Guide to Judiciary Policy

Vol 14: Procurement

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§ 110 Overview

§ 110.10 Purpose

This volume establishes the procurement program for the federal judiciary, except as specified in § 110.20 (Scope).

§ 110.20 Scope

(a) Information contained in this volume covers only procurement policies and procedures.

(b) This volume does **not** apply to the following:

(1) Procurement of printing services. **See:** Guide, Vol 23, Ch 2 (Printing), which applies to purchases of such services from either the Government Printing Office (GPO) or from sources other than GPO.

(2) Leasing of vehicles, which generally must be accomplished through GSA's Fleet Management Program.

(3) Placement and administration of Reimbursable Work Authorizations (RWAs) with GSA. **See:** Guide, Vol 16 (Space and Facilities).

(4) Purchases made using non-appropriated funds, i.e., Attorney-Admission Funds, sometimes called "library funds" or "bench-and-bar" funds. **See:** Guide, Vol 13, Ch 12 (Attorney Admission Fees).

(c) Questions related to programmatic policies and procedures not specifically set forth in this volume should be directed to the respective AO program office. For example, questions about cost ceilings for furniture procurements should be directed to the Space and Facilities Division, AO Office of Facilities and Security, which is responsible for Guide, Vol 16 (Space and Facilities), where those policies are published.

(d) Questions related to budget and funding policies and procedures, such as whether appropriated funds may be used for a specific purchase, or the appropriate use of specific budget object codes, should be directed to the Budget Division, AO Office of Finance and Budget.

Exception: Federal public defender organizations should direct such queries to Program Budget Operations and Assessment Division, AO Office of Defender Services.

§ 110.30 Authority

Under 28 U.S.C. § 604(a)(10), the Director is the administrative officer of the courts, and under the supervision and direction of the Judicial Conference of the United States, is authorized to:

- "purchase, exchange, transfer, distribute, and assign the custody of law books, equipment, supplies, and other personal property for the judicial branch of Government (except the Supreme Court) . . . ;
- provide or make available readily to each court appropriate equipment for the interpretation of proceedings in accordance with Section 1828 of this title; and
- enter into and perform contracts and other transactions upon such terms as the Director may deem appropriate as may be necessary to the conduct of the work of the judicial branch of Government (except the Supreme Court) . . . ".

§ 110.40 Applicability

(a) This volume applies to:

- the federal judiciary, including all United States courts, and their subordinate organizations;
- the Federal Judicial Center, except for research projects and other services, including the procurement of personal services;
- the Judicial Panel on Multidistrict Litigation;
- the Foreign Intelligence Surveillance Court;
- the Federal Public Defender Organizations (FPDOs);
- the Administrative Office of the United States Courts (AO); and
- all other judiciary organizations and programs within the scope of the authority of the Director of the AO.

(b) This volume does not apply to the:

- United States Supreme Court;

- United States Sentencing Commission; or
- community defender organizations (unless specified by their grant agreement terms).

§ 110.50 Definitions

See: Glossary of Procurement Terms.

§ 110.55 Application of Dollar Thresholds

(a) Various dollar thresholds appear throughout this volume and determine applicability of requirements such as which clauses and provisions must be included, whether competition is required, advertising requirements, and whether formal contracting procedures must be followed. These dollar thresholds always apply to the original contract award, but apply to modifications only to the extent that the modification is not within the scope of the original contract.

(b) For purposes of determining whether a specific procurement is or is not in excess of any specified dollar threshold, the dollar value used must include the estimated value of all contract options which might apply to that procurement. For additional information about contract options, **see:** Guide, Vol 14, § 220.40 (Options).

§ 110.60 Uniform Contract Format

The Uniform Contract Format is required for open market solicitations and awards in excess of $100,000. This format is optional for other types of solicitations and awards. **See:** Appx 1A (Uniform Contract Format).

§ 110.70 Solicitation Provisions and Contract Clauses

For the contract provisions and clauses referenced in this volume, **see:** Appx 1B (Solicitation Provisions and Contract Clauses).

For a quick reference matrix of contract provisions and clauses referenced in this volume, providing guidance as to when specific clauses/provisions are required, whether the specific clause/provision may be incorporated by reference or not, and which section of the Uniform Contract Format should include each clause/provision, **see:** Appx 1C (Matrix of Solicitation Provisions and Clauses (Including Key)).

§ 110.80 Previous Guidance

All previous editions of the *Guide*, AO memoranda, and any other written instructions or practices are superseded by information in this volume.

§ 120 Delegation of Procurement Authority

§ 120.10 Section Overview

§ 120.10.10 Authority to Delegate

Under 28 U.S.C. § 602(d), the Director of the AO may delegate any of the Director's functions, powers, duties, and authority (except the authority to promulgate rules and regulations) to such officers and employees of the judicial branch of government as the Director may designate, subject to such terms and conditions as the Director may consider appropriate. The Director may authorize the successive redelegation of such functions, powers, duties, and authority as the Director may deem desirable. All official acts performed by such officers and employees shall have the same force and effect as though performed by the Director in person.

§ 120.10.20 Conditions of Delegations

All delegations and authorities related to judiciary procurement are given by the Director conditional on adherence to the limitations and guidelines set forth in the *Guide*.

§ 120.20 Authorized Delegations

§ 120.20.10 The Director

(a) Delegation to the Procurement Executive

The Director has delegated unlimited judiciary procurement authority, within the applicable statutory requirements, to the Chief of the Procurement Management Division (PMD), as the judiciary's Procurement Executive. This delegation includes the responsibility for publishing and maintaining judiciary-wide procurement policies, manuals, procedures, etc., and conducting judiciary procurement program reviews.

(b) Delegation to Chief Judges and Federal Public Defenders

The Director has delegated authority to chief judges and federal public defenders (FPDs) up to the limits described in Levels 1, 2 and 3 of the Contracting Officers Certification Program (COCP) to procure products

and services within the provisions of the *Guide*, Procurement Manuals, and Procurement Bulletins. This authority may be redelegated in accordance with this chapter of the *Guide*. **See also:** § 140 (Contracting Officers Certification Program).

This general delegation to chief judges and federal public defenders does **not** include any of the following actions, which must be forwarded to the Procurement Executive (PE) for coordination and response:

- responses to protests at any level;
- decisions on disputes arising out of, or pertaining to, procurement actions; or
- ratifications of unauthorized procurement actions above delegated limits. **See also:** § 160 (Ratification).

(c) **See also:**

- Authority to Delegate (§ 120.10.10)
- Delegation to Chief Judges and Federal Public Defenders (§ 120.20.10(b))
- Procurement Executive (§ 120.20.30)
- Procurement Oversight (§ 130.30)
- Procurement Liaison Officers (§ 130.40)
- Contracting Officers (§ 130.50)
- Contracting Officers Certification Program (§ 140)

§ 120.20.20 [Reserved]

§ 120.20.30 Procurement Executive

The PE is authorized to redelegate any level of COCP procurement authority to AO personnel who possess the applicable qualifications. The PE, or the PE delegatee, may also provide one-time delegations of procurement authority to court unit contracting officers when required for a specific situation not otherwise in that unit's authority, and may take other actions as set forth in this chapter of the *Guide*, Procurement Manuals, and Procurement Bulletins. **See also:** § 140 (Contracting Officers Certification Program).

§ 120.20.40 Chief Judges and Federal Public Defenders

Chief judges and federal public defenders are authorized to redelegate oversight and procurement authority to a Procurement Liaison Officer (PLO) within their court unit, in

compliance with the limitations specified in the COCP, with the PLO having authority to redelegate procurement authority to contracting officers (COs).

§ 120.20.45 Contracting Officers

Contracts may be entered into and signed on behalf of the judiciary only by contracting officers, appointed in accordance with the requirements of the Contracting Officers Certification Program (COCP) as described in this chapter of the *Guide*. In addition, contracting officers may bind the judiciary only to the extent of the authority delegated to them. Contracting officers must ensure that all requirements of law, judiciary policy and regulations, including required approvals, are met when entering into contracts. Information on the limits of an individual contracting officer's authority must be provided upon request.

§ 120.20.50 Procurement Authority under Exceptional Circumstances

A court unit or FPDO may encounter a procurement which is outside any aspect of its delegated authority and certification level (described in § 140 (Contracting Officers Certification Program)). Also, a court unit or FPDO may be in a situation whereby the only CO is no longer available due to prolonged absence, resignation, etc., and a new CO has not yet been assigned or certified as eligible for appointment. The following possible solutions are available:

(a) If the procurement is outside the delegated authority a one-time delegation of authority may be requested from the PE to conduct and complete the procurement. A one-time delegation may contain conditions relating to the review of the procurement, or other aspects of the procurement.

(b) The court unit or FPDO may request that another court unit's CO with the proper certification conduct the procurement.

(c) The PLO may conditionally appoint a procurement officer for a restricted term (not to exceed one (1) year) until all certification training requirements for appointment as a CO can be completed.

(d) The PLO may request assistance from PMD for the procurement.

See also: § 140.15 (Certification Level Overview).

§ 120.20.60 Cancellations, Suspensions, and Limitations on Procurement Authority

(a) General

The Director reserves the right to cancel, suspend, or limit delegations of procurement authority.

(b) Authority to Cancel, Suspend, or Limit Procurement Authority

Delegations of procurement authority may be canceled, suspended, or further limited by the person making the delegation — PLO, the chief judge, the federal public defender, or the PE. No cancellation or suspension of procurement authority may operate retroactively so as to invalidate contracts which were otherwise valid at the time of award.

(c) When Delegations Must be Re-Issued

The general delegation of authority from the Director to chief judges, FPDs, and the FJC Director is delegated to the position and is not required to be re-issued by the Director upon appointment of a new chief judge or FPD or a new FJC Director.

A delegation of PLO authority by a chief judge or FPD is not required to be re-issued upon appointment of a new chief judge or FPD unless a different person is being appointed as PLO.

The appointment of a new PE or PLO automatically voids the CO delegation(s) made by the prior PE or PLO. The new PE or PLO must issue new CO delegation(s). In situations where a PLO has also been appointed as a COCP contracting officer at any level, although the PLO delegation may not be required to be re-issued, the contracting officer delegation is automatically voided by appointment of a new chief judge or FPD and must be re-issued for the individual to continue to act as a contracting officer.

§ 120.30 Types of Delegation

§ 120.30.10 General Delegation

The Director, or his delegatee, has made a general delegation of procurement authority, subject to conditions and limitations contained in the delegation.

§ 120.30.20 Specific Delegation

The Director has made specific delegations for special delegated procurement programs, which include conditions and limitations for each of the programs. Specific delegations generally exceed the dollar limitations of the general delegation and have specific procedures which must be followed. **See also:** § 120.40 (Delegation of Procurement Authority Under Special Delegated Procurement Programs).

§ 120.30.30 One-Time Delegation

Occasionally, there may be a need to exceed the general or special delegations, or to waive a specific limitation and/or condition. The PLO must forward any such requests in writing to the PE. Requests will be considered based on the situation and the best interest of the judiciary on a case-by-case basis.

§ 120.30.40 Documentation of Authorized Delegations and Redelegations

All delegations and redelegations of procurement authority must be documented and must:

(a) Be current – Form AO 374 (Delegation of Procurement Liaison Officer) or Form AO 375 (Procurement Liaison Officer's Appointment of Contracting Officer);

(b) Specify any restrictions to the types of products or services the individual may purchase which are in addition to the limits of the COCP level for which the individual is appointed; and

(c) Specify the dollar limitation of those purchases, if less than the applicable COCP level to which the individual is appointed.

§ 120.40 Delegation of Procurement Authority Under Special Delegated Procurement Programs

§ 120.40.10 Purpose

This section identifies the applicable specific statutory authority, if any, and establishes the policies and procedures required under each of the special delegated procurement programs. **See also:** § 140.25 (Level 2 Certification: Special Delegated Procurement Programs).

§ 120.40.15 AO Office with Primary Program Responsibility

The table below defines the AO office with primary programmatic responsibility of each special delegated procurement program.

§ 120.40.15 AO Office with Primary Program Responsibility	
Program	**Responsibility**
Copy Center Services	Assistant Director, Office of Court Administration
Court Interpreter Services	Assistant Director, Office of Court Administration
Court Reporting Services	Assistant Director, Office of Court Administration
Law Books	Assistant Director, Office of Court Administration
Residential Halfway House Services	Assistant Director, Office of Probation and Pretrial Services
Treatment Services	Assistant Director, Office of Probation and Pretrial Services
GSA Building Delegations	Assistant Director, Office of Facilities and Security
FPDO Case-Related Expert or Consultant Services	Assistant Director, Office of Defender Services

§ 120.40.20 Level 2 Certification Requirement and Duties

After completion of COCP Level 2 training, the PLO will issue a written COCP Level 2 certification to individuals in court units with procurement responsibilities of any special delegated procurement program. The certification will identify which of the special delegation programs the individual has been delegated authority. **See also:** § 140.25 (Level 2 Certification: Special Delegated Procurement Programs).

§ 120.40.25 Copy Center Services

(a) Delegation of Authority

The Director has delegated unlimited procurement authority to chief judges for redelegation to PLOs, with authority to redelegate to COs, to execute copy center licensing agreements, subject to the requirements for this procurement program.

(b) Limitations of Delegation

License Agreements for copy center services may be awarded only according to the procurement manual, Copy Center License Agreements.

(c) Training Requirements

This COCP Level 2 authority may be exercised only after completing PMD's Judiciary Basic Procurement Seminar.

See also: § 140.25 (Level 2 Certification: Special Delegated Procurement Programs).

§ 120.40.30 Court Interpreter Services

(a) Authority

Under 28 U.S.C. § 1827, the Court Interpreters Act requires the Director of the AO to "establish a program to facilitate the use of certified and otherwise qualified interpreters in judicial proceedings instituted by the United States."

(b) Delegation of Authority

The Director has delegated unlimited procurement authority to chief judges for redelegation to PLOs, who may redelegate to COs, subject to the requirements for this procurement program.

(c) Limitations of Delegation

Agreements for court interpreter services may be awarded only according to the procurement manual, Instructions and Procedures for Locating and Procuring Contract Court Interpreter Services.

(d) Training Requirements

This COCP Level 2 authority may be exercised only after completing PMD's Judiciary Basic Procurement Seminar and any corresponding specialized training programs offered by the responsible program office.

See also: § 140.25 (Level 2 Certification: Special Delegated Procurement Programs).

§ 120.40.35 Court Reporting Services

(a) Authority

Under 28 U.S.C. § 753(g), if the circuit judicial council determines that the number of court reporters provided to a court is insufficient to meet temporary demands, additional court reporters may be provided on a contract basis. "[T]he Director of the Administrative Office is authorized to and shall contract, without regard to § 3709 of the Revised Statutes of the United States, as amended (41 U.S.C. § 6101), with any suitable person, firm, association, or corporation for the providing of court reporters to serve such district court under such terms and conditions as the Director of the Administrative Office finds . . . after consultation with the chief judge of the district court . . . will best serve the needs of such district court." **Note:** For these purposes, bankruptcy courts are part of the district courts.

(b) Delegation of Authority

The Director has delegated unlimited procurement authority to chief judges for redelegation to PLOs, for redelegation to COs, to execute agreements for court reporting services, subject to the requirements for this procurement program.

(c) Limitations of Delegation

Agreements for court reporting services may be awarded only according to the procurement manual, Procurement Procedures for Court Reporting Services.

(d) Training Requirements

This COCP Level 2 authority may be exercised only after completing PMD's Judiciary Basic Procurement Seminar and any corresponding specialized training programs offered by the responsible program office.

See also: § 140.25 (Level 2 Certification: Special Delegated Procurement Programs).

§ 120.40.40 Law Books

(a) Authority

Under 28 U.S.C. § 604(a)(10), the Director is the administrative officer of the courts, and under the supervision and direction of the Judicial Conference of the United States, is authorized to ". . . purchase, exchange, transfer, distribute, and assign the custody of law books . . . for the judicial branch of Government (except the Supreme Court) . . . ;"

(b) Delegation of Authority

The Director has delegated procurement authority for legal research materials to chief judges, United States courts of appeals, for redelegation to circuit librarians as follows:

- up to $100,000 per transaction for the open market and sole source purchase of legal research materials;
- unlimited authority when purchasing against established contracts.

(c) Limitations of Delegation

This delegation is to purchase legal research materials within the funding provided. Approval by the Chief, Appellate Court and Circuit Administration Division (ACCAD) is required for the purchase of online resources in excess of $25,000 and for the purchase of printed materials in excess of $100,000 against established contracts. Open market or sole source purchases in excess of $100,000 require both approval by ACCAD and a one-time delegation of procurement authority under § 120.30.30 (One-Time Delegation). **See also:** Guide, Vol 21 (Legal Research Materials).

(d) Training Requirements

This COCP Level 2 authority may be exercised only after completing PMD's Judiciary Basic Procurement Seminar.

See also: § 140.25 (Level 2 Certification: Special Delegated Procurement Programs).

§ 120.40.45 Residential Halfway House Services

(a) Authority

Under 18 U.S.C. § 3152(a), the Director shall provide, by contract or otherwise, for the establishment of pretrial services in each judicial district, including the "operation of appropriate facilities for the custody or care of persons released under this chapter including residential halfway houses, addict and alcoholic treatment centers, and counseling services . . .". 18 U.S.C. § 3154(4).

(b) Delegation of Authority

The Director has delegated unlimited procurement authority to chief judges, United States district courts, for redelegation to PLOs, who may redelegate to COs, subject to the requirements for this procurement program.

(c) Limitations of Delegation

Agreements for residential halfway house services may be awarded only according to the procurement manual, Halfway House Services.

(d) Training Requirements

The COCP Level 2 authority may be exercised only after completing the specialized training provided by the AO Office of Probation and Pretrial Services (OPPS) and PMD's Judiciary Basic Procurement Seminar.

See also: § 140.25 (Level 2 Certification: Special Delegated Procurement Programs).

§ 120.40.50 Treatment Services

(a) Authority

Under 18 U.S.C. § 3672, the Director has "the authority to contract with any appropriate public or private agency or person for the detection of and care in the community of an offender who is an alcohol-dependent person, an addict or a drug-dependent person, or a person suffering from a psychiatric disorder within the meaning of § 2 of the Public Health Service Act. This authority shall include the authority to provide equipment and supplies; testing; medical, educational, social, psychological and vocational services; corrective and preventative guidance and training;

and other rehabilitative services designed to protect the public and benefit the alcohol-dependent person, addict or drug-dependent person, or a person suffering from a psychiatric disorder by eliminating his dependence on alcohol or addicting drugs, by controlling his dependence and his susceptibility to addiction, or by treating his psychiatric disorder. He may negotiate and award [such] contracts . . . without regard to § 3709 of the Revised Statutes of the United States." (**See:** 41 U.S.C. § 6101).

(b) Delegation of Authority

The Director has delegated unlimited procurement authority to chief judges, United States district courts, with authority to redelegate to PLOs, who may redelegate to COs, subject to the requirements for this procurement program.

(c) Limitations of Delegation

Agreements for treatment services may be awarded only according to the procurement manual, Procurement Procedures for Treatment Services.

(d) Training Requirements

The COCP Level 2 authority may be exercised only after completing the specialized training provided by OPPS and PMD's Judiciary Basic Procurement Seminar.

See also: § 140.25 (Level 2 Certification: Special Delegated Procurement Programs).

§ 120.40.55 GSA Building Delegations

(a) Delegation of Authority

Under 40 U.S.C. § 121(d), the Administrator of General Services may delegate authority to another "department or agency" to operate, maintain or repair a building or facility owned by the General Services Administration (GSA). Such building delegations are to the Director for a specific court and a specific courthouse. Upon receipt of such a building delegation from GSA, the Director issues a delegation of procurement authority to the chief judge consistent with the GSA Administrator's stated limitations, with authority for the chief judge to redelegate to PLOs, who may redelegate to COs.

(b) Limitations of Delegation

(1) The court unit CO must follow the guidance of GSA, the Federal Acquisition Regulation (FAR) and the GSA Regulations (GSAR).

(2) Contracts may be awarded only after obtaining the building delegation from GSA. Procurement authority is limited to the types of work and dollar levels identified in the GSA building delegation agreement.

(c) Training Requirements

This COCP Level 2 authority may be exercised only after completing PMD's Judiciary Basic Procurement Seminar and any training specified in the GSA building delegation.

See also: § 140.25 (Level 2 Certification: Special Delegated Procurement Programs).

§ 120.40.60 FPDO Case-Related Expert or Consultant Services

(a) Delegation of Authority

The Director has delegated to FPDs procurement authority to obtain case-related expert or consultant services under 5 U.S.C. § 3109 up to $100,000 with authority to redelegate to COs subject to the requirements for this procurement program.

(b) Limitations of Delegation

COs must follow the Instructions and Procedures for Procuring Case-Related Expert or Consultant Services under 5 U.S.C. § 3109 when awarding contracts for case-related expert or consultant services under 5 U.S.C. § 3109. Contracts in excess of $100,000 must be submitted to PMD, with ODS coordination, for approval.

(c) Training Requirements

This COCP Level 2 authority may be exercised only after completing PMD's COCP Level 3 training requirements. **See also:** § 140.30.50 (Training Requirements); § 140.30 (Level 3 Certification: General Delegation).

§ 130 Procurement

§ 130.10 Section Overview

§ 130.10.10 Policy and Procedure Documentation

All procurement policies, procedures, guidance, and statutes applicable to the judiciary are contained in this chapter of the *Guide* and the following:

(a) Procurement Manuals

Documents that contain "how-to" information on specific procurement related topics, and provide "shell" documents for contracts, purchase orders, delivery orders, and task orders that may be used by judiciary procurement personnel.

(b) Procurement Bulletins

Methods for transmitting breaking procurement news. They are issued on an as-needed basis in response to procurement-related questions or issues that apply to a broad audience.

§ 130.20 Procurement Statutes

§ 130.20.10 General

Statutes related to Special Delegated Procurement Programs are set forth with each program's description. **See:** § 120.40 (Delegation of Procurement Authority Under Special Delegated Procurement Programs). This section describes additional statutes which are applicable to judiciary procurement. In addition to the statutes described below, PLOs and court unit COs should be aware of applicable appropriations law principles. **See also:** Guide, Vol 13, § 260 (Appropriations Law Principles).

§ 130.20.15 Advertising Requirements

Under 41 U.S.C. § 6101, unless otherwise provided in the appropriation concerned or other law, purchases and contracts for supplies or services for the government may be made or entered into only after advertising for a sufficient time previously for proposals, except when:

(a) the amount involved in any one case does not exceed $25,000;

(b) the public exigencies require the immediate delivery of the articles or performance of the service;

(c) only one source of supply is available as certified by the government purchasing or CO; or

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

- of a technical and professional nature, or
- under government supervision and paid for on a time basis.

See also: Guide, Vol 14, § 315 (Publicizing Open Market Procurement Actions).

§ 130.20.20 Appropriations

(a) Adequate Appropriations Required

Under 41 U.S.C. § 6301, no contract or purchase on behalf of the United States shall be made, unless the same is authorized by law or is under an appropriation adequate to its fulfillment.

(b) Advance Payments

Under 31 U.S.C. § 3324, a payment under a contract to provide a service or deliver an article for the United States government may not be more than the value of the service already provided or the article already delivered, unless a specific appropriation or other law authorizes an advance payment. Limited exceptions exist for commercial contracts. **See also:** 28 U.S.C. 604(g)(4)(C); Guide, Vol 14, Ch 2 (Procurement Planning and Preparations) and Ch 7 (Contract Administration).

(c) Obligations Prior to Available Appropriations and Expenditures in Excess of Appropriations

Under 31 U.S.C. § 1341, unless authorized by law, the Anti-Deficiency Act prohibits officers or employees of the United States government from:

- involving the government in contracts or obligations for the payment of money before an appropriation is made, and

- making or authorizing expenditures or obligations exceeding an amount available in an appropriation or fund for the expenditures or obligations.

Violations may result in civil or criminal penalties.

§ 130.20.25 Authorization for Contracting and Delegating

(a) Authority to Contract

The Director of the AO is authorized to "enter into and perform contracts and other transactions upon such terms as the Director may deem appropriate, as may be necessary to the conduct of the work of the judicial branch of Government . . .". 28 U.S.C. § 604(a)(10).

(b) Authority to Delegate

The Director of the AO "may delegate any of the Director's functions, powers, duties, and authority (except the authority to promulgate rules and regulations) to such officers and employees of the judicial branch of Government as the Director may designate, and subject to such terms and conditions as the Director may consider appropriate; and may authorize the successive redelegation of such functions, powers, duties, and authority as the Director may deem desirable. All official acts performed by such officers and employees shall have the same force and effect as though performed by the Director in person." 28 U.S.C. § 602(d).

§ 130.20.30 Economy Act Procurements

Under 31 U.S.C. § 1535, the Economy Act authorizes federal agencies to enter into mutual agreements to obtain products or services by inter-agency procurement. An agency head may approve the placing of an order with another federal agency for products or services if:

- amounts are available,
- the head of the ordering agency or unit decides the order is in the best interest of the United States government,
- the agency or unit to fill the order is able to provide or obtain by contract the ordered products or services, and
- the agency head decides ordered products or services cannot be provided by contract as conveniently or as cheaply by a commercial enterprise.

See also: Guide, Vol 14, Ch 5 (Special Categories of Procurements).

§ 130.20.35 Procurement Integrity Act

The Procurement Integrity Act, 41 U.S.C. § 2101, *et seq.*, imposes certain restrictions and statutory penalties relative to obtaining/disclosing vendor data as well as restrictions on certain employees engaging in employment contacts with and/or accepting compensation from contractors after leaving judiciary employment.

See also: § 150 (Procurement Integrity and Ethics).

§ 130.20.40 Priorities in Obtaining Vending Services

The Randolph-Sheppard Act, 20 U.S.C. § 107, *et. seq*., requires that federal agencies give priority for the operation of vending facilities, including food, beverages or other articles or services, such as coin-operated copy machines, to people who are blind.

See also: Guide, Vol 14, § 310.30 (Randolph-Sheppard Act).

§ 130.20.45 Purchases From Workshops That Employ Blind or Disabled People

The Javits-Wagner-O'Day Act, 41 U.S.C. §§ 8501-8506, requires that federal agencies purchase certain products and services from qualified workshops that employ people who are blind or severely disabled. The Committee for Purchase from People Who are Blind or Severely Disabled administers the Ability One program and determines what products and services are covered and their prices.

See also: Guide, Vol 14, § 310.20 (Workshop for People Who are Blind or Severely Disabled).

§ 130.20.50 Procurement of Certain Professional Services

(a) Procurement of Architect-Engineer Services

The Brooks Act, 40 U.S.C. §§ 1101-1104, requires that the government publicly announce all requirements for architect-engineer services and negotiate contracts for these services based on the demonstrated competence and qualifications of prospective contractors to perform the services at fair and reasonable prices. **See also:** Guide, Vol 14, Ch 5 (Special Categories of Procurements).

