-wide contract for which the order is placed. The CO must follow the contract's ordering procedures. The contract's terms and conditions are applicable to the order. In the event that conflicting terms or conditions are incorporated in an individual order, the terms of the contract will control.
- (b) If the CO is required to solicit competitive quotes from more than one contractor before placing an order, the CO may use either technically acceptable/lowest price or best value as the basis of award. **Note:** Judiciary organizations, excluding the AO, are not delegated authority to conduct best value procurements and must obtain a one-time delegation from the Procurement Management Division (PMD) before issuance of the solicitation and before award of the subsequent contract.

§ 310.50 GSA Federal Supply Schedules

§ 310.50.10 In General

The Federal Supply Schedule (FSS) program is also known as the General Services Administration (GSA) Schedules Program or the Multiple Award Schedule (MAS) Program. The FSS program is directed and managed by GSA and provides federal agencies (including the judiciary) with a simplified process for obtaining commercial products and services at prices associated with volume buying. Indefinite delivery contracts are awarded to provide products and services at stated prices for given periods of time.

§ 310.50.13 Schedule Pricelists

- (a) GSA schedule contracts require all schedule contractors to publish an "Authorized Federal Supply Schedule Pricelist" (pricelist). The pricelist contains all the products and services offered by a schedule contractor. In addition, each pricelist contains the pricing and the terms and conditions pertaining to each Special Item Number (SIN) that is on schedule.
- (b) The GSA schedule contractor is required to provide one copy of its pricelist to any ordering activity (judiciary contracting officer) upon request. Also, a copy of the pricelist may be obtained from FSS via email or by telephone at 1-800-488-3111. This subsection and the pricelists contain necessary information for placing delivery orders (for products) or task orders (for services) with schedule contractors.

§ 310.50.16 Types of Supply Schedules	
Schedule	Contract Details
(a) Single-Award Schedules	Contracts made with one supplier at a stated price for delivery to a geographic area as defined in the schedule. Most schedules contain all information necessary for placing orders. Some schedules specify that the contractor's catalog must be used for additional ordering information to aid in the selection of variables such as fabrics and colors.
(b) Multiple-Award Schedules	Contracts made with more than one supplier for comparable products and services. Contracts are awarded to suppliers of the same generic type of product at varying prices for delivery within the same geographic area. Contractor catalogs and price lists must be used with the schedules to prepare delivery orders. The catalogs and price lists contain information such as item description, prices and discounts, order limitations, and delivery terms.

§ 310.50.20 GSA Advantage!

GSA offers an on-line shopping service called GSA Advantage! through which judiciary COs may place orders against schedules. GSA Advantage! enables judiciary COs to search specific information (i.e., national stock number, part number, common name), review delivery options, place orders directly with schedule contractors, and pay for orders using the judiciary purchase card.

§ 310.50.23 E-Buy

E-Buy is GSA's electronic Request for Quotation (RFQ) system, and is a part of a suite of on-line tools that complement GSA Advantage! E-Buy allows judiciary COs to post requirements and obtain quotes electronically.

§ 310.50.26 Further Guidance

For more information or assistance on either GSA Advantage! or e-Buy, contact GSA at gsa.advantage@gsa.gov.

§ 310.50.30 Incidental Items Not on Schedule

Quotations obtained from FSS vendors, when using schedules, may include incidental items not contained in the schedule. For administrative convenience, judiciary COs may add items not on the FSS (also referred to as open market items) to a FSS blanket purchase agreement (BPA), or an individual task or delivery order only if:

- (a) the total price of the incidental items on the order or agreement is less than GSA's competition threshold (for definition, **see**: § 310.50.43(a));
- (b) the judiciary CO has determined the price for the item(s) not on the FSS is fair and reasonable;

- (c) the item(s) are clearly labeled on the order as incidental item(s) which are not on the FSS; and
- (d) all judiciary clauses applicable to the incidental item(s) are included in the order and labeled applicable to the incidental item(s). This includes the use of Clause 3-3 and any other judiciary clauses applicable to the incidental item(s).

§ 310.50.33 Use of GSA Schedules

Judiciary COs issue delivery orders or task orders directly to the schedule contractors for the required products and services. The delivery or task order must cite the applicable GSA contract number from which the order is placed. When placing orders or establishing a BPA (**see:** § 310.50.53) under FSS contracts, judiciary COs must not seek competition outside of the schedules or synopsize the requirement on FedBizOpps. Orders against GSA FSS cannot be competed with open market, judiciary-wide contracts, or other federal agency contracts. Orders placed under GSA schedules must be consistent with the judiciary's policies, procedures, and within the contracting officer's delegation authority. **See:** Guide, Vol. 14, § 140 (Contracting Officers Certification Program). The judiciary is required to follow the GSA schedule ordering procedures as stated in this subsection when placing an order or establishing a BPA for products or services. The procedures in this section apply to all schedules.

§ 310.50.36 Clauses/Provisions Applicable to FSS Order

Orders placed by a judiciary CO under FSS contracts must be consistent with the judiciary's procurement program requirements applicable to the procurement of the product or service. When ordering from GSA FSS, the judiciary is required to follow the GSA schedule ordering procedures, the GSA contract's terms and conditions, and GSA's competition threshold. (For definition, **see:** § 310.50.43(a).) The CO may determine that judiciary specific provisions or clauses are also applicable. The CO may then add those to the order. **See:** Appx. 1B (Matrix of Solicitation Provisions and Clauses). However, the CO should not include provisions or clauses:

- (a) that are already part of the GSA contract (except as directed in judiciary procurement guidance);
- (b) that conflict with the GSA contract provisions or clauses; or
- (c) that create ambiguities when added to GSA contract provisions or clauses.

§ 310.50.40 Determination of Fair and Reasonable Price

Products offered on the schedule are listed at fixed prices. Services offered on the schedule are priced either at hourly rates, or at a fixed price for performance of a

specific task (e.g., installation, maintenance, and repair). GSA has already determined the prices of products and fixed-price services, and rates for services offered at hourly rates, under schedule contracts to be fair and reasonable. Therefore, judiciary COs are not required to make a separate determination of fair and reasonable pricing, except for a price evaluation as required by services requiring a statement of work. **See:** § 310.50.46. For additional information concerning when judiciary COs should seek additional discounts before placing an order, **see:** § 310.50.56.

§ 310.50.43 Required Ordering Procedures

Judiciary COs must use the ordering procedures of this subsection when placing an order or establishing a BPA for products or services. The procedures outlined in the following table apply to all schedules. Whenever a written Request for Quote (RFQ) is used, the judiciary CO must provide the RFQ (including the statement of work and the evaluation criteria) to any schedule contractor who requests a copy of it. Written RFQs may also be posted to GSA’s electronic RFQ system, e-Buy. **See:** § 310.50.23.

§ 310.50.43 Required Ordering Procedures	
Procedure	Details
<p>(a) Orders at or below GSA’s competition threshold (generally \$3,500), except for (1) procurement of construction subject to Davis-Bacon Act (which is \$2,000); and (2) procurement of services subject to the Service Contract Act (which is \$2,500)</p>	<p>(1) No competition is required. Judiciary COs may place orders at, or below, GSA’s competition threshold with any FSS contractor.</p> <p>(2) Although not required to solicit from a specific number of schedule contractors, judiciary COs should attempt to distribute orders among contractors, by rotating similar purchases. Even when not required, competition is desirable and will likely result in reduced prices.</p>
<p>(b) Minimum Competition</p>	<p>(1) Soliciting three sources or reviewing pricing of three sources is a minimum requirement for an order above GSA’s competition threshold. See: § 310.50.43(a). Soliciting additional sources is likely to result in higher levels of customer satisfaction and lower cost to the judiciary.</p> <p>(2) Conducting actual competition (i.e., requesting quotations), rather than only consulting prices is always preferable. Oftentimes, GSA contractors will quote prices lower than those on the GSA schedule because of special offers or quantity discounts.</p> <p>(3) When the CO solicits pricing by sending an RFQ to at least three sources, receipt of at least one of the completed</p>

§ 310.50.43 Required Ordering Procedures	
Procedure	Details
	RFQs is considered adequate competition, since the pricing was prepared in a competitive environment.
(c) GSA FSS Competitive Price/Quotation Requirements, Whether a Statement of Work is Required or Not	<p>In requesting pricing or quotations for orders exceeding GSA's competition threshold (for definition, see: § 310.50.43(a)):</p> <ol style="list-style-type: none"> (1) the pricing/quotation requests must all be to GSA schedule holders, or their authorized resellers (for definition, see: § 310.50.60), and must specify that the procurements were conducted under FSS; (2) open market quotations or quotations from other government contracts may not be mixed with pricing/quotations from GSA FSS for the purpose of meeting the competitive requirement; (3) pricing/quotation requests must be for products and/or services specified in the applicable schedule or within the general scope of the schedule; (4) orders from the GSA FSS may not be split to circumvent the requirement to obtain three competitive prices/quotations; and (5) pricing/quotation requests must provide the same product or service description, whether written or oral, to each of the vendors solicited.
(d) Orders exceeding GSA's competition threshold (generally \$3,500), except for (1) procurement of construction subject to Davis-Bacon Act, (which is \$2,000); and (2) procurement of services subject to the Service Contract Act, (which is \$2,500) but not exceeding the maximum order threshold and using "best value" evaluation criteria	<ol style="list-style-type: none"> (1) Requests for quotations that use "best value" (price and other factors) determinations must include a full description of the evaluation/selection criteria and the relative importance of each factor. (2) The CO must also state how the evaluation criteria will be used to make the award decision. This information must be disclosed with the solicitation to each potential offeror. See: Guide, Vol. 14, § 210.70.30(b)(5) (Source Selection Processes). (3) Before placing an order, a judiciary CO must consider reasonably available information about the product or service offered under multiple award schedule (MAS) contracts by surveying the GSA Advantage! on-line shopping service, or by reviewing the catalogs or pricelists of at least three schedule contractors. (4) Besides price, when determining best value, the judiciary

§ 310.50.43 Required Ordering Procedures	
Procedure	Details
	<p>CO may consider, among other factors, any or all of the following:</p> <ul style="list-style-type: none"> • past performance; • special features of the product or service required for effective program performance; • trade-in considerations; • probable life of the item selected as compared with that of a comparable item; • warranty considerations; • maintenance availability; • environmental and energy efficiency considerations; and • delivery terms. <p>Note: Under the Contracting Officers' Certification Program (COCP) (see: Guide, Vol. 14, § 140 (Contracting Officers Certification Program)), not all certification levels are authorized for "best value" procurements. Because the "best value" method is more complex, only appropriately trained and certified COs may solicit for best value offers. For CO's holding COCP certification levels not delegated this authority, the solicitation package using "best value" must be submitted to PMD for written approval before soliciting quotes.</p>
(e) Orders exceeding the maximum order threshold	<p>(1) Each schedule contract has maximum order thresholds for each Special Item Number (SIN). Although a price reduction may be sought at any time, this threshold represents the point where, given the dollar value of the potential order, the judiciary CO must seek a price reduction.</p> <p>(2) In addition to following the procedures in § 310.50.43(c) of this table and before placing an order that exceeds the maximum order threshold or establishing a BPA (see: § 310.50.53), judiciary COs must:</p> <ul style="list-style-type: none"> • review the pricelists of additional schedule contractors (the GSA Advantage! on-line shopping service can be used to facilitate this review); and • based upon the initial evaluation, seek price reductions from the schedule contractor(s). <p>If price reductions are not offered, an order may still be placed.</p>

§ 310.50.46 Additional Ordering Procedures

The following additional requirements apply when ordering services priced at hourly rates as established by the schedule contracts. The applicable services will be identified in the FSS publications and the contractor’s pricelists. For services priced at hourly rates, the specific services required by the judiciary CO must be fully described in a Statement of Work (SOW). All SOWs must include the work to be performed; location of work; period of performance; deliverable schedule; applicable performance standards; and any special requirements (e.g., security clearances, travel, special knowledge, analysis of requirements or system maintenance support). The RFQ may be posted to GSA’s electronic RFQ system, E-Buy (**see:** § 310.50.23).

§ 310.50.46 Additional Ordering Procedures	
Type of Order	Details
<p>(a) For orders exceeding GSA’s competition threshold (generally \$3,500), except for (1) procurement of construction subject to Davis-Bacon Act (which is \$2,000) and (2) procurement of services subject to the Service Contract Act (which is \$2,500), but not exceeding the maximum order threshold</p>	<p>The judiciary CO must:</p> <ol style="list-style-type: none"> (1) Develop a statement of work; (2) Provide the RFQ (including the statement of work and evaluation criteria) to at least three schedule contractors that offer services that will meet the judiciary’s needs; and (3) Request that contractors submit firm-fixed prices to perform the services identified in the statement of work, unless the use of a different contract type is permitted under the GSA schedule.
<p>(b) For proposed orders exceeding the maximum order threshold or when establishing a BPA</p>	<p>In addition to meeting the requirements of § 310.50.46(a), the judiciary CO must:</p> <ol style="list-style-type: none"> (1) Provide the RFQ (including the statement of work and evaluation criteria) to additional schedule contractors that offer services that will meet the needs of the judiciary. When determining the appropriate number of additional schedule contractors, the judiciary CO may consider, among other factors, the following: <ul style="list-style-type: none"> • complexity, scope and estimated value of the requirement; • market research results. (2) Seek price reductions.

§ 310.50.50 Evaluation and Award

The judiciary CO must evaluate all responses received using the evaluation criteria provided to the schedule contractors. The judiciary CO is responsible for considering the level of effort and the mix of labor proposed to perform a specific task being ordered, and for determining that the total price is reasonable. After the CO places an order, or establishes a BPA, with the schedule contractor, the CO should provide timely notification to unsuccessful offerors. If an unsuccessful offeror requests information on an award that was based on factors other than price alone, a brief explanation of the basis for the award decision must be provided.

§ 310.50.53 Blanket Purchase Agreements Under GSA Schedules

Use this subsection only for Blanket Purchase Agreements (BPAs) established under a GSA schedule. For procedures on how to establish an open market BPA, **see**: § 325.45.15 and Guide, Vol. 14, § 410.35 (Blanket Purchase Agreements).

- (a) Judiciary COs may establish BPAs under any schedule contract to fill repetitive needs for products or services. BPAs may be established with one or more schedule contractors. The number of BPAs to be established is within the discretion of the judiciary CO establishing the BPAs and should be based on a strategy that is expected to maximize the effectiveness of the BPA(s). In determining how many BPAs to establish, consider:
 - (1) the scope and complexity of the requirement(s);
 - (2) the need to periodically compare multiple technical approaches or prices;
 - (3) the administrative costs of BPAs; and
 - (4) the technical qualifications of the schedule contractor(s).
- (b) Establishment of a single BPA, or multiple BPAs, must be made using the same procedures outlined in § 310.50.43 and § 310.50.46. BPAs must address the frequency of ordering, invoicing, discounts, requirements (e.g., estimated quantities, work to be performed), delivery locations, and time.
- (c) When establishing multiple BPAs, the judiciary CO must specify the procedures for placing orders (also known as “calls” when ordering against a BPA) under the BPAs.

§ 310.50.53(d) Ordering from BPAs under GSA Schedules	
BPA Situation	Procedures
(1) Single BPA	If the judiciary CO establishes one BPA, authorized users may place the order/call directly under the established BPA when the need for the product or service arises.
(2) Multiple BPAs	If the judiciary CO establishes multiple BPAs, before placing an order/call exceeding GSA’s competition threshold (for definition, see : § 310.50.43(a)), the judiciary CO must: (A) forward the requirement, or statement of work and the evaluation criteria, to all BPA holders; and (B) evaluate the responses received, make the award determination, and place the order/call with the appropriate BPA holder.
(3) BPAs for Hourly Rate Services	If the BPA is for hourly rate services, the judiciary CO must develop a statement of work for requirements covered by the BPA. All orders/calls under the BPA must specify either a fixed price or an estimated ceiling amount for the performance of the tasks identified in the statement of work.
(4) Duration of BPAs	BPAs generally should not exceed five years in length, but may do so to meet program requirements. Contractors may be awarded BPAs that extend beyond the current term of their GSA Schedule contract, so long as there are option periods in their GSA Schedule contract that, if exercised, will cover the BPA’s period of performance.
(5) Review of BPAs	(A) The judiciary CO that established the BPA must review it at least once a year to determine whether: (i) the schedule contract, upon which the BPA was established, is still in effect; (ii) any updates to the BPA are appropriate, or new BPAs with different suppliers should be awarded, taking into account market conditions, sources of supply, and other pertinent factors; or (iii) estimated quantities/amounts have been exceeded and additional price reductions should be sought. (B) The judiciary CO must document the results of each annual review in the BPA file.

§ 310.50.56 Price Reductions and Other Negotiated Changes

Besides seeking price reductions before placing an order exceeding the maximum order threshold, or in conjunction with the annual BPA review, there may be other reasons to request a price reduction or other favorable terms and conditions, such as early delivery of an item. For example, judiciary COs should seek a price reduction when the product

or service is available elsewhere at a lower price, or when establishing a BPA to fill recurring requirements. The potential volume of orders/calls under BPAs, regardless of the size of individual orders/calls, offers the opportunity to secure greater discounts. Schedule contractors are not required to pass on to all schedule users a price reduction extended only to an individual CO for a specific order.