(b) Procurement of Experts and Consultants

Under 5 U.S.C. § 3109, when authorized by an appropriation or another statute, agency heads may procure by contract the temporary (not in excess of one (1) year) or intermittent services of experts, consultants, or organizations. **See also:** Guide, Vol 14, Ch 5 (Special Categories of Procurements).

§ 130.20.55 Labor Statutes Governing Contractor Wages and Benefits

(a) Service Contract Employee Wages and Benefits

The Service Contract Act, 41 U.S.C. § 6701, *et seq*., requires that federal contracts in excess of $2,500, which are principally for services furnished by service employees, include a clause specifying minimum monetary wages and fringe benefits, as determined by the Secretary of Labor based on prevailing wages in the specific locality, required to be paid to service employees performing the contract.

See also: Guide, Vol 14, § 325.25 (Purchase of Services).

(b) Construction Contract Employee Minimum Wages and Benefits

The Davis-Bacon Act, 40 U.S.C. § 3142, requires that federal contracts for construction, alteration or repair of public buildings in excess of $2,000 include a clause specifying minimum wages, as determined by the Secretary of Labor based on prevailing wages in the specific locality on similar projects, required to be paid to various classes of laborers and mechanics.

(c) Supply Contract Employee Minimum Wages and Benefits

The Walsh-Healey Public Contracts Act, 41 U.S.C. § 6501, *et seq.*, requires that all federal contracts in excess of $15,000 for the manufacture or furnishing of materials, supplies, articles and equipment, include or incorporate by reference the Act's stipulations pertaining to such matters as minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions.

§ 130.20.60 Energy Efficiency

The Energy Policy Act of 2005, 42 U.S.C. § 8259b, imposes requirements on the purchase of energy consuming products to promote energy efficiency.

See also: Guide, Vol 14, § 220.60 (Energy and Environmental Considerations).

§ 130.20.65 Funding Severable Services Across Fiscal Years

Under 28 U.S.C. § 604(g)(4)(A), the judiciary may obligate funds of the current fiscal year for a severable services contract where performance begins in the current fiscal year and extends through a period of not more than 12 months.

See also: Guide, Vol 14, § 220.50.60 (Contracts Crossing Fiscal Years).

§ 130.20.70 Multi-Year Contracts

Under 28 U.S.C. § 604(g)(4)(B), the judiciary may obligate funds of the current fiscal year to fully fund a multi-year contract of more than one (1) but not more than five (5) years.

See also: Guide, Vol 14, § 410.75 (Multi-Year Contracts).

§ 130.20.75 Judiciary Information Technology Fund

Under 28 U.S.C. § 612, a fund was established for the judiciary ". . . without fiscal year limitation for the procurement (by lease, purchase, exchange, transfer, or otherwise) of information technology resources for program activities . . . [as well as] expenses, including personal services, support personnel in the courts and in the Administrative Office of the United States Courts, and other costs, for the effective management, coordination, operation, and use of information technology resources . . .".

See also: Guide, Vol 14, § 510 (Personal Services Contracts).

§ 130.30 Procurement Oversight

§ 130.30.10 Policy

Oversight involves administering and managing the procurement program.

(a) The Director

The Director delegates procurement oversight responsibility to the chief judges and federal public defenders through this chapter.

(b) Chief Judges and Federal Public Defenders

The chief judge or federal public defender may redelegate oversight responsibility for procurements conducted under their authority to a PLO in each court unit or federal public defender organization (FPDO).

(c) Procurement Liaison Officers

A PLO may not redelegate oversight responsibilities.

(d) Required Documentation

The redelegation of oversight responsibility from the chief judge or federal public defender to a PLO is effected using the Form AO 374 (Delegation of Procurement Liaison Officer).

§ 130.30.20 Procurement Liaison Officer Oversight Responsibilities

Individuals appointed as PLOs have oversight responsibility for administering and managing the procurement program throughout their specific court unit or FPDO. This includes complying with this chapter of the *Guide*, Procurement Manuals, and Procurement Bulletins. Appointment as a PLO does not, in itself, constitute authority to act as a contracting officer. **See also:** § 120.20.45 (Contracting Officers); § 140.15.30 (Appointment Process for PLOs and COs (Levels 1-3)); § 130.40 (Procurement Liaison Officers).

§ 130.30.30 [Reserved]

§ 130.30.40 Chief Judge and Federal Public Defender Oversight Responsibilities

Chief judges and federal public defenders have a leadership role in court unit or FPDO management and stewardship, including management oversight responsibilities for official funds, personnel, and property. These stewardship responsibilities extend to the procurement process.

§ 130.30.50 Court Unit Executive and Federal Public Defender Fiduciary Responsibilities

FPDs and court unit executives, whether or not they are the designated PLO with procurement oversight responsibility, are responsible for managing allotments made to the court units and FPDOs for procurement. They must provide internal controls which ensure that funds are available in current fiscal year allotments. They must also ensure that correct object classes are used for each contract awarded.

§ 130.30.60 Handbook on Management Oversight and Stewardship

The Handbook on Management Oversight and Stewardship was developed for chief judges, court unit executives, FPDs, and administrators. This handbook:

- describes key management responsibilities,
- suggests ways to exercise leadership and oversee administrative operations of the court, and

- provides a quick reference guide to court unit executives and other managers to assist chief judges and federal public defenders to carry out their stewardship responsibilities.

See also: Guide, Vol 11 (Internal Control).

§ 130.30.70 Documentation of Procurement Delegations

(a) Policy

Delegations of procurement authority by chief judges, federal public defenders, or PLOs (designations of PLOs, COs, or conditionally appointed procurement officers) must be:

- transmitted to the delegate or appointee,
- transmitted (copies) to the chief judges' or federal public defenders' administrative files, and
- entered into the Procurement Delegation System established in InfoWeb.

See also: § 140.15.30 (Appointment Process for PLOs and COs (Levels 1-3)).

(b) Maintenance of Delegation Records

Copies of procurement authority delegations must be maintained and current at all times and are subject to audit review. Procurement liaison officers should make any additions, deletions, and corrections, and insert delegated procurement level(s) for conditionally appointed procurement officers and COs. Copies of one-time delegations from the Procurement Executive must be maintained within the relevant contract file. **See also:** § 140.15 (Certification Level Overview).

§ 130.40 Procurement Liaison Officers

§ 130.40.10 Selection

Chief judges or federal public defenders should adopt a process by which individuals are selected as PLOs. Generally, chief judges designate court unit executives as PLOs.

§ 130.40.20 Appointment Documentation

Every PLO designation by a chief judge or federal public defender must be in writing using Form AO 374 (Delegation of Procurement Liaison Officer). When it is desired for a PLO to also be a contracting officer, the Form AO 375 (Procurement Liaison Officer's Appointment of Contracting Officer) must be used, modifying the form appropriately for signature by the chief judge or federal public defender. **See also:** § 130.40.40 (Training Requirements).

Note: Appointment of a PLO to any COCP level except Level 1 (purchase card) is not recommended, due to the separation of duties issues it generates.

§ 130.40.30 Responsibilities

PLO responsibilities include, but are not limited to:

(a) Redelegating procurement authority to contracting officers within the court unit, subject to limitations set forth in the Contracting Officers Certification Program (COCP), as described in this volume of the *Guide*.

(b) Procurement planning for the court unit or FPDO.

(c) Ensuring separation of duties between personnel who:

- authorize and/or fund purchases;
- award contracts (i.e., purchase orders, delivery orders, task orders, or contracts), receive, inspect and accept deliverables, and authorize payments; and
- effect payment.

See also: Guide, Vol 11 (Internal Control).

(d) Ensuring that contract files (i.e., purchase orders, delivery orders, task orders, or contracts) are established and maintained.

(e) Limiting access to contract files and related documents to authorized judiciary procurement personnel.

(f) Ensuring that procurement actions are signed by personnel with procurement authority at the appropriate COCP level.

(g) Ensuring that the contract (i.e., purchase orders, delivery orders, task orders, or contracts) is issued prior to receipt of the products or services and that receipt, inspection, and acceptance of deliverables are evident prior to payment. The mechanics of this are explained in Guide, Vol 14, Ch 7 (Contract Administration).

(h) Ensuring that funds are available for the purchase and that financial and budget guidelines are followed.

(i) Ensuring that the continuing educational requirements of the COCP are met by procurement personnel.

(j) Ensuring that the court unit's or federal public defender's procurement personnel have received the most current copy of the *Guide*, Procurement Manuals, and Procurement Bulletins, and that all procurement activities are conducted according to them.

(k) Ensuring that the Procurement Delegation System in InfoWeb is accurate and current.

(l) Overseeing procurements conducted under the court unit's or FPDO's delegated COCP levels as may be applicable under each procurement action. PLOs perform the duties described in this chapter for their respective court units and federal public defender organizations. **See also:** § 130.30.20 (Procurement Liaison Officer Oversight Responsibilities).

§ 130.40.40 Training Requirements

(a) Procurement Liaison Officers Appointed as Contracting Officers

A PLO who also serves as a contracting officer must complete the required training for the applicable COCP certification level. **See also:** § 120.20.45 (Contracting Officers); § 130.30.20 (Procurement Liaison Officer Oversight Responsibilities); § 140.55 (Training).

(b) Procurement Liaison Officers Not Appointed as Contracting Officers

Individuals designated as PLOs, but not contracting officers, must take the Judiciary Executive Procurement Oversight Seminar (desktop training). They are also encouraged to take other training referenced in the COCP.

§ 130.50 Contracting Officers

§ 130.50.10 Applicability

Any reference to COs in the *Guide*, Procurement Manuals, and Procurement Bulletins also applies to conditionally appointed procurement officers.

§ 130.50.20 Appointment

Procurement liaison officers may redelegate procurement authority to as many COs as necessary for effective operation of the court unit or FPDO. The number of delegated COs and their levels of delegated procurement authority should not exceed those levels necessary to meet court unit or federal public defender organization needs. All COs must be appointed using Form AO 375 (Procurement Liaison Officer's Appointment of Contracting Officer).

See also: § 130.30.70 (Documentation of Procurement Delegations); § 140 (Contracting Officers Certification Program).

§ 130.50.30 Assistants

COs may have other judiciary employees help them with actions which do not include signing of the contract (i.e., purchase orders, delivery orders, task orders, or contracts). Even if other employees are involved in the procurement process, the CO is responsible for the correct procurement procedures and for the procurement actions of the individuals assisting them. Only the CO has authority to sign the contract (i.e., purchase orders, delivery orders, task orders, contracts, or modifications) and bind the judiciary.

§ 130.50.40 Assistant Responsibilities

Assistant responsibilities can include, but are not limited to:

- preparing the requests for offers;
- conducting market surveys;
- requesting verbal quotes;
- evaluating quotes/offers;
- preparing the purchase orders, delivery orders, task orders, contracts, or modifications;
- checking on deliveries or acceptances; and

- checking on payment of vouchers, etc.

§ 140 Contracting Officers Certification Program

§ 140.10 Section Overview

§ 140.10.10 Purpose

The Contracting Officers Certification Program:

(a) provides judiciary procurement employees with autonomy and flexibility in their procurement activities.

(b) specifies seven (7) levels of contracting officer authority which may be delegated within court units and federal public defender organizations (FPDOs), as well as within the AO PMD staff, including authority for special delegated procurement programs (**see:** § 120.40 (Delegation of Procurement Authority Under Special Delegated Procurement Programs)).

(c) stipulates procurement authority and/or related programmatic responsibilities at specified dollar levels based on successful completion of training requirements.

(d) formalizes the process that establishes contracting officer authority.

(e) requires compliance with specific certification level requirements as a condition to maintain delegated procurement authority.

§ 140.10.20 Scope

The COCP pertains to all forms of procurement conducted within the judiciary ranging from purchase card transactions to major contracts.

§ 140.15 Certification Level Overview

§ 140.15.10 Certification Levels

The COCP defines seven (7) levels of contracting officer authority. Within each level, there are unique training requirements.

§ 140.15.15 Certification Levels		
Certification Level	**Who may be appointed**	**Who may delegate the authority**
1	AO and court staff members	The PE, Chief judges and federal public defenders (FPDs), PLOs
2	AO and court staff members	The PE, Chief judges and FPDs and PLOs
3	AO and court staff members	The PE, Chief judges and FPDs and PLOs
4	[Reserved]	[Reserved]
5	Career 1102 procurement personnel (AO)	The PE
6	Career 1102 procurement personnel (AO)	The PE
7	Career 1102 procurement personnel (AO)	The PE

§ 140.15.20 Certification Level Features

Each certification level is distinct with respect to the:

- dollar amount of procurement authority which may be delegated,
- types of procurement actions which may be awarded,
- procurement methods which may be used,
- products and services which may be acquired, and
- training requirements.

§ 140.15.30 Appointment Process for PLOs and COs (Levels 1-3)	
Stage	**Description**
1	The chief judge or federal public defender selects and appoints a PLO in each court unit (normally the court unit executive) or federal public defender organization to administer and manage the procurement program throughout the court unit or federal public defender organization. **See:** § 130.40.20 (Appointment Documentation).

§ 140.15.30 Appointment Process for PLOs and COs (Levels 1-3)		
Stage	**Description**	
2	If the PLO is also appointed as a contracting officer, then: (1) the PLO must complete all training requirements for the applicable COCP appointment level, and (2) the chief judge or FPD issues a separate delegation to the PLO using Form AO 375 (Procurement Liaison Officer's Appointment of Contracting Officer). A PLO cannot appoint him/herself as a CO. The PLO enters this information into InfoWeb Procurement Delegation System.	
3	The PLO selects and appoints one or more individuals as a CO at a COCP level within the court unit's or federal public defender organization's general delegation of authority. **See also:** § 130.40.30 (Responsibilities).	
4	The following describes how new or newly assigned employees are appointed to exercise procurement authority at COCP levels 1 through 3.	
	IF the new or newly assigned employee is assigned duties at...	**THEN the...**
	COCP Level 1	(1) Proposed CO completes purchase card training. (2) PLO completes and signs the top portion of the Form AO 375 (Procurement Liaison Officer's Appointment of Contracting Officer). (3) Proposed CO completes and signs the bottom portion of the Form AO 375 (Appointed Individual's Acknowledgment) and Form AO 377 (Cardholder Certification), then submits both to the PLO. (4) PLO provides the original Form AO 375 to the CO and places a copy in the oversight files. The PLO updates the InfoWeb Procurement Delegation System.

§ 140.15.30 Appointment Process for PLOs and COs (Levels 1-3)		
Stage	**Description**	
	COCP Level 2 or 3	(1) PLO completes and signs the top portion of the Form AO 375 (Procurement Liaison Officer's Appointment of Contracting Officer). **Note:** For a conditionally appointed procurement officer who has not completed all required training, the PLO should cross out "I have completed the training required..." and write "pending training completion." A conditionally appointed procurement officer must complete distance training within two (2) months of being appointed and the instructor-led training within one (1) year. (2) Proposed CO or procurement officer completes and signs the bottom portion of Form AO 375 (Appointed Individual's Acknowledgment). (3) PLO provides the original Form AO 375 to the CO and places a copy in the oversight files. The PLO updates the InfoWeb Procurement Delegation System.
5	As part of routine financial audits, the Office of Audit reviews procurement actions undertaken by the CO or conditionally appointed procurement officer. Unsatisfactory audit, assessment, or review findings can result in the withdrawal of an individual's CO appointment or cancellation of the interim procurement officer authority. Remedies for this situation will be recommended on a case-by-case basis.	

§ 140.20 Level 1 Certification: Purchase Card Program

§ 140.20.10 Scope

COCP Level 1 is specific to the judiciary purchase card program.

§ 140.20.20 Authority

A contracting officer with a higher level appointment does **not** automatically have Level 1 procurement authority. Individuals must be specifically certified and appointed at Level 1 to use the judiciary purchase card. Additional guidance on the use of the judiciary purchase card is set forth in the Judiciary Purchase Card Program Manual.

§ 140.20.30 Level 1 Delegation

A delegation of Level 1 authority includes use of the judiciary purchase card for:

- open market procurements, with or without competition, up to $5,000 per purchase,
- orders placed under GSA federal supply schedules up to GSA's defined competition threshold (**see:** § 310.50.43 (Required Ordering Procedures)), and
- orders placed under judiciary-wide contracts or blanket purchase agreements (BPA) up to the specified maximum order threshold of the contract or BPA when the contract or BPA does not require competition, and explicitly authorizes orders to be placed using the purchase card.

§ 140.20.40 Training Requirements

To be eligible for appointment as a Level 1 CO, individuals must complete the Judiciary Purchase Card Program Training (desktop training – Course 2).

See also: Appx 1D (Contracting Officers Certification Program (Level 1: Judiciary Purchase Card Program)); Judiciary Purchase Card Program Manual.

§ 140.25 Level 2 Certification: Special Delegated Procurement Programs

§ 140.25.10 Scope

COCP Level 2 is specific to the judiciary's special delegated procurement programs.

§ 140.25.20 Authority

A contracting officer with a higher level certification does not automatically have Level 2 certification. Individuals must be specifically certified at Level 2 for the special delegated procurement program to procure under this authority. The individual may hold several Level 2 certifications corresponding to the specific special delegated procurement programs under which awards may be made.

§ 140.25.30 Level 2 Delegation

A delegation of Level 2 authority is program-specific (court reporting, court interpreters, halfway houses, etc.). **See also:** § 120.40 (Delegation of Procurement Authority Under Special Delegated Procurement Programs).

§ 140.25.40 Training Requirements

To be eligible for appointment as a Level 2 CO, individuals must complete:

- the Judiciary Basic Procurement Seminar (blended training – Course 3) and the COCP classroom training, and
- any corresponding specialized training program offered by the responsible program office (**see:** § 120.40.15 (AO Office with Primary Program Responsibility)).

See also: Appx 1E Contracting Officers Certification Program (Level 2: Special Delegated Procurement Programs).

§ 140.25.50 Required Contract Documents

Approved boilerplate contracting documents, as applicable to each program, must be used. Program policies, procedures, and boilerplate documents are available in the Procurement area of the J-Net.

§ 140.30 Level 3 Certification: General Delegation

§ 140.30.10 Scope

COCP Level 3 is the broadest grant of authority available to judiciary employees who are not career procurement personnel in the 1102 job series.

§ 140.30.20 Authority

A delegation of Level 3 authority covers the award of purchase orders and contracts within the limits defined below and as summarized in Appx 1F Contracting Officers Certification Program (Level 3). Level 3 authority is not inclusive of Level 1 purchase card authority or any Level 2 authority. However, the Form AO 375 (Procurement Liaison Officer's Appointment of Contracting Officer) may be annotated to indicate inclusion of these levels of authority, provided the appointed individual has met the training requirements for Level 1 or Level 2, as well as the requirements for Level 3.

§ 140.30.30 Level 3 Delegation

A delegation of Level 3 authority includes:

(a) Open market procurements, with or without competition, up to $5,000 per purchase. As noted above, this delegation does not include COCP Level 1 purchase card procurement authority, unless the individual has

completed the training requirements for Level 1 and the AO-375 specifically delegates both Level 1 and 3. **See also:** § 140.20 (Level 1 Certification: Purchase Card Program).

(b) Competitive, lowest-price, technically acceptable open market procurements conducted according to the procedures required for small purchases up to $100,000.

(c) Competitive, lowest-price, technically acceptable orders placed under GSA federal supply schedules up to the specified maximum order threshold, if any, of the schedule contract.

(d) Orders placed under pre-competed contracts awarded by other federal agencies up to the specified maximum order threshold, if any, of the contract.

(e) Orders placed under judiciary-wide contracts up to the specified maximum order threshold, if any, of the contract.

Note: When issuing orders against GSA federal supply schedules ((c) above), another federal agency's contract ((d) above), or a judiciary-wide contract ((e) above), the orders must comply with the competition threshold and ordering procedures applicable to that schedule or contract. **See also:** Guide, Vol 14, § 310.50 (GSA Federal Supply Schedules).

(f) Procurements for expert and consultant services up to $25,000. **See also:** 5 U.S.C. § 3109; Guide, Vol 14, Ch 5 (Special Categories of Procurements).

(g) IT procurements using less than full and open competition up to $25,000 with signed approval of the chief judge, federal public defender, or FJC Director (or PLO, if delegated).

(h) Interagency agreements (IAs) and memoranda of understanding (MOUs) for procurements up to $100,000 when the judiciary is the receiving agency. However, all such IAs and MOUs for procurements require review and approval by the chief judge, federal public defender, or FJC Director (PLO, if delegated), prior to CO signature. If the proposed IA or MOU is above this delegation authority or if the judiciary is the providing agency, the IA/MOU must be referred to the PE. Applicability of a statutory authority other than the Economy Act must be validated by the PE. **See also:** Guide, Vol 14, Ch 5 (Special Categories of Procurements).

(i) Procurement of training products and services up to $25,000 without competition.

(j) Commercial agreements, license agreements, and special use agreements as supplements and conditions to purchases conducted within the authorized delegation at this level. **See also:** Guide, Vol 14, Ch 5 (Special Categories of Procurements).

(k) Unlimited authority for the procurement of transit passes/vouchers using less than full and open competition with signed approval of the chief judge, federal public defender, or FJC Director (or PLO, if delegated).

(l) Unlimited authority for the sole source procurement of non-commercial products or services available only from state or local government entities with signed approval of the chief judge, federal public defender, or FJC Director (or PLO, if delegated).

§ 140.30.40 Delegation Limitations

(a) A delegation of Level 3 authority does not include authority for the following procurements:

- best value competitive procurements of any dollar amount;
- sole source procurement of non-IT products or services, except training products or services, above the $5,000 competition threshold, or
- sole source procurement of training products or services above the separate $25,000 competition threshold applicable to these products or services.

(b) Judiciary staff who are conditionally appointed as procurement officers with a delegation of Level 3 authority pending completion of required training do not have authority to enter into commercial agreements, license agreements, and special use agreements.

See also: Guide, Vol 14, Ch 5 (Special Categories of Procurements).

§ 140.30.50 Training Requirements

To be eligible for appointment as a Level 3 CO, individuals must complete the Judiciary Basic Procurement Seminar (blended training consisting of a desktop online component as well as a two day classroom seminar), and the Federal Appropriations Law Course (desktop online training). In addition, individuals appointed as Level 3 COs must

complete 16 hours of continuing education training every two years. **See also:** Appx 1F Contracting Officers Certification Program (Level 3).

§ 140.35 Level 4 Certification [Reserved]

This is reserved for future delegations.

§ 140.40 Level 5 Certification: General Delegation (AO Only)

§ 140.40.10 Scope

This level is specific to career procurement personnel within PMD in the 1102 job series.

§ 140.40.20 Authority and Delegation

A delegation of Level 5 authority confers procurement authority up to $100,000 subject to the policies and procedures as set forth in –

- Volume 14 of the *Guide*;
- the Judiciary Purchase Card Program Manual;
- applicable Procurement Bulletins;
- the *AO Manual*; and
- internal policies of the Procurement Management Division.

§ 140.40.30 [Reserved]

§ 140.40.40 Education and Training Requirements

To be eligible for appointment as a Level 5 CO, individuals must have either a baccalaureate degree OR at least 24 semester hours among these disciplines: accounting, law, business, finance, contracts, purchasing, economics, industrial management, marketing, quantitative methods, or organization and management. In addition, the individual must complete the mandatory training plus one of the two elective courses as indicated in Appx 1K (Required Training by Certification Level (Contracting Officers Certification Program)).

Individuals appointed as Level 5 COs must complete 80 hours of continuing education training every two years.

§ 140.45 Level 6 Certification: General Delegation (AO Only)

§ 140.45.10 Scope

This level is specific to career procurement personnel within PMD in the 1102 job series.

§ 140.45.20 Authority and Delegation

A delegation of Level 6 authority confers procurement authority up to $1,000,000 subject to the policies and procedures as set forth in –

- Volume 14 of the *Guide*;
- the Judiciary Purchase Card Program Manual;
- applicable Procurement Bulletins;
- the *AO Manual*; and
- internal policies of the Procurement Management Division.

§ 140.45.30 [Reserved]

§ 140.45.40 Education and Training Requirements

To be eligible for appointment as a Level 6 CO, individuals must meet the education requirements and training for Level 5 Certification (**see:** § 140.40.40 (Education and Training Requirements)) and complete the additional mandatory training plus two electives as shown in Appx 1K (Required Training by Certification Level (Contracting Officers Certification Program)).

Individuals appointed as Level 6 COs must complete 80 hours of continuing education training every two years.

§ 140.50 Level 7 Certification: General Delegation (AO Only)

§ 140.50.10 Scope

This level is specific to career procurement personnel within PMD in the 1102 job series.

§ 140.50.20 Authority and Delegation

A delegation of Level 7 authority confers unlimited procurement authority subject to the policies and procedures as set forth in the following:

- Volume 14 of the *Guide*;

- Judiciary Purchase Card Program Manual;
- applicable Procurement Bulletins;
- the *AO Manual*; and
- internal policies of the Procurement Management Division.

§ 140.50.30 [Reserved]

§ 140.50.40 Education and Training Requirements

To be eligible for appointment as a Level 7 CO, individuals must meet the education requirements and training for Level 6 certification (**see:** § 140.40.40 (Education and Training Requirements)) and complete the additional mandatory training plus two electives as shown in Appx 1K (Required Training by Certification Level (Contracting Officers Certification Program)).

Individuals appointed as Level 7 COs must complete 80 hours of continuing education training every two years.

§ 140.55 Training

§ 140.55.10 Importance of Training

In most judiciary organizations, procurement activities are one of several collateral duties by employees. These personnel have varying levels of procurement training and experience. Yet, the complexities involved in procurement are significant and increase on a constant basis. Thus, it is imperative that procurement personnel have as many opportunities as possible to receive targeted training in a broad variety of procurement subject areas. Appointment as a contracting officer and the subsequent delegation of procurement authority is contingent upon completion of certain mandatory training, but personnel should be encouraged to seek training opportunities beyond what is mandatory.

See also: Appx 1K Required Training by Certification Level (Contracting Officers Certification Program).

§ 140.55.20 Training Availability

(a) Levels 1 Through 3

Training for appointment up to Level 3 is available only through the judiciary, because the classes are specific to the judiciary's unique requirements. This includes:

- Judiciary Purchase Card Program Training (desktop training),

- Judiciary Basic Procurement Seminar (blended training), and
- Federal Appropriations Law Course (desktop training).

See also: Procurement area of the J-Net.

(b) Levels 5 Through 7

Training requirements for COCP Levels 5 through 7 are based upon the Federal Acquisition Certification in Contracting (FAC-C) program as implemented by the Federal Acquisition Institute (FAI). Courses are available from FAI as well as various commercial and educational organizations.

(c) Funding for Mandatory Training

Funding will not be provided to court units or FPDOs by the AO for any training required for appointment as a contracting officer.

(d) Advice Regarding Course Selections

As requested, PMD staff will provide guidance and advice as to the adequacy of specific course selections prior to the individual attending training.