§ 310.50.60 Authorized Resellers

If provided by the schedule, offers may be solicited from and subsequent awards may be made to any FSS contract holders or the schedule holder's designated agents or authorized resellers. The designated agents or authorized resellers must be identified in the FSS contract. It is the CO's responsibility to review the FSS schedule.

§ 310.50.63 Brand Name or Equal

A "brand name or equal" description may be used, if the CO is prepared to evaluate and accept an item determined to be "equal" to the specified brand name. The CO must document the determination in the procurement file. If the requirement is in excess of the GSA competition threshold (for definition, **see:** § 310.50.43(a)) and is defined so as to require a particular "brand name," product, or a feature of a product peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company, then this is restricting competition to only those who can provide the specified brand name item.

Note: When a specific brand name, product, or feature is specified and an "or equal" product will not be considered, then the procurement must be justified as other than full and open competition. **See:** § 335.10.50.

§ 310.50.66 Sole Source Justification and Approval

- (a) Orders placed under schedules are exempt from the requirements to advertise. However, judiciary COs may procure sole source requirements under this subsection only if the need to do so is justified in writing according to § 335.30 and approved at the applicable delegation level. For proposed orders exceeding GSA's competition threshold, the judiciary CO may solicit from one source, if the judiciary CO determines that the circumstances dictate only one source is reasonably available (e.g., exclusive licensing agreement).
- (b) Generally it is not possible to structure a statement of work services request so as to allow a sole source justification under GSA FSSs. An exception is when the services are proprietary in nature. Then the CO must justify this reason and document the file accordingly. Judiciary COs must use the procedures in this subsection when ordering services priced at hourly rates as established by the schedule contracts. The applicable

services will be identified in the FSS publications and the contractor's pricelists.

§ 310.50.70 Documentation

(a) Minimum Documentation

The information in this subsection is in addition to the documentation requirements in Guide, Vol. 14, § 710.10 (Procurement Files (Purchase/Delivery/Task Order or Contract Files)). The judiciary CO must document:

- (1) the GSA schedule contracts considered, noting for each the GSA contract number, and the contractor name, as well as pricing for each;
- (2) a description of the product or service purchased;
- (3) the amount paid and the reason for any difference from the amount of the order; and
- (4) for orders exceeding the GSA competition threshold that are awarded without competition, Justification for Other than Full and Open Competition (Form AO 370) approved at the applicable delegation level. **See:** § 335.

(b) Additional Documentation for Services

In addition to the documentation requirements of § 310.50.70(a), when acquiring services using the procedures at § 310.50.46, the judiciary CO must also document:

- (1) the evaluation methodology used in selecting the contractor to receive the order;
- (2) the rationale for any technical/cost tradeoffs in making the selection; and
- (3) the price reasonableness determination required by § 310.50.40.

§ 310.50.73 Payment

The judiciary may make payment for oral or written orders by any authorized means, including FAS₄T and the judiciary's purchase card.

§ 310.50.76 Order Placement

- (a) To order products or services from schedule contracts, judiciary COs may place orders orally (except for services requiring an SOW), or use GSA Form OF 347 (Order for Supplies and Services), or a FAS₄T form.
- (b) The judiciary CO must place an order directly with the contractor according to the terms and conditions of the pricelists.
- (c) Before placing the order, the judiciary CO must ensure that the judiciary procurement program requirements have been complied with.
- (d) Orders must include the following information in addition to any information required by the schedule contract:
 - (1) complete shipping and billing addresses;
 - (2) GSA contract number;
 - (3) judiciary order number and date;
 - (4) F.O.B. delivery point (i.e., origin or destination);
 - (5) discount terms;
 - (6) delivery time or period of performance;
 - (7) special item number (SIN) or national stock number (NSN);
 - (8) a statement of work for services, when required, or a brief, complete description of each item (when ordering by model number, features and options, such as color, finish, and electrical characteristics, if available, must be specified);
 - (9) quantity and any authorized variation in quantity;
 - (10) unit price;
 - (11) total price of order;
 - (12) where inspection and acceptance will take place;
 - (13) other pertinent data (e.g., delivery instructions or receiving hours and size-or-truck limitations);
 - (14) marking requirements; and

- (15) level of preservation, packaging, and packing.

§ 310.50.80 Administration of GSA Schedule Orders

GSA is responsible for administering FSS contracts, and the judiciary may not change, terminate, or otherwise undertake administration of an FSS contract. However, judiciary COs are responsible for administration of their own individual orders placed against FSS contracts, in accordance with the terms and conditions of the GSA schedule contract, and must deal directly with the contractor. Such functions include:

- (a) inspecting and accepting products and services;
- (b) making or arranging for payment;
- (c) modifying orders;
- (d) terminating orders for default and charging contractors with resulting excess costs; and
- (e) terminating orders for the convenience of the judiciary.

§ 310.50.83 Inspection and Acceptance

- (a) Products
 - (1) Receiving offices must inspect products at destination except when:
 - (A) the schedule contract indicates that mandatory source inspection is required to be performed by GSA; or
 - (B) a schedule item is covered by a product description, and the judiciary CO determines that GSA's inspection assistance is needed (based on the ordering volume, the complexity of the products, or the past performance of the supplier).
 - (2) When GSA performs the inspection, the judiciary CO will provide two copies of the order specifying source inspection to the GSA contracting officer for that specific schedule contract. The GSA contracting officer will notify the judiciary CO of acceptance or rejection of the products.
 - (3) Material inspected at source by GSA, and determined to conform with the product description of the schedule, must not be reinspected for the same purpose. The judiciary receiving office must limit inspection to kind, count, and condition on receipt.

(4) Unless otherwise provided in the schedule contract, acceptance is conclusive, except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(b) Services

The judiciary CO has the right to inspect all services in accordance with the contract requirements and as called for by the order. The judiciary CO must perform any inspections and tests specified in the order in a manner that will not unduly delay the work.

§ 310.50.86 Remedies for Nonconformance

- (a) If a GSA schedule contractor delivers a product or service, but it does not conform to the order requirements, the judiciary CO must take appropriate action according to the inspection and acceptance clause of the GSA schedule contract, as supplemented by the order.
- (b) If the contractor fails to perform an order, or take appropriate corrective action, the judiciary CO may terminate the order for cause or modify the order to establish a new delivery date (after obtaining consideration, as appropriate). Judiciary COs must follow the procedures at § 310.50.90 when terminating an order for cause.

§ 310.50.90 Termination for Cause

- (a) A judiciary CO may terminate individual orders for cause. Termination for cause must comply with the GSA requirements for commercial items, and may include charging the contractor with excess costs resulting from repurchase. The PE must review and approve, in writing, all proposed terminations of GSA schedule orders whether for cause or convenience.
- (b) The GSA schedule contracting officer must be notified of all instances where a judiciary CO has terminated for cause an individual order to a FSS contractor, or if fraud is suspected.
- (c) If the contractor asserts that the failure to perform was excusable, the judiciary CO must follow the procedures at § 310.50.96.
- (d) If the contractor is charged excess costs, the following apply:
- (1) Any repurchase must be made at as low a price as reasonable, considering the quality required by the government, delivery requirements, and administrative expenses. Copies of all repurchase orders, except the copy furnished to the repurchase contractor or any other commercial concern, must include the notation:

Repurchase against the account of _____
(insert contractor's name) under Order _____
(insert number) under Contract _____ (insert
number).

- (2) When excess costs are anticipated, the judiciary CO may withhold funds due the terminated contractor as offset security. Judiciary COs must minimize excess costs to be charged against the terminated contractor and collect or set-off any excess costs owed.
- (3) If a judiciary CO is unable to collect excess repurchase costs, it must notify the GSA schedule contracting office after final payment to the repurchase contractor.
 - (A) The notice must include the following information about the terminated order:
 - name and address of the contractor;
 - schedule, contract, and order number;
 - national stock number (NSN) or special item number(s) (SIN), and a brief description of the item(s);
 - cost of schedule items involved;
 - excess costs to be collected; and
 - other pertinent data.
 - (B) The notice must also include the following information about the repurchase contract:
 - name and address of the contractor;
 - item repurchase cost;
 - repurchase order number and date of payment;
 - contract number, if any; and
 - other pertinent data.
- (e) Only the GSA schedule contracting officer may modify the schedule contract to terminate for cause any, or all, products or services covered by the schedule contract. If the GSA schedule contracting officer has

terminated any products or services covered by the schedule contract, no further orders may be placed for those items. Orders placed before termination for cause must be fulfilled by the contractor, unless terminated for the convenience of the government by the judiciary CO.

§ 310.50.93 Termination for the Judiciary’s Convenience

- (a) A judiciary CO may terminate individual orders for the government’s convenience. Terminations for the government’s convenience must comply with GSA’s regulations for commercial items included in the FSS contract. The PE must review and approve, in writing, all proposed terminations whether for cause or convenience.
- (b) Before terminating orders for the government’s convenience, the judiciary CO must endeavor to enter into a “no cost” settlement agreement with the contractor.
- (c) Only the GSA schedule contracting officer may modify the schedule contract to terminate any, or all, products or services covered by the schedule contract for the government’s convenience.

§ 310.50.96 Disputes Involving GSA Schedule Contractors

It is the judiciary’s policy that whenever possible, any disputes arising under orders placed by judiciary COs will be settled by the judiciary COs, within their COCP delegation authority. Above their delegation authority, the CO must refer the dispute to the PE. The following table outlines procedures for handling disputes with GSA schedule contractors.

§ 310.50.96 Disputes With GSA Schedule Contractors	
Type of Dispute	Details
(a) Disputes Pertaining to the Performance of Orders under a Schedule Contract	(1) Under GSA’s standard Disputes clause included in all schedule contracts, the judiciary CO may either: <ul style="list-style-type: none"> (A) issue final decisions on disputes arising from performance of the order (but see: (b) regarding disputes not relating to performance); or (B) refer the dispute to the GSA schedule contracting officer for a decision. (2) The judiciary CO must notify the GSA schedule contracting officer promptly of any final decision issued under (a)(1).
(b) Disputes Pertaining to the Terms and	The judiciary CO must refer all disputes that relate to the schedule contract terms and conditions to the GSA schedule contracting officer for resolution under the “Disputes” clause of the schedule

§ 310.50.96 Disputes With GSA Schedule Contractors	
Type of Dispute	Details
Conditions of Schedule Contracts	contract and notify the schedule contractor of the referral.
(c) Appeals	Contractors may appeal final decisions pertaining to disputes arising under the schedule contract, as well as orders placed thereunder, in accordance with the applicable “Disputes” clause.
(d) Alternative Dispute Resolution	Judiciary COs should use alternative dispute resolution (ADR) procedures, to the maximum extent practicable.

§ 310.60 Other Federal Agency Contracts

§ 310.60.10 In General

One method by which the judiciary may obtain products and services is by using other federal agency contracts (also referred to as multi-agency contracts or Government-Wide Acquisition Contracts (GWACs)). Other federal agency contracts are delivery or task order contracts established by one agency which authorize use by other government agencies to obtain products and services. **Note:** GSA federal supply schedules are not considered “other federal agency contracts” as defined by this section. Guidance on how to use the GSA federal supply schedules is contained in § 310.50.

§ 310.60.20 Ordering Scenarios

- (a) Various federal agencies have awarded contracts that may be used by other agencies. There are three basic ordering methods for these contracts, as follows:
 - (1) In most cases, the judiciary may place orders directly against the other agency’s contract with no other administrative action required.
 - (2) In a minority of cases, the judiciary must enter into a Memorandum of Understanding (MOU) or Interagency Agreement (IA) in order to be granted ordering authority, but orders may be placed directly with the vendor once the MOU or IA has been signed.
 - (3) In a smaller number of instances, the awarding agency reserves all ordering authority to itself, and the judiciary must transfer funds to that agency via an Interagency Agreement and authorize that agency to place the order on its behalf in order to use the contract.

- (b) The judiciary CO must ascertain which of these three ordering methods is applicable before issuing any order. For additional information on Interagency Agreements (IA) and Memorandum of Understanding (MOU), which are subject to the Economy Act (31 U.S.C. § 1535), **see:** Guide, Vol. 14, § 550 (Interagency Agreements and MOUs for Obtaining Products and Services). When ordering from other federal agency contracts under any of the above scenarios, the judiciary is required to follow the contract's ordering procedures and the other federal agency contract's terms and conditions. If authorized to place orders directly with the vendor, the CO may determine that judiciary specific provisions or clauses are also applicable to the procurement. These may be added, if they do not duplicate or conflict with the other agency's existing terms and conditions. The delivery/task order must cite the other agency's contract number under which the order is placed.

§ 310.60.30 Ordering Procedures

The following procedures must be followed when obtaining products and services through another federal agency contract:

- (a) Determine if another federal agency contract is in the best interests of the government by:
- (1) ensuring the products and services required are within the scope of the other federal agency contract;
 - (2) analyzing the total cost of obtaining the products or services from the other federal agency contract, including applicable service or processing fees imposed by the other federal agency;
 - (3) determining if there are any pricing advantages of using the other federal agency contract;
 - (4) considering intangibles, such as ease of use, time savings;
 - (5) comparing the expenditure of effort and associated costs with placing an order or procuring under other procedures; and
 - (6) identifying other restrictions, such as length of time during which the other federal agency contract will remain in force and effect, or in the procedures imposed by the other federal agency as a condition to using the contract.
- (b) If, after considering the factors described above, it is decided to obtain the products or services through another federal agency contract under the Economy Act, the action must be supported by a written determination

placed in the official procurement file; including supporting rationale as to how/why:

- (1) use of another federal agency contract under the Economy Act, 31 U.S.C. § 1535, is in the best interest of the government; and
- (2) the products or services cannot be obtained as conveniently or economically by procurement directly with a private source.

See: Guide, Vol. 14, § 550 (Interagency Agreements and MOUs for Obtaining Products and Services) and Appx. 5A (Economy Act Determination and Finding), which provides a cover page for the additional accompanying supporting factual statement required above.

- (c) If the other federal agency's ordering procedures require that orders be competed among multiple contractors, the CO may use either technically acceptable/lowest price or best value as the basis for award of a request for quotation. **Note:** Judiciary organizations, excluding the AO, are not delegated authority to conduct best value procurements and must obtain a one-time delegation from PMD before issuance of the solicitation and before award of the subsequent contract.

§ 310.70 Open Market

Open market purchases are those made directly from commercial sources using competitive procedures where applicable, without reference to any other existing federal contract. For open market procurement procedures, **see:** §.

§ 310.80 Vendors Offering Services for Public Use

§ 310.80.10 In General

The following procedures apply to vendors who propose to provide a service within a courthouse to attorneys and/or other court customers at little or no expense to the judiciary. Such vendors usually charge a fee to the user and are, essentially, proposing that the court grant them a license or privilege to do so, a privilege not granted to the public at large.

§ 310.80.20 Determination Required

The court organization must determine whether the service is necessary to the business or mission of the judiciary. Examples of such services might include electronic case filing systems or evidence presentation technology in the courtroom. Services determined to be necessary to the judiciary's mission must be paid for with appropriated

funds. Using other sources of funds for such services could constitute an improper augmentation of funds.

§ 310.80.30 Competition

- (a) If the service is **not** necessary to the business of mission of the judiciary but, it is a service deemed beneficial to the public, and the service requires access to or use of any judiciary property, facilities, records or data in a manner not permitted to the public at large, then the opportunity to provide the service must be competed. Examples might include a conference telephone system offered by a vendor to attorneys for a fee that will facilitate attorneys' participation in court hearings from a remote location or high speed internet access at counsel tables or wireless access for attorneys waiting in the courthouse.
- (b) The level of competitive procurement procedures to be followed will be based on a reasonable estimate of the income the vendor expects to derive from payments by the public users over a stated period of time (such as one year) and any cost to the court.
 - (1) A minimum of three quotes must be solicited if the estimate is more than \$10,000 for open market services, but not more than \$25,000.
 - (2) If the open market value is estimated at more than \$25,000, the service being procured must be advertised and fully competed.
 - (3) If the open market value is estimated at more than \$100,000, a one-time delegation of authority from PMD is required.

§ 315 Publicizing Open Market Procurement Actions

§ 315.10 Policy

Generally, open market procurements for products or services for the judiciary in excess of \$25,000 may be made or entered into only after advertising a sufficient time (usually a minimum of 10 days) before receipt of offers. **See:** Guide, Vol. 14, § 130.20.15 (Advertising Requirements). For exceptions to this general rule, **see:** § 315.10.30. There may also be exceptions for certain delegated programs, in the appropriation law, or in other law applicable to the procurement.

§ 315.10.20 Publicizing Time Requirements

The publicizing information must include a clear and concise description of the products or services that is not unnecessarily restrictive of competition and will allow a prospective offeror to make an informed business judgment as to whether or not to request a copy of the solicitation. Other elements are the point of contact name and

phone number, the solicitation number, and due date for offers. Electronic access to the solicitation may be provided to potential offerors. Estimated cost data must not normally be included. However, estimated levels of effort must be furnished when purchasing labor hours.

§ 315.10.30 Exceptions

Exceptions to the advertising requirements are as follows:

- (a) when the independent government cost estimate (**see:** Guide, Vol. 14, § 210.30(d) (Requesting Office Responsibilities)) is less than \$25,000;
- (b) when public exigencies require the immediate delivery of the articles or performance of the service;

(**Note:** A PE written concurrence is required in order to use this exception.)