§ 140.55.30 Training Alternatives

(a) Relevant Previous Experience

The PE has the discretion to grant exceptions to the required courses listed for the various certification levels on a case-by-case basis for relevant previous experience. Requests must include a written description of any relevant duties and/or experience that are proposed as equivalents or substitutes for formal training.

Example: The PLO may request that the PE confirm the appointment of an individual who is or has been a career CO, but has not taken all of the courses listed as requirements for the proposed level of appointment.

(b) Credit for the Same or Similar Classes

Credit for previously completing the same classes or similar ones is considered by the PE on a case-by-case basis, except for the following unique judiciary courses:

- Judiciary Purchase Card Program Training (desktop training),
- Judiciary Executive Procurement Oversight Seminar (desktop training),
- Judiciary Basic Procurement Seminar (blended training), and
- Federal Appropriations Law Course (desktop training).

§ 140.60 Continuing Education

§ 140.60.10 Required Continuing Education

As an ongoing condition of certification, COs appointed to Level 3 certification or higher must complete a specified number of hours of continuing education every two (2) years. The following table shows the amount of continuing education required.

§ 140.60.10 Continuing Education Requirements	
Certification Level	**Required Hours Every Two (2) Years**
3	16
5	80
6	80
7	80

§ 140.60.20 Failure to Meet Continuing Education Requirements

If a CO does not complete the biennial continuing education requirement, the PLO must cancel the CO's appointment.

See also: § 140.55.30 (Training Alternatives).

§ 140.60.30 Approval for Continuing Education

PLOs approve continuing education training for the COs within their court unit.

§ 140.60.40 Examples of Continuing Education

Some examples of continuing education are:

- refresher courses (e.g., modules of the blended training may be used as refreshers);
- advanced procurement courses (e.g., Advanced Contract Administration);
- courses designed to broaden knowledge (e.g., Source Selection Procedures, Contract Quality Assurance, Evaluating Contractor Performance, etc.);
- courses related to procurement ethics/standards of conduct;
- financial management training, e.g., FAS_4T Forum;
- courses that expand COs' knowledge of the products or services they are responsible for acquiring; or
- in-house training sessions, videos, etc., on relevant and current topics taught by experienced procurement officials.

§ 140.60.50 Continuing Education Certification Process

The following table describes the continuing education certification process.

§ 140.60.50 Continuing Education Certification Process	
Stage	**Description**
1	The CO completes all or part of the biennial continuing education training requirement.
2	The CO notifies the PLO that the continuing education requirement for a certification level is met or partially met.
3	The PLO confirms the completion of the required training.
4	The PLO ensures that the training information including relevant dates is entered into the InfoWeb Procurement Delegation System.

§ 150 Procurement Integrity and Ethics

§ 150.10 Section Overview

This section describes the provisions of the Procurement Integrity Act (the "Act"), 41 U.S.C. § 2101, *et seq*.; establishes policies with respect to identifying and addressing contractor conflicts of interest; and provides information relative to judiciary employee standards of conduct, and acceptance of gratuities or gifts.

§ 150.20 Procurement Integrity Act

§ 150.20.10 Purpose

This section describes the standards for judiciary employees and for contractors consistent with the Act.

§ 150.20.15 Authority

See: The Procurement Integrity Act, 41 U.S.C. § 2101, *et seq*.

§ 150.20.20 Applicability

This policy applies to all judiciary employees and other personnel who participate in procurement activities.

§ 150.20.25 Provisions of the Act

(a) Prohibition on Disclosing Procurement Information

Under 41 U.S.C. § 2102, present or former officials of the judiciary, or persons who have acted or are acting for or on behalf of the judiciary with respect to a judiciary procurement, are prohibited from knowingly disclosing contractor bid or proposal information or source selection information before the award of a contract to which the information relates.

(b) Prohibition on Obtaining Procurement Information

Under 41 U.S.C. § 2102, all persons are prohibited from knowingly obtaining contractor bid or proposal information or source selection information before the award of a contract to which the information relates.

(c) Employees' Required Actions When Contacted About Employment

Under 41 U.S.C. § 2103, any judiciary employee, personally and substantially participating in a judiciary procurement in excess of $100,000 who contacts or is contacted by a bidder or offeror in that procurement regarding possible non-federal employment, must:

(1) report the contact in writing to the immediate supervisor, the PE, and the Office of General Counsel (OGC) in the AO; and

(2) reject the possibility of non-federal employment; or

(3) disqualify him/herself from further personal and substantial participation in the procurement until such time as the employee has been authorized to resume participation on the grounds that the company and/or individual is no longer a bidder or offeror in the procurement, or all discussions between the employee and the bidder or offeror regarding possible employment have terminated without an agreement for employment.

Each report required under (c)(1) must be retained by the submitting employee's division for not less than two (2) years following submission.

(d) Prohibition on Former Employees Accepting Compensation from Contractors

Under 41 U.S.C. § 2104, former judiciary employees may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor within a period of one (1) year after the former employee:

(1) served, at the time of selecting or awarding the contract to that contractor, as the procuring contracting officer, source selection authority, a member of the source selection evaluation board, or chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of $10,000,000;

(2) served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of $10,000,000 awarded to that contractor; or

(3) personally made a decision for the judiciary to:

(A) award a contract, subcontract, modification or a contract or subcontract, or a task order or delivery order in excess of $10,000,000 to that contractor;

(B) establish overhead or other rates applicable to a contract for that contractor that are valued in excess of $10,000,000;

(C) approve the issuance of a contract payment or payments in excess of $10,000,000 to that contractor; or

(D) pay or settle a claim in excess of $10,000,000 with that contractor.

(4) These provisions do not prohibit a former employee from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to above in (1), (2), and (3) of (d).

(5) Former employees who knowingly accept compensation in violation of this prohibition shall be subject to penalties. **See also:** § 150.20.30 (Penalties).

§ 150.20.30 Penalties

(a) Criminal

Under 41 U.S.C. § 2105, a person who is convicted of engaging in conduct constituting a violation of subsection (a) or (b), the prohibitions against disclosing and obtaining information for the purpose of exchanging the information for anything of value, or against obtaining or giving anyone a competitive advantage in the award of a contract, shall be imprisoned for not more than five (5) years or fined as provided under Title 18, or both.

(b) Civil

Under 41 U.S.C. § 2105(b), the Attorney General may bring a civil action in the appropriate United States district court against any person engaging in conduct constituting a violation of 41 U.S.C. §§ 2102-2104. Upon proof of such conduct by a preponderance of the evidence, the person is subject to a civil penalty of not more than $50,000 for each violation plus twice the amount of compensation which the individual received or was offered for the prohibited conduct.

(c) Administrative Actions

Under 41 U.S.C. § 2105(c), if information is received that a contractor or an employee has engaged in conduct constituting a violation of the Act, the judiciary may consider cancelling the procurement, if a contract has not yet been awarded; rescinding the contract; initiating suspension or debarment proceedings; and or initiating adverse personnel actions.

(d) These penalties are not exclusive of penalties available under other laws. **See also:** 18 U.S.C. §§ 203, 1001, and 1905.

§ 150.20.35 Implementation Responsibilities

The Act imposes on each judiciary employee the responsibility to conform with the Act.

(a) Ethics Official

The Director has designated the General Counsel of the AO as the ethics official for the Act.

(b) AO Procurement Management Division

The AO Procurement Management Division must train conditionally appointed procurement officers and COs on procurement integrity. The minimum requirement is to provide all PLOs with a copy of the Act. This requirement may be met by distributing this chapter of the *Guide*.

(c) Procurement Liaison Officers

PLOs must provide a copy of the material covering the Procurement Integrity Act to every employee within the court unit or federal public defender organization who may fall under this law, including conditionally appointed procurement officers, COs, and assistants.

§ 150.20.40 Questions About Procurement Integrity Policies

Anyone with questions concerning procurement integrity policy should be directed to PMD or the AO Office of General Counsel (OGC). In instances not clearly defined or not covered by the policies in this section, judiciary employees are to seek guidance from the OGC. Judiciary employees or former employees may request a written advisory opinion from the OGC.

§ 150.20.45 Additional Training

More comprehensive training on the policy governing implementation of the Act is available in the Judiciary Basic Procurement Seminar.

§ 150.30 Conflicts of Interest

§ 150.30.10 Organizational and Consultant Conflicts of Interest

(a) When procuring products and services, there is a potential for an organizational or consultant conflict of interest. Such a situation may occur when a contractor:

- is unable, or potentially unable, to provide unbiased impartial assistance or advice to the judiciary because of conflicting roles, or
- has an unfair competitive advantage for an award.

(b) Such potential conflicts of interest are not limited to any particular type of procurement, but are more likely to occur when involving the following:

- management support services,
- consultant services,
- assistance with technical evaluations, or
- systems engineering and technical direction.

§ 150.30.20 Identification of Potential Conflicts of Interest

As part of procurement planning, COs must attempt to identify potential conflicts of interest so that they may be avoided or mitigated. The following examples illustrate situations in which questions concerning potential conflicts of interest may arise:

§ 150.30.20 Potential Conflicts of Interest	
Type of conflict	**Definition**
(a) Unequal Access to Information	Access to internal judiciary business information as part of the performance of a contract that could provide the contractor a competitive advantage in a later competition for another judiciary contract. Such an advantage could easily be perceived as unfair by a competing vendor who is not given similar access to the relevant information.
(b) Competitive Advantage	The contractor, under a prior or existing contract, participates in defining or preparing the requirements or documents that are involved in a subsequent procurement where the contractor may be a competitor. This includes any participation by a contractor which would allow them to suggest technology, process or other bias into the solicitation's requirements reflective of their familiarity or expertise and giving them a competitive advantage. Examples include defining the requirements, preparing an alternatives analysis, drafting the statement of work or specifications, or developing the evaluation criteria.
(c) Impaired Objectivity	The contractor is required to assess or evaluate products or services produced or performed by the contractor or one of its business divisions, subsidiaries, or affiliates, or any entity with which it has a significant financial relationship. The contractor's ability to render impartial advice could appear to be undermined by the contractor's financial or other business relationship with the entity being evaluated.

When a potential conflict is foreseen, the CO must request assistance from the PE, who will consult OGC, to determine how to avoid or mitigate the conflict.

§ 150.30.30 Disqualified and Rejected Offer

Occasionally, a situation occurs where it does not become apparent until offers are received that participation by a particular offeror may lead to a conflict of interest and/or unfair competitive advantage. In that case, if the conflict cannot be avoided or mitigated, the offeror may be disqualified and its offer rejected. Any such determination must be reduced to a written analysis of the proposed course of action. Prior to taking any action, consultation is required with the PE, who will consult with OGC.

§ 150.30.40 Clauses

Include Clause 1-1, Employment by the Government and Clause 1-5, Conflict of Interest in all solicitations and contracts for services.

§ 150.40 Standards of Conduct

§ 150.40.10 General

Judiciary employees are held to the highest standards of conduct in the performance of their duties and must conduct themselves so as to avoid even the appearance of any impropriety. All officials, including judges, chief probation officers, chief pretrial services officers, procurement liaison officers, the PE, COs, procurement officials, circuit librarians, and their subordinates must exercise due care in the oversight and execution of procurement actions within their purview. All employees must conduct all dealings with potential offerors and contractors in a manner so that no favoritism or competitive advantage is given to one business over another in dealing with the judiciary.

§ 150.40.20 Prohibitions on Purchasing from Relatives or Judiciary Employees

(a) A CO must not knowingly award a procurement to:

(1) a relative of a judiciary employee,

(2) another judiciary employee, or

(3) a business concern (or other organization) owned or substantially owned or controlled by a judiciary employee(s) or a relative(s) of judiciary employee(s).

(b) If a compelling reason exists for such an award, full information and justification must be provided to the PE, for consideration of an approved written exception.

§ 150.40.30 Guide References

(a) For court personnel, information concerning standards of conduct may be found in the Guide, Vol 2A, Ch 2 (Code of Conduct for United States Judges) and Ch 3 (Code of Conduct for Judicial Employees);

(b) Employees of the Administrative Office should also refer to the AO Manual, Human Resources, Ch 1 (Personnel Principles and Policies), Subch B (Code of Conduct for Administrative Office Employees).

§ 150.50 Gratuities or Gifts

See: Guide, Vol 2C, Ch 6 (Gifts). AO personnel should also refer to the AO Human Resources Manual, Ch I, Subch B, Section F (Gifts).

§ 150.50.10 Procurement Official Prohibitions

The exception for gifts to a Judicial officer or judiciary employee with an aggregate market value of $50 or less per occasion and $100 or less per calendar year stated in the Guide, Vol 2C, § 620.35(b)(8) (Acceptance of Gifts by a Judicial Officer or Employee; Exceptions) does not apply to a judicial employee who is "personally and substantially" involved in a judicial procurement if the donor has sought or is seeking to do business with the court or other entity served by the judicial employee.

§ 150.50.20 Violations

If there is evidence that an unlawful gratuity or gift was offered or given by a contractor to a judiciary officer or employee, the CO must contact the PE for assistance in determining:

- what actions are appropriate under an affected procurement; and
- whether debarment proceedings against the contractor under the Guide, Vol 14, § 320.30 (Debarment, Suspension and Ineligibility) are appropriate.

Disciplinary action may also be taken against the employee, as appropriate.

§ 150.50.30 [Reserved]

§ 150.50.40 [Reserved]

§ 150.50.50 Clause

All solicitations and contracts exceeding the judiciary's small purchase threshold must include Clause 1-10, Gratuities or Gifts. The clause provides for possible termination of the contract for default upon a finding by the PE or his designee, after providing the contractor the opportunity to appear with counsel and submit evidence, including witnesses, that a contractor (or the contractor's agent or representative) offered or gave a gratuity or gift to a judiciary officer or employee intended to obtain a contract or favorable treatment under a contract. Any termination decision must be approved in writing by the PE, who will coordinate with OGC. For additional information on contract termination, **see:** Guide, Vol 14, § 755 (Contract Termination).

§ 160 Ratification

§ 160.10 Definition

A ratification is the act of approving an unauthorized commitment by an official who has the authority to do so. The approval of an unauthorized commitment or act results in the act being given effect as if originally authorized. It is not a desirable method of procurement, because it is not in accordance with the judiciary's policies and procedures, and may result in punitive action against the person(s) who committed the unauthorized act. The CO is the only judiciary employee who is delegated procurement authority to legally commit the judiciary to a contractual relationship. An unauthorized commitment is an agreement that is not binding on the judiciary solely because the employee who made it lacked the appropriate procurement authority.

§ 160.15 Authority to Ratify

An unauthorized commitment may be ratified by the CO only after the appropriate judiciary official i.e., chief judge, FPD, FJC Director, PE or AO Director has authorized the ratification. If specifically delegated by the chief judge or federal public defender, the PLO may be the authorizing official for ratification actions within the delegation limitation of the court unit or federal public defender organization (FPDO), so long as the PLO is not also the contracting officer (CO) on the same action.

§ 160.20 Procedures to Request Ratification

Upon the identification of an unauthorized commitment, the following actions must be taken:

(a) The CO must instruct the contractor, orally and in writing, to stop all work immediately.

(b) The person who committed the unauthorized act or a point of contact from the requesting office (program office/user) and the CO must prepare a memorandum to the file containing the following information (**see also:** Form AO 371 (Justification and Approval for Ratification of an Unauthorized Commitment)):

(1) the amount of the unauthorized commitment and the name of the contractor;

(2) a statement of facts concerning the unauthorized commitment, including:

(A) what procurement procedures were followed and why normal procurement procedures were not followed;

(B) the identity of the person(s) who made the unauthorized commitment;

(C) how the contractor was selected;

(D) a list of other sources considered, if any;

(E) a detailed description of the products or services ordered;

(F) verification that the products or services satisfy a bona fide need of the judiciary;

(G) whether price was discussed and the estimated or agreed-upon price, if one resulted from discussions;

(H) whether or not the products or services have been received and/or accepted or the current status of delivery or performance;

(I) whether funds were available for the unauthorized commitment at the time the purchase was made; and

(J) any invoices or requests for payment received from the contractor, and any other pertinent documents relating to the unauthorized commitment.

(c) A statement indicating corrective action taken to preclude a recurrence of similar unauthorized commitments in the future.

§ 160.25 Criteria for Approving Ratification Requests

An unauthorized commitment may be ratified if **all** of the following criteria are met:

(a) The judiciary has obtained or will obtain a benefit resulting from the performance of the unauthorized commitment, and/or the products or services have been provided to and accepted by the judiciary;

(b) The CO had the appropriate delegated procurement authority to enter into a contractual commitment at the time the unauthorized commitment was made and still has the authority to do so. Or, for unauthorized actions exceeding the CO's delegated procurement authority, the PE could have

granted authority to enter into such a contractual commitment. The court unit, federal public defender organization (FPDO), or FJC must contact PMD for assistance in making this determination;

(c) The resulting procurement would have been proper and would have met all legal requirements, if it had been made by a CO with the appropriate level of delegated procurement authority;

(d) An individual who possesses the requisite procurement authority determines the price is fair and reasonable; and

(e) Funds are available and were available at the time the unauthorized commitment was made. Funds used for payment must be from the year in which the unauthorized commitment occurred, irrespective of when the ratification is accomplished.

§ 160.30 Who May Authorize Ratification

If the procurement is found to have been appropriate according to § 160.25 (Criteria for Approving Ratification Requests) above, then the authorizing official, as identified in the table below, may authorize the ratification.

§ 160.30 Who May Authorize Ratification	
IF the action...	**THEN...**
(a) falls within the general delegation authority of the court unit, FPDO, or FJC defined at § 120.20.10(b)	the authorizing official is the chief judge, FPD, the FJC Director, or the PLO (if delegated) who will provide a one time delegation to the CO to ratify the unauthorized action or assign it to a CO with the appropriate authority.
(b) does not fall within the delegation authority of the court unit, FPDO, or FJC defined at § 120.20.10(b)	the authorizing official is the PE. The CO will submit to the PE the ratification documentation, including a signed approval of the request by the PLO, chief judge, FPD, or the FJC Director. The PE will review the documents and, if appropriate, provide a one time delegation of authority for the CO to ratify the action.

After obtaining the one time delegation of authority and the signed authorization, the CO may ratify the unauthorized action in accordance with § 160.35 (Ratification Actions by CO), below.

§ 160.35 Ratification Actions by CO

If the ratification is ultimately approved in writing, the CO must:

(a) prepare and execute contract documents equivalent to those that should have been prepared had the requirement been properly executed initially;

(b) ensure the date of the action is the current date, but the effective date must be the date of the unauthorized commitment;

(c) note on each such contract document:

> "This *[fill in purchase order, delivery order, task order, contract, or modification]* ratifies an unauthorized commitment made on *[date]*."

(d) place all ratification documents in the contracting file.

§ 160.40 Non-Ratifiable Unauthorized Commitments

Not all actions can be ratified, such as those that are prohibited by law or otherwise improper. Examples include leasing space without or in excess of an appropriate delegation of procurement authority from GSA, improper sole source actions which lack legal sufficiency, expenditures which are not proper under fiscal law, or awards which include improper terms and conditions. If this occurs, the CO must contact the PE first for assistance, then the PE will consult with OGC.

§ 160.45 Reporting Requirement

The chief judge, FJC Director, or FPD must submit a report to the PE each month listing each request received for ratification of an unauthorized commitment with the final disposition of each request. Reporting is not required during months with no ratification requests. The report must include the following information:

(a) name of court unit, FPDO or FJC;

(b) unauthorized commitment value;

(c) name of contractor;

(d) description of products or services;

(e) date ordered;

(f) whether or not the unauthorized commitment was ratified; and

(g) rationale for ratification or non-ratification.

§ 160.50 Employee Consequences

A decision to ratify a specific unauthorized commitment does not preclude disciplinary action against the employee responsible for it. Employees may be disciplined for making unauthorized commitments, regardless of whether or not the unauthorized commitment is ratified.

§ 170 Release of Information

§ 170.10 Judiciary Policy

The Freedom of Information Act (FOIA) does not apply to the judiciary. However, as a matter of policy, and to the extent not inconsistent with other policies governing the judiciary, documents relating to the procurement process, including awarded contracts, that would be released under FOIA will be released by the judiciary, upon request.

§ 170.20 Awarded Contracts

Awarded contracts will generally be released, including the successful offer if it has been incorporated by reference into the contract. Unit pricing and fully burdened labor rates for a base period and exercised option periods will be released unless the contractor offers adequate legal reason for withholding this information. However, trade secret information and confidential commercial information will not be released.

§ 170.30 Internal Documents

Internal documents such as memos, correspondence, source selection plans, and offer evaluations, including individual score sheets, deliberations of technical and source selection officials, may be deemed privileged interagency or intra-agency documents which will not be disclosed. These documents may be released only after the CO consults with the appropriate judiciary personnel (e.g., PE, OGC) and only if disclosure would not inhibit communication or otherwise compromise the procurement process with regard to the subject of the request, as well as other ongoing procurements.

§ 170.40 Obtaining Guidance

Since requests for documents, most particularly pricing information, often involve complex issues requiring knowledge of court rulings, statutes, and other issues, COs are cautioned to first seek the guidance of the PE, who will consult with OGC, before disclosing documents which could be considered confidential or trade secret information

under FOIA or the Trade Secrets Act, or involve other questions about release of information.

§ 170.50 Unsuccessful Proposals

Under this policy, any information contained in an unsuccessful proposal must not be disclosed under any circumstances.

§ 170.60 Debriefing

For information concerning what information may be disclosed during a debriefing of unsuccessful offerors, **see:** Guide, Vol 14, § 330.73 (Award Debriefing).

§ 170.70 Clause

All solicitations and contracts must include Clause 1-15, Disclosure of Contractor Information to the Public.

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Appx 1A: Uniform Contract Format

§ 1A.100 Applicability

§ 1A.200 Uniform Contract Format Parts and Sections

§ 1A.300 Contents of the Solicitation/Award

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§ 1A.100 Applicability

The Uniform Contract Format (UCF) described in this appendix is required for open market solicitations and contract awards over $100,000. Use of the UCF format for other procurements is optional.

§ 1A.200 UCF Parts and Sections

Request for Proposals (RFP) solicitations issued using the UCF consist of the sections listed below. Once a contract has been awarded, sections A through K become the contract. **Note:** While sections L and M will not be part of the resulting contract, they **must** be retained in the pre award documentation. The contract clauses in Parts I, II, and III constitute a complete contract **except** the pricing information in Section B. The offeror must fill out Section B when the offer is submitted. The following table lists the required parts and sections of a UCF, and shows the order in which the information **must** be incorporated, if there is applicable information for the section.

§ 1A.200 UCF Parts and Sections
Part I – The Schedule
Section A Solicitation/Contract Form
Section B Products or Services and Prices/Costs
Section C Description/Specifications/Statement of Work
Section D Packaging and Marking
Section E Inspection and Acceptance

Section F Deliveries or Performance
Section G Contract Administration Data
Section H Special Contract Requirements
Part II – Contract Clauses
Section I Contract Clauses
Part III – List of Documents, Exhibits, and Other Attachments
Section J List of Attachments
Part IV – Representations and Instructions
Section K Representations and Certifications, and Other Statements of Offerors
Section L Instructions, Conditions, and Notice to Offerors
Section M Evaluation Factors for Award

§ 1A.300 Contents of the Solicitation/Contract

The following table outlines the contents of each section of the Uniform Contract Format.

§ 1A.300 Contents of the Solicitation/Contract		
Section	**Title**	**Description**
A	Solicitation/ Contract Form	Section A is comprised of the SF 33, Solicitation, Offer and Award, used as the cover sheet for the RFP. A bilateral contract may be awarded without discussions simply by the additional signature of the Contracting Officer. If discussions are held and Best and Final Offers requested, the resulting bilateral contract must be prepared using the SF 26, Award/Contract for Section A. The contractor should always be requested to sign the SF26 prior to execution by the Contracting Officer. The most important information in the SF 33 for solicitation purposes is the time by which offers must be submitted and the requirement for signature by an authorized representative of the contractor.

§ 1A.300 Contents of the Solicitation/Contract		
Section	**Title**	**Description**
B	Products or Services and Prices/Costs	Section B gives potential offerors a summary description of the contract requirements and provides a place for offerors to submit their proposed prices. Include a brief description of the products or services, e.g., item number, national stock number/part number, if applicable, and quantities. Alternatively, Section B of a solicitation may direct offerors to enter their pricing information in a spreadsheet provided for that purpose.
C	Description/ Specifications/ Statement of Work	Section C contains a detailed description of the products to be delivered or the work to be performed under the contract. Include any details needed beyond the information provided in Section B for competing offerors to develop accurate pricing proposals.
D	Packaging and Marking	Section D provides packaging, packing, preservation, and marking requirements, if any.
E	Inspection and Acceptance	Section E includes inspection, acceptance, quality assurance, and reliability requirements.
F	Deliveries or Performance	Section F specifies the time, place, and method of delivery or performance. Solicitations specifying shipment Free-on-Board (F.o.b.) origin must state that offers will be evaluated on the basis of the proposed price plus proposed transportation costs from point of origin to the designated destination.
G	Contract Administration Data	Section G includes any required contract administration information, such as whether individual task orders will be issued against the contract, special invoicing instructions, or payment instructions if payment is to made to an address other than that shown on the SF-33.
H	Special Contract Requirements	Section H contains any special contract requirements, e.g., security requirements, that are not in other sections, including clauses that are specially written for the specific solicitation or contract. This section will alert offerors to specially written clauses that must be given close attention.

§ 1A.300 Contents of the Solicitation/Contract		
Section	**Title**	**Description**
I	Contract Clauses	Section I contains most of the standard clauses for the proposed contract, including the clauses required by law or by the Guide and any additional clauses expected to apply to any resulting contract, if these clauses are not required to be included in any other section of the UCF. **See:** Appx 1C (Matrix of Solicitation Provisions and Clauses (Including Key)).
J	List of Attachments	Section J contains a list of any applicable attachments and exhibits to the contract, including the title, date, and number of pages for each attachment listed.
K	Representations, Certifications, and Other Statements of Offerors	Section K contains solicitation provisions that require representations, certifications, or the submission of other information by offerors.
L	Instructions, Conditions, Notices to Offerors	Section L contains solicitation provisions and other information and instructions not required elsewhere to guide offerors in preparing offers, such as instructions to submit offers in a specific format or severable parts to facilitate evaluation. The instructions may specify further organization of offer parts, such as: (a) administrative; (b) management; (c) technical; (d) past performance; and (e) detailed cost information.
M	Evaluation Factors for Award	Section M contains all evaluation factors, including price or cost, and any significant subfactors that will be considered in making award. Include the relative importance of the evaluation factors and subfactors, and their relation to price or cost. Numerical weights or scoring systems, which may be used to rank offers, need not be disclosed. Any minimum requirements which may apply to particular evaluation factors or subfactors must be described. Any judiciary costs or charges other than proposed prices to be considered in the evaluation of offers must be identified.