- (c) when only one source of supply is available and the CO executes the appropriate determination required under § 335; or

(**Note:** Written concurrence by the purchasing office's official, as identified in Guide, Vol. 14, § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials), is required within their delegation authority. Advertising exceptions above the judiciary organization's delegation authority, as well as all exceptions at any dollar level within PMD, require the PE's written concurrence.)

- (d) when the services are required to be performed by the contractor in person and are:

- (1) of a technical and professional nature (**see:** Guide, Vol. 14, § 520 (Experts and Consultants)); or
- (2) under judiciary direct supervision and paid for on a time basis (**see:** Guide, Vol. 14, § 510 (Personal Services)).

(**Note:** When the exception listed above in § 315.10.30(d)(1) is for a procurement more than \$25,000 and whenever the exception in § 315.10.30(d)(2) applies, regardless of dollar value, the CO must submit justification to the PE for written approval before solicitation.)

§ 315.20 Methods of Publicizing Procurement Notices

Procurement notices are intended to increase meaningful competition by disseminating and explaining the judiciary's requirements. COs must advertise each proposed open

market procurement that is expected to exceed \$25,000 (for exceptions, **see:** § 315.10.30). Judiciary organizations have authority to meet the publicizing requirement by advertising within the local trade area for open market solicitations over \$25,000, but less than \$100,000. However, national advertisement is encouraged whenever feasible. Open market procurements exceeding \$100,000 must be advertised nationally. There are several ways to disseminate information concerning the judiciary’s needs:

§ 315.20 Methods of Publicizing Procurement Notices	
Publication Method	Description
(a) National Posting on FedBizOpps	FedBizOpps stands for Federal Business Opportunities and is a GSA-run website available to all government agencies for publicly advertising federal solicitations and contract awards.
(b) Local Posting	When required or desired to increase competition, local posting of solicitations must be prominently displayed in a public area. Depending on the location, solicitations may be posted in the public area of the purchasing activity, courthouse, or other visible area easily accessible by the public.
(c) Local Announcements and Advertisements	Announcements of proposed purchases may be placed in newspapers, trade journals, and magazines for publication. Paid commercial advertisements may be used when determined by the CO to be in the judiciary’s interest.
(d) Electronically	Any appropriate public electronic means may also satisfy the local posting requirement.

§ 320 Contractor Qualifications

§ 320.10 Responsible Prospective Contractors

§ 320.10.10 Importance of Responsibility

Before award, COs must determine that the prospective contractor is responsible. If a contractor who is not responsible, subsequently defaults, provides late delivery, or other unsatisfactory performance, the award could eventually cost the judiciary more money or a loss of time. To qualify for award, a prospective contractor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors.

§ 320.10.20 General Standards

Certain key areas must be considered when determining an offeror’s responsibility. At times the same areas may be used as evaluation factors. In such instances, the factors must be clearly stated in the solicitation and evaluated in accordance with the evaluation provisions of the solicitation. To be determined responsible, a contractor must:

- (a) have financial resources adequate to perform the contract;
- (b) be able to comply with the delivery or performance schedule, taking into consideration all existing commitments (including awards pending);
- (c) have a good performance record;
- (d) have a sound record of integrity and business ethics;
- (e) have a quality control program that complies with solicitation requirements or the demonstrated ability to obtain one;
- (f) have the necessary organization, experience, accounting, and operational controls, technical skills, and production and property controls, or the demonstrated ability to obtain them;
- (g) have the necessary equipment and facilities, or the demonstrated ability to obtain them; and
- (h) be otherwise qualified and eligible to receive an award under applicable laws and regulations.

§ 320.10.30 Subcontractor Responsibility

Generally, prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors. **But see:** § 320.30 regarding debarred, suspended, or ineligible contractors. Matters of prospective subcontractor responsibility may affect the determination of the prospective prime contractor's responsibility. A prospective contractor may be required to provide written evidence of a proposed subcontractor's responsibility.

§ 320.10.40 Determination of Subcontractor Responsibility

When it is in the judiciary's interest to do so, the CO may directly determine a prospective subcontractor's responsibility, using the same standards as used to determine a prime contractor's responsibility. This may be particularly appropriate if a subcontractor is considered critical to the contractor's successful performance or if the proposed subcontracted effort is a substantial portion of the overall work to be performed.

§ 320.20 Determining Responsibility or Non-Responsibility

§ 320.20.10 Determination

The CO must make an affirmative determination of responsibility according to the provisions of § 320.10 before awarding any contract.

§ 320.20.20 Required Documentation

A written determination is required in the event that a prospective contractor is found to be non-responsible. All documents and reports related to such a determination, including any pre-award survey reports (**see:** § 320.20.50) must be included in the procurement file.

§ 320.20.30 Obtaining Information

Before making a determination of responsibility, the CO must possess or obtain information sufficient to be satisfied that the prospective contractor currently meets applicable standards of responsibility. At a minimum, for open market and sole source awards, the CO must check GSA's Excluded Parties List System (EPLS) (**see:** § 320.30). (**Note:** when ordering against another agency's contract, such as GSA schedule orders, orders under the NASA SEWP contracts, etc., the CO may rely upon the other agency's determination of responsibility in awarding the contract.) Other sources of responsibility information include:

- (a) records and experience data, including verifiable knowledge from judiciary personnel in purchasing offices, audit offices, and from other agency's contracting offices;
- (b) the prospective contractor, including offer information, questionnaire replies, financial data, information on production equipment, and personnel information; and
- (c) publications, suppliers, subcontractors, and customers of the prospective contractor, financial institutions, government agencies, and business and trade associations.

§ 320.20.40 Discussion

Communication with a prospective offeror for the purpose of obtaining or clarifying information needed to determine responsibility is not "discussion" as defined in § 330.43. Clarification with offerors regarding responsibility issues does not require that discussions be held with all those in the competitive range.

§ 320.20.50 Pre-Award Surveys

- (a) If available information does not provide an adequate basis for determining the responsibility or non-responsibility of a prospective contractor, the CO must perform a pre-award survey, by obtaining the assistance and participation of specialists as needed. The extent of the survey must be commensurate with the dollar value and complexity of the purchase, and may include any or all of the following:

- (1) data on hand or from other government agencies or commercial sources;
 - (2) examination of financial statements and records; or
 - (3) on-site inspection of plant and facilities to be used for contract performance.
- (b) Each participant in the survey must make a written report of findings to the CO, which must be retained with the CO's responsibility determination. The CO may require a consolidated survey report if there would otherwise be numerous individual reports.
- (c) The CO may discuss pre-award survey information with the prospective contractor being surveyed.

§ 320.30 Debarment, Suspension, and Ineligibility

§ 320.30.10 In General

Purchasing offices must procure from responsible contractors only. Therefore, purchasing offices must not solicit offers from, award contracts to, or consent to subcontracts with debarred, suspended, or ineligible contractors or affiliates thereof, unless the PE determines in writing that there is a compelling reason for such action in the interest of the judiciary.

§ 320.30.15 Excluded Parties List System

- (a) The General Services Administration:
- (1) compiles and maintains a list of all parties debarred, suspended, proposed for debarment, or declared ineligible by federal agencies and the General Accounting Office (GAO);
 - (2) includes in the list codes indicating the reason the party is excluded and the name and telephone number of the agency official responsible for inquiries regarding each excluded party; and
 - (3) updates the list daily and publishes it on online.
- (b) The Excluded Parties List System (EPLS) list contains the following information:
- (1) the names and addresses of all contractors debarred, suspended, proposed for debarment, or declared ineligible, in alphabetical order, with cross-references when more than one name is involved in a single action;

- (2) name of the federal agency or other authority taking the action;
- (3) cause for the action or other statutory or regulatory authority;
- (4) effect of the action;
- (5) termination date for each listing;
- (6) Dun and Bradstreet Universal Numbering System (DUNS) number;
and
- (7) name and telephone number of the debarring agency's point of contact for the action.

§ 320.30.25 Procurement Executive Notification to GSA

Any judiciary recommendation for debarment must be submitted to the PE for action according to § 320.50 or § 320.60. After a debarment or suspension determination is made, the PE will furnish GSA notice of the determination made by the judiciary for inclusion on the EPLS. The PE will:

- (a) provide GSA with the information required by § 320.30.15 after the action becomes effective;
- (b) notify GSA after modifying or rescinding an action;
- (c) maintain records relating to each debarment, suspension, or proposed debarment taken by the judiciary for six years and three months; and
- (d) respond to inquiries from other federal agencies about contractors debarred or suspended by the judiciary.

§ 320.30.30 Effect of Listing

- (a) Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and COs must not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the PE determines that there is a compelling reason for such action.
- (b) Contractors debarred, suspended, or proposed for debarment are also excluded from conducting business with the government as agents or representatives of other contractors.
- (c) Contractors listed as having been declared ineligible on the basis of statutory or other regulatory procedures are excluded from receiving contracts and, if applicable, subcontracts, under the conditions and for the

period set forth in the statute or regulation. COs may not solicit offers or quotations from, award contracts to, or consent to subcontracts with such contractors under those conditions and for that period.

- (d) Contractors debarred, suspended, or proposed for debarment are excluded from acting as individual sureties.
- (e) After the opening of offers, the CO must review the EPLS. Offers received from any listed contractor in response to a solicitation must be rejected unless the PE determines in writing that there is a compelling reason to consider the offer. Offers or quotations received from any listed contractor will not be evaluated for award or included in the competitive range, nor will discussions be conducted with a listed offeror during a period of ineligibility, unless the PE determines, in writing, that there is a compelling reason to do so. If the period of ineligibility expires or is terminated before award, the CO may, but is not required to, consider such offers or quotations.
- (f) Immediately before award, the CO must again review the EPLS to ensure that no award is made to a listed contractor, unless the PE determines, in writing, that there is a compelling reason to do so.

§ 320.30.35 Continuation of Current Contracts

- (a) Notwithstanding the debarment, suspension, proposed debarment or ineligibility of a contractor, COs may continue contracts or subcontracts in existence at the time the contractor was debarred, suspended, or proposed for debarment unless the PE directs otherwise. A decision as to the type of termination action, if any, to be taken should be made only after review by contracting and technical personnel and in consultation with the PE, who will coordinate with the AO's Office of General Counsel (OGC), to ensure the propriety of the proposed action.
- (b) If approved by the PE in consultation with OGC, purchasing offices may continue to place orders against existing contracts, including indefinite delivery contracts, unless the contract is terminated.
- (c) COs may not renew or otherwise extend the duration of current contracts, or consent to subcontracts, with contractors debarred, suspended, or proposed for debarment, unless the PE states, in writing, the compelling reasons for renewal or extension.

§ 320.30.40 Causes for Debarment

The PE is authorized, after conferring with OGC, to debar a contractor according to the procedures in this part for the following causes:

- (a) the PE may debar a contractor for a conviction of or civil judgment for:
 - (1) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract;
 - (2) violation of federal or state antitrust statutes relating to the submission of offers;
 - (3) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;
 - (4) commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a government contractor or subcontractor.
- (b) The PE may debar a contractor, based upon a preponderance of the evidence, for violations of a judiciary contract or subcontract so serious as to justify debarment action, such as:
 - (1) willful failure to perform in accordance with the terms of one or more contracts; or
 - (2) a history of failure to perform or of unsatisfactory performance of one or more contracts or subcontracts.
 - (3) any other cause of so serious or compelling a nature that it affects the present responsibility of a government contractor or subcontractor.

§ 320.30.45 Conditions for Debarment

The existence of any of the causes in § 320.30.40 does not necessarily require that a contractor be debarred. The decision to debar is within the discretion of the PE and must be made in the best interest of the judiciary. All mitigating factors must be considered in determining the seriousness of the offense, failure, or inadequacy of performance, and in deciding whether debarment is warranted.

§ 320.30.50 Removal of Debarment

The existence of any of the first two causes in § 320.30.40(a) must be established by criminal conviction in a court of competent jurisdiction. If appeal taken from such conviction results in a reversal of the conviction, the debarment must be removed upon the request of the contractor unless other causes for debarment exist.

§ 320.30.55 Evidence Required

The existence of any of the causes in § 320.30.40(a) must be established by evidence that the judiciary determines to be clear and convincing.

§ 320.30.60 Individual Accountability

The criminal, fraudulent, or seriously improper conduct of an individual acting on behalf of or associated with the action may be imputed to the firm with which the individual is or has been connected when accomplished within the course of the individual's official duty or was effected by the individual with the knowledge, approval, or acquiescence of the firm. Likewise, when a firm is involved in criminal, fraudulent, or seriously improper conduct, any person involved in, or who acquiesced in, the commission of the conduct may be debarred.

§ 320.40 Period of Debarment

§ 320.40.10 Guidelines

When other agencies provide a specific period of debarment, applicable statutes, executive orders, or controlling regulations govern. In other cases, debarment by the judiciary must be for a reasonable, definite, stated period of time, commensurate with the seriousness of the offense or the failure or inadequacy of performance. Generally, a period of debarment may not exceed three years.

§ 320.40.20 Debarment Removal or Reduction of Debarment Period

Except as precluded by statute, debarment may be removed or the period may be reduced by the PE upon submission of an application by the debarred contractor. The application must be supported by documentary evidence setting forth appropriate grounds for the granting of relief, such as newly discovered material evidence, reversal of a conviction, bona fide change of ownership or management, or the elimination of the causes for which debarment was imposed. The PE may, as a matter of discretion, deny any application for removal of debarment or for reduction of its period. In any case in which a debarment is removed or the debarment period is reduced, the PE must transmit to OGC a notice and statement for the record of the reasons for the removal of the debarment or the reduction of the period of debarment.

§ 320.50 Procedural Requirements for Debarment

§ 320.50.10 Notice of Proposal to Debar

The PE, after conferring with OGC, must initiate a debarment proceeding by sending to the contractor a written notice of proposed debarment. The notice must be served by sending it to the last known address of the contractor by certified mail, return receipt requested. The notice must state:

- (a) that debarment is being considered;
- (b) the reasons for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based;
- (c) the cause(s) relied upon under § 320.30.40 for proposing debarment;
- (d) that, within 30 days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts;
- (e) the judiciary's procedures governing debarment decision making;
- (f) the effect of the issuance of the notice of proposed debarment; and
- (g) the potential effect of an actual debarment, including the period of debarment and the proposed effective date.

§ 320.50.20 Hearing Request

A contractor served with a notice of proposed debarment may request a hearing by addressing a request to OGC through the PE.

§ 320.50.30 Concurrent Debarment

When the PE proposes to debar a contractor already debarred by another government agency for a term concurrent with such debarment, the debarment proceedings before the judiciary may be based entirely upon the record of facts obtained from the other federal agency or upon such facts and additional facts. In such cases the facts obtained from the other federal agency must be considered as established, but the party to be debarred must have an opportunity to present information to the PE and to explain why debarment by the judiciary must not be imposed.

§ 320.60 Causes for Suspension

§ 320.60.10 Contractor Suspension

The PE may, when the interest of the judiciary requires, and after conferring with OGC, suspend any contractor upon adequate evidence of or indictment for:

- (a) commission of fraud or a criminal offense incidental to obtaining, attempting to obtain, or performing a judiciary contract or subcontract;

- (b) violation of federal or state antitrust statutes relating to the submission of offers. Indictment for any of these causes constitutes adequate evidence for suspension;
- (c) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; or any other offense indicating a lack of business integrity or business honesty that seriously and directly affects present responsibility as a contractor or subcontractor; or
- (d) other cause(s) of so serious and compelling a nature, affecting the present responsibility as a contractor or subcontractor, as may be determined by the PE to warrant suspension. A pending hearing for debarment may be such a cause.

§ 320.60.20 Concurrent Suspension

A suspension invoked by another government agency may be the basis for the imposition of a concurrent suspension by the PE, on behalf of the judiciary.

§ 320.60.30 Notice of Suspension

- (a) The PE must send a notice of the suspension to be served upon the contractor and any specifically named affiliates to be suspended.
- (b) The notice must be sent by certified mail, return receipt requested.
- (c) The notice of suspension must be coordinated through OGC before issuance.
- (d) The notice must state:
 - (1) that they have been suspended and that the suspension is based on an indictment or other adequate evidence that the contractor has committed irregularities:
 - (A) of a serious nature in business dealings with the government; or
 - (B) seriously reflecting on the propriety of further judiciary dealings with the contractor. Any such irregularities must be described in terms sufficient to place the contractor on notice without disclosing the judiciary's evidence;
 - (2) that the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue;

- (3) the cause(s) relied upon under § 320.60.10 for imposing suspension;
- (4) that, within 30 days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension, including any additional specific information that raises a genuine dispute over the material facts; and
- (5) that additional proceedings to determine disputed material facts will be conducted unless:
 - (A) the action is based on an indictment; or
 - (B) a determination is made that the substantial interests of the judiciary in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

§ 320.60.40 Period of Suspension

- (a) Suspension must be for a temporary period pending the completion of investigation and any ensuing legal proceedings, unless sooner terminated by the PE or as provided in this section.
- (b) If legal proceedings are not initiated within 12 months after the date of the suspension notice, the suspension will be terminated unless the PE requests its extension. **See:** § 320.60.40(c).
- (c) Suspension Extension

A suspension, while in effect, may be extended for an additional period of six months upon written determination of the reasons and necessity for the extension. Notice of any extension of suspension must be served upon the contractor in the manner set forth in § 320.60.30. In no event may a suspension plus its extensions exceed in the aggregate a period of 18 months, unless legal proceedings have been initiated within that period. In that case, successive additional periods of suspension may be imposed until the proceeding in question has been completed. The termination of a suspension, however, may not prejudice a debarment proceeding that was pending or that may be brought for the same reasons that led to the suspension.

§ 325 Small Purchase Procedures

§ 325.10 Applicability

The small purchase procedures are for use in making open market fixed-price purchases up to \$100,000, as well as Not-To-Exceed purchase orders under \$100,000 for services such as equipment repairs which are customarily priced on the basis of parts plus labor. This dollar limitation is referred to as the judiciary's small purchase threshold.

Note: This section does not apply to GSA FSS orders (**see:** § 310.50) or orders from other federal agency contracts (**see:** § 310.60).

§ 325.10.10 Competition Requirement

Purchases must be made on the basis of adequate competition whenever feasible. Adequate competition means the solicitation of and participation by a sufficient number of capable sources to ensure that the required quality and quantity of products and services is obtained when needed, and that the price is fair and reasonable.

§ 325.10.20 In General

COs, supported by such assistance as is necessary, must make a determination that adequate competition has been obtained in any instance in which it is required. In making that determination, COs must act with reasoned discretion, taking into account the business requirements of the particular procurement, the judiciary's general interest in identifying new suppliers, and in providing opportunities for its supplier base.

§ 325.10.30 Limitations

A procurement estimated to total more than the judiciary's small purchase threshold may not be split into two or more purchases in order to use small purchase procedures. Nor may a known requirement for goods or services be split, parceled, divided or purchased over a period of time solely to avoid the dollar limitations for small purchase procedures.

§ 325.15 Open Market With or Without Competition

§ 325.15.10 Competition Threshold

In the judiciary, open market purchases for \$10,000 (\$25,000 for training products and services) or less may be made without obtaining competitive quotations, provided that the CO determines the price to be reasonable.

§ 325.15.20 Verifying Price Reasonableness

The administrative cost of verifying the reasonableness of the price for purchases within the \$10,000 (\$25,000 for training products and services) competition threshold may more than offset potential savings from detecting instances of overpricing. Therefore, action to verify price reasonableness need only be taken if:

- (a) the CO suspects or has information to indicate that the price may not be reasonable (such as comparison to the previous price paid or personal knowledge of the product or service involved); or
- (b) purchasing a product or service for which no comparable pricing information is readily available (such as a product or service that is not the same as, or is not similar to, other products or services that have been recently purchased on a competitive basis).

§ 325.15.30 Vendor Rotation

Where practicable, noncompetitive purchases within the \$10,000 (\$25,000 for training products and services) competition threshold must be distributed and rotated equitably among qualified suppliers. A quotation must be obtained from other than the previous supplier before placing a repeat order.

§ 325.20 Competitive Small Purchase Procedures

§ 325.20.10 Competition Guidelines

- (a) Competition must be sought to the extent practicable for purchases estimated to be more than the open market competition threshold (**see:** § 325.15.10) but less than the judiciary's small purchase threshold. **See also:** § 335 (Other Than Full and Open Competition).
- (b) For open market purchases in this range, offers or quotations must be solicited from a sufficient number of qualified sources (normally at least three) to ensure that the price is fair and reasonable. Notwithstanding the minimum number of qualified sources that must be solicited to ensure adequate competition, the CO is encouraged to solicit as many potential sources as time will permit, commensurate with the scope of the procurement.
- (c) For any open market purchases over \$25,000, the requirement must be advertised (**see:** § 315.20).
- (d) For any open market purchases over the judiciary's small purchase threshold (**see:** § 325.10), for the standard competitive contracting procedures for formal contracts (**see:** § 330).

§ 325.20.20 Soliciting Competitive Quotes

When determining how many quotations to solicit, the CO may consider the following factors:

- (a) the nature of the product or service to be purchased and whether it is highly competitive and readily available in several makes or brands or if relatively few suppliers provide the product or service;
- (b) information obtained in making recent purchases of the same or similar item;
- (c) the urgency of the proposed purchase; and
- (d) past experience concerning specific vendors' prices.

§ 325.25 Purchase of Services

§ 325.25.10 Service Contract Act

- (a) The Service Contract Act (SCA), 41 U.S.C. §§ 6701–6701, applies to contracts over \$2,500, including purchase orders, the principal purpose of which is to furnish services through the use of service employees for work to be performed in the United States, Puerto Rico, Guam, or the U.S. Virgin Islands. **See:** Guide, Vol. 14, § 130.20.55 (Labor Statutes Governing Contractor Wages and Benefits).
- (b) The SCA does not apply to:
 - (1) employees employed in bona fide executive, administrative, or professional capacities, or
 - (2) computer systems analysts, computer programmers, software engineers, and other similarly skilled computer employees,as defined in 29 CFR part 541.
- (c) Some examples of service employees include:
 - stenographic reporting services,
 - equipment repair services,
 - clerical services,
 - janitorial services,
 - copy center services,
 - mail related services, and
 - data collection, processing and analysis services.

- (d) SCA applies regardless of:
 - (1) the beneficiary of the services (judiciary or general public);
 - (2) the source of funding (judiciary or the public); or
 - (3) the place of performance (judiciary or contractor's premises).

§ 325.25.20 Statutory Requirement

- (a) SCA requires that service contracts over \$2,500 contain mandatory provisions regarding minimum wages and fringe benefits. It requires contractors to pay their service employees at least the wages and fringe benefits prevailing in that locality and in no event may service employees be paid less than the minimum wages specified in the Fair Labor Standards Act, 29 U.S.C. 206(a)(1).
- (b) In addition to including a provision in the solicitation and resulting contract notifying contractors that the Act applies, a wage determination issued by the Department of Labor (DOL) must be included as an attachment and made part of the solicitation and resulting contract if the services are subject to the Act.

§ 325.25.30 Exemptions

The U.S. Department of Labor's implementing regulations allow contractors for certain types of services to be exempt. The two categories of exemptions include:

- (a) maintenance, calibration or repair of information technology equipment, office/business machines, and certain scientific or medical equipment for which micro-electronic circuitry or similarly sophisticated technology is essential; and
- (b) the following additional services:
 - (1) automobile or other types of vehicle maintenance;
 - (2) financial services involving issuance of cards (e.g., purchase cards);
 - (3) hotel/motel services for conferences, including lodging and/or meals, that are part of the contract or subcontract for the conference (but excluding ongoing contracts for lodging on an as-needed or continuing basis);

- (4) maintenance, calibration, repair and/or installation for all types of equipment where the service is obtained from the manufacturer or supplier of the equipment on a sole source basis;
- (5) transportation of persons by common carrier on regularly scheduled routes or via standard commercial services (e.g., commuter trains, buses, commercial airlines, shuttle vans, etc.) (**Note:** excluding charter services); and
- (6) relocation services, including the services of real estate brokers or appraisers to assist federal employees in buying and selling homes (excludes actual moving and/or storage of household goods and related services).

Note: The exemption is not automatic. The offeror must affirmatively certify in either Provision 3-195, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Certification; or Provision 3-220, Exemption from Application of the Service Contract Act to Contracts for Certain Services – Certification, that it meets the conditions required by the Department of Labor regulations to qualify for exemption. In the event that the offeror does not certify affirmatively, the CO must include the appropriate wage determination in any resulting contract as well as Clause 3-160.

§ 325.25.40 Obtaining Wage Determinations

- (a) Most prevailing wage determinations may be obtained using the Department of Labor's Wage Determinations On-Line (WDOL) website, www.wdol.gov. The website contains a User Guide and FAQs for its use and also has an email link to request assistance. The website asks questions specific to the proposed procurement (e.g., performance location, type of service) in order to determine the appropriate prevailing wage determination. If a wage determination is available, the website will provide a printer friendly version. The CO must print out the wage determination, include it in the solicitation and in the resulting award, and maintain it as file documentation.
- (b) If the WDOL database does not contain an applicable prevailing wage determination for a contract action, the contracting officer must use the e98 process to request a wage determination. To complete e-98, the CO may need to review the DOL publication, Service Contract Act Directory of Occupations, to determine the appropriate classes of service employees needed to perform the work.
- (c) In using the e98 process, COs must provide as complete and accurate information on the e98 as possible, ensuring that the email address submitted on an e98 request is accurate.

- (d) The CO must anticipate the amount of time required to gather the information necessary to obtain a wage determination, including sufficient time, if necessary, to contact the Department of Labor to request wage determinations that are not available through the use of WDOL.
- (e) Although the WDOL website provides assistance to select the correct wage determination, the CO is responsible for the wage determination selected. If the CO uses the e98 process, the Department of Labor will respond to the CO based on the information provided on the e98, and the CO may rely upon that response as the correct wage determination for the contract.
- (f) To obtain the applicable wage determination for each contract action, the CO must determine the following information concerning the service employees expected to be employed in performing the contract:
 - (1) the classes of service employees to be employed in performance of the contract using the Wage and Hour Division's *Service Contract Act Directory of Occupations*, found on WDOL's Library page at www.wdol.gov/library.aspx;
 - (2) the locality where the services will be performed; and
 - (3) whether there is an existing collective bargaining agreement (CBA) for an incumbent contractor.
- (g) If the CO requests a wage determination using the e98 process and has not received a response within 10 days, the CO should contact the Department of Labor's Wage and Hour Division to determine when the wage determination can be expected. The e98 website provides a telephone number for this purpose.
- (h) If the CO requests a wage determination using the e98 process and the start of work is delayed, for whatever reason, more than 60 days from the date indicated on the submitted e98, the CO must submit a new e98. Any revision to the wage determination received as a result of the new e98 supercedes the earlier response and must be incorporated in the contract.

§ 325.25.50 Impact of a Revised Wage Determination

- (a) The Department of Labor's Wage and Hour Division periodically issues revisions to prevailing wage determinations. The requirement to include a revised wage determination in a solicitation or contract is determined by the date of receipt of the revised wage determination by the CO. If the original wage determination was obtained using WDOL, the time of receipt is deemed as the first day of publication of the revised determination on

the website. If the original wage determination was obtained using the e98 process, the time of receipt is deemed to be the date the CO receives actual notice of a new or revised prevailing wage determination from the Department of Labor.

- (b) Once a wage determination has been selected from the WDOL website for a solicitation or contract, the CO is responsible for monitoring the website for revisions. Monitoring may be done by use of the website's "Alert Service."
- (c) Whether or not the CO must incorporate a revised wage determination depends upon when the revision is published on www.wdol.gov and when contract performance is required to start. If the revised prevailing wage determination is published after award of a contract which requires performance to start within 30 days after award, the revision need not be incorporated in the contract. If the contract performance period does not start within 30 days after the award, any wage determination revision received by the CO 10 or more days prior to the contract's specified start of performance must be incorporated in the contract.

§ 325.25.60 Other Requirements

Upon award of a contract or a modification which incorporates a new wage determination, the CO must provide the contractor with a copy of DOL Publication WH-1313 along with a copy of the executed contract or modification. The WH-1313 is available at www.dol.gov/whd/regs/compliance/posters/sca.htm and may be printed in color or black and white. The contractor is required to post the WH-1313, with the wage determination attached to it, in a prominent and accessible location at the worksite where it may be seen by all employees performing the contract.

§ 325.25.70 Incorporation of Wage Determinations

- (a) In no case may a service contract be awarded without a wage determination if the Act applies. A copy of the wage determination should be provided to offerors when requesting quotes for services which are subject to the Act to ensure that the pricing provided reflects compliance with the wage determination.
- (b) If the Department of Labor determines, whether before or after award of a contract, that a CO made an erroneous determination that the SCA did not apply to a particular procurement or failed to include an appropriate wage determination in a covered contract, the CO, within 30 days of notification by the Department of Labor, must modify the contract to include Clause 3-160, as well as any applicable wage determination issued by the Department of Labor. The Department of Labor, in certain cases, may require retroactive application of the wage determination.

- (c) If the contract is funded by fiscal year appropriations and the term of the contract is extended, such as by exercising an option, a new wage determination must be obtained and incorporated in the contract by modification.
- (d) If the contract is not subject to annual appropriations, such as the copy center agreements (funded by the public) or contracts funded by the Judiciary Information Technology Fund, a new wage determination must be obtained every two years during the contract and incorporated in the contract by modification.
- (e) The CO must equitably adjust the contract price to reflect any changed cost of performance resulting from incorporating a wage determination or a revised wage determination.

§ 325.25.80 Required Clauses and Provisions	
Clause or Provision	Include in ...
(a) Clause 3-160, Service Contract Act of 1965, as amended	<p>solicitations and contracts over \$2,500 principally for services covered by the Act and performed in the United States, Puerto Rico, Guam or the U.S. Virgin Islands, or any such award modified to exceed \$2,500, including indefinite-delivery contracts and ordering agreements when orders are expected to aggregate more than \$2,500; except if the award includes:</p> <ul style="list-style-type: none"> (1) Clause 3-215, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements; or (2) Clause 3-225, Exemption from Application of the Service Contract Act to Contracts for Certain Services – Requirements
(b) Clause 3-175, Fair Labor Standards Act and Service Contract Act – Price Adjustment (Multi-Year And Option Contracts)	<p>solicitations and contracts for fixed price services that:</p> <ul style="list-style-type: none"> (1) include Clause 3-160; (2) exceed the judiciary’s small purchase threshold; and (3) include options to extend the period of performance or solicit a multi-year proposal.

§ 325.25.80 Required Clauses and Provisions	
Clause or Provision	Include in ...
(c) Clause 3-180, Fair Labor Standards Act and Service Contract Act – Price Adjustment	<p>solicitations and contracts for fixed price services that:</p> <ul style="list-style-type: none"> (1) include Clause 3-160; (2) exceed the judiciary’s small purchase threshold; and (3) do not include options to extend the period of performance or solicit multi-year proposals.
(d) Provision 3-195, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Certification	<p>solicitations for the types of services listed at § 325.25.30(a) when the resultant award may be exempt from Service Contract Act coverage</p>
(e) Clause 3-200, Service Contract Act – Place of Performance Unknown	<p>solicitations and contracts when the place of performance is unknown at the time the solicitation is issued. When the procurement is subject to the Service Contract Act and publicizing is required (see: § 315.10), the CO will include a statement in the notice to the effect that:</p> <ul style="list-style-type: none"> (1) the place of performance is unknown at the time the solicitation was issued; (2) the CO has requested wage determinations for the possible places or areas of performance; and (3) the CO will request wage determinations for additional possible places of performance if asked to do so in writing.
(f) Clause 3-215, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Requirements	<p>solicitations for the types of services listed at § 325.25.30(a) when the resultant award may be exempt from Service Contract Act coverage;</p> <p>resulting contracts when the successful offeror has affirmatively certified that it qualifies for exemption</p>

§ 325.25.80 Required Clauses and Provisions	
Clause or Provision	Include in ...
(g) Provision 3-220, Exemption from Application of the Service Contract Act to Contracts for Certain Services – Certification	solicitations for the types of services listed at § 325.25.30(b) when the resultant award may be exempt from Service Contract Act coverage
(h) Clause 3-225, Exemption from Application of the Service Contract Act to Contracts for Certain Services – Requirements	solicitations for the types of services listed at § 325.25.30(b) when the resultant award may be exempt from Service Contract Act coverage; in resulting contracts when the successful offeror has affirmatively certified that it qualifies for exemption

§ 325.30 Soliciting Under Small Purchase Procedure

§ 325.30.10 In General

- (a) For procurements less than the judiciary’s small purchase threshold (defined at § 325.10), soliciting quotations under small purchase procedures may be done either in writing or orally.
- (b) Whether the solicitation is oral or written, the CO must request the vendor’s DUNS number.
- (c) When determining responsibility (**see:** § 320.20) and checking the debarred list (**see:** § 320.30), the DUNS number will assist in obtaining information about the vendor.
- (d) When the award is made, the vendor’s DUNS number (or Tax ID number) must be included in the name and address block on the award instrument (purchase/delivery/task order).

§ 325.30.20 Written Solicitations

- (a) Under small purchase procedures, a written solicitation is referred to as a request for quotations (RFQ). Because written solicitations provide a clearer understanding of the requirement, they must be used in the following circumstances:
 - (1) when a large number of line items is included in a single proposed procurement;
 - (2) when obtaining oral quotations is not considered economical or practical;

- (3) when a Service Contract Act wage determination is applicable;
 - (4) when extensive specifications are involved; or
 - (5) when purchasing services, unless the services are generally pre-defined and would normally be priced in a catalog.
- (b) In addition to describing the judiciary requirement, a written RFQ must include Clause 3-3, Terms and Conditions – Small Purchases and Provision 3-5, Taxpayer Identification and Other Offeror Information. This provision must be included in full text to enable the vendor to provide the information requested. For additional clauses and provisions related to solicitations for services and when to include them, **see:** § 325.25.80.

§ 325.30.25 Oral Solicitations

An oral solicitation may be used when a written solicitation would be impracticable, as when processing a written solicitation would cause a delay detrimental to the judiciary. Records of oral solicitations (e.g., vendors contacted and prices offered) must be in the purchasing file. **See:** Guide, Vol. 14, § 710.10 (Procurement Files (Purchase/Delivery/Task Order or Contract Files)).

§ 325.30.30 Amending Written Solicitations

- (a) An amendment to an RFQ must be issued on GSA Form SF-30, Amendment of Solicitation/Modification of Contract. The purchase file must be documented to show the reason for any amendment.
- (b) An amendment may make the following types of changes:
 - quantity,
 - specifications,
 - delivery schedule, or
 - other corrections as needed.
- (c) **See also:** § 330.16.40 regarding issuance of amendments to solicitations.