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Appx 1B: Solicitation Provisions and Contract Clauses

Note: For a cross-linked matrix of the solicitations provisions and clauses in this appendix, **see:** Guide, Vol 14, Appx 1C.

Provisions and Clauses (B and Chapter 1)
Provisions and Clauses (Chapter 2)
Provisions and Clauses (Chapter 3)
Provisions and Clauses (Chapter 4)
Provisions and Clauses (Chapter 5)
Provisions and Clauses (Chapter 6)
Provisions and Clauses (Chapter 7)

Provisions and Clauses (B and Chapter 1)

B.1.1 Definitions

Provision

A term or condition used only in solicitations and applying only before award, e.g., provisions which provide information about how offers will be evaluated.

Clause

A term or condition used in solicitations and contracts and applying both before and after award.

B.1.2 Applicability

This Appendix sets forth standard provisions and clauses to be included in solicitations and contracts for products and services. Applicable provisions and clauses must be included in the prescribed Uniform Contract Format (UCF) section when issuing a solicitation or contract which is required to follow the UCF. **See:** Appx 1A (Uniform Contract Format); Appx 1C (Matrix of Solicitation Provisions and Clauses (including Key)). When UCF does not apply, such as in small purchase procedures, incorporate appropriate clauses and provisions in the following order:

- clauses followed by provisions
- clauses/provisions incorporated by reference followed by those required to be incorporated in full text (**see:** Appx 1C (Matrix of Solicitation Provisions and Clauses (including Key))
- by clause/provision number

B.1.3 Numbering of Provisions and Clauses

Provisions and clauses are numbered with the chapter or appendix prescribing their use in Volume 14 of the *Guide*. For instance, Clause 1-1 is in Chapter 1, Provision 2-1 is in Chapter 2, and Provision B-1 is prescribed in this Appendix B.

Beneath each clause or provision title are instructions on where in this volume of the *Guide* the prescription for the usage of that clause or provision is located. The instructions also say in which section of the UCF (A through M) to insert the clause or provision if UCF applies. The prescription will indicate the circumstances for use of the provision or clause, e.g., "Clause X-X is included in all solicitations and contracts."

The Matrix of Solicitation Provisions and Clauses (Appx 1C) is a quick reference document to help COs:

- find clauses, provisions, their prescription(s), and the applicable UCF section;

- determine whether specific clauses or provisions may be incorporated by reference or must be incorporated in full text; and

- determine whether the clause or provision is always required (R) or only required when certain conditions apply (A).

B.2.1 Solicitation Provisions and Contract Clauses Prescribed in Appendix B.

(a) Provision B-1, Solicitation Provisions Incorporated by Reference is included in all solicitations.

(b) Clause B-5, Clauses Incorporated by Reference is included in all solicitations and contracts.

(c) Clause B-20, Computer Generated Forms is included in all solicitations and contracts that require the contractor to submit data on standard or optional forms prescribed by this manual.

Provision B-1, Solicitation Provisions Incorporated by Reference

Include the following provision as prescribed in Appx B, § B.2.1.(a) (Solicitation Provisions and Contract Clauses Prescribed in Appendix B).

Solicitation Provisions Incorporated by Reference (SEP 2010)

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the contracting officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this address: http://www.uscourts.gov/procurement.aspx.

(end)

Clause B-5, Clauses Incorporated by Reference

Include the following clause as prescribed in Appx B, § B.2.1.(b) (Solicitation Provisions and Contract Clauses Prescribed in Appendix B).

Clauses Incorporated by Reference (SEP 2010)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the contracting officer will make their full text available. Also, the full text of a clause may be accessed electronically at this address:
http://www.uscourts.gov/procurement.aspx.

(end)

Provision B-10, RESERVED

Clause B-15, RESERVED

Clause B-20, Computer Generated Forms

Include the following clause as prescribed in Appx B, § B.2.1.(c) (Solicitation Provisions and Contract Clauses Prescribed in Appendix B).

Computer Generated Forms (JAN 2003)

(a) Any data required to be submitted on a standard or optional form may be submitted on a computer generated version of the form, provided there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the standard or optional form number and edition date.

(b) Unless prohibited by the contracting officer, any data required to be submitted on a judiciary unique form may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the judiciary form number and edition date.

(c) If the contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

(end)

Clause 1-1, Employment by the Government

Include the following clause as prescribed in § 150.30.40 (Clauses).

Employment by the Government (JAN 2003)

(a) The contractor covenants that throughout the term of this contract no contractor employee who performs services under this contract will be an officer or employee of the government of the United States.

(b) If the contractor be an individual, the contractor covenants that throughout the term of this contract the individual will not be or become an officer or employee of the government of the United States. If during the term of contract the contractor intends to become an officer or employee of the government, the contractor shall advise the contracting officer in writing of such intentions so appropriate measures may be taken.

(c) If the contractor be other than an individual, the contractor covenants that throughout the term of this contract no partner, principal, officer, stockholder, or other person having a financial interest in the contractor or the ability to control

the contractor, directly or indirectly, will be or become an officer or employee of the government of the United States. The status of a stockholder as an officer or employee of the government of the United States will not constitute a violation of this subsection if the stock of the contractor is traded publicly over the counter or on a regional or national stock exchange.

(d) For purposes of subsection (c), a business or partnership interest or stock owned by a spouse, child, or parent of an officer or employee of the government of the United States shall be deemed to be owned by such officer or employee.

(e) The violation of any subsection of this section will constitute a material breach for which the judiciary may seek any and all remedies under the contract, including termination.

(end)

Clause 1-5, Conflict of Interest

Include the following clause as prescribed in § 150.30.40 (Clauses) and § 520.75(a) (Provisions and Clauses).

Conflict of Interest (AUG 2004)

(a) The contractor specifically agrees that there is no conflict of interest arising from the services to be provided under this agreement. The contractor further agrees that no employee, principal, or affiliate is in any such conflict.

(b) Work under this contract may create a future conflict of interest that could prohibit the contractor from competing for, or being awarded future judiciary contracts. The following examples illustrate situations in which questions concerning potential conflicts of interest may arise:

(1) Unequal Access to Information

Access to internal judiciary business information as part of the performance of a contract that could provide the contractor a competitive advantage in a later competition for another judiciary contract. Such an advantage could easily be perceived as unfair by a competing vendor who is not given similar access to the relevant information.

(2) Competitive Advantage

The contractor, under a prior or existing contract, participates in defining or preparing the requirements or documents that are involved in a

subsequent procurement where the contractor may be a competitor. This includes, but is not limited to, defining the requirements, preparing an alternatives analysis, drafting the statement of work or specifications, or developing the evaluation criteria.

(3) Impaired Objectivity

The contractor is required to assess or evaluate products or services produced or performed by the contractor or one of its business divisions, subsidiaries, or affiliates, or any entity with which it has a significant financial relationship. The contractor's ability to render impartial advice could be undermined by the contractor's financial or other business relationship with the entity being evaluated.

The contractor agrees to immediately notify the contracting officer, in writing, if an actual or potential conflict of interest arises, including any of the above and if a non-judiciary client requests or receives any professional advice, representation, or assistance regarding the judiciary.

The judiciary reserves the right to preclude a contractor from participating in a procurement, refuse to permit the contractor to undertake any conflicting agreements with non-judiciary clients, or terminate this contract without cost to the judiciary in the event the contracting officer determines a conflict of interest exists and cannot be avoided or mitigated.

(end)

Clause 1-10, Gratuities or Gifts

Include the following clause as prescribed in § 150.50.50 (Clause).

Gratuities or Gifts (JAN 2010)

(a) The right of the contractor to proceed may be terminated by written notice if, after notice and hearing, the Procurement Executive or designee determines - at a level above the contracting officer - that the contractor, its agent or another representative:

(1) offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official or employee of the judiciary; and

(2) intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) of this clause, the judiciary is entitled to pursue the same remedies as in a breach of contract.

(d) The rights and remedies of the judiciary provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(end)

Clause 1-15, Disclosure of Contractor Information to the Public

Include the following clause as prescribed in § 170.70 (Clause).

Disclosure of Contractor Information to the Public (AUG 2004)

(a) The judiciary reserves the right to disclose information provided by the contractor, in response to a request by a member of the general public. Upon receipt of a written request, the judiciary will disclose information which would constitute public records in an agency covered by the Freedom of Information Act. In the event the requested information consists of or includes commercial or financial information, including unit prices, the contractor shall be notified of the request and provided with an opportunity to comment.

(b) The contractor will thereafter be notified as to whether the information requested will be released. The contractor understands and agrees that unit and/or aggregate prices contained in the contract may be subject to disclosure without consent.

(end)

Provisions and Clauses (Chapter 2)

Provision 2-1, Request for Information or Solicitation for Planning Purposes

Include the following provision as prescribed in § 210.60.40 (Solicitation Provision).

Request for Information or Solicitation for Planning Purposes (JAN 2003)

The judiciary does not intend to award a contract on the basis of this solicitation or to otherwise pay for the information solicited.

(1) Although "offer" and "offeror" are used in this Request for Information, your response will be treated as information only. It will not be used as an offer.

(2) This solicitation is issued for the purpose of: [state purpose]

(end)

Clause 2-5A, Inspection of Products

Include the following clause as prescribed in § 220.10.70(a) (Clauses).

Inspection of Products (JAN 2003)

(a) The contractor shall use and maintain a written inspection or quality control system acceptable to the judiciary for the products under this contract. The contractor shall tender to the judiciary for acceptance only products which have been inspected in accordance with the acceptable inspection system and have been found by the contractor to be in conformity with contract requirements. As part of the system, the contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the judiciary during contract performance and for at least three years after acceptance. The judiciary has the right to evaluate the acceptability and effectiveness of the contractor's inspection system before award and during contract performance. This evaluation may be used to determine the extent of judiciary inspection and testing, but this does not waive its right to inspect and test all items. The right of review, whether exercised or not, does not relieve the contractor of the obligations under the contract. As a minimum, the contractor's inspection/quality control system shall reflect controls and record keeping in the following functional areas:

(1) receiving inspection;

(2) in-process inspection;

(3) final inspection and test (including packaging);

(4) calibration of inspection or test equipment; and

(5) control or disposition of nonconforming material.

(b) The judiciary has the right to inspect and test all products provided under this contract, to the extent practicable, at all times and places, including the period of manufacture, and in any event before acceptance. The judiciary will perform inspections and tests in a manner that will not unduly delay the work. The judiciary assumes no contractual obligation to perform any inspection and test for the benefit of the contractor unless specifically set forth elsewhere in this contract.

(c) If requested by the judiciary, the contractor shall provide, without charge, all reasonable facilities and assistance to the judiciary inspectors. If the judiciary performs inspections or tests on the premises of the contractor or a subcontractor, the contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

(d) The judiciary may require the contractor to correct or replace any products that fail to comply with the requirements of this contract. The judiciary may reject defective products which do not conform to the contract requirements and:

(1) require replacement or correction of the defects;

(2) acquire replacement products from another source, and charge the contractor for any costs incurred by the judiciary; or

(3) accept the products at a reduced price.

(e) Any remedy such as replacement, correction, or reimbursement for re-procurement will be determined by the contracting officer. Corrected or replaced products may not be tendered again unless the former tender and the requirement for correction or replacement are disclosed. If the contractor fails to proceed with reasonable promptness to perform replacement or correction, and if it can be performed within a ceiling price, the judiciary may:

(1) by contract, or otherwise, remove, replace, or correct the products and charge the cost to the contractor; or

(2) terminate this contract for default.

(f) The contracting officer may negotiate a deduction for consideration from the contract for reimbursement to the judiciary for any costs incurred for:

(1) the total time, including round-trip travel time, lost by judiciary representatives when the contractor is not ready for inspection at the time inspection and testing is requested by the judiciary; and

(2) the total time, including round-trip travel time, required by judiciary representatives for reinspection and retesting necessitated by rejection.

(3) Charges other than these, for any retesting caused by rejection, will be computed as the actual laboratory cost obtained from the National Bureau of Standards or other testing laboratory.

(end)

Clause 2-5B, Inspection of Services

Include the following clause as prescribed in § 220.10.70(b) (Clauses).

Inspection of Services (AUG 2004)

(a) The contractor shall provide to the judiciary for acceptance only services which conform to the contract requirements. As part of the inspection system, the contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the judiciary during contract performance and for at least three years after acceptance. The judiciary has the right to evaluate the acceptability and effectiveness of the contractor's inspection system before award and during contract performance. This evaluation may be used to determine the extent of judiciary inspection and testing, but this does not waive its right to inspect and test all services. The right of review, whether exercised or not, does not relieve the contractor of the obligations under the contract.

(b) The judiciary has the right to inspect and test all services provided under this contract, to the extent practicable, at all times and places during the term of the contract. The judiciary will perform inspections and tests in a manner that will not unduly delay the work.

(c) If requested by the judiciary, the contractor shall provide, without charge, all reasonable facilities and assistance to the judiciary inspectors. If the judiciary performs inspections or tests on the premises of the contractor or a

subcontractor, the contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

(d) If any of the services do not conform with contract requirements, the judiciary may require the contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the judiciary may:

(1) require the contractor to take necessary action to ensure that future performance conforms to contract requirements; and

(2) reduce the contract price to reflect the reduced value of the services performed.

(e) If the contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the judiciary may:

(1) by contract or otherwise, perform the services and charge to the contractor any cost incurred by the judiciary that is directly related to the performance of such service; or

(2) terminate the contract for default.

(end)

Clause 2-10, Responsibility for Products

Include the following clause as prescribed is § 220.10.70(c) (Clauses).

Responsibility for Products (JAN 2010)

(a) Title to products furnished under this contract shall pass to the judiciary upon formal acceptance, regardless of when or where the judiciary takes physical possession, unless the contract specifically provides for earlier passage of title.

(b) Unless the contract specifically provides otherwise, risk of loss of or damage to products shall remain with the contractor until, and shall pass to the judiciary upon:

(1) delivery of the products to a carrier, if transportation is F.o.b. origin; or

(2) acceptance by the judiciary or delivery of the products to the judiciary at the destination specified in the contract whichever is later, if transportation is f.o.b. destination.

(c) Paragraph (b) of this clause shall not apply to products that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such non-conforming products remains with the contractor until cure or acceptance. After cure or acceptance, paragraph (b) of this clause shall apply.

(d) Under paragraph (b) of this clause, the contractor shall not be liable for loss of or damage to products caused by the negligence of officers, agents, or employees of the judiciary acting within the scope of their employment.

(end)

Provision 2-15, Warranty Information

Include the following provision as prescribed in § 220.20.40(a) (Clauses and Provisions).

Warranty Information (JAN 2003)

Offerors are encouraged to submit information on any standard commercial warranties provided for offered products. The judiciary will consider these warranties in determining the most advantageous offer, to the extent provided in the evaluation factors.

(end)

Clause 2-20A, Incorporation of Warranty

Include the following clause as prescribed in § 220.20.40(b) (Clauses and Provisions).

Incorporation of Warranty (JAN 2003)

Notwithstanding the contractor's standard commercial warranty, if offered and accepted by the judiciary, any dispute thereunder will be resolved under the Disputes clause of this contract, notwithstanding any disputes procedure that may be specified in the warranty.

(end)

Clause 2-20B, Contractor Warranty (Products)

Include this clause as prescribed in § 220.20.40(c) (Clauses and Provisions).

Contractor Warranty (Products) (JAN 2010)

(a) The contractor warrants that all products furnished under this contract, including packaging and markings, will be free from defects in material or workmanship and will conform with the specifications and all other requirements of this contract.

(b) The contracting officer will give written notice to the contractor of any breach of warranty and either:

(1) require the prompt correction or replacement of any defective or nonconforming products; or

(2) retain them, reducing the contract price by an amount equitable under the circumstances.

(c) When return for correction or replacement is required, the contractor is responsible for all costs of transportation and for risk of loss in transit. If the contractor fails or refuses to correct or replace the defective or nonconforming products, the contracting officer may correct or replace them with similar products and charge the contractor for any cost to the judiciary. In addition, the contracting officer may dispose of the nonconforming products, with reimbursement from the contractor or from the proceeds for excess costs. Any products corrected or furnished in replacement are subject to this clause.

(d) The rights and remedies of the judiciary provided in this clause are in addition to, and do not limit, any rights afforded to the judiciary by any other clause of the contract.

(end)

Clause 2-20C, Warranty of Services

Include the following clause as prescribed in § 220.20.40(d) (Clauses and Provisions).

Warranty of Services (JAN 2003)

(a) Definition. "Acceptance," as used in this clause, means the act of an authorized representative of the judiciary by which the judiciary assumes for itself, or as an

agent of another, approves specific services, as partial or complete performance of the contract.

(b) Notwithstanding inspection and acceptance by the judiciary or any provision concerning the conclusiveness thereof, the contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The contracting officer will give written notice of any defect or nonconformance to the contractor *[contracting officer will insert the specific period of time in which notice will be given to the contractor; e.g., "within 30 days from the date of acceptance by the judiciary"; within 1000 hours of use by the judiciary;" or other specified event whose occurrence will terminate the period of notice, or combination of any applicable events or period of time]*. This notice will state either

(1) that the contractor shall correct or re-perform any defective or nonconforming services; or

(2) that the judiciary does not require correction or re-performance.

(c) If the contractor is required to correct or re-perform, it shall be at no cost to the judiciary, and any services corrected or re-performed by the contractor shall be subject to this clause to the same extent as work initially performed. If the contractor fails or refuses to correct or re-perform, the contracting officer may, by contract or otherwise, correct or replace with similar services and charge to the contractor the cost occasioned to the judiciary thereby, or make an equitable adjustment in the contract price.

(d) If the judiciary does not require correction or re-performance, the contracting officer will make an equitable adjustment in the contract price.

(end)

Clause 2-25A , Delivery Terms and Contractor's Responsibilities

Include the following clause as prescribed in § 220.25.70(a) (Product-Related Delivery Clauses and Provisions).

Delivery Terms and Contractor's Responsibilities (JAN 2003)

(a) The judiciary reserves the right to specify the mode of transportation and routing to be employed.

(b) Destination: If the contract specifies "F.o.b. destination," the following apply:

(1) “F.o.b. destination" means delivery to a destination specified in the purchase document by the consignor or seller (unless the contract provides otherwise). This includes within the doors of the specified building, including delivery to specific rooms within the building when specified. The cost of shipping and risk of loss are borne by the seller or consignor. Title to the products passes to the judiciary when deliverables arrive at the contract's stated destination.

(2) The contractor shall:

(i) pack and mark shipments to comply with contract specifications or, in their absence, prepare shipments in accordance with carrier requirements;

(ii) prepare and distribute commercial bills of lading;

(iii) deliver the shipment in good order and condition to the point of delivery specified in the contract;

(iv) be responsible for loss or damage occurring before receipt at the specified point of delivery;

(v) furnish a delivery schedule and designate the mode of delivery;

(vi) pay and bear all delivery costs to the specified point of delivery.

(c) Origin: If the contract specifies "F.o.b. origin," the following apply:

(1) "F.o.b. origin" means delivery, free of expense to the judiciary to the carrier or shipment facility as follows:

(i) delivery on board the indicated type of conveyance of the carrier (or of the judiciary, if specified), to the specified point from which the shipment will be made and from which line haul transportation service (as distinguished from switching, local drayage, or other terminal service) begins;

(ii) to a U.S. Postal Service facility; or

(iii) delivered by the contractor, to any judiciary designated point located within the same commercial zone (as prescribed by the

Interstate Commerce Commission) as the F.o.b. point named in the contract.

(2) The contractor shall:

(i) pack and mark shipments to comply with contract specifications or, in their absence, prepare the shipment in accordance with carrier requirements and good commercial practices and secure the lowest applicable transportation charge.

(ii) order specified carrier equipment when requested by the judiciary. Otherwise, order appropriate carrier equipment not in excess of capacity to accommodate the shipment.

(iii) deliver the shipment in good order and condition to the carrier, when loaded by the contractor, load, stow, trim, block, and/or brace shipments as required by the carrier's rules and regulations.

(iv) be responsible for loss or damage occurring before delivery to the carrier; and for loss or damage due to improper packing/marking and, when loaded by the contractor, from improper loading, stowing, trimming, blocking, and/or bracing of the shipment;

(v) prepare a commercial bill of lading or other transportation receipt, to show:

(A) a description of the shipment in terms of the governing freight classification or tariff (or government rate tender) under which the lowest freight rates are applicable;

(B) the seals affixed to the conveyance, including the serial number on them, or other identification;

(C) the length and capacity of cars or trucks ordered and furnished;

(D) other pertinent information required to effect prompt delivery to the consignee, including name delivery address, postal address and ZIP code of consignee, routing, etc.;

(E) special instructions or annotations requested by the judiciary for commercial bills of lading (for example, “This shipment is the property of, and the freight charges paid to the carrier will be reimbursed by, the judiciary”); and

(F) the signature of carrier's agent and the date the shipment is received by the carrier.

(vi) distribute the copies of the bill of lading, or other transportation receipt, as directed by the judiciary.

(vii) supply with each invoice a memorandum copy of the bill of lading, clearly indicating the signature of the carrier's agent, date of pickup, and the weight accepted by the carrier. If the weight is determined by the carrier after pickup, it shall be annotated on the memorandum copy of the bill of lading along with the following:

"I certify that the weight information is that obtained from the carrier.

Signed:"

(3) If the judiciary has not specified otherwise, the contractor shall ship on commercial bills of lading.

(4) If the judiciary specifies that shipment is to be made on endorsed commercial bills of lading for transportation charges up to $100, the contractor shall be required to prepay all transportation charges, not to exceed $100, per shipment.

(5) The contractor shall annotate the commercial bill of lading as follows:

"Property of the United States Judiciary"

(6) The actual transportation costs, not to exceed $100 per shipment, will be added to the contractor's invoice as a separate item. The costs shall be based on the lowest published rate on file with the Interstate Commerce Commission or any state regulatory body. They shall be supported by freight or express receipts marked "prepaid."

(end)

Clause 2-25B, Commercial Bill of Lading Notations

Include the following clause as prescribed in § 220.25.70(b) (Product-Related Delivery Clauses and Provisions).

Commercial Bill of Lading Notations (JAN 2003)

If the contracting officer authorizes products to be shipped on a commercial bill of lading and the contractor will be reimbursed these transportation costs as direct allowable costs, the contractor shall ensure before shipment is made that the commercial shipping documents are annotated as follows:

"Transportation is for the judiciary [name of the specific court unit or federal public defender organization] and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and will be reimbursed by, the judiciary."

(end)

Clause 2-30A, Time of Delivery

Include the following clause as prescribed in § 220.25.70(c) (Product-Related Delivery Clauses and Provisions).

Time of Delivery (JAN 2003)

(a) The judiciary requires delivery to be made according to the delivery schedule specified in Section F of the contract schedule. The judiciary will evaluate offerors' proposed delivery schedules to determine the offer with the most advantageous delivery time to the judiciary. Offers that propose delivery that will not clearly fall within the required delivery period will be deemed unacceptable. The judiciary reserves the right to award on the basis of either the required delivery schedule or the proposed delivery schedule when an offeror proposes an earlier delivery schedule than required. If the offeror proposes no other delivery schedule, the required delivery schedule will apply.

(b) The required delivery schedule may be stated in terms of days after the effective date of the contract award or specific dates.

(end)

Clause 2-30B, Desired And Required Time Of Delivery

Include the following clause as prescribed in § 220.25.70(d) (Product-Related Delivery Clauses and Provisions), and fill in the tables where indicated.

Desired And Required Time Of Delivery (JAN 2010)

(a) The judiciary desires delivery to be made according to the following schedule:

Desired Delivery Schedule		
(*Contracting Officer insert specific details*)		
Item No.	**Quantity**	**Within Applicable Specified Time Frame** (i.e. number of calendar days after award, after contract start date, or after a specified date, etc.)

If the offeror is unable to meet the desired delivery schedule, it may, without prejudicing evaluation of its offer, propose a delivery schedule below. However, the offeror's proposed delivery schedule shall not extend the delivery period beyond the time for delivery in the judiciary's required delivery schedule as follows:

Required Delivery Schedule		
(*Contracting Officer insert specific details*)		
Item No.	**Quantity**	**Within Applicable Specified Time Frame** (i.e. number of calendar days after award, after contract start date, or after a specified date, etc.)

Offers that propose delivery of a quantity under such terms or conditions that delivery will not clearly fall within the applicable required delivery period specified above, will be considered non-responsive and rejected. If the offeror proposes no other delivery schedule, the desired delivery schedule above will apply.

Offeror's Proposed Delivery Schedule		
(*Offeror insert specific details*)		
Item No.	**Quantity**	**Within Applicable Specified Time Frame** (i.e. number of calendar days after award, after contract start date, or after a specified date, etc.)

(b) Attention is directed to the Contract Award provision of the solicitation that provides that a written award or acceptance of offer mailed or otherwise furnished to the successful offeror results in a binding contract. The judiciary will mail or otherwise furnish to the offeror an award or notice of award not later than the day the award is dated. Therefore, the offeror shall compute the time available for performance beginning with the actual date of award, rather than the date the written notice of award is received from the contracting officer through the ordinary mails. However, the judiciary will evaluate an offer that proposes delivery based on the contractor's date of receipt of the contract or notice of award by adding (1) five calendar days for delivery of the award through the ordinary mails, or (2) one working day if the solicitation states that the contract or notice of award will be transmitted electronically. (The term "working day" excludes weekends and U.S. federal holidays.) If, as so computed, the offered delivery date is later than the required delivery date, the offer will be considered non-responsive and rejected.

(end)

Clause 2-35 F.o.b. Destination, Within Judiciary's Premises

Include the following clause as prescribed in § 220.25.70(e) (Product-Related Delivery Clauses and Provisions).

F.o.b. Destination, Within Judiciary's Premises (JAN 2003)

(a) The term "F.o.b. destination, within judiciary's premises," as used in this clause, means free of expense to the judiciary delivered and laid down within the doors of the judiciary's premises, including delivery to specific rooms within a building if so specified.

(b) The contractor shall:

(1) (i) pack and mark the shipment to comply with contract specifications; or

(ii) in the absence of specifications, prepare the shipment in conformance with carrier requirements;

(2) prepare and distribute commercial bills of lading;

(3) deliver the shipment in good order and condition to the point of delivery specified in the contract;

(4) be responsible for any loss of and/or damage to the products occurring before receipt of the shipment by the judiciary at the delivery point specified in the contract;

(5) furnish a delivery schedule and designate the mode of delivering carrier; and

(6) pay and bear all charges to the specified point of delivery.

(end)

Clause 2-40A, Variation in Quantity

Include the following clause as prescribed in § 220.25.70(f) (Product-Related Delivery Clauses and Provisions).

Variation in Quantity (JAN 2003)

(a) A variation in the quantity of any item called for by this contract will not be accepted unless the variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified in paragraph (b) of this clause.