§ 325.35 Basis for Award

§ 325.35.10 Policy

- (a) The basis for award must be determined before issuance of the solicitation and must not change once offers have been received.
- (b) Small purchases may be awarded on the basis of:

- (1) technically acceptable/lowest price, which includes items such as transportation and administrative charges; or
 - (2) best value, which involves an evaluation and comparison of cost or price and other factors.
- (c) For small purchases, technically acceptable/lowest price is the preferred basis for award. **See:** § 325.35.20. If appropriate, best value may be used, but the circumstances requiring its use must be documented and maintained in the purchase file. **Note:** Judiciary organizations, excluding the AO, are not delegated authority to conduct best value procurements and must obtain a one-time delegation from PMD before issuance of the solicitation and before award of the subsequent contract.

§ 325.35.20 Technically Acceptable/Lowest Price

Offers are evaluated based on price. Awards are made to the lowest priced offer or quote which meets the judiciary’s stated minimum technical requirements and is made by a responsible offeror. This method is normally used for standard commercial off-the-shelf products or services of acceptable quality for which there is adequate competition. **See also:** Guide, Vol. 14, § 210.70.30(a) (Source Selection Processes).

§ 325.35.30 Best Value

Small purchase open market awards may be made based on best value to the responsible offeror who submits the most advantageous quotation taking into account price and other evaluation factors specifically stated in the solicitation. This method must be used when price alone may not provide the best overall basis to make the award. Small purchase procedures must not normally be used when the other evaluation factors are highly complex and will require lengthy or detailed offer submissions by the offerors or quoters. In such situations, standard competitive contracting procedures must be used (**see:** § 330) no matter the dollar value of the purchase. These procedures are outlined in the following table.

§ 325.35.30 Best Value	
Procedure	Details
(a) Evaluation Factors	Evaluation factors are of value or concern to the requiring organization, vary depending on the product or service, and may include, but are not limited to: <ul style="list-style-type: none"> • quality; • experience; • delivery schedule; • maintainability; • ease of operation; • size or weight, etc.; • past performance; or

	<ul style="list-style-type: none"> • qualifications of key personnel.
(b) Evaluation Strategy	<p>The use of evaluation factors other than price requires the development of an evaluation strategy. The evaluation strategy must be developed by the CO with information from the requesting office. The evaluation strategy must identify:</p> <ul style="list-style-type: none"> • the need to use evaluation factors other than price; • the evaluation factors to be used and their relative weight or order of importance; • the overall importance of the other evaluation factors relative to price (i.e., greater than, equal to, less than); and • the individual or individuals who will perform the evaluation (see: Guide, Vol. 14, § 210.70.40 (Evaluation Panels)).
(c) Award	<p>Award is made after comparing each offer to the evaluation factors, and scoring it based on the relative weight of the factors. The decision is then made by comparing the scores with the differences in price. The CO will prepare a justification, which documents the trade-off of technical value to price.</p>

§ 325.40 Receipt and Evaluation of Quotations

§ 325.40.10 Recording Quotes

Responses to written and oral quotations must be clearly recorded in a format permitting ready comparison of prices and other details. The CO must place this record in the purchase file.

§ 325.40.20 Late Quotations

Late quotations in response to written or oral Request for Quote solicitations may be considered when an award has not yet been made, provided that the CO determines that doing so is in the judiciary’s best interest. This determination must be documented in the purchase file.

§ 325.40.30 Evaluation

Evaluation must be made on the basis of price, or price and other factors as set forth in the RFQ. Regardless of the basis of award (best value or lowest price/technically acceptable), the CO must make a price reasonableness determination and document it in the purchase file.

§ 325.45 Ordering Methods Under Small Purchase Procedures

§ 325.45.10 Purchase Order

A purchase order is used to place open market orders when quotations have been obtained in response to an oral or written RFQ. Because a quotation is not a legal offer subject to acceptance by the judiciary, a purchase order issued in response to a

quotation does not become a binding contract until the contractor either signifies acceptance by (1) commencing delivery or performance of the work; or (2) accepts the purchase order in writing.

(a) Contents of a Purchase Order

The following items must be included on each purchase order:

- (1) purchase order number and date;
- (2) technical point of contact;
- (3) vendor's name, address, DUNS or Tax ID Number (TIN);
- (4) description of product(s)/service(s) required;
- (5) quantity/unit of measure and extended prices/total;
- (6) billing address;
- (7) payment provisions;
- (8) contract number if order is placed against an existing contract (for FSS, GWAC, Judiciary-Wide, etc., **see:** § 310.50 or § 310.60);
- (9) delivery requirements
 - date/time;
 - quantity;
 - form;
 - place;
 - appropriation(s) data;
 - inspection and acceptance provisions; and
 - CO's signature.

(b) Purchase Order Terms and Conditions

To protect the judiciary's rights when acquiring products and/or services, it is important that basic terms and conditions be made a part of any purchase order issued.

(c) Open Market Purchases

COs must include Clause 3-3, Terms and Conditions – Small Purchases, in open market RFQs and purchase orders. It lists the basic terms and conditions required on any open market purchase order estimated to be less than the judiciary's small purchase threshold. The CO must also

consult the clause matrix and include any other clauses which may be applicable to the specific purchase order.

(d) Modification of Purchase Orders

Modification of Purchase Orders must be processed on GSA Form SF-30 (or an equivalent form in FAS₄T if the SF-30 is not available), must identify the order it modifies and contain an appropriate modification number. If written acceptance is determined to be necessary to ensure the contractor's compliance, the CO must obtain a contractor's written acceptance of a purchase order modification. **See also:** Guide, Vol. 14, § 745 (Contract Modifications).

(e) Use of Unpriced Purchase Orders

Unpriced purchase orders, in which the end price is not established at the time the purchase order is issued, may be used only when:

- (1) it is impractical to obtain firm pricing in advance of issuing the purchase order;
- (2) the purchase is for:
 - (A) repairs to equipment requiring disassembly to determine the nature and extent of repairs; or
 - (B) products or services for which there is a repetitive need within a single fiscal year and for which prices are known to be competitive (e.g., overnight delivery services, or office supplies), and the Not-to-Exceed amount stated on the purchase order is not greater than the competition threshold (**see:** § 325.15.10).

As with blanket delivery orders, unpriced purchase orders must be thoroughly documented to support the amount obligated and monitored periodically to ensure that excess funds are de-obligated in a timely manner. (**See:** § 220.50.20(c)).

§ 325.45.15 Blanket Purchase Agreement (BPA)

A Blanket Purchase Agreement (BPA) is an ordering agreement (**see:** Guide, Vol. 14, § 410.35 (Blanket Purchase Agreements)), which does not, in itself, order anything. It permits individuals, designated in writing by name or title, to place orders ("calls") by telephone, over-the-counter, by email, or in writing. A BPA is not a contract and may be established without an obligation of funds. Instead funds are obligated at the time a call is placed against a BPA. BPAs are normally established with suppliers from which

frequent, repetitive purchases are made. They can significantly reduce paperwork and administrative costs.

§ 325.45.20 Types of BPAs

There are two types of BPAs: priced and unpriced. They are described in the following table.

§ 325.45.20 Types of BPAs	
BPA Type	Description
(a) Priced BPA	<p>(1) A priced BPA has a price list, approved in writing by the BPA's CO. The price list establishes prices for calls of products or services during the term of the BPA.</p> <p>(2) A priced BPA is appropriate when prices are available for commercial products, such as office supplies, or for a flat-rate repair service. Pricing changes may be made infrequently with the BPA CO's approval of a new price list. The BPA's CO will determine and document that the new pricing is still fair and reasonable and competitive in the current market.</p>
(b) Unpriced BPA	<p>(1) An unpriced BPA does not contain a price list, but may contain labor hour rates. Prices are competed and established when an individual call is placed against the BPA.</p> <p>(2) An unpriced BPA is appropriate when the call will require a statement of work or when prices cannot otherwise be established before establishing the BPA.</p>

§ 325.45.25 Use of BPAs

BPAs are used when:

- (a) a wide variety of items in a broad class of products or services may be available from suppliers, but quantities and delivery requirements are not known in advance and may vary considerably;
- (b) there is a desire to reduce preparation of numerous written orders and processing of invoices since billing under a BPA is done collectively for several calls over an established time period (usually monthly); or
- (c) there is a need to provide commercial sources of supply for ordering by offices that do not have other purchasing authority.

§ 325.45.30 Sources

BPAs may be established with suppliers when numerous individual purchases will likely be made in a given period. It would be advantageous to establish BPAs with certain

suppliers who are dependable, consistently lower in price than other suppliers, and when numerous small purchases are expected to be made from them. BPAs may be established with GSA FSS schedule holders, with other federal agencies, or on the open market using the same competition and ordering procedures established in § 310.50 (GSA), or § 325.45 (small purchase procedures). Any competitive procurement must be conducted with the same type of source (i.e., all GSA, or all open market).

§ 325.45.35 Number

The number of BPAs established for a given product or service should be based on a strategy that is expected to maximize the effectiveness of the BPA(s). In determining how many BPAs to award, the CO must consider:

- (a) the scope and complexity of the requirement(s);
- (b) the technical qualifications of the contractor(s);
- (c) the administrative costs of BPAs;
- (d) the need to periodically compare multiple technical approaches or prices; and
- (e) the need to have backup sources for the products and/or services, since BPA holders are not required to accept all orders.

§ 325.45.40 Single Award BPAs

Individual calls placed against a Single Award BPA will not require additional competition, if the BPA is established according to this paragraph. A single BPA may be established, if the awarded BPA is priced, but will not require statements of work, and:

- (a) if during the life of the BPA, the total of all the calls will not exceed the competition threshold (**see:** § 325.15.10);
- (b) if the awarded BPA was competed when established and multiple BPAs were not appropriate (**see:** § 325.45.45, immediately below); or
- (c) if the solicitation for the BPA was appropriately justified and approved for other than full and open competition (**see:** § 335).

§ 325.45.45 Competition Using Multiple Award BPAs

BPAs for the same class of products or services should be established concurrently with more than one supplier, unless there is written approved justification in the file why only one source is capable of providing the products or services (**see:** § 325.45.40 and

§ 335.30). If competition cannot be obtained by awarding multiple BPAs, then another procurement method may be appropriate. The CO must determine if other than full and open competition is appropriate and document the file accordingly.

- (a) If the purchase requires a statement of work or the BPA is unpriced, then the call should be competed among the Multiple Award BPA holders, unless it is a single award BPA under § 325.45.40.
- (b) The following table explains how a call should be competed when priced Multiple Award BPAs are established.

§ 325.45.45(b) Competing a Call	
Purchase Estimate	Action
(1) Less than the applicable competition threshold.	The calls do not need to be competed. However, they should be rotated among the priced Multiple Award BPA holders for the same class of products or services.
(2) More than the applicable competition threshold.	The calls should be competed among the Multiple Award BPA holders.
Note: For definition of GSA competition threshold for BPAs awarded under a GSA schedule contract, see: § 310.50.43(a)). For definition of competition threshold for open market judiciary BPAs, see: § 325.15.10.	

§ 325.45.50 Mandatory Source Restriction

If BPAs are established for products or services which are required to be obtained or purchased from required sources as specified in § 310, then they must be established only with the mandatory source(s).

§ 325.45.55 Establishing BPAs

BPAs, priced and unpriced, single and multiple award, are established according to the requirements of the Guide, Vol. 14, § 410.35 (Blanket Purchase Agreements) and small purchases procedures.

§ 325.45.60 Ordering Under BPAs

Documentation of BPA calls must be limited to essential information to process the request (e.g., description, delivery terms, price, competitive offers, applicable justifications or determinations). Calls issued under the BPA are subject to the terms and conditions of the applicable BPA. The calls should be documented in the BPA file. Invoicing may be processed periodically (i.e., monthly) and will include all the calls placed during that time period.

When frequent calls are anticipated against a priced single-award BPA, the CO may utilize a blanket delivery order (BDO), obligating funds and tracking the open balance in accordance with Guide, Vol. 14, § 220.50.20(c) (Contract Funding Requirements). BDO's may not cross the fiscal year, but may only be used to pay for calls placed within a single fiscal year.

§ 325.45.65 Review of BPAs

The BPA's CO must conduct monthly random reviews of the calls placed by authorized ordering personnel to determine that the orders were placed appropriately according to the agreement and within applicable procurement guidance. The BPA's CO must review BPA files at least annually to ensure that authorized procedures are being followed, pricing is still competitive, and that continued use is justified.

§ 325.45.70 Closing out BPAs

BPAs are closed out in the same manner as purchase orders (**see:** § 325.60), with the exception that all the documents (e.g., calls, invoices, justifications, determinations) are maintained with the BPA until the expiration date of the BPA.

§ 325.50 Administration of Small Purchases

Purchases must be administered according to the terms and conditions of the order or agreement. After the order is placed, the requesting office awaits delivery or performance, inspects the products or services, and accepts or rejects the delivery. If there is a problem in the delivery or performance, the requesting office informs the CO. The CO determines the best course of action, depending on the circumstances and the terms and conditions of the order. Modifications are made as necessary to clarify, correct, terminate, cancel the order, or make appropriation data changes or corrections. The last administration action is to close out the purchase order. **See:** § 325.60.

§ 325.55 Termination and Cancellation of Purchase Orders

§ 325.55.10 In General

If an order needs to be ended before its completion then either a termination or cancellation needs to be processed, as described below.

§ 325.55.20 Termination

If a purchase order has been accepted in writing by the contractor or the contractor has commenced performance, then a termination must be processed. The CO must process the termination according to the provisions of the Guide, Vol. 14, § 755 (Contract Termination).

§ 325.55.30 Cancellation

If a purchase order has not been accepted in writing by the contractor or the contractor has not commenced performance, then a cancellation must be processed. The CO may cancel by notifying the contractor in writing that the purchase order is being canceled and requesting the contractor's written acceptance of the cancellation.

§ 325.55.40 Acceptance of Cancellation

If the contractor accepts the cancellation and does not claim that costs were incurred as a result of beginning performance under the purchase order, the purchase order may be canceled. The CO must process a modification to cancel the purchase order and deobligate any funds.

§ 325.55.50 Rejection of Cancellation

If the contractor does not accept the cancellation or claims that costs were incurred as a result of beginning performance under the purchase order, the CO must treat the action as a termination in accordance with the provisions of Clause 3-3 and the provisions of Guide, Vol. 14, § 755 (Contract Termination).

§ 325.60 Closing Out Purchase Orders

Once final acceptance and final payment are made, the order is considered closed. Transactions using small purchase procedures must be retained until three years after final payment, or until audited, whichever is later. **See:** Guide, Vol. 14, § 760.30 (Disposition of Contract Files).

§ 330 Standard Competitive Contracting Procedures

§ 330.10 Applicability

This section describes procedures for the competitive procurement of products and services whose cost is estimated to exceed the small purchase threshold stated in § 325.10. These procedures do not apply to orders or contracts placed under GSA FSS (**see:** § 310.50) or orders against other federal agency contracts (**see:** § 310.60).

§ 330.10.10 Format and Contents of Contract

A contract is used when offers have been obtained in response to a written Request for Proposal (RFP) and follows the uniform contract format (UCF) as set forth in Guide, Vol. 14, Appx. 1A). Because an offer is subject to acceptance by the judiciary, a contract issued based on a proposal in response to an RFP is signed by both the contractor and the contracting officer. The contractor's DUNS number or Tax ID number (TIN) is included in the name and address block of the award document.

(a) Face Page of a Contract

The following items must be included on the face page of each contract:

- (1) date and contract number;
- (2) contractor's signature; and
- (3) CO's signature.

(b) Contract Terms and Conditions

To protect the judiciary's rights when acquiring products and/or services, it is important that basic terms and conditions be made a part of any contract.

§ 330.10.20 Soliciting under Standard Competitive Contracting Procedures

(a) Preparation of Solicitations

Solicitations must be prepared according to Guide, Vol. 14, Appx. 1A (Uniform Contract Format).

(b) Recommended Time Frames for Offers

Consistent with specific purchase requirements, all solicitations must allow sufficient time for offerors to prepare and submit offers. The following table outlines the recommended time frames.

§ 330.10.20(b) Recommended Time Frames for Offers	
Type of Product and Service	Offer Time
(1) Nonstandard, Noncommercial Products and Services	The CO must allow at least thirty days for submission of proposals, unless there is written approved justification from the PLO for requiring an earlier submission.
(2) Standard Commercial Products and Services	The CO will make a decision as to the sufficient length of solicitation time by taking into consideration the availability of competition, complexity of the purchase, delivery time required, etc. This length of time is usually a small number of days.

(c) Method of Solicitation

The CO will determine the method by which the solicitation is delivered to potential offerors. This determination will take into consideration such choices as: regular US Postal Service mail; electronic mail; or posting on a website. Choices are dependent on the size of the solicitation package,

the number of vendors being solicited, the time required for the responses to be returned, and/or other pertinent considerations.

(d) Posting and Synopsis

The CO must comply with the methods of publicizing requirements in § 315.20.

(e) Availability of Solicitations

The purchasing office must maintain a reasonable number of copies of solicitations to be provided to prospective offerors upon request. If the solicitation is advertised as being available on an electronic site, the solicitation must remain available to prospective offerors until the posted closing time for receipt of proposals.

§ 330.10.30 Provisions and Clauses

The CO will include the following clauses and provisions in all solicitations exceeding the judiciary's small purchase threshold (**see:** § 325.10) unless the prescription indicates otherwise.

- (a) Provision 3-5, Taxpayer Identification and Other Offeror Information;
- (b) [Reserved];
- (c) Provision 3-15, Place of Performance;
- (d) Provision 3-20, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters. The offeror will appropriately fill in the provision's blank spaces.
- (e) Clause 3-25, Protecting the Judiciary's Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment;
- (f) Provision 3-30, Certificate of Independent Price Determination is included in all solicitations for firm-fixed price contracts or fixed-price with economic price adjustment, which are expected to exceed the judiciary's small purchase threshold (**see:** § 325.10). The offeror will appropriately fill in the provision's blank spaces.
- (g) Clause 3-35, Covenant Against Contingent Fees;
- (h) Clause 3-40, Restrictions on Subcontractor Sales to the Government;
- (i) Clause 3-45, Anti-Kickback Procedures;

- (j) Clause 3-50, Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity;
- (k) Clause 3-55, Price or Fee Adjustment for Illegal or Improper Activity;
- (l) [Reserved];
- (m) [Reserved];
- (n) Provision 3-70, Determination of Responsibility;
- (o) Clause 7-20, Security Requirements, is included whenever unescorted access to judiciary buildings or access to the judiciary IT network is required. (For additional information regarding the types of background checks, procedures for obtaining background checks and appropriate forms to use, **see**: Guide, Vol. 12, § 570 (Background Checks and Investigations).);
- (p) [Reserved];
- (q) Provision 3-85, Explanation to Prospective Offerors;
- (r) [Reserved];
- (s) Provision 3-95, Preparation of Offers;
- (t) Provision 3-100, Instructions to Offerors is included in all solicitations.
 - (1) Alternate I is included if the judiciary intends to make award after discussions with offerors within the competitive range; or
 - (2) Alternate II is included if the judiciary would be willing to accept alternate offers;
 - (3) Alternate III is included if the judiciary would be willing to consider offers which do not include all items solicited and make multiple awards.
- (u) Clause 3-105, Audit and Records;
- (v) Provision 3-115, Facsimile Offers is included in solicitations if facsimile offers are authorized;
- (w) Clause 3-120, Order of Precedence;
- (x) [Reserved]

- (y) Provision 3-130, Authorized Negotiators. The offeror will appropriately fill in the provision's blank spaces.
- (z) Provision 3-135, Single or Multiple Awards is included in solicitations for indefinite-quantity contracts that may result in multiple contract awards;
- (aa) Clause 3-140, Notice to the Judiciary of Labor Disputes is included in solicitations and contracts that involve programs or requirements for which it is necessary that contractors be required to notify the judiciary of actual or potential labor disputes that are delaying or threaten to delay timely performance;
- (bb) Clause 3-145, Payment for Overtime Premiums is included in solicitations and contracts when a cost-reimbursement contract is contemplated. The CO will appropriately fill in the clause's blank spaces.
- (cc) Clause 3-150, Contract Work Hours and Safety Standards Act – Overtime Compensation is included when the resulting contract may involve the employment of laborers or mechanics (**see:** Glossary);
- (dd) Clause 3-155, Walsh-Healy Public Contracts Act is included in solicitations and contracts if the procurement is for the manufacturing or furnishing of products and expected to be in excess of \$15,000;
- (ee) For applicable Services Contract Act provisions and clauses (**see:** § 325.25.80);
- (ff) [Reserved]
- (gg) [Reserved]
- (hh) Provision 3-185, Evaluation of Compensation for Professional Employees is included in solicitations for service contracts when the contract amount is expected to exceed \$500,000 and the service to be provided will require meaningful numbers of professional employees;
- (ii) [Reserved]
- (jj) [Reserved]
- (kk) Clause 3-205, Protest After Award is included in all solicitations and contracts;
- (ll) Provision 3-210, Protests is included in all solicitations exceeding the judiciary's small purchase threshold (**see:** § 325.10). The CO will appropriately fill in the provision's blank spaces;

- (mm) Clause 5-30, Authorization and Consent is included in all solicitations and contracts. Use the clause with Alternate I if the solicitation or contract is for communication services with a common carrier and the services are unregulated and not priced by a tariff schedule set by a regulatory body.
- (nn) Court organizations that are capable of making payment by electronic funds transfer (EFT) will incorporate the following clauses as indicated:
 - (1) Clause 3-300, Central Contractor Registration is included in solicitations and contracts except when:
 - (A) the contract is awarded under circumstances of urgent and compelling need;
 - (B) the contractor is a foreign vendor; or
 - (C) awards under \$10,000 (\$25,000 for training products and services) that do not use EFT for payment.
 - (2) Clause 3-305, Payment by Electronic Funds Transfer – Central Contractor Registration is included in solicitations and contracts that include Clause 3-300.
 - (3) Clause 3-310, Payment by Electronic Funds Transfer – Other Than Central Contractor Registration is included in contracts when a critical sole source provider of goods or services refuses to register in CCR, but has provided Electronic Funds Transfer information for payment directly to the judiciary.
 - (4) Provision 3-315, Submission of Electronic Funds Transfer Information with Offer is included in solicitations when urgent and compelling circumstances require award to be made without regard to whether or not the awardee is registered in CCR. The resulting contract must include either Clause 3-305, Payment by Electronic Funds Transfer – Central Contractor Registration, if the awardee is registered in CCR, or Clause 3-310, Payment by Electronic Funds Transfer – Other Than Central Contractor Registration, if the awardee is not registered in CCR.

See also: Guide, Vol. 14, § 170.70 (Clause); § 715.55 (Clauses/Provisions); and § 755.20.60 (Clauses).

§ 330.13 Pre-Offer Conference

§ 330.13.10 In General

Whenever circumstances warrant, such as when a solicitation has complicated specifications or requirements, a pre-offer conference may be held to brief prospective offerors and respond to questions.

§ 330.13.20 Notification Requirements

If the need for a pre-offer conference is foreseen, notice of the conference must be given in the solicitation. Otherwise, all offerors that received the solicitation must be given written notice of the time, place, nature, and scope of the conference. If time allows, prospective offerors must be instructed to submit written questions in advance, so that prepared answers can be distributed at the conference.

§ 330.13.30 Conducting the Conference

The CO or a designated representative must conduct the conference, with the assistance and participation of program officials, technical personnel or others as appropriate.

§ 330.13.40 Records

A record of the conference must be furnished to all prospective offerors that received the solicitation. Conferees must be informed that statements and explanations at the conference do not change any terms, specifications, or other requirements of the solicitation. These may only be changed by issuance of a written amendment from the CO.

§ 330.16 Amendment of Solicitations

§ 330.16.10 In General

If it becomes necessary to make changes in a solicitation, a solicitation amendment must be issued.

§ 330.16.20 Time Frame

An amendment must be issued in sufficient time to permit offerors to consider it in submitting or modifying their offers. CO's issuing amendments near the due date for submission of proposals should consider whether an extension of the due date is necessary based upon the extent of the changes made by the amendment.

§ 330.16.30 Notification

When the CO believes it is necessary to give notification of a change by telephone or email, a written amendment confirming the change must be processed and distributed to the offerors.

§ 330.16.40 Amendment Distribution

When deciding which offerors are affected by a change, the CO must consider the stage of the procurement as follows:

- (a) if offers are not yet due, the amendment must be sent to all prospective offerors that received the solicitation and it must be posted in the same place as the solicitation;
- (b) if the time for receipt of offers has passed, but offers have not yet been evaluated, the amendment must be sent to all the responding offerors; and
- (c) if the competitive range (**see:** § 330.60) has been established and the amendment would have no effect on the basis for establishing the competitive range, only those offerors within the competitive range must be sent the amendment.

§ 330.20 Cancellation of Solicitations

§ 330.20.10 In General

Solicitations must not be canceled unless circumstances make cancellation necessary. Examples of circumstances are when there is no longer a requirement for the products or services, or the solicitation requires amendments of such magnitude that a new solicitation is needed.

§ 330.20.20 Notification

Written notice of the cancellation must explain the reason for cancellation. It must be sent to all prospective offerors that received the solicitation and posted in the same place as the solicitation.

§ 330.20.30 Time Frame

If the solicitation is canceled before the date for receipt of offers, any offers received must be returned unopened to the offerors. If the solicitation is canceled after the date for receipt of offers, any offers received must be kept unopened for five years after cancellation.

§ 330.23 Disclosure and Use of Information

§ 330.23.10 Before Release of the Solicitation

Information concerning proposed purchases must not be released outside the judiciary before solicitation of offers, except for information publicized through briefings, market research, announcements, or notices. This information must be restricted to those having a legitimate interest.

§ 330.23.20 After Release of the Solicitation

- (a) After issuance of a solicitation, only the CO, or others specifically authorized by the CO, may communicate or transmit information concerning the solicitation.
- (b) When the information is needed for the preparation of offers or if lack of it would be prejudicial to uninformed prospective offerors, any information given to one prospective offeror must be furnished promptly to all other prospective offerors as an amendment to the solicitation.
- (c) General information that would not give a prospective offeror an advantage may be furnished upon request, such as an explanation of a clause, a procedural requirement, or a provision of the solicitation. If it becomes apparent that an ambiguity must be clarified or an error corrected, the solicitation must be formally amended.

§ 330.23.30 After Receipt of Offers

- (a) The content of offers and the number or identity of offerors must be protected. This information is restricted to those having a legitimate role in the offer evaluation and award processes and is disclosed only to the extent needed to evaluate the offers.
- (b) During the preaward period, only the CO, and others specifically authorized by the CO, may transmit technical or other information and conduct discussions with offerors. Information must not be furnished to any offeror which by itself, or together with other information, would possibly give one offeror an advantage over others. However, general information that is not prejudicial to others may be furnished upon request.

§ 330.26 Receipt of Offers

§ 330.26.10 Handling

Offers must be marked with the date and time of receipt and kept secure at all times. It is equally important to keep them secure before and after opening as well as during the recording and evaluation processes.

§ 330.26.20 Opening and Recording

After the time established for receipt, the CO will open and record the offers.

§ 330.26.30 Modification and Withdrawal

Offers may be modified or withdrawn by written notice. An offer modification must be received by the date and time set for receipt of offers. Notice of withdrawal of an offer must be received before award.

§ 330.26.40 Late Offers

Any offer received at the office designated in the solicitation after the exact date and time specified for receipt of offers will not be considered unless it is received before award is made and:

- (a) it was sent by registered mail or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
- (b) it was sent by mail (or telegram or facsimile, if authorized) or hand-carried (including delivery by commercial carrier) if it is determined by the judiciary that the late receipt was due primarily to judiciary mishandling after receipt at the judiciary installation;
- (c) it was sent by U.S. Postal Service express mail next day service – post office to addressee, not later than 5:00 p.m. at the place of mailing two working days before the date specified for receipt of offers. The term “working days” excludes weekends and U.S. federal holidays;
- (d) it was transmitted through an electronic commerce method authorized by the solicitation and was received at the initial point of entry to the judiciary infrastructure not later than 5:00 p.m. one working day before the date specified for receipt of offers;
- (e) there is acceptable evidence to establish that it was received at the activity designated for receipt of offers and was under the judiciary’s control before the time set for receipt of offers, and the CO determines that accepting the late offer would not unduly delay the procurement;
- (f) it is the only offer received; or
- (g) the CO decides that acceptance is in the best interest of the judiciary, provided offers have not been opened.

§ 330.26.50 Late Proposal Documentation

Each late offer and modification must be retained in the solicitation file with a statement as to whether it was considered, with the reasons.

§ 330.26.60 Facsimile Offers

If facsimile offers are authorized, Provision 3-115, Facsimile Offers is included as prescribed in § 330.10.30(v).

§ 330.30 Failure to Acknowledge Amendments

§ 330.30.10 Awards Made Without Discussions

Offers lacking acknowledgment of an amendment, or clear indication in the offer that the amendment had been received, must be disregarded when the amendment affects price, quantity, quality, or delivery.

§ 330.30.20 Awards Made after Discussions

Uncertainties regarding the amendment may be resolved through discussions.

§ 330.30.30 [Reserved]

§ 330.33 Mistakes in Offers

COs must examine all offers for mistakes. Communication with an offeror concerning potential mistakes is clarification, not discussion. However, if the correction of a mistake requires reference to any document (such as worksheets or other data) not included with the offer, the mistake may be corrected only through discussions.

§ 330.36 Evaluation of Offers

§ 330.36.10 In General

Offer evaluation is an assessment of both the offer itself and the offeror's ability (as demonstrated by the offer), to perform the proposed contract successfully. The judiciary must evaluate competitive offers and then assess their relative qualities solely on the evaluation factors and subfactors specified in the solicitation. Evaluations may be conducted using any rating method or combination of methods, including:

- pass/fail;
- adjectival ratings (e.g., fair, satisfactory, good, excellent).

The relative strengths, deficiencies, significant weaknesses, and risks supporting the offer evaluation must be documented in the procurement file.

§ 330.36.20 Price or Cost Evaluation

Prices or estimated costs must be evaluated according to the Guide, Vol. 14, § 440 (Price Analysis) or § 450 (Cost Analysis) Price or cost analysis is necessary to determine the reasonableness and validity of a proposed price or cost estimate, and to assist in determining an offeror's understanding of the work and ability to perform the contract.

§ 330.36.30 Evaluation of Other Factors

Each offer must be examined to determine whether it meets the requirements of the solicitation. The specific purchase requirements, the evaluation factors, and the source selection plan determine the extent of the required analysis. The evaluation must be documented to include:

- (a) the basis for evaluation;
- (b) an analysis of each offer, including an assessment of each offeror's ability to accomplish the solicitation requirements, and why the offer is determined to be acceptable or unacceptable;
- (c) a narrative statement of the major strengths, weaknesses and risks of the various offers;
- (d) a summary, matrix, or quantitative ranking of each offer in relation to the best rating possible; and
- (e) a narrative statement summarizing the evaluation team's finding.

§ 330.36.40 Only One Offer

If only one offer is received in response to a competitive solicitation, it may be evaluated and considered for award. It is considered to be a competitive offer so long as more than one source was solicited and there was a reasonable expectation of more than one offer. A determination of price reasonableness must be included in the procurement file based on:

- (a) market research;
- (b) previous purchases of the same or similar product or service;
- (c) current price lists, catalogs, or advertisements;
- (d) a comparison with similar items in a related industry;
- (e) the CO's personal knowledge of the item being purchased;

- (f) comparison to an independent government estimate; or
- (g) any other reasonable basis.

§ 330.40 Selection for Award

§ 330.40.10 In General

The award will be made to the offeror whose offer receives the highest evaluation and/or lowest price in accordance with the evaluation factors identified in the solicitation.

See: § 330.36.30.

§ 330.40.20 Technically Acceptable/Lowest Price Awards

Awards under solicitations which specify technically acceptable/lowest price evaluation are made to the responsible offeror submitting the lowest priced offer which meets the technical requirements stated in the solicitation. This method is normally used for standard commercial products or services for which there is adequate competition.

§ 330.40.30 Best Value Awards

For awards under solicitations which specify best value evaluation, the source selection authority (usually the CO) is ultimately responsible for making the selection decision and is responsible for trade-off judgments involving cost and other evaluation factors. Selection must be made in accordance with the solicitation's stated evaluation factors and must be documented. The documentation will include a determination by the source selection authority that the price is fair and reasonable and the basis for determination. **See also:** § 325.35.

§ 330.40.40 Selection Documentation

- (a) The source selection authority's selection memorandum must specify any rankings/ratings and recommendations prepared by technical and/or price evaluation teams or pre-award survey teams.
- (b) However, the findings of these teams are only guides for the source selection authority's final selection decision and must be presented in sufficient depth to permit the intelligent weighing of alternatives and the making of trade-off judgments.
- (c) The offers may not be compared to each other, but are compared to the evaluation criteria.
- (d) The source selection memorandum must show the relative differences among the offeror's scores, demonstrating their strengths, weaknesses, and risks as compared to the solicitation's evaluation factors.

- (e) The supporting documentation must include the basis and reason for the source selection decision.

§ 330.40.50 Responsibility Determination

Award may be made only after the CO makes a favorable determination of the selected offeror's responsibility (**see**: § 320.20), which should be included as part of the source selection memorandum.

§ 330.43 Discussions with Offerors

§ 330.43.10 In General

A contractor may be selected and award made with or without discussing offers with the offerors. The need for discussion of offers depends upon the circumstances of the purchase, such as the complexity of the requirement, the extent of competition, and the quality of the offers received.

§ 330.43.20 Discussions of Price

Whenever price is the most important (or the only) evaluation factor, award will normally be made without discussions. If adequate competition exists, offerors should be encouraged to submit their most favorable offers at the outset. However, even when award will be based on price alone, the CO may determine that discussions are necessary in order to determine that the price is fair and reasonable.

§ 330.46 Rejection of All Offers

All offers received may be rejected if the CO determines that:

- (a) prices proposed are unreasonable and discussions have not resulted in a reasonable price or prices;
- (b) all offers are technically unacceptable; or
- (c) offers were not independently arrived at in open competition, were collusive, or were submitted in bad faith.

§ 330.50 Award Without Discussions

§ 330.50.10 In General

- (a) Verification, withdrawal, or correction under this procedure does not constitute discussion.