(b) The permissible variation shall be limited to:

___ Percent increase [*contracting officer insert percentage*]

___ Percent decrease [*contracting officer insert percentage*]

This increase or decrease shall apply to _____.*

** Contracting officer will insert in the blank the designation(s) to which the percentages apply, such as:*

(1) The total contract quantity;

(2) Item 1 only;

(3) Each quantity specified in the delivery schedule;

(4) The total item quantity for each destination; or

(5) The total quantity of each item without regard to destination.

(end)

Clause 2-40B, Delivery of Excess Quantities

Include the following clause as prescribed in § 220.25.70(g) (Product-Related Delivery Clauses and Provisions).

Delivery of Excess Quantities (JAN 2003)

The contractor is responsible for the delivery of each item quantity within allowable variations, if any. If the contractor delivers, and the judiciary receives, quantities of any item in excess of the quantity called for (after considering any allowable variation in quantity), such excess quantities will be treated as being delivered for the convenience of the contractor. The judiciary may retain such excess quantities up to $250 in value without compensating the contractor therefore, and the contractor waives all right, title, or interests therein. Quantities in excess of $250 will, at the option of the judiciary, either be returned at the contractor's expense or retained and paid for by the judiciary at the contract unit price.

(end)

Clause 2-45, Packaging and Marking

Include the following clause as prescribed in § 220.25.70(h) (Product-Related Delivery Clauses and Provisions).

Packaging and Marking (AUG 2004)

(a) Unless otherwise specified, preservation, packaging, and marking for all items delivered hereunder shall be in accordance with commercial practice and

adequate to insure acceptance by common carrier and safe arrival at destination. The contractor shall place the contract number and delivery order number, or purchase order, as applicable, on or adjacent to the exterior shipping label or include them on the internal packing slip. For any magnetic media provided, the contractor shall provide extra markings for protection against exposure to magnetic fields or temperature extremes.

(b) All documentation, reports, and other deliverables shall be clearly marked with the project title, contract number, and delivery order number (when applicable). Unless otherwise specified, all items shall be packaged and packed in accordance with normal commercial practices (e.g., if magnetic media is involved, extra marking shall be considered for protection against exposure to magnetic fields or temperature).

(end)

Clause 2-50, Continuity of Services

Include the following clause as prescribed in § 220.25.80(a) (Service-Related Provisions and Clauses).

Continuity of Services (JAN 2003)

(a) The contractor recognizes that the services under this contract are vital to the judiciary and shall be continued without interruption and that, upon contract expiration, a successor, either the judiciary or another contractor, may continue them. The contractor agrees to:

(1) furnish phase-in training, and

(2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The contractor shall, upon the contracting officer's written notice:

(1) furnish phase-in, phase-out services for up to 90 days after this contract expires, and

(2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and will be subject to the contracting officer's written approval. The contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to

ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

(end)

Clause 2-55, Privacy or Security Safeguards

Include the following clause as prescribed in § 220.25.80(b) (Service-Related Provisions and Clauses).

Privacy or Security Safeguards (JAN 2003)

(a) The contractor shall not publish or disclose in any manner, without the contracting officer's written consent, the details of any safeguards either designed or developed by the contractor under this contract or otherwise provided by the judiciary.

(b) To the extent required to carry out a program of inspection to safeguard against threats and hazards to the security, integrity, and confidentiality of judiciary data, the contractor shall afford the judiciary access to the contractor's facilities, installations, technical capabilities, operations, documentation, records, and databases.

(c) If new or unanticipated threats or hazards are discovered by either the judiciary or the contractor, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party.

(end)

Clause 2-60, Stop-Work Order

Include the following clause as prescribed in § 220.25.80(c) (Service-Related Provisions and Clauses).

Stop-Work Order (JAN 2010)

(a) The contracting officer may, at any time, by written order to the contractor, require the contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the contractor, and for any further period to which the parties may agree. The order will be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the contractor, or within any extension of that period to which the parties shall have agreed, the contracting officer will either:

(1) cancel the stop-work order; or

(2) terminate the work covered by the order as provided in the default, or the Termination for Convenience, clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the contractor shall resume work. The contracting officer will make an equitable adjustment in the delivery schedule or contract price, or both, and the contract will be modified, in writing, accordingly, if:

(1) the stop-work order results in an increase in the time required for, or in the contractor's cost properly allocable to, the performance of any part of this contract; and

(2) the contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the contracting officer decides the facts justify the action, the contracting officer may receive and act upon the claim submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the judiciary, the contracting officer will allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the contracting officer will allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(end)

Clause 2-65, Key Personnel

Include the following clause as prescribed in § 220.25.80(d) (Service-Related Provisions and Clauses) and § 520.75(b) (Provisions and Clauses).

Key Personnel (AUG 2004)

(a) Individuals identified below as key personnel and accepted for this contract are expected to remain dedicated to this contract. However, in the event that it becomes necessary for the contractor to replace any of the individuals designated as key personnel, the contractor shall request such substitutions in accordance with this clause. Substitution of key personnel will be considered under the following circumstances only:

(1) All substitutes shall have qualifications at least equal to those of the person being replaced.

(2) All appointments of key personnel shall be approved in writing by the contracting officer, and no substitutions of such personnel shall be made without the advance written approval of the contracting officer.

(3) Except as provided in paragraph (4) of this clause, at least 30 days (60 days if security clearance is required) in advance of the proposed substitution, all proposed substitutions of key personnel shall be submitted in writing to the contracting officer, including the information required in paragraph (5) of this provision.

(4) The following identifies the requirements for situations where individuals proposed as key personnel become unavailable because of sudden illness, death or termination of employment. The contractor shall within 5 work days after the event, notify the contracting officer in writing of such unavailability. If the event happens after award, the contracting officer will determine if there is an immediate need for a temporary substitute and a continuing requirement for a permanent substitute for the key personnel position. The contracting officer will promptly inform the contractor of this determination. If the contracting officer specifies that a temporary substitute is required, the contractor shall as soon as is practical identify who will be performing the work as a temporary substitute. The temporary

substitute will then start performance on a date mutually acceptable to the contracting officer and the contractor. Within 15 work days following the event, if the contracting officer specifies that a permanent substitute is required, the contractor shall submit, in writing, for the contracting officer's approval, the information required in (5) and (6) below, for a proposed permanent substitute for the unavailable individual. The approval process will be the same as (7) below.

(5) Request for substitution of key personnel shall provide a detailed explanation of the circumstances necessitating substitution, a resume of the proposed substitute, and any other information requested by the contracting officer to make a determination as to the appropriateness of the proposed substitute's qualifications. All resumes shall be signed by the proposed substitute and his/her formal (per company accepted organizational chart) direct supervisor or higher authority.

(6) As a minimum (or as otherwise specified in the solicitation), resumes shall include the following:

(a) name of person;

(b) functional responsibility;

(c) education (including, in reverse chronological order, colleges and/or technical schools attended (with dates), degree(s)/certification(s) received, major field(s) of study, and approximate number of total class hours);

(d) citizenship status;

(e) experience including, in reverse chronological order for up to ten years, area(s) or work in which a person is qualified, company and title of position, approximate starting and ending dates (month/year), concise descriptions of experience for each position held including specific experience related to the requirements of this contract; and

(f) certification that the information contained in the resume is correct and accurate (signature of key person and date signed, and signature of the supervisor or higher authority and date signed will be accepted as certification).

(7) The contracting officer will promptly notify the contractor in writing of his/her approval or disapproval of all requests for substitution of key

personnel. All disapprovals will require re-submission of another proposed substitution within 15 days by the contractor.

The following individuals are designated as key personnel under this contract:

_____

_____

_____

(end)

Provision 2-70, Site Visit

Include the following provision as prescribed in § 220.25.80(e) (Service-Related Provisions and Clauses).

Site Visit (JAN 2003)

Offerors or quoters are urged and expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event will failure to inspect the site constitute grounds for a claim after contract award.

(end)

Clause 2-75, Liquidated Damages

Include the following clause as prescribed in § 220.30.50 (Clause), inserting the amount where indicated.

Liquidated Damages (JAN 2003)

(a) If the contractor fails to complete delivery of the products, or performance of the services within the time specified in this contract, or any extension, the contractor shall, in place of actual damages, pay to the judiciary $_____ *(contracting officer insert amount)* for liquidated damages as agreed for each calendar day of delay.

(b) Alternatively, if completion of delivery or performance is delayed beyond the contract dates, the judiciary may, at its sole discretion, terminate this contract in whole or in part under the Termination for Default clause, and the contractor shall

be liable for the agreed liquidated damages accruing until the time the judiciary may reasonably obtain delivery or performance of similar products or services. The liquidated damages will be in addition to excess costs of re-procurement.

(c) The contractor will not be charged with liquidated damages when the delay in completion of delivery or performance arises out of causes beyond the control and without the fault or negligence of the contractor.

(end)

Clause 2-80, Judiciary Property

Include the following clause as prescribed in § 220.35(c) (Judiciary Property).

Judiciary Property (JAN 2003)

(a) Title to judiciary property provided under this contract remains in the judiciary. The contractor may use the judiciary property only in connection with this contract. The contractor shall secure judiciary property and maintain adequate property control records in accordance with sound industrial practice and shall make them available for judiciary inspection at all reasonable times.

(b) Upon delivery of judiciary property to the contractor, the contractor assumes the risk and responsibility for its loss or damage, except:

(1) for reasonable wear and tear;

(2) to the extent property is consumed in performing the contract; or

(3) as otherwise provided in the contract.

(c) Upon completing this contract, the contractor shall follow the contracting officer's instructions regarding the disposition of all judiciary property not consumed in performing this contract or previously delivered to the judiciary. The contractor shall prepare for shipment, deliver F.o.b. origin, or dispose of the judiciary property, as directed or authorized by the contracting officer. The net proceeds of any such disposal will be credited to the contract price or will be paid to the judiciary as directed by the contracting officer.

(d) The items of property are listed in an inventory of items attached to this contract and the contractor shall notify the judiciary on any required adjustments.

(end)

Provision 2-85A, Evaluation Inclusive of Options

Include the following provision as prescribed in § 220.40.60(a)(1) (Option Provisions and Clauses).

Evaluation Inclusive of Options (JAN 2003)

(a) The judiciary will evaluate offers for purposes of award by adding the total price for all options to the total price for the basic requirement. Evaluation of options does not obligate the judiciary to exercise the option(s).

(b) Any offer that is materially unbalanced as to prices for basic and option quantities may be rejected. An unbalanced offer is one that is based on prices significantly less than cost for some work and prices that are significantly overstated for other work.

(end)

Provision 2-85B, Evaluation Exclusive of Options

Include the following provision as prescribed in § 220.40.60(a)(2) (Option Provisions and Clauses).

Evaluation Exclusive of Options (JAN 2003)

The judiciary will evaluate offers for award purposes by including only the price for the basic requirement; i.e., options will not be included in the evaluation for award purposes.

(end)

Provision 2-85C, Evaluation of Options Exercised at Time of Contract Award

Include the following provision as prescribed in § 220.40.60(a)(3) (Option Provisions and Clauses).

Evaluation of Options Exercised at Time of Contract Award (JAN 2003)

Except when it is determined not to be in the judiciary's best interests, the judiciary will evaluate the total price for the basic requirement together with any option(s) exercised at the time of award.

(end)

Clause 2-90A, Option for Increased Quantity

Include the following clause as prescribed in § 220.40.60(b)(1) (Option Provisions and Clauses).

Option for Increased Quantity (JAN 2003)

The judiciary may increase the quantity of products called for in this contract by requiring the delivery of the numbered line item identified in the schedule as an option item, in the quantity and at the price set forth in the schedule. The contracting officer may exercise this option, at any time within the period specified in the schedule, by giving written notice to the contractor. Delivery of the items added by the exercise of this option will continue immediately after, and at the same rate as, delivery of like items called for under this contract, unless the parties otherwise agree.

(end)

Clause 2-90B, Option for Increased Quantity – Separately Priced Line Item

Include the following clause as prescribed in § 220.40.60(b)(2) (Option Provisions and Clauses).

Option for Increased Quantity – Separately Priced Line Item (JAN 2003)

The judiciary may require the delivery of the numbered line item, identified in the schedule as an option item, in the quantity and at the price stated in the schedule. The contracting officer may exercise the option by written notice to the contractor within *[insert in the clause the period of time in which the contracting officer has to exercise the option]*. Delivery of added items shall continue at the same rate that like items are called for under the contract, unless the parties otherwise agree.

(end)

Clause 2-90C, Option to Extend Services

Include the following clause as prescribed in § 220.40.60(b)(3) (Option Provisions and Clauses).

Option to Extend Services (JAN 2003)

The judiciary may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a

result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The contracting officer may exercise the option by written notice to the contractor within _____ calendar days prior to the then current expiration date of this contract *[insert the period of time within which the contracting officer may exercise the option]*.

(end)

Clause 2-90D, Option to Extend the Term of the Contract

Include the following clause as prescribed in § 220.40.60(b)(4) (Option Provisions and Clauses).

Option to Extend the Term of the Contract (JAN 2003)

(a) The judiciary may extend the term of this contract by written notice to the contractor within _____ calendar days prior to the then current expiration date of this contract *[insert the period of time within which the contracting officer may exercise the option]*; provided that the judiciary gives the contractor a preliminary written notice of its intent to extend at least _____ calendar days [60 days unless a different number of days is inserted] before the contract expires. The preliminary notice does not commit the judiciary to an extension.

(b) If the judiciary exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed _____ (months) (years).

(end)

Clause 2-95, Material Requirements

Include the following clause as prescribed in § 220.25.70(i) (Product-Related Delivery Clauses and Provisions).

Material Requirements (JAN 2003)

(a) As used in this clause:

(1) “new" means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within,

an original manufacturing process; *provided* that the products meet contract requirements, including but not limited to, performance, reliability, and life expectancy.

(2) "reconditioned" means restored to the original normal operating condition by readjustments and material replacement.

(3) "recovered material" means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(4) "re-manufactured" means factory rebuilt to original specifications.

(5) "virgin material" means:

(i) previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or

(ii) any undeveloped resource that is, or with new technology will become, a source of raw materials.

(b) Unless this contract otherwise requires virgin material or products composed of or manufactured from virgin material, the contractor shall provide products that are new, reconditioned, or re-manufactured, as defined in this clause.

(c) An offer to provide unused former government surplus property shall include a complete description of the material, the quantity, the name of the government agency from which acquired, and the date of procurement.

(d) An offer to provide used, reconditioned, or re-manufactured products shall include a detailed description of such products and shall be submitted to the contracting officer for written approval.

(e) Used, reconditioned, or re-manufactured products, or unused former government surplus property, may be used in performance if the contractor has proposed the use of such products, and the contracting officer has authorized their use.

(end)

Provision 2-100, Brand Name or Equal

Include the following provision as prescribed in § 230.40.30 (Provision).

Brand Name or Equal (JAN 2003)

(a) One or more items called for by this solicitation have been identified in the schedule by a brand-name-or-equal product description. Offers offering equal products will be considered for award if these products are clearly identified and are determined by the judiciary to contain all of the essential characteristics of the brand-name products referenced in the solicitation.

(b) Unless the offeror clearly indicates in the offer that the offer is for an equal product, the offer will be considered as offering a brand-name product referenced in the solicitation.

(c) If the offeror proposes to furnish an equal product, the brand name and model or catalog number, if any, of the product to be furnished shall be inserted in the space provided in the solicitation. The evaluation of offers and the determination as to equality of the product offered will be based on information furnished by the offeror or identified in the offer, as well as other information reasonably available to the purchasing activity. The purchasing activity is not responsible for locating or obtaining any information not identified in the offer and reasonably available to the purchasing activity. Accordingly, to ensure that sufficient information is available, the offeror shall furnish as a part of the offer:

(1) all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the purchasing activity to establish exactly what the offeror proposes to furnish and to determine whether the product offered meets the requirements of the solicitation; or

(2) specific references to information previously furnished or to information otherwise available to the purchasing activity to permit a determination as to equality of the product offered.

(3) If the offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, the offeror shall:

(i) Include in the offer a clear description of the proposed modifications; and

(ii) Clearly mark any descriptive material to show the proposed modifications.

(end)

Provision 2-105, Economic Purchase Quantity-Products

Include the following provision as prescribed in § 220.25.70(j) (Product-Related Delivery Clauses and Provisions).

Economic Purchase Quantity-Products (JAN 2003)

(a) Offerors are invited to state an opinion on whether the quantity(ies) of products on which offers or quotes are requested in this solicitation is (are) economically advantageous to the judiciary.

_____

_____

_____

(b) Each offeror who believes that procurements in different quantities would be more advantageous is invited to recommend an economic purchase quantity. If different quantities are recommended, a total and a unit price shall be quoted for applicable items. An economic purchase quantity is that quantity at which a significant price break occurs. If there are significant price breaks at different quantity points, this information is desired as well.

Offeror's Recommendations			
Item	**Quantity**	**Price Quotation**	**Total**

(c) The information requested in this provision is being solicited to avoid procurements in disadvantageous quantities and to assist the judiciary in developing a database for future procurements of these items. However, the judiciary reserves the right to amend or cancel the solicitation and re-solicit with respect to any individual item in the event quotations received and the judiciary's requirements indicate that different quantities shall be acquired.

(end)

Clause 2-110, Option to Purchase Equipment

Include the following clause as prescribed in § 220.45.70 (Clauses).

Option to Purchase Equipment (JAN 2003)

(a) The judiciary may purchase the equipment provided on a lease or rental basis under this contract. The contracting officer may exercise this option only by providing a unilateral modification to the contractor. The effective date of the purchase will be specified in the unilateral modification and may be any time during the period of the contract, including any extensions thereto.

(b) Except for final payment and transfer of title to the judiciary, the lease or rental portion of the contract becomes complete and lease or rental charges shall be discontinued on the day immediately preceding the effective date of purchase specified in the unilateral modification required in paragraph (a) of this clause.

(c) The purchase conversion cost of the equipment shall be computed as of the effective date specified in the unilateral modification required in paragraph (a) of this clause, on the basis of the purchase price set forth in the contract, minus the total purchase option credits accumulated during the period of lease or rental, calculated by the formula contained elsewhere in this contract.

(d) The accumulated purchase option credits available to determine the purchase conversion cost will also include any credits accrued during a period of lease or rental of the equipment under any previous judiciary contract if the equipment has been on continuous lease or rental. The movement of equipment from one site to another site shall be "continuous rental."

(end)

Clause 2-115, Terms for Commercial Advance Payment of Purchases

Include the following clause as prescribed in § 220.55.70(a) (Advance Payment Clauses).

Terms for Commercial Advance Payment of Purchases (OCT 2006)

(a) Contractor Entitlement to Advance Payment

The Contractor may request, and the Government may authorize, payment in advance when: the payment requested is properly due in accordance with this contract; the products or services due under the contract will be delivered or performed in accordance with the contract; and there has been no impairment or diminution of the Government’s security under this contract.

(b) Special Terms Regarding Termination for Default

If this contract is terminated for default, the Contractor shall, on demand, repay to the Government the amount of unliquidated advance payments. The Government shall be liable for no payment except as provided by Clause 7-230, Termination for Default – Fixed Price Products and Services.

(c) Security for Advance Payment

The Contractor must provide adequate security prior to any authorization for advance payment. In the event the Contractor fails to provide adequate security, as required by this clause, no advance payment shall be made under this contract. The Contracting Officer may determine that the Contractor's financial condition provides adequate security. If the Contracting Officer does not consider the Contractor's financial condition to provide adequate security, the Contractor must provide an irrevocable letter of credit from a federally insured financial institution in an amount equal to the advance payment requested. If, at any time, the Contracting Officer determines that the security provided by the Contractor is insufficient, the Contractor shall promptly provide such additional security as the Contracting Officer determines necessary. In the event the Contractor fails to provide such additional security, the Contracting Officer may collect or liquidate such security that has been provided and suspend further payments to the Contractor; and the Contractor shall repay to the Government the amount of unliquidated advance payments as the Contracting Officer at his / her sole discretion deems repayable.

(d) Reservation of Rights

(1) No payment or other action by the Government under this clause shall:

(i) Excuse the Contractor from performance of obligations under this contract; or

(ii) Constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause:

(i) Shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract; and

(ii) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this

clause or the exercise of any other right, power, or privilege of the Government.

(e) Limitation on Frequency of Financing Payments

Contractor financing payments shall be provided no more frequently than monthly.

(f) Dates for Payment

A payment under this clause is a contract financing payment and not subject to the interest penalty provisions of the Prompt Payment Act.

(g) Restrictions on Novation

While any advance payments made under this contract remain outstanding with respect to performance (i.e., the Judiciary has not received all of the performance which has been paid in advance), the Contractor shall not substantially change the management, ownership, or control of the corporation without the prior written consent of the CO.

(h) Prohibition Against Assignment

The Contractor shall not assign this contract, any interest therein, or any claim under the contract to any party.

(end)

Alternate I (OCT 2006): *In accordance with § 220.55.70(b) (Advance Payment Clauses), add the following paragraph to the basic clause in contracts for photocopy equipment maintenance agreements which authorize advance payment*

(i) Any advance payment authorized by this contract is not inclusive of excess copy charges which may be incurred. These charges shall be invoiced in arrears, either at the end of the twelve month period of performance or when the cumulative amount of such charges reaches $500.00, whichever occurs first.

(end)

Clause 2-120, Submission of Invoice

Include the following clause as prescribed in § 220.55.70(c) (Advance Payment Clauses).

Submission of Invoice (OCT 2006)

Upon satisfactory completion of the first month of performance under this contract and approval by the Contracting Officer, the contractor may invoice and receive payment for a maximum of twelve months of performance.

(end)

Clause 2-125, Security for Advance Payment

Include the following clause as prescribed in § 220.55.70(d) (Advance Payment Clauses).

Security for Advance Payment (OCT 2006)

The Contractor's financial condition has been accepted as adequate security for advance payments under this contract. Should the Contracting Officer determine that the Contractor's financial condition has changed to such an extent that it can no longer be considered adequate security, the contracting officer may exercise the Government's rights to require other security under paragraph (c), Security for Government Financing, of the clause at Clause 2-115, Terms for Commercial Advance Payment of Purchases.

(end)

Clause 2-130, Energy Efficiency in Energy-Consuming Products

Include the following clause as prescribed in § 220.60.70(a) (Clauses).

Energy Efficiency in Energy-Consuming Products (JAN 2010)

(a) Definition. As used in this clause:

"Energy-efficient product":

(1) Means a product that:

(i) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or

(ii) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program (FEMP)

(2) The term "product" does not include any energy-consuming product or system designed or procured for combat or combat-related missions (**see:** 42 U.S.C. § 8259b).

(b) The Contractor shall ensure that energy-consuming products are energy efficient products (i.e., ENERGY STAR® products or FEMP-designated products) at the time of contract award, for products that are:

(1) Delivered;

(2) Acquired by the Contractor for use in performing services at a judiciary-controlled facility;

(3) Furnished by the Contractor for use by the judiciary; or

(4) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.

(c) The requirements of paragraph (b) apply to the Contractor (including any subcontractor) unless:

(1) The energy-consuming product is not listed in the ENERGY STAR® Program or FEMP; or

(2) Otherwise approved in writing by the Contracting Officer.

(d) Information about these products is available at:

(1) ENERGY STAR® ; and

(2) FEMP.

(end)

Clause 2-135, IEEE Standard for the Environmental Assessment of Personal Computer Products

Include the following clause as prescribed in § 220.60.70(b) (Clauses).

IEEE Standard for the Environmental Assessment of Personal Computer Products (JAN 2010)

(a) Definitions. As used in this clause:

"Computer monitor" means a video display unit used with a computer.

"Desktop computer" means a computer designed for use on a desk or table.

"IEEE" means Institute of Electrical and Electronics Engineers

"Notebook computer" means a portable-style or laptop-style computer system.

"Personal computer product" means a notebook computer, a desktop computer, or a computer monitor, and any peripheral equipment that is integral to the operation of such items. For example, the desktop computer together with the keyboard, the mouse, and the power cord would be a personal computer product. Printers, copiers, and fax machines are not included in peripheral equipment, as used in this definition.

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for contractor use at a Government-owned facility, only personal computer products that at the time of submission of proposals were Electronic Product Environmental Assessment Tool (EPEAT) Bronze registered or higher. Bronze is the first level discussed in clause 1.4 of the IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.

(c) For information on IEEE standard 1680, **see:** www.epeat.net.

(end)

Provisions and Clauses (Chapter 3)

Clause 3-1, Contractor Use of Mandatory Sources of Products or Services

Include the following clause as prescribed in § 310.20.70 (Clauses).

Contractor Use of Mandatory Sources of Products or Services (JUN 2012)

(a) Certain products or services to be provided under this contract for use by the judiciary are required by law to be obtained from nonprofit agencies participating in the program operated by the Committee for Purchase from People Who Are Blind or Severely Disabled (the Committee) under Javits-Wagner-O'Day Act, (41 U.S.C. §§ 8501-8506). Additionally, certain of these products are available from the Defense Logistics Agency (DLA), the General Services Administration (GSA), or the Department of Veterans Affairs (VA). The contractor shall obtain mandatory products or services to be provided for judiciary use under this contract from the specific sources indicated in the contract.

(b) The contractor shall immediately notify the contracting officer if a mandatory source is unable to provide the products or services by the time required, or if the quality of products or services provided by the mandatory source is unsatisfactory. The contractor shall not purchase the products or services from other sources until the contracting officer has notified the contractor that the Committee or an AbilityOne central nonprofit agency has authorized purchase from other sources.

(c) Price and delivery information for mandatory products is available from the contracting officer for products obtained through the DLA/GSA/VA distribution facilities. For mandatory products or services not available from DLA/GSA/VA sources, price and delivery information is available from the appropriate central nonprofit agency. Payments will be made directly to the source making delivery. Points of contact for AbilityOne central nonprofit agencies are:

(1) National Industries for the Blind (NIB)
1310 Braddock Place
Alexandria, VA 22314-1591
703-310-0500; and

(2) National Industries for the Severely Handicapped (NISH)
8401 Old Courthouse Road
Vienna, VA 22182
571-226-4660

(end)

Clause 3-3, Provisions, Clauses, Terms and Conditions - Small Purchases

Include the following clause as prescribed in § 310.50.30(d), § 325.30.20(b), and § 325.45.10(c).

Provisions, Clauses, Terms and Conditions - Small Purchases (JUN 2012)

(a) The following provisions are incorporated by reference into the request for quotations (RFQ):

(1) Provision 3-70, Determination of Responsibility (JAN 2003)

(2) Provision 3-210, Protests (SEP 2010)

(3) Provision 7-60, Judiciary Furnished Property or Services (JAN 2003)

(b) The contractor shall comply with the following clauses incorporated by reference:

(1) Clause 1-15, Disclosure of Contractor Information to the Public (AUG 2004)

(2) Clause 2-60, Stop Work Order (JAN 2010)

(3) Clause 3-205, Protest After Award (JAN 2003)

(4) Clause 7-20, Security Requirements (JAN 2010)

(5) Clause 7-30, Public Use of the Name of the Federal Judiciary (JAN 2003)

(6) Clause 7-35, Disclosure or Use of Information (APR 2010)

(7) Clause 7-85, Examination of Records (JAN 2003)

(8) Clause 7-125, Invoices (APR 2011)

(9) Clause 7-130, Interest (Prompt Payment) (JAN 2003)

(10) Clause 7-135, Payments (JAN 2003) (Payment means acceptance by the inclusion of this clause.)