- (b) Award may be made without discussion whenever adequate competition or price analysis make it clear that acceptance of the most favorable initial offer will result in a reasonable price.
- (c) Provision 3-100, Instructions to Offerors, prescribed at § 330.10.30(t) for inclusion in all solicitations above the judiciary's small purchase threshold, states (1) that the CO intends to award without discussions; and (2) that the judiciary reserves the right to conduct discussions, if the CO later determines them to be necessary.
- (d) The clause with Alternate I is used if the judiciary intends to make award after discussions with offerors within the competitive range; or the clause is used with Alternate II if the judiciary would be willing to accept alternate offers.

§ 330.50.20 Resolving Uncertainties in Offers

Whenever there is uncertainty as to the pricing, technical, or other aspects of the most favorable initial offer, award may be made without discussions only when the uncertainty can be resolved by seeking a clarification. If the limited communications involved in seeking a clarification cannot resolve the uncertainty, discussions must be held with all offerors in the competitive range. For additional information on the difference between discussions and clarifications, **see**: § 330.43 and Glossary.

§ 330.50.30 Equal Low Price

If equal low prices are proposed, and the solicitation contains no other evaluation factors, selection of the offer for award may be based on factors such as performance record, experience, or other factors in the judiciary's interest. Award may be determined by drawing lots only if there is no other basis for selection.

§ 330.50.40 Resolving Mistakes in Offers

The following procedure will be used to resolve mistakes without discussions, if the CO informs the offeror of the suspected mistake, identifies the mistake and requests verification. The CO must point out the circumstances giving rise to the suspicion of mistake (such as duplications, omissions or errors in computations, obvious misplacement of a decimal point, obviously incorrect discount). This must be done without disclosing other offers or the judiciary estimate. If a mistake is confirmed, the offeror may withdraw its offer or seek its correction. If;

- (a) the offeror verifies its offer, then the offer is evaluated as submitted;
- (b) the offeror requests correction of a mistake, the CO, with the approval of the PE and concurrence of OGC, may permit the correction without discussion if both the existence of the mistake, and the offer actually

intended, are clearly ascertainable from the solicitation and the offer. If there is insufficient evidence to permit the correction without discussions and discussions will not be held, the offeror will be given a final opportunity to withdraw its offer. If not withdrawn, the offer is evaluated as submitted.

§ 330.53 Award with Discussions

- (a) When appropriate, written or oral discussions may be held with offerors to resolve uncertainties in their offers, to give them an opportunity to correct deficiencies, and to revise their offers.
- (b) Before conducting discussions, the CO must establish written prenegotiation objectives commensurate with the dollar value and complexity of the negotiation by writing a Memorandum of Negotiation Objectives.
- (c) Discussions must not favor one offeror over another; reveal another offeror's technical solution or any information that would compromise an offeror's intellectual property; nor reveal another offeror's price.
- (d) If discussions are held with one offeror, all offerors in the competitive range must be afforded the opportunity to have discussions and submit revised offers, if appropriate.

§ 330.56 Conduct of Discussions

- (a) The CO is responsible for conducting discussions with the offeror's authorized negotiators identified in the offer in Provision 3-130, Authorized Negotiators. The CO will use the assistance or participation of program officials, technical personnel, or others as appropriate.
- (b) The content, form, and extent of the discussions is a matter of the CO's judgment. Discussions are conducted to:
 - (1) advise each offeror of deficiencies in its offer in terms of the judiciary's requirements, but not deficiencies relative to other offers, nor deficiencies resulting from the offeror's lack of diligence or competence;
 - (2) attempt to resolve uncertainties concerning aspects of the offer;
 - (3) resolve any suspected mistakes by calling them to the offeror's attention as specifically as possible without disclosing information concerning other offers or the evaluation process; and

- (4) provide the offeror a reasonable opportunity to submit any cost or price, technical, or other revisions to its offer that may result from the discussions.

§ 330.60 Competitive Range

§ 330.60.10 In General

The competitive range must be determined on the basis of cost or price and other factors stated in the solicitation and include all offers that have a significant chance of being selected for award. When there is doubt as to whether an offer is in the competitive range, the offer must be included.

§ 330.60.20 Establishment of Competitive Range

The competitive range may not be established on the basis of an arbitrary standard. It must reflect the fair evaluation of the competing offers. The competitive range may include offers with the potential for improving their competitive position, after appropriate discussions and revision. Even if an offer has a potential for significant improvement, it may be excluded from the competitive range if, relative to other offers, it has no significant chance of selection for award.

§ 330.60.30 Elimination of Offers

- (a) If the CO determines that the number of offerors that would otherwise be included in the competitive range exceeds the number at which an efficient competition can be conducted, the CO may limit the number of offerors in the competitive range. This will include the greatest number that will permit efficient competition among the offerors with the highest evaluation criteria ratings.
- (b) However, elimination of such offers must be done very cautiously. When negotiations are not anticipated to be complex or time-consuming, a relatively large number of offerors might not result in inefficiency.
- (c) In contrast, a complex procurement may anticipate substantial negotiations and offer revisions. Then limiting the competitive range could be desirable.

§ 330.60.40 Notification

The CO must send prompt written notification to those offerors not in the competitive range and to those eliminated from the competitive range as a result of discussions.

§ 330.63 Best and Final Offers

§ 330.63.10 In General

Upon completion of discussions, the CO will issue a request for best and final offers to all offerors in the competitive range. The request must include:

- (a) notice that discussions are concluded;
- (b) notice of the opportunity to submit best and final offers in the form of revisions to any aspect of the offer; and
- (c) a common cutoff date and time that allows a reasonable opportunity for submission of written best and final offers.

§ 330.63.20 Reopening Discussions

After receipt of best and final offers, the CO must not reopen discussions unless it is clearly necessary and in the judiciary's interest to do so, such as when information available does not provide adequate basis for contractor selection and award. If discussions are reopened, the CO must issue an additional request for best and final offers to all offerors still within the competitive range.

§ 330.66 Selection and Negotiation

§ 330.66.10 Selection of an Awardee

Following evaluation of offers, the source selection authority (usually the CO) must select for award the offer or best and final offer demonstrating the best value to the judiciary on the basis of the evaluation factors stated in the solicitation.

§ 330.66.20 Negotiations after Selection

Any uncertainties or deficiencies remaining in the offer selected must be clarified or corrected through clarifications or discussions with the offeror, as appropriate, leading to a definitive contract. Negotiations must include the disclosure and resolution of all deficiencies and all unsubstantiated areas of cost and price. No changes may be made in the judiciary's requirements or in the offer that, if made before contractor selection, would have affected the basis for selection.

§ 330.70 Award

§ 330.70.10 In General

Award may be made by written acceptance of a signed offer or by execution of the award document by both parties. Where there have been no changes to the original proposal submitted by the selected offeror as a result of negotiations, etc., award may

be effected by inserting a contract number in Block 2 and completing Blocks 19 through 28 of the Standard Form 33 which was part of the solicitation and was signed and submitted by the offeror with their proposal.

Where discussions and negotiations have resulted in changes to the original proposal and/or to the terms of the solicitation, award should be effected on a Standard Form 26. The entire contract package, including the Standard Form 26, should be sent to the selected offeror for signature prior to the CO signature. This ensures that both parties have the opportunity to review the document to ensure that it reflects all changes agreed upon during the course of negotiations.

Regardless of which form is used, performance may not commence until both parties have executed the contract document.

§ 330.70.20 Approval Requirements

(a) Single Award

If a proposed award requires higher-level written approval or delegation of contracting authority, award may not be made until the written approval or delegation has been obtained.

(b) Multiple Awards

When more than one award results from any single solicitation, separate award documents must be executed, each suitably numbered, according to Provision 3-135, Single or Multiple Awards. When an award is made to an offeror for fewer than all items that may be awarded to that offeror and additional items are being withheld for subsequent award, the first award to that offeror must state that the judiciary may make subsequent awards on additional items within the offer acceptance period.

§ 330.70.30 Award Notification

Promptly after award, the CO must send all offerors a written notice including:

- (a) the name and address of each offeror receiving an award;
- (b) total award amount(s);
- (c) a statement that award was made without discussions, if applicable; and
- (d) a brief statement of the basis for the selection decision which addresses the selection in general terms and does not reveal another offeror's trade secrets or other proprietary information.

§ 330.73 Award Debriefing

§ 330.73.10 In General

An unsuccessful offeror must request a debriefing in writing. Unsuccessful offerors, who request a debriefing, must be debriefed and told the basis for selection decision and award. Debriefings must be scheduled promptly.

§ 330.73.20 Conducting the Debriefing

The CO or a designated representative must conduct the debriefing with the assistance and participation of program officials, technical personnel, or others including OGC, as appropriate.

§ 330.73.30 Debriefing Information

Debriefing information must include the judiciary's evaluation of the significant weak or deficient factors in the offer as compared to the evaluation criteria, and not point-by-point comparison with other offers.

§ 330.73.40 Restricted Debriefing Information

Information must not be disclosed to any offeror as to:

- (a) trade secrets;
- (b) privileged or confidential manufacturing processes and techniques;
- (c) business and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; or
- (d) unique or innovative concepts contained in an offer.

§ 330.73.50 Records

The CO must include a summary of each debriefing in the procurement file.

§ 335 Other than Full and Open Competition

§ 335.10 In General

COs must take all reasonable steps to avoid contracting without providing for full and open competition. However, there are valid circumstances when it is both necessary and in the best interest of the judiciary to award a sole source contract or to limit competition.

§ 335.10.10 Invalid Reasons to Limit Competition

Contracting without providing for full and open competition cannot be justified on the basis of insufficient time to conduct a competitive procurement because of:

- (a) a lack of advance planning by the requesting office; or
- (b) concerns related to the amount of, or expiration of, funds available to the requesting office.

§ 335.10.20 Procedures

When not providing for full and open competition, the CO must:

- (a) prepare a written justification, using Form AO 370 (Justification for Other Than Full and Open Competition), specifically demonstrating why the requirement cannot be obtained using full and open procurement procedures; and
- (b) ensure that all the steps under this section for the justification, documentation, and written approval of the procurement are completed before issuance of the solicitation.

§ 335.10.30 Limitations on Use

Contracting without providing for full and open competition must be approved in writing as set forth in § 335.30 by the purchasing office's official, as identified in Guide, Vol. 14, § 120.20.10(b), or, for purchases not within the judiciary organization's general delegation (**see:** Guide, Vol. 14, § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials)), by PMD.

§ 335.10.40 Written Justification Not Required

The procedures of this section do not apply to the following:

- (a) purchases of products and services from qualified workshops, as determined by the Committee for Purchase from People who are Blind or Severely Disabled (**see:** § 310.20);
- (b) orders placed against single-award national judiciary contracts or BPAs (**see:** § 310.40);
- (c) orders placed against other agency single-award contracts (**see:** § 310.60);
- (d) purchases not expected to exceed the applicable open market competition threshold (**see:** § 325.15.10);

- (e) purchases under a GSA schedule contract not expected to exceed the GSA competition threshold (**see:** § 310.50.43(a));
- (f) orders placed under single-award indefinite-delivery contracts (**see:** Guide, Vol. 14, § 410.30 (Indefinite-Delivery Contracts));
- (g) modifications within the scope of a contract or the exercise of options, such as lease extensions and renewal options;
- (h) software modifications, enhancements, maintenance, and renewals of licenses or leases for previously purchased commercial computer software within the scope of the contract; and
- (i) purchases from utilities. **Note:** “Utilities” does not include local and long distance voice and data services, but services such as water, sewer, gas, and electric.

§ 335.10.50 Use of Brand Name Descriptions

- (a) A procurement that uses a brand name description or other purchase description to specify a particular brand name, product, or feature of a product which is peculiar to one manufacturer does not provide for full and open competition regardless of the number of sources solicited. It must be justified and approved according to § 335.30.
- (b) The justification should indicate that the use of such descriptions in the procurement is essential to the judiciary’s requirements, thereby precluding consideration of a product manufactured by another company.
- (c) “Brand-name or equal” descriptions, and other purchase descriptions that permit prospective contractors to offer products other than those specifically referenced by brand name, provide for full and open competition and do not require justifications and approvals to support their use.

§ 335.20 Circumstances Permitting Other than Full and Open Competition

Competition must be sought for any open market purchase expected to exceed the competition threshold (**see:** § 325.15.10) except when:

- (a) public exigency requires the immediate delivery of the products or performance of the services due to unusual and compelling urgency. A PE written concurrence is required in order to use this exception;
- (b) the CO certifies that only one responsible source of supply is available and no other products or services will satisfy judiciary requirements;

- (c) the services are required to be performed by the contractor in person and are:
 - (1) of a technical and professional nature (**see:** Guide, Vol. 14, § 520 (Experts and Consultants)) or
 - (2) under the judiciary supervision and paid for on a time basis (**see:** Guide, Vol. 14, § 510 (Personal Services)); or
- (d) an unsolicited offer acceptably meets the criteria in § 340.60.

Note: The exceptions of (b), (c) and (d) above are subject to the delegation authority of the purchasing office's official, as identified in Guide, Vol. 14, § 120.20.10(b). Above the delegation authority, PMD's written concurrence is required.

§ 335.30 Justification for Other Than Full and Open Competition

§ 335.30.10 In General

- (a) The CO must not award any contract for which competition is required without providing for full and open competition unless the CO justifies it in writing, and receives the required written approval from the purchasing office's official, as identified in Guide, Vol. 14, § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials), or, in the AO, the PE. **See also:** § 310.50.33, which explains that sole source is generally not appropriate for GSA schedule orders for services, and § 310.50.63, which explains that "brand name" specifications are considered sole source and must be supported by a sole source justification.
- (b) This requirement applies whether the purchase is made under GSA schedule, where the GSA's competition threshold applies (for definition, **see:** § 310.50.43(a)), or as an open market purchase where the judiciary competition threshold of \$10,000 (\$25,000 for training products and services) applies.

§ 335.30.20 Required Elements of Justification

At a minimum, each justification must include the following information:

- (a) identification of the judiciary organization preparing the document and specific identification of the document as a "Justification for Other Than Full and Open Competition";
- (b) the nature or description of the proposed procurement;
- (c) a description of the requirement, including estimated value and/or cost;

- (d) a specific citation to the circumstance(s) which provides justification for the use of other than full and open competition (**see:** § 335.20);
- (e) an explanation of the unique nature of the procurement or other factors that qualify the requirement for the use of other than full and open competition;
- (f) an explanation of the proposed contractor's unique qualifications or other factors that qualify the proposed contractor for the procurement;
- (g) any available information which would support a determination by the CO that the proposed costs to the judiciary will be fair and reasonable;
- (h) a description of the market survey conducted and the results (or a statement of the reasons why a market survey was not conducted), and a list of the potential sources contacted by the CO or which expressed, in writing, an interest in the procurement; and
- (i) any other pertinent facts or reasons supporting the use of other than full and open competition.

§ 335.40 Award Procedures

§ 335.40.10 In General

The same procedures are used as those required for award with discussions (**see:** § 330.53), except:

- (a) the restrictions on conduct of discussions do not apply;
- (b) a best and final offer may be sought, but is not required; and
- (c) contractor selection will normally have been justified and documented in the Justification for Other Than Full and Open Competition (Form AO 370).

§ 335.40.20 Pricing Considerations

Particular attention must be given to pricing in a noncompetitive purchase. Cost analysis may be required in addition to price analysis. **See:** § 345.40 and § 345.50. Price negotiations must be fully documented, and the CO must make a written determination of price reasonableness, fully explaining the basis for the determination.

§ 335.40.30 Publication Not Required

There is no requirement to publicize a solicitation for a procurement made using other than full and open competition.

§ 335.40.40 Responsibility Determination

The CO must make a responsibility determination (**see:** § 320.20) before awarding a contract using other than full and open competition procedures in the same manner as for competitive awards.

§ 335.40.50 Clauses and Provisions

The clauses and provisions listed at § 330.10.30 apply equally to noncompetitive solicitations and contracts.

§ 340 Unsolicited Offers

§ 340.10 Definition

Unsolicited offers allow unique and innovative ideas or approaches that have been developed outside the government to be made available to the judiciary for use in accomplishing its mission. Unsolicited offers are initiated by a potential contractor with the intent that the judiciary will enter into a contract with the offeror for efforts supporting the judiciary mission. They often represent a substantial investment of time and effort by the offeror.

§ 340.10.10 Exclusions

Unsolicited offers are not advertising material, commercial item offers, contributions (for definition, **see:** Glossary), or routine correspondence on technical issues.

§ 340.10.20 Requirement for Valid Offer

A valid unsolicited offer must:

- (a) be innovative and unique;
- (b) be independently originated and developed by the offeror;
- (c) be prepared without judiciary supervision, endorsement, direction, or direct judiciary involvement;
- (d) include sufficient detail to permit a determination that judiciary support could be worthwhile and the proposed work could benefit the judiciary's mission responsibilities; and
- (e) not be an advance offer for a known judiciary requirement that can be acquired by competitive methods.

Note: Unsolicited offers in response to a publicized general statement of judiciary needs are considered to be independently originated.

§ 340.20 Judiciary Points of Contact

§ 340.20.10 In General

Only the CO has the authority to bind the judiciary regarding unsolicited offers. The CO will be the primary point of contact to receive any unsolicited offers and to manage the evaluation process.