(11) Clause 7-140, Discounts for Prompt Payment (JAN 2003)

(12) Clause 7-150, Extras (JAN 2003)

(13) Clause 7-185, Changes (JAN 2003)

(14) Clause 7-200, Judiciary Delay of Work (JAN 2003) (Applies for products and fixed-price services.)

(15) Clause 7-210, Payment for Emergency Closures (AUG 2004)

(16) Clause 7-235, Disputes (JAN 2003)

(c) The contractor shall comply with the following clauses, incorporated by reference, unless the stated circumstances do not apply:

(1) Clause B-20, Computer Generated Forms (JAN 2003) (Applies when the contractor is required to submit data on standard or optional forms.)

(2) Clause 6-60, Rights in Data – General (JUN 2012) (Applies if data will be produced, furnished, or acquired under the purchase order.)

(3) Clause 7-145, Government Purchase Card (JAN 2003) (Applies when the CO determines that the purchase card can be used to make payments.)

(4) Clause 2-115, Terms for Commercial Advance Payment of Purchases (OCT 2006) (Applies if advance payment will be authorized.)

(5) Clause 2-115, Alt I (OCT 2006) (Applies if advance payment is authorized for photocopy equipment maintenance.)

(6) The following apply to products only:

a) Clause 2-25A, Delivery Terms and Contractor's Responsibilities (JAN 2003) (Purchase order will specify whether delivery is expected at destination or origin.)

b) Clause 2-45, Packaging and Marking (AUG 2004) (Applies to fixed-price contracts for products or for a service involving furnishing of products.)

c) Clause 3-155, Walsh-Healey Public Contracts Act (JUN 2012) (Applies to purchase orders over $15,000 for the manufacturing or furnishing of products in the United States, Puerto Rico, or the U. S. Virgin Islands.)

(7) The following apply to services only:

a) Clause 1-1, Employment by the Government (JAN 2003)

b) Clause 1-5, Conflict of Interest (AUG 2004)

c) Clause 3-160, Service Contract Act of 1965 (JUN 2012) (Applies to any purchase order over $2,500, 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, **except** where Clause 3-215, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment - Requirements, **or** Clause 3-225, Exemption from Application of the Service Contract Act to Contracts for Certain Services - Requirements apply. See (c)(7)g) and (c)(7)h) below.)

d) Clause 7-40, Judiciary-Contractor Relationship (JAN 2003) (Applies to services when not involving judiciary information technology funds.)

e) Clause 7-65, Protection of Judiciary Buildings, Equipment and Vegetation (JAN 2003) (Applies when services are performed at a judiciary facility.)

f) Clause 7-205, Payment for Judiciary Holidays (JAN 2003) (Applies to time-and-materials or labor-hour contracts.)

g) Clause 3-215, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Requirements (APR 2011) (Applies if the request for quotation included Provision 3-195 and the contractor certified its compliance with the conditions stated in the provision.)

h) Clause 3-225, Exemption from Application of the Service Contract Act to Contracts for Certain Services – Requirements (APR 2011) (Applies if the request for quotation included Provision 3-220 and the contractor certified its compliance with the conditions stated in the provision.)

(d) Inspection/Acceptance

The contractor shall tender for acceptance only those products and/or services that conform to the requirements of this contract. The judiciary reserves the right to inspect or test any products or services that have been tendered for acceptance. The judiciary may require repair or replacement of nonconforming

products or re-performance of nonconforming services at no increase in contract price. The judiciary must exercise its post-acceptance rights:

(1) within a reasonable period of time after the defect was discovered or should have been discovered; and

(2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(e) Excusable Delays

The contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The contractor shall notify the contracting officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the contracting officer of the cessation of such occurrence.

(f) Termination for the Judiciary’s Convenience

The judiciary reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the contractor can demonstrate to the satisfaction of the judiciary, using its standard record keeping system, have resulted from the termination. The contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the judiciary any right to audit the contractor's records. The contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(g) Termination for Cause

The judiciary may terminate this contract, or any part hereof, for cause in the event of any default by the contractor, or if the contractor fails to comply with any contract terms and conditions, or fails to provide the judiciary, upon request, with adequate assurances of future performance. In the event of termination for

cause, the judiciary shall not be liable to the contractor for any amount for products or services not accepted, and the contractor shall be liable to the judiciary for any and all rights and remedies provided by law. If it is determined that the judiciary improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(h) Warranty

The contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(end)

Provision 3-5, Taxpayer Identification and Other Offeror Information

Include the following provision as prescribed in § 325.30.20(b) (Written Solicitations) and § 330.10.30(a) (Provisions and Clauses).

Taxpayer Identification and Other Offeror Information (APR 2011)

(a) Definitions.

"Taxpayer Identification (TIN)," as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a social security number or an employer identification number.

(b) All offerors shall submit the information required in paragraphs (d) and (e) of this provision to comply with debt collection requirements of 31 U.S.C. §§ 7701(c) and 3325(d), reporting requirements of 26 U.S.C. §§ 6041, 6041A, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) The TIN may be used by the government to collect and report on any delinquent amounts arising out of the offeror's relationship with the government (31 U.S.C. § 7701(c)(3)). If the resulting contract is subject to payment recording requirements, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(d) Taxpayer Identification Number (TIN): _____

[ ] TIN has been applied for.

[ ] TIN is not required, because:

[ ] Offeror is a nonresident alien, foreign corporation or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

[ ] Offeror is an agency or instrumentality of a foreign government;

[ ] Offeror is an agency or instrumentality of the federal government.

(e) Type of Organization:

[ ] sole proprietorship;

[ ] partnership;

[ ] corporate entity (not tax-exempt);

[ ] corporate entity (tax-exempt);

[ ] government entity (federal, state or local);

[ ] foreign government;

[ ] international organization per 26 CFR 1.6049-4;

[ ] other _____.

(f) Contractor representations.

The offeror represents as part of its offer that it is [___], is not [___] 51% owned and the management and daily operations are controlled by one or more members of the selected socio-economic group(s) below:

[___] Women Owned Business

[___] Minority Owned Business (if selected then one sub-type is required)

[___] Black American Owned

[___] Hispanic American Owned

[___] Native American Owned (American Indians, Eskimos, Aleuts, or Native Hawaiians)

[___] Asian-Pacific American Owned (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru)

[___] Subcontinent Asian (Asian-Indian) American Owned (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal)

[___] Individual/concern, other than one of the preceding.

(end)

Provision 3-10, RESERVED

Provision 3-15, Place of Performance

Include the following provision as prescribed in § 330.10.30(c) (Provisions and Clauses).

Place of Performance (JAN 2003)

If the judiciary intends or the offeror proposes, in the performance of any contract resulting from this solicitation, to use one or more facilities located at addresses different from the offeror's address as indicated in this offer, the offeror shall include in its offer a statement referencing this provision and identifying those facilities by street address, city, country, state, and ZIP code, and the name and address of the operators of those facilities if other than the offeror.

(end)

Provision 3-20, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters

Include the following provision as prescribed in § 330.10.30(d) (Provisions and Clauses).

Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters (APR 2011)

(a) (1) The offeror certifies, to the best of its knowledge and belief, that:

(i) the offeror and/or any of its principals:

(A) are ___ are not ___ presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal agency;

(B) have ___ have not ___, within the three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating federal criminal tax laws, or receiving stolen property;

(C) are ___ are not ___ presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision;

(D) have ___, have not ___, within a three-year period preceding this offer, been notified of any delinquent federal taxes in an amount that exceeds $3,000 for which the liability remains unsatisfied.

(1) Federal taxes are considered delinquent if both of the following criteria apply:

(i) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(ii) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(2) Examples.

(i) The taxpayer has received a statutory notice of deficiency, under I.R.C. § 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(ii) The IRS has filed a notice of federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. § 6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(iii) The taxpayer has entered into an installment agreement pursuant to I.R.C. § 6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(iv) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

ii. The offeror ___ has ___ has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any federal agency.

(2) "Principal," for the purposes of this certification, means an officer; director; owner; partner or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division, or business segment, and similar positions).

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under 18 U.S.C. § 1001.

(b) The offeror shall provide immediate written notice to the contracting officer if, at any time prior to contract award, the offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the offeror's responsibility. Failure of the offeror to furnish a certification or provide such additional information as requested by the contracting officer may render the offeror nonresponsible.

(d) Nothing contained in the foregoing will be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the offeror knowingly rendered an erroneous certification, in addition to other remedies available to the judiciary, the contracting officer may terminate the contract resulting from this solicitation for default.

(end)

Clause 3-25, Protecting the Judiciary's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment

Include the following clause as prescribed in § 330.10.30(e) (Provisions and Clauses).

Protecting the Judiciary's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (JAN 2003)

(a) The government suspends or debars contractors to protect the government's interests (including the judiciary). The contractor shall not enter into any subcontract in excess of $25,000 with a contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed $25,000, to disclose to the contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the federal government.

(c) A corporate officer or a designee of the contractor shall notify the contracting officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment. The notice shall include the following:

(1) the name of the subcontractor;

(2) the contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs;

(3) the compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs; and

(4) the systems and procedures the contractor has established to ensure that it is fully protecting the judiciary's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(end)

Provision 3-30, Certificate of Independent Price Determination

Include the following provision as prescribed in § 330.10.30(f) (Provisions and Clauses).

Certificate of Independent Price Determination (JAN 2003)

(a) The offeror certifies that:

(1) the prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement, with any other offeror or with any competitor relating to:

(A) those prices;

(B) the intention to submit an offer; or

(C) the methods or factors used to calculate the prices offered.

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or contract award unless otherwise required by law; and

(3) no attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory –

(1) is the person in the offeror's organization responsible for determining the prices in this offer, and that the signatory has not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; or

(2) (i) has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision _____ *(insert full name of person(s) in the offeror's organization responsible for determining the prices in this offer, and the title of his or her position in the offeror's organization)*;

(ii) as an authorized agent, does certify that the principals named in subdivision (b)(2)(i) of this provision; have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; and

(iii) as an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision.

(c) If the offeror deletes or modifies paragraph (a)(2) of this provision, the offeror shall furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

(end)

Clause 3-35, Covenant Against Contingent Fees

Include the following clause as prescribed in § 330.10.30(g) (Provisions and Clauses).

Covenant Against Contingent Fees (JAN 2003)

(a) The contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the judiciary will have the right to annul or terminate this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) Definitions

"Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain judiciary contracts nor holds itself out as being able to obtain any judiciary contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain judiciary contracts nor holds out as being able to obtain any judiciary contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a judiciary contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a judiciary employee or officer to give consideration or to act regarding a judiciary contract on any basis other than the merits of the matter.

(end)

Clause 3-40, Restrictions on Subcontractor Sales to the Government

Include the following clause as prescribed in § 330.10.30(h) (Provisions and Clauses).

Restrictions on Subcontractor Sales to the Government (JAN 2003)

(a) Except as provided in (b) of this clause, the contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the judiciary of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) of this clause does not preclude the contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed the judiciary's small purchase threshold.

(end)

Clause 3-45, Anti-Kickback Procedures

Include the following clause as prescribed in § 330.10.30(i) (Provisions and Clauses).

Anti-Kickback Procedures (JUN 2012)

(a) Definitions

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime contractor, prime contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime Contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining products, materials, equipment, or services of any kind.

"Prime Contractor" as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor Employee," as used in this clause, means any officer, partner, employee, or agent of a prime contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime contractor or subcontractor for the purpose of obtaining products, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime contractor, who offers to furnish or furnishes any products, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general products to the prime contractor or a higher tier subcontractor.

"Subcontractor Employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. §§ 8701-8707) (the Act), prohibits any person from:

(1) providing or attempting to provide or offering to provide any kickback;

(2) soliciting, accepting, or attempting to accept any kickback; or

(3) including, directly or indirectly, the amount of any kickback in the contract price charged by a prime contractor to the United States or in the contract price charged by a subcontractor to a prime contractor or higher tier subcontractor.

(c) (1) The contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting office, the

head of the contracting office if it does not have an inspector general, or the Department of Justice.

(3) The contractor shall cooperate fully with any federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The contracting officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the prime contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The contracting officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the prime contractor shall notify the contracting officer when the monies are withheld.

(5) The contractor agrees to incorporate the substance of this clause, including paragraph (c)(5) but excepting paragraph (c)(1), in all subcontracts under this contract which exceed the judiciary's small purchase threshold.

(end)

Clause 3-50, Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity

Include the following clause as prescribed in § 330.10.30(j) (Provisions and Clauses).

Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (JUN 2012)

(a) If the judiciary receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. §§ 2101-2107) (the Act), as amended by section 4304 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the judiciary may:

(1) cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) rescind the contract with respect to which:

(i) the contractor or someone acting for the contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27(a) or (b) of the Act for the purpose of either:

(A) exchanging the information covered by such subsections for anything of value; or

(B) obtaining or giving anyone a competitive advantage in the award of a judiciary contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act.

(b) If the judiciary rescinds the contract under paragraph (a) of this clause, the judiciary is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the judiciary specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

(end)

Clause 3-55, Price or Fee Adjustment for Illegal or Improper Activity

Include the following clause as prescribed in § 330.10.30(k) (Provisions and Clauses).

Price or Fee Adjustment for Illegal or Improper Activity (JUN 2012)

(a) The judiciary, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27(a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. §§ 2101-2107).

(b) The price or fee reduction referred to in paragraph (a) of this clause will be:

(1) for cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) for cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;

(3) for cost-plus-award-fee contracts:

(i) the base fee established in the contract at the time of contract award;

(ii) if no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the contractor for each award fee evaluation period or at each award fee determination point.

(4) for fixed-price-incentive contracts, the judiciary may:

(i) reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) if an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the contracting officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract will be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price will be the total final contract price.

(5) for firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the contracting officer from records or documents in existence prior to the date of the contract award.

(c) The judiciary may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the judiciary may terminate this contract for default. The rights and remedies of the judiciary specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(end)

Provision 3-60, RESERVED

Clause 3-65, RESERVED

Provision 3-70, Determination of Responsibility

Include the following provision as prescribed in § 330.10.30(n) (Provisions and Clauses).

Determination of Responsibility (JAN 2003)

A determination of responsibility will be made on the apparent successful offeror prior to contract award. If the prospective contractor is found non-responsible, that offeror will be rejected and will receive no further consideration for award. In the event a contractor is rejected based on a determination of non-responsibility, a determination will be made on the next apparent successful offeror.

(end)

Provision 3-75, RESERVED

Provision 3-80, RESERVED

Provision 3-85, Explanation to Prospective Offerors

Include the following provision as prescribed in § 330.10.30(q) (Provisions and Clauses).

Explanation to Prospective Offerors (AUG 2004)

Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc. shall submit such questions in writing only to the contracting officer soon enough to allow a reply to reach all prospective offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given by the contracting officer to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an

amendment to the solicitation, if that information is deemed by the contracting officer to be necessary in submitting offers or if, in the judgment of the contracting officer, the lack of it would be prejudicial to any other prospective offerors. The offeror is instructed specifically to contact only the contracting officer in connection with any aspect of this procurement prior to contract award. Contact with any other judiciary official except the contracting officer, or without the contracting officer's express consent, concerning this solicitation may result in disqualification of the offeror from consideration for award.

(end)

Provision 3-90, RESERVED

Provision 3-95, Preparation of Offers

Include the following provision as prescribed in § 330.10.30(s) (Provisions and Clauses).

Preparation of Offers (JAN 2003)

(a) Offerors are expected to examine the drawings, specifications, schedule and all provisions and instructions. Failure to do so will be at the offeror's risk.

(b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the offer and print or type its name on the offer and each continuation sheet on which it makes an entry. Erasures or other changes shall be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previous furnished to the purchasing office.

(c) For each item in the offer, the offeror shall:

(1) show the unit price/cost, including, unless otherwise specified, packaging, packing, and preservation; and

(2) enter the extended price/cost for the quantity of each item offered in the "amount" column of the schedule.

In case of discrepancy between a unit price/cost and an extended price/cost, the unit price/cost will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.

(d) Offers for products or services other than those specified will not be considered unless authorized by the solicitation.

(e) Offerors shall state a definite time for delivery of products or for performance of services, unless otherwise specified in the solicitation.

(f) Time, if stated as a number of days, will include Saturdays, Sundays, and federal holidays.

(end)

Provision 3-100, Instructions to Offerors

Include the following provision as prescribed in § 330.10.30(t) (Provisions and Clauses).

Instructions to Offerors (APR 2011)

(a) Definitions. As used in this provision:

"Discussions" are negotiations that occur after establishment of the competitive range that may, at the contracting officer's discretion, result in the offeror being allowed to revise its offer.

“In writing," "writing," or "written" means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

"Offer modification" is a change made to an offer before the solicitation's closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

"Offer revision" is a change to an offer made after the solicitation closing date, at the request of or as allowed by a contracting officer as the result of negotiations.

"Time," if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period will include the next working day.

(b) Amendments to Solicitations

If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) Submission, Modification, Revision, and Withdrawal of Offers

(1) Unless some other method (e.g., facsimile) is permitted in the solicitation, offers and modifications to offers shall be submitted in paper media in sealed envelopes or packages (i) addressed to the office specified in the solicitation, and (ii) showing the time and date specified for receipt, the solicitation number, and the name and address of the offeror. Offerors using commercial carriers shall ensure that the offer is marked on the outermost wrapper with the information in paragraphs (c)(1)(i) and (c)(1)(ii) of this provision.

(2) The first page of the offer shall show:

(i) the solicitation number;

(ii) the name, address, and telephone and facsimile numbers of the offeror (and email address if available);

(iii) a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;

(iv) names, titles, and telephone and facsimile numbers (and email addresses if available) of persons authorized to negotiate on the offeror's behalf with the judiciary in connection with this solicitation; and

(v) name, title, and signature of person authorized to sign the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(3) Submission, Modification, Revision, and Withdrawal of Offers

(i) Offerors are responsible for submitting offers, and any modifications or revisions, so as to reach the judiciary office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated judiciary office on the date that offer or revision is due.

(ii) (A) Any offer, modification, or revision received at the judiciary office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the

contracting officer determines it's in the judiciary's best interest, the contracting officer determines that accepting the late offer would not unduly delay the procurement, and:

(1) there is acceptable evidence to establish that it was received at the judiciary office designated for receipt of offers prior to the time set for receipt; or

(2) it is the only offer received.

(ii) (B) However, a late modification of an otherwise successful offer that makes its terms more favorable to the judiciary, will be considered at any time it is received and may be accepted.

(iii) Acceptable evidence to establish the time of receipt at the judiciary office includes the time/date stamp of that office on the offer wrapper, other documentary evidence of receipt maintained by the office, or oral testimony or statements of judiciary personnel.

(iv) If an emergency or unanticipated event interrupts normal judiciary processes so that offers cannot be received at the office designated for receipt of offers by the exact time specified in the solicitation, and urgent judiciary requirements preclude amendment of the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal judiciary processes resume.

(v) Offers may be withdrawn by written notice received at any time before award. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the Provision 3-115, "Facsimile Offers." Offers may be withdrawn in person by an offeror or an authorized representative, if the identity of the person requesting withdrawal is established and the person signs a receipt for the offer before award.

(4) Unless otherwise specified in the solicitation, offers on less than all items solicited will not be considered.

(5) Offerors shall submit offers in response to this solicitation in English and in U.S. dollars.

(6) Offerors may submit modifications to their offers at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.

(7) Offerors may submit revised offers only if requested or allowed by the contracting officer.

(8) Offers may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the contracting officer.

(d) Offer Expiration Date

Offers in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet (unless a different period is proposed by the offeror).

(e) Restriction on Disclosure and Use of Data

Offerors that include in their offers data that they do not want disclosed to the public for any purpose, or used by the judiciary except for evaluation purposes, shall:

(1) mark the title page with the following legend:

This offer includes data that shall not be disclosed outside the judiciary and shall not be duplicated, used, or disclosed — in whole or in part — for any purpose other than to evaluate this offer. If, however, a contract is awarded to this offeror as a result of — or in connection with — the submission of this data, the judiciary shall have 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 this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [*insert numbers or other identification of sheets*]; and

(2) 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.

(f) Contract Award

(1) The judiciary intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose offer(s) represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

(2) The judiciary may reject any or all offers if such action is in the judiciary's interest.

(3) The judiciary may waive informalities and minor irregularities in offers received.

(4) The judiciary intends to evaluate offers and award a contract without discussions with offerors (except clarifications). Therefore, the offeror's initial offer shall contain the offeror's best terms from a cost or price and technical standpoint. The judiciary reserves the right to conduct discussions if the contracting officer later determines them to be necessary. If the contracting officer determines that the number of offers that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the contracting officer may limit the number of offers in the competitive range to the greatest number that will permit an efficient competition among the most highly rated offers.

(5) The judiciary reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the offer.

(6) The judiciary reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the judiciary's best interest to do so.

(7) Exchanges with offerors after receipt of an offer do not constitute a rejection or counteroffer by the judiciary.

(8) The judiciary may determine that an offer is unacceptable if the prices proposed are materially unbalanced between line items or sub-line items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. An offer may be rejected if the contracting officer determines that the lack of balance poses an unacceptable risk to the judiciary.

(9) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.

(10) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time specified in the offer shall result in a binding contract without further action by either party.

(11) The judiciary may disclose the following information in postaward debriefings to other offerors:

(i) the overall evaluated cost or price, and technical rating of the successful offeror;

(ii) the overall ranking of all offerors, when any ranking was developed by the judiciary during source selection;

(iii) a summary of the rationale for award; and

(iv) for procurements of commercial items, the make and model of the item to be delivered by the successful offeror.

(end)

Alternate I (JAN 2003): *As prescribed in § 330.10.30(t)(1) (Provisions and Clauses), substitute the following paragraph for paragraph (f)(4) of the basic provision if the judiciary intends to make award after discussions with offerors within the competitive range.*

(f)(4) The judiciary intends to evaluate offers and award a contract after conducting discussions with offerors whose offers have been determined to be within the competitive range. If the contracting officer determines that the number of offers that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the contracting officer may limit the number of offers in the competitive range to the greatest number that will permit an efficient competition among the most highly rated offers. Therefore, the offeror's initial offer shall contain the offeror's best terms from a price and technical standpoint.

Alternate II (JAN 2003): *As prescribed in § 330.10.30(t)(2) (Provisions and Clauses), add paragraph (c)(9) to the basic clause, if the judiciary would be willing to accept alternate offers.*

(c)(9) Offerors may submit offers that depart from stated requirements. Such offers shall clearly identify why the acceptance of the offer would be advantageous to

the judiciary. Any deviations from the terms and conditions of the solicitation, as well as the comparative advantage to the judiciary, shall be clearly identified and explicitly defined. The judiciary reserves the right to amend the solicitation to allow all offerors an opportunity to submit revised offers based on the revised requirements.

Alternate III (SEP 2010): *As prescribed in § 330.10.30(t)(3) (Provisions and Clauses), replace paragraph (c)(4) of the basic clause with the following, if the judiciary will consider offers that do not include all items solicited.*

(c)(4) Unless otherwise specified in the solicitation, the offeror may propose to provide any item or combination of items.

(end)

Clause 3-105, Audit and Records

Include the following clause as prescribed in § 330.10.30(u) (Provisions and Clauses).

Audit and Records (APR 2011)

(a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) Examination of Costs

If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price re-determinable contract, or any combination of these, the contractor shall maintain and the contracting officer, or an authorized representative of the contracting officer, will have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination will include inspection at all reasonable times of the contractor's plants, or parts of them, engaged in performing the contract.

(c) Detailed Cost Information

If the contractor has been required to submit detailed cost information in connection with any pricing action relating to this contract, the contracting officer, or an authorized representative of the contracting officer, will have the right to examine and audit all of the contractor's records, including computations and projections, related to:

(1) the offer for the contract, subcontract, or modification;

(2) the discussions conducted on the offer(s), including those related to negotiating;

(3) pricing of the contract, subcontract, or modification; or

(4) performance of the contract, subcontract or modification.

(d) Comptroller General

(1) The Comptroller General of the United States, or an authorized representative, will have access to and the right to examine any of the contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

(2) This paragraph may not be construed to require the contractor or subcontractor to create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Reports

If the contractor is required to furnish cost, funding, or performance reports, the contracting officer or an authorized representative of the contracting officer will have the right to examine and audit the supporting records and materials, for the purpose of evaluating:

(1) the effectiveness of the contractor's policies and procedures to produce data compatible with the objectives of these reports; and

(2) the data reported.

(f) Availability

The contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any shorter or longer period required by statute or by other clauses of this contract. In addition:

(1) if this contract is completely or partially terminated, the contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) the contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) The contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the judiciary's small purchase threshold, and:

(1) that are cost-reimbursement, incentive, time-and-materials, labor-hour, or price re-determinable type or any combination of these;

(2) for which detailed cost information is required; or

(3) that require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the contracting officer under the judiciary prime contract.

(end)

Provision 3-110, RESERVED

Provision 3-115, Facsimile Offers

Include the following provision as prescribed in § 330.10.30(v) (Provisions and Clauses).

Facsimile Offers (JAN 2003)

(a) Definition
"Facsimile offer," as used in this provision, means an offer, revision or modification of an offer, or withdrawal of an offer that is transmitted to and received by the judiciary via facsimile machine.

(b) Offerors may submit facsimile offers as responses to this solicitation. Facsimile offers are subject to the same rules as paper offers.

(c) The telephone number of receiving facsimile equipment is: [*insert telephone number*].

(d) If any portion of a facsimile offer received by the contracting officer is unreadable to the degree that conformance to the essential requirements of the solicitation cannot be ascertained from the document:

(1) the contracting officer immediately will notify the offeror and permit the offeror to resubmit the offer;

(2) the method and time for re-submission will be prescribed by the contracting officer after consultation with the offeror; and

(3) the re-submission will be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness, provided the offeror complies with the time and format requirements for re-submission prescribed by the contracting officer.

(e) The judiciary reserves the right to make award solely on the facsimile offer. However, if requested to do so by the contracting officer, the apparently successful offeror promptly shall submit the complete original signed offer.

(end)

Clause 3-120, Order of Precedence

Include the following clause as prescribed in § 330.10.30(w) (Provisions and Clauses).

Order of Precedence (JAN 2003)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

(1) the schedule (excluding the specifications);

(2) representations and other instructions;

(3) the solicitation/contract provisions and clauses;

(4) other documents, exhibits, and attachments;

(5) the specifications.

(end)

Provision 3-125, RESERVED

Provision 3-130, Authorized Negotiators

Include the following provision as prescribed in § 330.10.30(y) (Provisions and Clauses).

Authorized Negotiators (JAN 2003)

The offeror represents that the following persons are authorized to negotiate on its behalf with the judiciary in connection with this solicitation *(offeror lists names, titles, and telephone numbers of the authorized negotiators*).

Name: _____
Titles: _____
Telephone: _____
Fax: _____
E-mail: _____

(end)

Provision 3-135, Single or Multiple Awards

Include the following provision as prescribed in § 330.10.30(z) (Provisions and Clauses).

Single or Multiple Awards (JAN 2003)

The judiciary may elect to award a single contract or to award multiple contracts for the same or similar products or services to two or more sources under this solicitation.

(end)

Clause 3-140, Notice to the Judiciary of Labor Disputes

Include the following clause as prescribed in Section § 330.10.30(aa) (Provisions and Clauses).

Notice to the Judiciary of Labor Disputes (JAN 2003)

If the contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the contractor shall immediately give notice, including all relevant information, to the contracting officer.

(end)

Clause 3-145, Payment for Overtime Premiums

Include the following clause as prescribed in § 330.10.30(bb) (Provisions and Clauses).

Payment for Overtime Premiums (JAN 2003)

(a) The use of overtime is authorized under this contract if the overtime premium does not exceed *_____ or the overtime premium is paid for work:

(1) necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(2) by indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(3) to perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or

(4) that will result in lower overall costs to the judiciary.

(b) Any requests for estimated overtime premiums that exceed the amount specified above shall include all estimated overtime for contract completion and shall:

(1) identify the work unit; e.g., department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the contracting officer to evaluate the necessity for the overtime;

(2) demonstrate the effect that denial of the request will have on the contract delivery or performance schedule;

(3) identify the extent to which approval of overtime would affect the performance or payments in connection with other judiciary contracts, together with identification of each affected contract; and

(4) provide reasons why the required work cannot be performed by using multishift operations or by employing additional personnel.

** Insert either "zero" or the dollar amount agreed to during negotiations. The inserted figure does not apply to the exceptions in paragraph (a)(1) through (a)(4) of the clause.*

(end)

Clause 3-150, Contract Work Hours and Safety Standards Act – Overtime Compensation

Include the following clause as prescribed in § 330.10.30(cc) (Provisions and Clauses).

Contract Work Hours and Safety Standards Act – Overtime Compensation (JAN 2003)

(a) Overtime Requirements

No contractor or subcontractor employing laborers or mechanics will require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and ½ times the basic rate of pay for each hour worked over 40 hours.

(b) Violation; Liability for Unpaid Wages; Liquidated Damages

The responsible contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the contractor and subcontractor are liable for liquidated damages payable to the judiciary. The contracting officer will assess liquidated damages at the rate of $10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards Act.

(c) Withholding for Unpaid Wages and Liquidated Damages

The contracting officer will withhold from payments due under the contract sufficient funds required to satisfy any contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy contractor or subcontractor liabilities, the contracting officer will withhold payments from other federal or federally assisted contracts held by the same contractor that are subject to the Contract Work Hours and Safety Standards Act.

(d) Payrolls and Basic Records

(1) The contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract

during the contract and shall make them available to the judiciary until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The contractor and its subcontractors shall allow authorized representatives of the contracting officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The contractor or subcontractor also shall allow authorized representatives of the contracting officer or Department of Labor to interview employees in the workplace during working hours.

(e) Subcontracts

The contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts exceeding the judiciary's small purchase threshold and require subcontractors to include these provisions in any lower tier subcontracts. The contractor shall be responsible for compliance by any subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(end)

Clause 3-155, Walsh-Healey Public Contracts Act

Include the following clause as prescribed in § 330.10.30(dd) (Provisions and Clauses).

Walsh-Healey Public Contracts Act (JUN 2012)

If this contract is for the manufacture or furnishing of materials, products, articles or equipment in an amount that exceeds or may exceed $15,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. § 6501 *et seq.*), the following terms and conditions apply:

(1) all stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect;

(2) all employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary

of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 14 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (29 U.S.C. 201 *et seq*.).

(end)

Clause 3-160, Service Contract Act of 1965

Include the following clause as prescribed in § 325.25.80(a) (Required Clauses and Provisions).

Service Contract Act of 1965 (JUN 2012)

(a) Definitions

"Act", as used in this clause, means the Service Contract Act of 1965 (41 U.S.C. § 6701 *et seq*.).

"Contractor", when this clause is used in any subcontract, shall be deemed to refer to the subcontractor, except in the term "government prime contractor."

"Service Employee" means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, or as computer systems analysts, computer programmers, software engineers, or other similarly skilled computer employees, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(b) Applicability

This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 6702, as interpreted in Subpart C of 29 CFR Part 4.

(c) Compensation

(1) Each service employee employed in the performance of this contract by the contractor or any subcontractor shall be paid not less than the

minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or an authorized representative, as specified in any wage determination attached to this contract.

(2) (i) If a wage determination is attached to this contract, the contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e. appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the contractor prior to the performance of contract work by the unlisted class of employee. The contractor shall submit Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, to the contracting officer no later than 30 days after the unlisted class of employees performs any contract work. The contracting officer will review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the contracting officer's recommendation) and all pertinent information, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the contracting officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division will be transmitted to the contracting officer, who will promptly notify the contractor of the action taken. Each affected employee shall be furnished by the contractor with a written copy of such determination, or it shall be posted as a part of the wage determination.

(iv) (A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The

approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract that are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the contractor shall advise the contracting officer of the action taken, but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this paragraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the

unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with paragraph (c)(2) of this clause, the Wage and Hour Division will make a final determination of conformed classification, wage rate, and/or fringe benefits which will be retroactive to the date the class of employees commenced contract work.

(3) Adjustment of Compensation

If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) Obligation to Furnish Fringe Benefits

The contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under paragraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR part 4.

(e) Minimum Wage

In the absence of a minimum-wage attachment for this contract, neither the contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause will relieve the contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(f) Successor Contracts

If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality, and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract

setting forth such collectively bargained wage rates and fringe benefits, neither the contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not the employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement.

No contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in section 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations. Where it is found in accordance with the review procedures in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits in a predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees under the predecessor contract was not entered into as a result of arm's-length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Administrative Review Board, as the case may be, irrespective of whether such issuance occurs prior to or after award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) Notification to Employees

The contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to the contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the work site. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(h) Safe and Sanitary Working Conditions

The contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the contractor or subcontractor that are unsanitary, hazardous or dangerous to the health or safety of service employees. The contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR part 1925.

(i) Records

(1) The contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(i) for each employee subject to the Act:

(A) name, address, and social security number;

(B) correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) daily and weekly hours worked by each employee; and

(D) any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor contractor's employees which had been furnished to the contractor as prescribed by paragraph (n) of this clause.

(2) The contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the contracting officer, upon direction of the Department of Labor and notification to the contractor, will take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the work site during normal working hours.

(j) Pay Periods

The contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(k) Withholding of Payments and Termination of Contract

The contracting officer will withhold or cause to be withheld from the government prime contractor under this or any other government contract with the prime contractor such sums as an appropriate official of the Department of Labor requests or such sums as the contracting officer decides may be necessary to pay underpaid employees employed by the contractor or subcontractor. In the event of failure to pay employees subject to the Act all or part of the wages or fringe benefits due under the Act, the contracting officer may, after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost.

(l) Subcontracts

The contractor agrees to insert this clause in all subcontracts subject to the Act.

(m) Collective Bargaining Agreements Applicable to Service Employees

If wages to be paid or fringe benefits to be furnished any service employees employed by the government prime contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the government prime contractor shall report such fact to the contracting officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.

(n) Seniority List

Not less than ten days prior to completion of any contract being performed at a federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a contractor (predecessor) or successor (29 CFR 4.173), the incumbent prime contractor shall furnish the contracting officer a certified list of the names of all service employees on the contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor contractors of each such service employee. The contracting officer will turn over such list to the successor contractor at the commencement of the succeeding contract.

(o) Rulings and Interpretations

Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.

(p) (1) Contractor’s Certification

By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the contractor's firm is a person or firm ineligible to be awarded government contracts by virtue of the sanctions imposed under section 5 of the Act.

(2) No part of this contract will be subcontracted to any person or firm ineligible for award of a government contract under section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.

(q) Variations, Tolerances, and Exemptions Involving Employment

Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Public Law 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR parts 520 and 525).

(2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two Acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR parts 520 and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR parts 525 and 528.

(r) Apprentices

Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which

is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a state, under a program registered with the Office of Apprenticeship Training, Employer, and Labor Services (OATELS), U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the contractor as to its entire workforce under the registered program.

(s) Tips

An employee engaged in an occupation in which the employee customarily and regularly receives more than $30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations 29 CFR, Part 31. However, the amount of credit shall not exceed $1.34 per hour beginning January 1, 1981. To use this provision:

(1) the employer shall inform tipped employees about this tip credit allowance before the credit is used;

(2) the employees shall be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) the employer shall be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and

(4) the use of such tip credit shall have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(t) Disputes Concerning Labor Standards

The U.S. Department of Labor has set forth in 29 CFR parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the

Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting office, the U.S. Department of Labor, or the employees or their representatives.

(end)

Clause 3-165, RESERVED

Clause 3-170, RESERVED

Clause 3-175, Fair Labor Standards Act and Service Contract Act – Price Adjustment (Multi-Year and Option Contracts)

Include the following clause as prescribed in § 325.25.80(b) (Required Clauses and Provisions) and § 410.75.65(c) (Contract Clauses and Provisions).

Fair Labor Standards Act and Service Contract Act – Price Adjustment (Multi-Year and Option Contracts) (JUN 2012)

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to collective bargaining agreements.

(b) The contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The wage determination, issued under the Service Contract Act of 1965 (41 U.S.C. § 6701, *et seq*.), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current on the anniversary date of a multi-year contract or the beginning of each renewal option period, will apply to this contract. If no such determination has been made applicable to this contract, then the federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. § 206) current on the anniversary date of a multi-year contract or the beginning of each renewal option period, will apply to this contract.

(d) The contract price, contract unit price labor rates, or fixed hourly labor rates will be adjusted to reflect the contractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the contractor as a result of:

(1) the Department of Labor wage determination applicable on the anniversary date of the multi-year contract, or at the beginning of the

renewal option period. For example, the prior year wage determination required a minimum wage rate of $4.00 per hour. The contractor chose to pay $4.10. The new wage determination increases the minimum rate to $4.50 per hour. Even if the contractor voluntarily increases the rate to $4.75 per hour, the allowable price adjustment is $.40 per hour;

(2) an increased or decreased wage determination otherwise applied to the contract by operation of law; or

(3) an amendment to the Fair Labor Standards Act of 1938 that is enacted after award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (d) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profit.

(f) The contractor shall notify the contracting officer of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by the contracting officer. The contractor shall promptly notify the contracting officer of any decrease under this clause, but nothing in the clause will preclude the government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and the change in fixed hourly rates (if this is a time-and-materials or labor-hour contract), any relevant supporting data, including payroll records, that the contracting officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates will be modified in writing. The contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(g) The contracting officer or an authorized representative will have access to and the right to examine any directly pertinent books, documents, papers and records of the contractor until the expiration of 3 years after final payment under the contract.

(end)

Clause 3-180, Fair Labor Standards Act and Service Contract Act – Price Adjustment

Include the following clause as prescribed in § 325.25.80(c) (Required Clauses and Provisions).

Fair Labor Standards Act and Service Contract Act – Price Adjustment (APR 2011)

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to contractor collective bargaining agreements.

(b) The contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The contract price, contract unit price labor rates, or fixed hourly labor rates will be adjusted to reflect increases or decreases by the contractor in wages and fringe benefits to the extent that these increases or decreases are made to comply with:

(1) an increased or decreased wage determination applied to this contract by operation of law; or

(2) an amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(d) Any such adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and to the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance; it will not otherwise include any amount for general and administrative costs, overhead, or profit.

(e) The contractor shall notify the contracting officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the contracting officer in writing. The contractor shall promptly notify the contracting officer of any decrease under this clause, but nothing in the clause will preclude the government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount and the change in fixed hourly rates (if this is a time-and-materials or labor-hour contract) claimed and any relevant supporting data that the contracting officer may reasonably require. Upon agreement of the parties, the contract price,

contract unit price labor rates, or fixed hourly rates will be modified in writing. The contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(f) The contracting officer or an authorized representative will, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor.

(end)

Provision 3-185, Evaluation of Compensation for Professional Employees

Include the following provision as prescribed in § 330.10.30(hh) (Provisions and Clauses).

Evaluation of Compensation for Professional Employees (JAN 2003)

(a) Recompetition of service contracts may in some cases result in lowering the compensation (salaries and fringe benefits) paid or furnished professional employees. This lowering can be detrimental in obtaining the quality of professional services needed for adequate contract performance. It is therefore in the judiciary's best interest that professional employees, as defined in 29 CFR 541, be properly and fairly compensated. As part of their offers, offerors will submit a total compensation plan setting forth salaries and fringe benefits proposed for the professional employees who will work under the contract. The judiciary will evaluate the plan to assure that it reflects a sound management approach and understanding of the contract requirements. This evaluation will include an assessment of the offeror's ability to provide uninterrupted high-quality work. The professional compensation proposed will be considered in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure.

(b) The compensation levels proposed shall reflect a clear understanding of work to be performed and shall indicate the capability of the proposed compensation structure to obtain and keep suitably qualified personnel to meet mission objectives. The salary rates or ranges shall take into account differences in skills, the complexity of various disciplines, and professional job difficulty. Additionally, offers envisioning compensation levels lower than those of predecessor contractors for the same work will be evaluated on the basis of maintaining program continuity, uninterrupted high-quality work, and availability

of required competent professional service employees. Offerors are cautioned that lowered compensation for essentially the same professional work may indicate lack of sound management judgment and lack of understanding of the requirement.

(c) The judiciary is concerned with the quality and stability of the work force to be employed on this contract. Professional compensation that is unrealistically low or not in reasonable relationship to the various job categories, since it may impair the contractor's ability to attract and retain competent professional service employees, may be viewed as evidence of failure to comprehend the complexity of the contract requirements.

(d) Failure to comply with these provisions may constitute sufficient cause to justify rejection of an offer.

(end)

Clause 3-190, RESERVED

Provision 3-195, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment - Certification

Include the following provision as prescribed in § 325.25.80(d) *(Required Clauses and Provisions)*.

Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Certification (APR 2011)

(a) The offeror shall check following certification:

CERTIFICATION

The offeror [ ] does [ ] does not certify that –

(1) the items of equipment to be serviced under this contract are used regularly for other than government purposes, and are sold or traded by the offeror (or subcontractor in the case of an exempt subcontractor) in substantial quantities to the general public in the course of normal business operations;

(2) the services will be furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, or repair of equipment.

(i) An "established catalog price" is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the offeror, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public.

(ii) An "established market price" is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or contractor; and

(3) the compensation (wage and fringe benefits) plan for all service employees performing work under the contract is the same as that used for these employees and equivalent employees servicing the same equipment of commercial customers.

(b) Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services. If the offeror certifies to the conditions in paragraph (a) of this provision then Clause 3-160, Service Contract Act of 1965, will not be included in any resultant contract to this offeror.

(c) If the offeror does not certify to the conditions in paragraph (a) of this provision –

(1) Clause 3-215, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Requirements, will not be included in any resultant contract awarded to this offeror; and

(2) the offeror shall notify the contracting officer as soon as possible, if the contracting officer did not attach a Service Contract Act wage determination to the solicitation.

(d) The contracting officer may not make an award to the offeror, if the offeror fails to execute the certification in paragraph (a) of this provision or to contact the contracting officer as required in paragraph (c) of this provision.

(end)

Clause 3-200, Service Contract Act – Place of Performance Unknown

Include the following clause as prescribed in § 325.25.80(e) (Required Clauses and Provisions).

Service Contract Act – Place of Performance Unknown (JAN 2003)

(a) This contract is subject to the Service Contract Act, and the place of performance was unknown when the solicitation was issued. In addition to places or areas identified in wage determinations, if any, attached to the solicitation, wage determinations have also been requested for the following:_____ [*insert places or areas*]. The contracting officer will request wage determinations for additional places or areas of performance if asked to do so in writing by _____ [*insert time and date*].

(b) Offerors who intend to perform in a place or area of performance for which a wage determination has not been attached or requested may nevertheless submit offers. However, a wage determination will be requested and incorporated in the resultant contract retroactive to the date of contract award, and there will be no adjustment in the contract price.

(end)

Clause 3-205, Protest after Award

Include the following clause as prescribed in § 330.10.30(kk) (Provisions and Clauses).

Protest after Award (JAN 2003)

(a) Upon receipt of a notice of protest or a determination that a protest is likely, the contracting officer may, by written order to the contractor, direct the contractor to stop performance of the work called for by this contract. The order will be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the contracting officer will either:

(1) cancel the stop-work order; or

(2) terminate the work covered by the order as provided in the Default, or the Termination clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the contractor shall resume work. The contracting officer will make an equitable adjustment in the delivery schedule or contract price, or both, and the contract will be modified, in writing, accordingly, if:

(1) the stop-work order results in an increase in the time required for, or in the contractor's cost properly allocable to, the performance of any part of this contract; and

(2) the contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; *provided*, that if the contracting officer decides the facts justify the action, the contracting officer may receive and act upon an offer at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the judiciary, the contracting officer will allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the contracting officer will allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The judiciary's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the contractor's intentional or negligent misstatement, misrepresentation, or mis-certification, a protest related to this contract is sustained, and the judiciary pays costs, the judiciary may require the contractor to reimburse the judiciary the amount of such costs. In addition to any other remedy available, the judiciary may collect this debt by offsetting the amount against any payment due the contractor under any contract between the contractor and the judiciary.

(end)

Provision 3-210, Protests

Include the following provision as prescribed in § 330.10.30(ll) (Provisions and Clauses).

Protests (SEP 2010)

(a) The protestor has a choice of protest forums. It is the policy of the judiciary to encourage parties first to seek resolution of disputes with the contracting officer.

If the dispute cannot be resolved with the contracting officer, then it is the policy of the judiciary to encourage parties to seek a judiciary resolution of disputes with the Administrative Office of the United States Courts. However, if a party files a formal protest with an external forum on a solicitation on which it has filed a protest with the judiciary, the judiciary protest will be dismissed.

(b) Judiciary protests will be considered only if submitted in accordance with the following time limits and procedures:

(1) any protest shall be filed in writing with the contracting officer designated in the solicitation for resolution of the protest. It shall identify the solicitation or contract protested and set forth a complete statement of the alleged defects or grounds that make the solicitation terms or the award or proposed award defective. Mere statement of intent to file a protest is not a protest.

(2) a protest shall be filed not later than ten (10) calendar days after the basis of the protest is known, or should have been known. A protest based on alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of offers, shall be filed prior to the closing date for receipt of offers. The judiciary, in its discretion, may consider the merits of any protest which is not timely filed. The office hours of the Administrative Office 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.

(3) the protest shall include the following information:

(i) name, address, and fax and telephone numbers of the protester or its representative;

(ii) solicitation or contract number;

(iii) detailed statement of the legal and factual grounds for the protest, to include a description of resulting alleged prejudice to the protester;

(iv) copies of relevant documents;

(v) request for a ruling by the judiciary;

(vi) statement as to the form of relief requested;

(vii) all information establishing that the protester is an interested party for the purpose of filing a protest; and

(viii) all information establishing the timeliness of the protest.

(c) Unless stated otherwise elsewhere in this solicitation, protests that are filed directly with the judiciary, and copies of any protests that are filed with an external forum, shall be served on the contracting officer at the Issuing Office address on the standard form, if any, or elsewhere in this solicitation. Written and dated acknowledgment of receipt must be obtained from the Contracting Officer issuing this solicitation, or authorized designee.

(d) The copy of any protest shall be received in the office designated above within one day of filing a protest with an external forum.

(end)

Clause 3-215, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Requirements

Include the following clause as prescribed in § 325.25.80(f) (Required Clauses and Provisions).

Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Requirements (APR 2011)

(a) The items of equipment to be serviced under this contract are used regularly for other than government purposes, and are sold or traded by the contractor in substantial quantities to the general public in the course of normal business operations.

(b) The services shall be furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, or repair of equipment.

(1) An “established catalog price” is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the contractor, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public.

(2) An "established market price" is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or contractor.

(c) The contractor shall use the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as is used for these employees and for equivalent employees servicing the same equipment of commercial customers.

(d) The contractor is responsible for compliance with all the conditions of this exemption by its subcontractors. The contractor shall determine the applicability of this exemption to any subcontract on or before subcontract award. In making a judgment that the exemption applies, the contractor shall consider all factors and make an affirmative determination that all of the conditions in paragraphs (a) through (c) of this clause will be met.

(e) If the Department of Labor determines that any conditions for exemption in paragraphs (a) through (c) of this clause have not been met, the exemption shall be deemed inapplicable, and the contract shall become subject to the Service Contract Act. In such case, the procedures at 29 CFR 4.123(e)(1)(iv) and 29 CFR 4.5(c) will be followed.

(f) The contractor shall include the substance of this clause, including this paragraph (f), in subcontracts for exempt services under this contract.

(End)

Provision 3-220, Exemption from Application of the Service Contract Act to Contracts for Certain Services – Certification

Include the following provision as prescribed in § 325.25.80(g) (Required Clauses and Provisions).

Exemption from Application of the Service Contract Act to Contracts for Certain Services – Certification (APR 2011)

(a) The offeror shall check following certification:

CERTIFICATION

The offeror [ ] does [ ] does not certify that –

(1) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the offeror (or

subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations;

(2) The contract services are furnished at prices that are, or are based on, established catalog or market prices. An “established catalog price” is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the offeror, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public. An “established market price” is a current price, established in the usual course of ordinary and usual trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or offeror;

(3) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract; and

(4) The offeror uses the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the offeror uses for these employees and for equivalent employees servicing commercial customers.

(b) Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services. If the offeror certifies to the conditions in paragraph (a) of this provision then Clause 3-160, Service Contract Act of 1965, as amended, will not be included in any resultant contract to this offeror.

(c) If the offeror does not certify to the conditions in paragraph (a) of this provision—

(1) Clause 3-225, Exemption from Application of the Service Contract Act to Contracts for Certain Services – Requirements, will not be included in any resultant contract to this offeror; and

(2) The offeror shall notify the contracting officer as soon as possible if the contracting officer did not attach a Service Contract Act wage determination to the solicitation.

(d) The contracting officer may not make an award to the offeror, if the offeror fails to execute the certification in paragraph (a) of this provision or to contact the Contracting Officer as required in paragraph (c) of this provision.

(end)

Clause 3-225, Exemption from Application of the Service Contract Act to Contracts for Certain Services – Requirements

Include the following clause as prescribed in § 325.25.80(h) (Required Clauses and Provisions).

Exemption from Application of the Service Contract Act to Contracts for Certain Services – Requirements (APR 2011)

(a) The services under this contract are offered and sold regularly to non-Governmental customers, and are provided by the contractor to the general public in substantial quantities in the course of normal business operations.

(b) The contract services are furnished at prices that are, or are based on, established catalog or market prices. An "established catalog price" is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the contractor, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public. An "established market price" is a current price, established in the usual course of ordinary and usual trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or contractor.

(c) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the judiciary contract.

(d) The contractor shall use the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as is used for these employees and for equivalent employees servicing commercial customers.

(e) (1) The subcontractor, if any, for exempt services shall be selected for award based on other factors in addition to price or cost with the combination of other factors at least as important as price or cost; or

(2) A subcontract for exempt services shall be awarded on a sole source basis.

(f) The contractor is responsible for compliance with all the conditions of this exemption by its subcontractors. The contractor shall determine in advance, based on the nature of the subcontract requirements and knowledge of the practices of likely subcontractors, that all or nearly all likely subcontractors will meet the conditions in paragraphs (a) through (d) of this clause. If the services are currently being performed under a subcontract, the contractor shall consider the practices of the existing subcontractor in making a determination regarding the conditions in paragraphs (a) through (d) of this clause. If the contractor has reason to doubt the validity of the certification, the requirements of the Service Contract Act shall be included in the subcontract.

(g) If the Department of Labor determines that any conditions for exemption at paragraphs (a) through (e) of this clause have not been met, the exemption shall be deemed inapplicable, and the contract shall become subject to the Service Contract Act. In such case, the procedures in at 29 CFR 4.123(e)(2)(iii) and 29 CFR 4.5(c) will be followed.

(h) The contractor shall include the substance of this clause, including this paragraph (h), in subcontracts for exempt services under this contract.

(End)

Clause 3-300, Central Contractor Registration

Include the following clause as prescribed in § 330.10.30(nn)(1) (Provisions and Clauses).

Central Contractor Registration (APR 2011)

(a) Definitions. As used in this clause –

"Central Contractor Registration (CCR) database" means the primary Government repository for contractor information required for the conduct of business with the Government.

"Data Universal Numbering System (DUNS) number" means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

"Data Universal Numbering System +4 (DUNS+4) number" means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts for the same concern.

"Registered in the CCR database" means that –

(1) The contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and

(2) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS), and has marked the record "Active". The contractor will be required to provide consent for TIN validation to the Government as a part of the CCR registration process.

(b) (1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS +4" followed by the DUNS or DUNS +4 number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number will be used by the contracting officer to verify that the offeror is registered in the CCR database.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number –

(i) via the internet at http://fedgov.dnb.com/webform or if the offeror does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or

(ii) if located outside the United States, by contacting the local Dun and Bradstreet office. The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

(i) company legal business name;

(ii) tradestyle, doing business, or other name by which your entity is commonly recognized;

(iii) company physical street address, city, state and ZIP code;

(iv) company mailing address, city, state and ZIP code (if different from physical);

(v) company telephone number;

(vi) date the company was started;

(vii) number of employees at your location;

(viii) chief executive officer/key manager;

(ix) line of business (industry);

(x) company headquarters name and address (reporting relationship within your entity).

(d) If the offeror does not become registered in the CCR database within the time prescribed by the contracting officer, the contracting officer will proceed to award to the next otherwise successful registered offeror.

(e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) The contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(g) Change of Name and Novation Agreements:

(1) If a contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not

completed the necessary requirements regarding novation and change-of-name agreements, the contractor shall provide the responsible contracting officer a minimum of one business day's written notification of its intention to (i) change the name in the CCR database; (ii) comply with the requirements of the Guide, Vol 14, § 745.55; and (iii) agree in writing to the timeline and procedures specified by the responsible contracting officer. The contractor must provide with the notification sufficient documentation to support the legally changed name.