§ 340.20.20 Preliminary Contact

Preliminary contact with a judiciary CO before preparing a detailed unsolicited offer or submitting proprietary information to the judiciary may save considerable time and effort for both parties. The CO will provide information about the preliminary contact to the applicable judiciary program or other appropriate judiciary personnel. The CO will make available to potential offerors of unsolicited offers at least the following information:

- (a) procedures for submission and evaluation of unsolicited offers; and
- (b) instructions for identifying and marking proprietary information so that it is protected.

§ 340.30 Content of Unsolicited Offers

Unsolicited offers **must** contain the following information to permit consideration in an objective and timely manner:

§ 340.30 Content of Unsolicited Offers	
Information Type	Contents
(a) Basic	<ul style="list-style-type: none"> (1) offeror’s name, address and type of organization (e.g., profit, nonprofit, educational); (2) names and telephone numbers of technical and business personnel to be contacted for evaluation or negotiation purposes; (3) identification of proprietary data to be used only for evaluation purposes; (4) names of other federal, state or local agencies or parties receiving the offer or funding the proposed effort; (5) date of submission; and (6) signature of a person authorized to represent and contractually obligate the offeror.

§ 340.30 Content of Unsolicited Offers	
Information Type	Contents
(b) Technical	<p>(1) concise title and abstract of the proposed effort (approximately 200 words);</p> <p>(2) a reasonably complete discussion stating:</p> <ul style="list-style-type: none"> • the objectives of the effort or activity, • the method or approach, • extent of effort to be employed, • the nature and extent of the anticipated results, and • the manner in which the work will help to support accomplishment of the judiciary’s mission; <p>(3) names and biographical information on the offeror’s key personnel who would be involved, including alternates; and</p> <p>(4) type of support needed from the judiciary (e.g., facilities, equipment, materials, or personnel resources).</p>
(c) Supporting	<p>(1) proposed price or total estimated cost for the effort in sufficient detail for meaningful evaluation;</p> <p>(2) period of time for which the offer is valid (a six-month minimum is suggested);</p> <p>(3) type of contract preferred;</p> <p>(4) proposed duration of effort;</p> <p>(5) brief description of the offeror’s organization, previous experience, relevant past performance, and facilities to be used;</p> <p>(6) other statements, if applicable, about organizational conflicts of interest, security clearance requirements, and environmental impacts; and</p> <p>(7) the names and telephone numbers of judiciary personnel already contacted regarding the offer.</p>

§ 340.40 Receipt and Initial Review

§ 340.40.10 Initial Review

Before initiating a comprehensive evaluation, the judiciary contact point will determine if the offer:

- (a) is a valid unsolicited offer, meeting the requirements of § 340.10.20;

- (b) is suitable for submission in response to an existing judiciary requirement;
- (c) is related to the judiciary's mission;
- (d) contains sufficient technical and cost information for evaluation;
- (e) has been approved in writing by a responsible official or other representative, who is authorized to bind the offeror contractually; and
- (f) complies with the marking requirements of § 340.80.

§ 340.40.20 Acknowledgment of Receipt

If the offer meets these requirements, the contact point must promptly acknowledge receipt of the offer including a copy to the appropriate judiciary CO, and process the offer.

§ 340.40.30 Rejection

If an unsolicited offer is rejected, the judiciary contact point will promptly return the unsolicited offer and inform the offeror, in writing, of the rejection and the reasons for rejection, with a copy to the appropriate judiciary CO.

§ 340.50 Evaluation

§ 340.50.10 In General

Comprehensive evaluations must be coordinated by the judiciary contact point, who will attach or imprint on each unsolicited offer, circulated for evaluation, the legend required by § 340.80.40.

§ 340.50.20 Evaluation Factors

When performing a comprehensive evaluation of an unsolicited offer, evaluators must consider the following factors, in addition to any other factors appropriate for the particular offer:

- (a) unique, innovative, and meritorious methods, approaches, or concepts demonstrated by the offer;
- (b) potential contribution of the effort to the judiciary's specific mission;
- (c) the offeror's capabilities, related experience, facilities, techniques, or unique combinations of these that are integral factors for achieving the offer objectives;

- (d) the qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel critical to achieving the offer objectives; and
- (e) the realism of the proposed cost/price.

§ 340.50.30 Notification

The evaluators must notify the judiciary point of contact of their recommendations when the evaluation is completed.

§ 340.60 Criteria for Acceptance and Negotiation of an Unsolicited Offer

§ 340.60.10 In General

A favorable comprehensive evaluation of an unsolicited offer does not, in itself, justify awarding a contract without providing for full and open competition. The judiciary point of contact must reject and return an unsolicited offer to the offeror, citing reasons, when its substance:

- (a) is available to the judiciary without restriction from another source;
- (b) closely resembles a pending competitive procurement requirement;
- (c) does not relate to the judiciary's mission;
- (d) does not demonstrate an innovative and unique method, approach, or concept; or
- (e) is otherwise not deemed a meritorious offer.

§ 340.60.20 Conditions for Acceptance

The CO may commence negotiations on a sole source basis only when:

- (a) the judiciary requesting office sponsoring the procurement furnishes the necessary funds;
- (b) an unsolicited offer has received a favorable comprehensive evaluation;
- (c) a valid sole source justification has been documented and approved in writing (**see:** § 335.30); and
 - (1) the source has submitted an unsolicited offer that demonstrates a unique capability to provide the particular products or services proposed;

- (2) the unsolicited proposal offers a product, concept, or services not otherwise available to the judiciary; and
- (3) the unsolicited proposal does not resemble the substance of a pending competitive procurement.

§ 340.70 Prohibitions

§ 340.70.10 In General

Judiciary personnel will not use any data, concept, idea, or other part of an unsolicited offer as the basis, or part of the basis, for a solicitation or in negotiations with any other firm unless the offeror is notified of and agrees to the intended use. However, this prohibition does not preclude using any data, concept, idea or other part in the offer that also is available from another source without restriction.

§ 340.70.20 Non-Disclosure of Restricted Information

Judiciary personnel will not disclose restrictively marked information included in an unsolicited offer. The disclosure of such information concerning trade secrets, processes, operations, style of work, apparatus, and other matters, except as authorized by law, may result in criminal penalties under 18 U.S.C. § 1905.

§ 340.80 Limited Use of Data

§ 340.80.10 Restrictive Markings

An unsolicited offer may include data that the offeror does not want disclosed to the public for any purpose or used by the judiciary except for evaluation purposes. If the offeror wishes to restrict the data, the title page must be marked with the following legend:

Use and Disclosure of Data

This offer includes data that must not be disclosed outside the judiciary and must not be duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate this offer. However, if a contract is awarded to this offeror, as a result of, or in connection with, the submission of the data, the judiciary has the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the judiciary's right to use information contained in the offer if obtainable from another source without restriction. The data subject to this restriction are contained in sheets *[insert numbers or other identification of sheets/page numbers]*.

§ 340.80.20 Page Markings

The offeror must also mark each sheet of data it wishes to restrict with the following legend:

Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this offer.

§ 340.80.30 Use of Different Legend

The judiciary point of contact must reject and return to the offeror any unsolicited offer marked with a legend different from that provided in § 340.80.10. The return letter must state that the offer cannot be considered because it is impracticable for the judiciary to comply with the legend. It must further state that the judiciary will consider the offer, if it is resubmitted with the proper legend.

§ 340.80.40 Cover Sheet

The judiciary point of contact must place a cover sheet on the offer or clearly mark it as follows, unless the offeror clearly states in writing that no restrictions are imposed on the disclosure or use of the data contained in the offer:

Unsolicited Offer – Use of Data Limited

All personnel must exercise extreme care to ensure that (1) the information in this offer is not disclosed to an individual who has not been authorized access to such data according to the Guide, Vol. 14, § 150 (Procurement Integrity and Ethics), and (2) this offer is not duplicated, used, or disclosed in whole or in part for any purpose other than evaluation of the offer, without the written permission of the offeror. If a contract is awarded on the basis of this offer, the terms of the contract must control disclosure and use. This notice does not limit the judiciary's right to use information contained in the offer if it is obtainable from another source without restriction. This notice must not by itself be construed to impose any liability upon the judiciary's evaluation personnel for disclosure or use of data contained in this offer.

§ 340.80.50 Cover Sheet and Offeror's Restrictive Markings

Use of the cover sheet is solely a matter of handling unsolicited offers. It does not relieve an offeror of its responsibility to identify trade secrets, commercial or financial information, and privileged or confidential information to the judiciary. **See:** § 340.80.10.

§ 340.80.60 Use of Outside Evaluators

If the offer is received with the restrictive legend (**see:** § 340.80.10), the cover sheet (**see:** § 340.80.40) must also be used and written permission must be obtained from the offeror before release of the offer for evaluation by non-judiciary personnel. For additional guidance of the use of outside consultants as evaluators, **see:** Guide, Vol. 14, § 210.70.40(d) (Evaluation Panels).

§ 345 Price Negotiations

§ 345.10 Establishing Negotiation Objectives

- (a) Negotiations are generally held to reach agreement on price, profit or fee, and contract terms and conditions, whether for an initial award or for a contract modification. Before conducting negotiations, the CO must establish written negotiation objectives commensurate with the dollar value and complexity of the contract action. The process of determining negotiation objectives helps the CO judge the overall reasonableness of the offer and to negotiate a fair and reasonable price or cost. In setting the negotiation objectives, the CO must analyze the offer, and take into account any advisory reports received, and other pertinent data (such as independent cost estimates and price histories).
- (b) The scope and depth of the analysis needed to support the negotiation objectives is directly related to the dollar value, importance, and complexity of the pricing action. The pertinent issues to be negotiated must always be identified and objectives established for each issue. When the negotiation requires cost analysis, the negotiation objectives must also include:
 - the cost objectives, and
 - a profit or fee objective.

§ 345.20 Negotiation

§ 345.20.10 In General

Price negotiation does not require that agreement be reached on every element of cost. Reasonable compromises may be necessary. The recommendations of auditors and other specialists are advisory only. It may not be possible to negotiate a price that is in accord with all advisory opinions or with the CO's negotiation objectives. The CO is responsible for exercising the necessary judgment and is solely responsible for the final negotiated agreement. However, the CO must include explanatory comment in the memorandum of negotiation when advisory recommendations on pricing are not adopted.

§ 345.20.20 Cost and Contract Type Factors

The negotiation of contract type and price are related. They must be considered together with the issues of risks and uncertainty to the contractor and the judiciary. Therefore, the CO must not become preoccupied with any single element. The contract type must be balanced with the risks, cost, and profit or fee negotiated. This will achieve a total result of a price fair and reasonable to both the judiciary and the contractor. Because profit or fee, is only one of several interrelated variables, the CO must not

agree on profit or fee without concurrent agreement on cost and type of contract. **See also:** Guide, Vol. 14, § 410 (Contract Types).

§ 345.30 Detailed Pricing Information

The CO should use every means available to ascertain whether a fair and reasonable price can be determined before requesting detailed pricing information (i.e., a detailed breakdown of all elements of cost included in the proposed price such as labor, material costs, overhead, G&A, and profit). Requiring the submission of detailed pricing information leads to increased proposal preparation costs, can cause extended procurement lead time, and consumes additional judiciary and contractor resources. The CO should request only sufficient pricing information necessary to make a determination that the negotiated price is fair and reasonable.

§ 345.40 Price Analysis

§ 345.40.10 In General

Before award, the CO must select and use whatever price analysis techniques will reveal whether the judiciary is receiving a fair and reasonable price. If none of the price analysis techniques are sufficient to determine the proposed price to be fair and reasonable, the CO must conduct a cost analysis.

§ 345.40.20 Techniques

One or more of the following techniques may be used to perform price analysis:

- (a) comparison of proposed prices received in response to a competitive solicitation;
- (b) comparison of prior proposed prices and/or contract prices under judiciary or other federal agency contracts with current proposed prices for the same or similar end items in comparable quantities;
- (c) application of estimating metrics (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry;
- (d) comparison with competitive published catalogs or price lists, published market prices or commodities, similar indexes, and discount or rebate arrangements;
- (e) comparison of proposed prices with independent judiciary cost estimates;
or
- (f) ascertaining that the price is set by law or regulation.

§ 345.50 Cost Analysis

Cost analysis is normally appropriate only when there is not adequate price competition and no method of price analysis will reveal whether the judiciary is receiving a fair and reasonable price. If it is anticipated that cost analysis will be necessary, the solicitation should require that the offeror provide a complete detailed breakout of all cost elements as a part of the price proposal. **See:** Guide, Vol. 14, § 450 (Cost Analysis).

§ 345.60 Negotiation Memorandum

Following any negotiation, the CO must promptly prepare a memorandum summarizing the principal elements of the negotiation. The memo would include the negotiation objectives as discussed in § 345.10. The memo must be approved in writing by the PLO. The memorandum must be included in the procurement file and must contain at least the following information:

- (a) the purpose of the negotiation;
- (b) a description of the purchase, or modification, with identifying number;
- (c) a summary of the technical and price negotiation results;
- (d) the name, position, and organization of each person representing the offeror or the judiciary in the negotiation;
- (e) if detailed pricing information was obtained, an analysis of the various elements of cost;
- (f) a summary of the offer, any advisory report recommendations, and the reasons for any significant variances between them and the negotiated amount;
- (g) the most significant facts or considerations controlling the establishment of the negotiation objectives and the negotiated price, including an explanation of any significant differences between the two positions;
- (h) the basis for determining the profit or fee negotiation objective and the profit or fee negotiated, if applicable; and
- (i) documentation of fair and reasonable pricing.

§ 350 Judiciary Protest Procedures

§ 350.10 Policy

- (a) Any judiciary procurement organization receiving a protest must immediately forward it to PMD without taking any action.
- (b) It is the policy of the judiciary to encourage parties to seek resolution of disputes with the Administrative Office of the United States Courts (AO).
- (c) A mere disagreement with the decision of the CO does not constitute a protest. A “protest” for purposes of these procedures is a written objection by an interested party to any of the following:
 - (1) a solicitation or other request for offers for the procurement of products or services;
 - (2) an award or proposed award of a contract; and
 - (3) a cancellation of the solicitation or other request.

§ 350.20 Procedural Requirements

§ 350.20.10 Interested Parties

For purposes of filing a judiciary level protest, an interested party means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

§ 350.20.15 Election of Forum

The protestor has a choice of protest forums. However, if the same party files a protest with an external forum on the same solicitation as a pending judiciary protest, the judiciary protest will be dismissed.

§ 350.20.20 Filing a Judiciary Protest

A judiciary level protest must be filed in writing with the CO designated in the solicitation for resolution of the protest, who will promptly provide copies to the PE. It must identify the solicitation or contract protested and set forth a complete statement of the grounds for protest. A statement of intent to file a protest is not a protest.

§ 350.20.25 Protest Decision Authority

The PE is the deciding official for any judiciary level protest. In reaching a decision on the protest, the PE will confer with OGC. The decision of the PE will constitute the final decision of the judiciary.

§ 350.20.30 Time Frame for Filing a Protest

- (a) A judiciary protest must be filed not later than 10 calendar days after the basis of the protest is known, or should have been known.
- (b) Any protest based on alleged improprieties in a solicitation, which are apparent before the closing date for receipt of offers, must be filed before the closing date for receipt of offers.
- (c) The judiciary, in its discretion, may consider the merits of any protest which is not timely filed.
- (d) The office hours of the AO are 8:30 a.m. to 5:00 p.m., Eastern time. Time for filing a document expires at 5:00 p.m., Eastern time, on the last day on which such filing may be made.

§ 350.20.35 Form of Protest

A judiciary protest must include the following information:

- (a) the protester's name, address, and telephone number, including fax number and email address;
- (b) the solicitation or contract number;
- (c) identity of the contracting activity and the CO's name;
- (d) a detailed statement of all legal and factual grounds for the protest, to include a description of the alleged prejudice to the protester;
- (e) copies of relevant documents;
- (f) a request for a ruling by the judiciary;
- (g) a request for relief and the protester's suggested form of relief;
- (h) all information establishing that the protester is an interested party for the purpose of filing a protest;
- (i) all information establishing the timeliness of the protest; and
- (j) a signature by an authorized representative of the protester.

§ 350.20.40 Processing of Judiciary Protest

The CO will immediately forward the protest to PMD, including a copy of the contract, any pertinent documentation, and the CO's explanation and recommendation. The PE

will issue a written decision on the protest within 35 calendar days after the filing of the protest. The written decision will be binding on the cognizant contracting office.

§ 350.20.45 Protest Filed Before and After Award

(a) Protest Before Award

When a timely protest has been filed with the CO before award, award may not be made until the matter has been resolved, unless the CO, after consulting with the PE, and with the concurrence with OGC, determines in writing, that urgent and compelling circumstances which significantly affect the interests of the judiciary will not permit delay of the award until the protest has been resolved. When authorized to make an award before a protest is resolved, the CO must inform the protester, in writing, of the judiciary's determination to proceed with the award.

(b) Protest After Award

When a protest is filed within 10 days after award, the CO must immediately suspend performance pending resolution of the protest by the judiciary. Performance need not be suspended in those instances where the CO determines, in writing, that urgent and compelling circumstances exist or it is otherwise in the best interests of the judiciary to allow the contractor to proceed. Before making such a determination, the CO must consult with the PE, who will coordinate with OGC.

§ 350.20.50 Resolution

The PE, after conferring with OGC, will prepare a decision that is well reasoned, and that provides sufficient explanation for the basis of the decision. It must also advise the protester that the decision constitutes the final determination of the judiciary on the protested matter. A copy of the protest decision must be furnished to the protester and to the CO.