(2) If the contractor fails to comply with the requirements of paragraph (g)(1) of this clause, or fails to perform the agreement at paragraph (g)(1)(iii) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information showing the contractor to be other than the contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(h) Assignment of Claims

The contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims. Assignees shall be separately registered in the CCR database. Information provided to the contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than the contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(i) Offerors and contractors may obtain information on registration and annual confirmation requirements via the internet at http://www.ccr.gov or by calling 1-888-227-2423, or 269-961-5757.

(end)

Clause 3-305, Payment by Electronic Funds Transfer – Central Contractor Registration

Include the following clause as prescribed in § 330.10.30(nn)(2) (Provisions and Clauses).

Payment by Electronic Funds Transfer – Central Contractor Registration (JUN 2012)

(a) Method of Payment

(1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either:

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (*but see* paragraph (d) of this clause).

(b) Contractor's EFT Information

The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.

(c) Mechanisms for EFT Payment

The Government will make payment by EFT through the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) Suspension of Payment

If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice shall be deemed not to be a proper invoice.

(e) Liability for Uncompleted or Erroneous Transfers

(1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for –

(i) Making a correct payment; and

(ii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and:

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(f) EFT and Assignment of Claims

If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register separately in the CCR database and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized under an assignment of claims pursuant to § 740.50, is not permitted. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(g) Liability for Change of EFT Information by Financial Agent

The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.

(h) Payment Information

The *[insert court payment office name]* will not provide EFT payment information. Payment information may be obtained by registering as a payee vendor with the United States Department of the Treasury. Registered vendors may retrieve and/or review check stub advice each time an EFT payment is received.

If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the check and any other payment information to the remittance address contained in the CCR database.

(end)

Clause 3-310, Payment by Electronic Funds Transfer – Other Than Central Contractor Registration

Include the following clause as prescribed in § 330.10.30(nn)(3) (Provisions and Clauses).

Payment by Electronic Funds Transfer – Other Than Central Contractor Registration (JUN 2012)

(a) Method of Payment

(1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT) except as provided in paragraph (a)(2) of this clause.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either:

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend payment due dates until such time as the Government makes payment by EFT (*but see* paragraph (d) of this clause).

(b) Mandatory Submission of Contractor's EFT Information

(1) The Contractor is required to provide the Government with the information required to make payment by EFT (*see* paragraph (i) of this clause). The Contractor shall provide this information directly to the office designated in paragraph (j) of this clause by no later than 15 days prior to submission of the first request for payment. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the same office.

(2) If the Contractor provides EFT information applicable to multiple contracts, the Contractor shall specifically state the applicability of this EFT information in terms acceptable to the office designated in paragraph (j).

(c) Mechanisms for EFT Payment

The Government will make payment by EFT through the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) Suspension of Payment

(1) The Government is not required to make any payment under this contract until after receipt, by the office designated in paragraph (j), of the correct EFT payment information from the Contractor. Until receipt of the correct EFT information, any invoice or contract financing request shall be deemed not to be a proper invoice.

(2) If the EFT information changes after submission of correct EFT information, the Government shall begin using the changed EFT information no later than 30 days after its receipt by the office designated in paragraph (j) to the extent payment is made by EFT. However, the Contractor may request that no further payments be made until the updated EFT information is implemented by the payment office.

(e) Liability for Uncompleted or Erroneous Transfers

(1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for:

(i) Making a correct payment; and

(ii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and:

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment and the provisions of paragraph (d) shall apply.

(f) EFT and Assignment of Claims

If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall provide the EFT information required by paragraph (i) of this clause to the office designated in paragraph (j), and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(g) Liability for Change of EFT Information by Financial Agent

The Government is not liable for errors resulting from changes to EFT information provided by the Contractor's financial agent.

(h) Payment Information

The *[insert court payment office name]* will not provide EFT payment information. EFT payment information may be obtained by registering as a payee vendor with the United States Department of the Treasury. Registered vendors may retrieve and/or review check stub advice each time an EFT payment is received. The Treasury registration web site is: www.fms.treas.gov/paid/PAIDfaq.asp.

If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the check and any other payment information to the remittance address provided in accordance with paragraph (i) of this clause.

(i) EFT Information

The Contractor shall provide the following information to the office designated in paragraph (j) of this clause. The Contractor may supply this data for this or multiple contracts (*see* paragraph (b) of this clause). The Contractor shall designate a single financial agent per contract capable of receiving and processing the EFT information using the EFT methods described in paragraph (c) of this clause.

(1) The contract number (or other procurement identification number).

(2) The Contractor's name and remittance address, as stated in the contract(s).

(3) The signature (manual or electronic, as appropriate), title, and telephone number of the Contractor official authorized to provide this information.

(4) The name, address, and 9-digit Routing Transit Number of the Contractor's financial agent.

(5) The Contractor's bank account number and the type of account (checking, saving, or lockbox).

(j) Designated Office:

[insert name, address, phone, and fax for court's paying office]

(end)

Provision 3-315, Submission of Electronic Funds Information with Offer

Include the following provision as prescribed in § 330.10.30(nn)(4) (Provisions and Clauses).

Submission of Electronic Funds Information with Offer (JUL 2007)

The offeror shall provide, with its offer, the following information that is required to make payment by electronic funds transfer (EFT) under any contract that results from this solicitation. This submission satisfies the requirement to provide EFT information under paragraphs (b)(1) and (i) of Clause 3-310, Payment by Electronic Funds Transfer – Other than Central Contractor Registration.

(1) The solicitation number (or other procurement identification number).

(2) The offeror's name and remittance address, as stated in the offer.

(3) The signature (manual or electronic, as appropriate), title, and telephone number of the offeror's official authorized to provide this information.

(4) The name, address, and 9-digit Routing Transit Number of the offeror's financial agent.

(5) The offeror's account number and the type of account (checking, savings, or lockbox).

(end)

Provisions and Clauses (Chapter 4)

Provision 4-1, Type of Contract

Include the following provision as prescribed in § 410.15.20 (Solicitation Requirements).

Type of Contract (JAN 2003)

The judiciary plans to award a _____ (*Contracting officer inserts specific type of contract)* type of contract under this solicitation, and all offers shall be submitted on this basis. Alternate offers based on other contract types will not be considered.

(end)

Clause 4-5, Ordering

Include the following clause as prescribed in § 410.30.75(a) (Clauses).

Ordering (AUG 2004)

(a) Any products and services to be furnished under this contract will be ordered by issuance of written delivery orders or task orders by the individuals or activities designated in the schedule. Such orders may be issued from the effective date of the contract through the last day of the contract.

(b) All delivery orders or task orders are subject to the terms and conditions of this contract and will specify the date, time and place for the products to be delivered or the services to be performed. If the contracting officer so requires, the contractor shall provide a written or oral acknowledgment. In the event of a conflict between a delivery order or a task order and this contract, this contract will control.

(c) If mailed, a delivery order or a task order is considered “issued” when the judiciary deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the schedule.

(end)

Clause 4-10, Order Limitations

Include the following clause as prescribed in § 410.30.75(b) (Clauses).

Order Limitations (APR 2011)

(a) Minimum Order

When the judiciary requires products or services covered by this contract in an amount less than _____ *(contracting officer insert minimum dollar amount or quantity)*, the judiciary is not obligated to purchase, nor is the contractor obligated to furnish, those products or services under this contract.

(b) Maximum Order

The contractor is not obligated to honor:

(1) any order for a single item in excess of _____ *(contracting officer insert maximum dollar amount or quantity)*;

(2) any order for a combination of items in excess of _____ *(contracting officer insert maximum dollar amount or quantity)*; or

(3) a series of orders from the same ordering office in the course of _____ days *(contracting officer specify)* that together call for quantities exceeding the limitations stated in subparagraph (b)(1) or (b)(2) above.

(c) If this is a requirements contract, (i.e. includes Clause 4-20, “Requirements”) the judiciary is not required to order a part of any one requirement from the contractor if that requirement exceeds the maximum-order limitations stated in paragraph (b) above.

(d) Notwithstanding paragraphs (b) and (c) of this section, the contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within _____ days *(contracting officer specify)* after issuance, with written notice stating the contractor’s intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the judiciary may acquire the products or services from another source.

(end)

Clause 4-15, RESERVED

Clause 4-20, Requirements

Include the following clause as prescribed in § 410.30.75(c) (Clauses).

Requirements (JAN 2003)

(a) This is an indefinite-delivery requirements contract for the products or services specified, and effective for the period stated in the schedule. The quantities of products or services specified in the schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the judiciary's requirements do not result in orders in the quantities described as “estimated” or “maximum” in the schedule, that fact will not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the contractor shall furnish to the judiciary all products or services specified in the schedule and called for by orders issued in accordance with the Ordering clause.

(c) Except as this contract otherwise provides, the judiciary will order from the contractor all the products or services specified in the schedule that are required to be purchased by the activity or activities specified in the schedule.

(d) The judiciary is not required to purchase from the contractor requirements in excess of any limit on total orders under this contract.

(e) If the judiciary urgently requires delivery or performance of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the contractor will not accept an order providing for the accelerated delivery, the judiciary may acquire the urgently required products or services from another source. In the event that the contractor accepts such an order for accelerated delivery, such accelerated delivery shall not constitute the basis for an equitable price adjustment.

(f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the contractor within the time specified in the order. The contract will govern the contractor’s and judiciary’s rights and obligations with respect to that order to the same extent as if the order were completed during the contract’s effective period.

(end)

Clause 4-25, Indefinite Quantity

Include the following clause as prescribed in § 410.30.75(d) (Clauses).

Indefinite Quantity (JAN 2003)

(a) This is an indefinite-delivery indefinite-quantity contract for the products or services specified, and effective for the period stated, in the schedule. The quantities of products and services specified in the schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The contractor shall furnish to the judiciary, when and if ordered, the products or services specified in the schedule up to and including the quantity designated in the schedule as the "maximum." The judiciary will order at least the quantity of products or services designated in the schedule as the "minimum."

(c) Except for any limitations on quantities in the Order Limitations clause or in the schedule, there is no limit on the number of orders that may be issued.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the contractor within the time specified in the order. The contract will govern the contractor's and judiciary's rights and obligations with respect to that order to the same extent as if the order were completed during contract's effective period.

(end)

Provision 4-27, Time-and-Materials/Labor-Hour Proposal Requirements – Competitive Pricing

Include the following provision as prescribed in § 410.45.50(a) (Provisions and Clauses - Labor-Hour and Time-and-Materials Contracts).

Time-and-Materials/Labor-Hour Proposal Requirement – Competitive Pricing (APR 2011)

(a) The judiciary contemplates award of a time-and-materials or labor-hour type of contract resulting from this solicitation.

(b) The offeror must specify fixed hourly rates in its offer that include wages, general and administrative expenses, and profit. The offeror must specify whether the fixed hourly rate for each labor category applies to labor performed by –

(1) The offeror;
(2) Subcontractors; and/or
(3) Divisions, subsidiaries, or affiliates of the offeror under a common control;

(c) The offeror must establish fixed hourly rates using –

(1) Separate rates for each category of labor to be performed by each subcontractor and for each category of labor to be performed by the offeror, and for each category of labor to be transferred between divisions, subsidiaries, or affiliates of the offeror under a common control;

(2) Blended rates for each category of labor to be performed by the offeror, including labor transferred between divisions, subsidiaries, or affiliates of the offeror under a common control, and all subcontractors; or

(3) Any combination of separate and blended rates for each category of labor to be performed by the offeror, affiliates of the offeror under a common control, and subcontractors.

(end)

Provision 4-28, Time-and-Materials/Labor-Hour Proposal Requirements – Non-Competitive Pricing

Include the following provision as prescribed in § 410.45.50(b) (Provisions and Clauses - Labor-Hour and Time-and-Materials Contracts)

Time-and-Materials/Labor-Hour Proposal Requirement – Non-Competitive Pricing (APR 2011)

(a) The judiciary contemplates award of a time-and-materials or labor-hour type of contract resulting from this solicitation.

(b) The offeror must specify fixed hourly rates in its offer that include wages, general and administrative expenses, and profit for each category of labor to be performed by –

(1) The offeror;
(2) Each subcontractor; and
(3) Each division, subsidiary, or affiliate of the offeror under a common control;

(c) The fixed hourly rates for services transferred between divisions, subsidiaries, or affiliates of the offeror under a common control shall not include profit for the transferring organization, but may include profit for the prime contractor.

(end)

Clause 4-30, Payment (Time-and-Materials and Labor-Hour Contracts)

Include the following clause as prescribed in § 410.45.50(c) (Provisions and Clauses - Labor-Hour and Time-and-Materials Contracts).

Payment (Time-and-Materials and Labor-Hour Contracts) (APR 2011)

(a) The judiciary will pay the contractor as follows upon submission of invoices or vouchers approved in writing by the contracting officer or the contracting officer's authorized representative:

(1) Hourly Rate

(i) Hourly rate means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are –

- Performed by the contractor;
- Performed by subcontractors; or
- Transferred between divisions, subsidiaries, or affiliates of the contractor under a common control.

(ii) The amounts will be computed by multiplying the appropriate hourly rates prescribed in the contract by the number of direct labor hours performed.

(iii) The hourly rates shall be paid for all labor performed on the contract that meets the labor qualifications specified in the contract. Labor hours incurred to perform tasks for which labor qualifications were specified in the contract will not be paid to the extent the work is performed by employees that do not meet the qualifications specified in the contract, unless specifically authorized by the contracting officer.

(iv) The hourly rates will include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour will be payable on a prorated basis.

(v) Vouchers may be submitted once each month (or at more frequent intervals if approved in writing by the contracting officer). The contractor will substantiate vouchers (including any subcontractor hours reimbursed at the hourly rate in the contract) by evidence of actual payment and by –

(A) individual daily job timekeeping records;

(B) records that verify the employees meet the qualifications for the labor categories specified in the contract; or

(C) other substantiation approved in writing by the contracting officer.

(vi) Promptly after receipt of each substantiated voucher, the judiciary will, except as otherwise provided in this contract, and subject to the terms of paragraph (e) of this section, pay the voucher as approved by the contracting officer or authorized representative.

(vii) Unless otherwise prescribed in the contract, the contracting officer may unilaterally issue a contract modification requiring the contractor to withhold amounts from its billings until a reserve is set aside in an amount that the contracting officer considers necessary to protect the judiciary's interests. The contracting officer may require a withhold of five percent of the amounts due under paragraph (a) of this clause, but the total amount withheld for the contract may not exceed $50,000. The amounts withheld will be retained until the contractor executes and delivers the release required by paragraph (g) of this clause.

(viii) Unless the contract prescribes otherwise, the hourly rates in the contract will not be varied by virtue of the contractor having performed work on an overtime basis. If no overtime rates are provided in the contract and overtime work is approved in writing in advance by the contracting officer, overtime rates may be negotiated. Failure to agree upon these overtime rates will be treated as a dispute under the Disputes clause of this contract. If the contract provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime has been approved in writing in advance by the contracting officer.

(b) Materials

(1) For the purposes of this clause –

(i) Direct materials means those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.

(ii) Materials means –

(A) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the contractor under a common control;

(B) Subcontracts for supplies and incidental services for which there is not a labor category specified in the contract;

(C) Other direct costs (e.g., incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.); and

(D) Applicable indirect costs.

(2) If the contractor furnishes its own materials that meet the definition of commercial item in the *Guide to Judiciary Policy*'s Glossary of Procurement Terms, the price to be paid for such materials must not exceed the contractor's established catalog or market price, adjusted to reflect the quantities being acquired; and actual cost of any modifications necessary because of contract requirements.

(3) Except as provided for in paragraph (b)(2) of this clause, the judiciary will reimburse the contractor for allowable cost of materials provided the contractor –

(i) has made payments for materials in accordance with the terms and conditions of the agreement or invoice; or

(ii) ordinarily makes these payments within 30 days of the submission of the contractor's payment request to the judiciary and such payment is in accordance with the terms and conditions of the agreement or invoice.

(4) Payment for materials is subject to Clause 4-60, Allowable Cost and Payment.

(5) The contractor may include allocable indirect costs and other direct costs to the extent they are –

(i) comprised only of costs that are clearly excluded from the hourly rate;

(ii) allocated in accordance with the contractor's written or established accounting practices; and

(iii) indirect costs are not applied to subcontract that are paid at the hourly rates.

(6) To the extent practicable, the contractor shall –

(i) obtain materials at the most advantageous prices available, with due regard to securing prompt delivery of satisfactory materials; and

(ii) take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the contractor shall promptly notify the contracting officer and give the reasons. The contractor shall give credit to the judiciary for cash and trade discounts, rebates, scrap, commissions, and other amounts that have accrued to the benefit of the contractor, or would have accrued except for the fault or neglect of the contractor. The contractor shall not deduct from gross costs the benefits lost without fault or neglect on the part of the contractor or lost through fault of the judiciary.

(7) The judiciary will not pay profit or fee to the prime contractor on materials, except when reimbursing for commercial items under paragraph (b)(2) above.

(c) If the contractor enters into any subcontract that requires consent under Clause 7-75, Subcontracts, without obtaining such consent, the judiciary is not required to reimburse the contractor for any costs incurred under the subcontract prior to the date the contractor obtains the required consent. Any reimbursement of subcontract costs incurred prior to the date the consent was obtained shall be at the sole discretion of the judiciary.

(d) Total Cost

It is estimated that the total cost to the judiciary for the performance of this contract shall not exceed the ceiling price set forth in the contract, and the contractor agrees to use its best efforts to perform the work specified in the contract and all obligations under this contract within such ceiling price. If at any time the contractor has reason to believe that the hourly rate payments and

material costs that will accrue in performing the contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the contract, the contractor shall notify the contracting officer, giving a revised estimate of the total price to the judiciary for performing this contract with supporting reasons and documentation. If at any time during the performance of this contract, the contractor has reason to believe that the total price to the judiciary for the performance of this contract will be substantially greater or less than the then stated ceiling price, the contractor shall so notify the contracting officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during the performance of this contract, the judiciary has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the contracting officer will advise the contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(e) Ceiling Price

The judiciary will not be obligated to pay the contractor any amount in excess of the ceiling price in the contract, and the contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the contract, unless and until the contracting officer notifies the contractor in writing that the ceiling price has been increased and specifies in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the contract has been increased, any hours expended and material costs incurred by the contractor in excess of the ceiling price before the increase will be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(f) Audit

At any time before final payment under this contract, the contracting officer may request audit of the invoices or vouchers and supporting documentation. Each payment previously made will be subject to reduction to the extent of amounts, on preceding invoices or vouchers, that are found by the contracting officer or authorized representative not to have been properly payable and will also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and written approval of the voucher or invoice designated by the contractor as the “completion voucher” or “completion invoice” and supporting documentation, and upon compliance by the contractor with all terms of this contract (including, without limitation, terms related to patents and the terms of paragraph (g) of this clause), the judiciary will promptly pay any balance due the contractor. The completion invoice or voucher, and supporting documentation,

shall be submitted by the contractor as promptly as practicable following completion of the work under this contract, but in no event later than one year (or such longer period as the contracting officer may approve in writing) from the date of completion.

(g) Assignment and Release of Claims

The contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the judiciary, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(1) specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the contractor;

(2) claims, together with reasonable incidental expenses, based upon the liabilities of the contractor to third parties arising out of performing this contract, that are not known to the contractor on the date of the execution of the release, and of which the contractor gives notice in writing to the contracting officer not more than 6 years after the date of the release or the date of any notice to the contractor that the judiciary is prepared to make final payment, whichever is earlier; or

(3) claims for reimbursement of costs (other than expenses of the contractor by reason of its indemnification of the judiciary against patent liability), including reasonable incidental expenses, incurred by the contractor under the terms of this contract relating to patents.

(end)

Alternate I (APR 2011): *In accordance with § 410.45.50(d) (Provisions and Clauses - Labor-Hour and Time-and-Materials Contracts), add the following paragraph (h) to the basic clause.*

(h) The terms of this clause that govern reimbursement for materials furnished are considered to be deleted.

Clause 4-35, Execution and Commencement of Work (Letter Contract)

Include the following clause as prescribed in § 410.50.80(a) (Clauses).

Execution and Commencement of Work (Letter Contract) (JAN 2003)

The contractor shall indicate acceptance of this letter contract by signing three copies of the contract and returning them to the contracting officer not later than _____ (*contracting officer inserts date*). Upon acceptance by both parties, the contractor shall proceed with performance of the work, including purchase of necessary materials.

(end)

Clause 4-40, Limitation of Judiciary Liability (Letter Contract)

Include the following clause as prescribed in § 410.50.80(b) (Clauses).

Limitation of Judiciary Liability (Letter Contract) (JAN 2003)

(a) In performing this contract, the contractor is not authorized to make expenditures or to incur obligations exceeding $ _____ *(contracting officer inserts limit)*.

(b) The maximum amount for which the judiciary will be liable if this contract is terminated is $ _____(*contracting officer inserts maximum liability)*.

(end)

Clause 4-45, Contract Definitization

Include the following clause as prescribed in § 410.50.80(c) (Clauses).

Contract Definitization (JAN 2003)

(a) A _____ *(contracting officer inserts type of contract)* definitive contract is contemplated. The contractor agrees to begin promptly negotiating with the contracting officer the terms of a definitive contract that will include:

(1) all judiciary clauses required on the date of execution of the letter contract;

(2) all clauses required by law on the date of execution of the definitive contract; and

(3) any other mutually agreeable clauses, terms, and conditions. The contractor agrees to submit a _____*(insert specific type of offer;*

e.g., fixed-price or cost-and-fee) offer and detailed cost information supporting its offer.

(b) The schedule for definitizing this contract is (*insert target date for definitization of the contract and dates for submission of offer, beginning of negotiations, and, if appropriate, submission of make-or-buy and subcontracting plans and detailed cost information):*

(1) Definitization target date: _____

(2) Offer submission date: _____

(3) Beginning of negotiations date: _____

(4) Other appropriate dates: _____

(c) If agreement on a definitive contract to supersede this letter contract is not reached by the target date in paragraph (b) of this section, or within any extension of it granted by the contracting officer, the contracting officer may, with the prior written approval of the judiciary Procurement Executive, determine a reasonable price or fee, subject to contractor appeal as provided in the Disputes clause. In any event, the contractor shall proceed with completion of the contract, subject only to the Limitation of Judiciary Liability clause.

(1) After the contracting officer's determination of price or fee, the contract will be governed by:

(i) all judiciary required clauses on the date of execution of this letter contract for either fixed-price or cost-reimbursement contracts as determined by the contracting officer under this paragraph (c);

(ii) all clauses required by law as of the date of the contracting officer's determination; and

(iii) any other clauses, terms, and conditions mutually agreed upon.

(2) To the extent consistent with paragraph (c)(1) of this section, all clauses, terms, and conditions included in this letter contract will continue in effect, except those that by their nature apply only to a letter contract.

(d) The definitive contract resulting from this letter contract will include a negotiated _____*(contracting officer inserts “firm fixed price” or “total estimated*

reimbursable cost") in no event to exceed $_____*(contracting officer inserts the proposed amount upon which the award was based)*.

(end)

Clause 4-50, Payment of Allowable Costs before Definitization

Include the following clause as prescribed in § 410.50.80(d) (Clauses).

Payment of Allowable Costs before Definitization (JAN 2003)

(a) Reimbursement Rate

Pending the placing of the definitized contract referred to in this letter contract, the judiciary will promptly reimburse the contractor for all allowable costs under the contract at the following rates:

(1) 100 percent of written approved costs representing financing payments to subcontractors under fixed-price subcontracts, provided that the judiciary's payments to the contractor will not exceed 80 percent of the allowable costs of those subcontracts;

(2) 100 percent of written approved costs representing cost-reimbursement subcontracts, provided, that the judiciary's payments to the contractor will not exceed 85 percent of the allowable costs of those subcontracts;

(3) 85 percent of all other written approved costs.

(b) Limitation of Reimbursement

To determine the amounts payable to the contractor under this letter contract, the contracting officer will determine allowable costs. The total reimbursement made under this paragraph will not exceed 85 percent of the maximum amount of the judiciary's liability, as stated in this contract.

(c) Invoicing

Payments will be made promptly to the contractor when requested as work progresses, but not more often than once each month (or more often if approved in writing by the contracting officer). The contractor may submit to an authorized representative of the contracting officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable costs incurred by the contractor in performance of this contract.

(d) Allowable Costs

For the purpose of determining allowable costs, the term “costs” includes:

(1) those recorded costs that result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for products or services purchased directly for the contract;

(2) when the contractor is not delinquent in payment of costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid for:

(i) products and services purchased directly for the contract, provided payments will be made:

(A) in accordance with the terms and conditions of a subcontract or invoice; and

(B) ordinarily prior to the submission of the contractor’s next payment request to the judiciary;

(ii) materials issued from the contractor's stores inventory and placed in the production process for use on the contract;

(iii) direct labor;

(iv) direct travel;

(v) other direct in-house costs; and

(vi) properly allocable and allowable indirect costs, as shown on the records maintained by the contractor for purposes of obtaining reimbursement under judiciary contracts; and

(3) the amount of financing payments that the contractor has paid by cash, check, or other forms of payment to subcontractors.

(e) Audit

At any time before final payment, the contracting officer may have the contractor's invoices or vouchers and statements of cost audited. Any payment may be:

(1) reduced by any amounts found by the contracting officer not to constitute allowable costs; or

(2) adjusted for prior overpayments or under payments made on preceding invoices or vouchers.

(end)

Clause 4-55, Economic Price Adjustment – Standard Products

Include the following clause as prescribed in § 410.65.50 (Clauses) and § 410.75.65(b) (Contract Clauses and Provisions). The clause may be modified to increase the 10 percent limit on aggregate increases in paragraph (c)(1), upon written approval by the Procurement Executive, PMD.

Economic Price Adjustment – Standard Products (JAN 2003)

(a) The contractor warrants that the unit price stated in the schedule for _____ [*offeror inserts schedule line item number*] is not in excess of the contractor's applicable established price in effect on the contract date for like quantities of the same item. The term "unit price" excludes any part of the price directly resulting from requirements for preservation, packaging, or packing beyond standard commercial practice. The term "established price" means a price that:

(1) is an established catalog or market price for a commercial item sold in substantial quantities to the general public; and

(2) is the net price after applying any standard trade discounts offered by the contractor.

(b) The contractor shall promptly notify the contracting officer of the amount and effective date of each decrease in any applicable established price. Each corresponding contract unit price will be decreased by the same percentage that the established price is decreased. The decrease will apply to those items delivered on and after the effective date of the decrease in the contractor's established price, and this contract will modified accordingly.

(c) If the contractor's applicable established price is increased after the contract date, the corresponding contract unit price will be increased, upon the contractor's written request to the contracting officer, by the same percentage that the established price is increased, and the contract will be modified accordingly, subject to the following limitations:

(1) the aggregate of the increases in any contract unit price under this clause will not exceed 10 percent of the original contract unit price;

(2) the increased contract unit price will be effective:

(i) on the effective date of the increase in the applicable established price if the contracting officer receives the contractor's written request within 10 days thereafter; or

(ii) if the written request is received later, on the date the contracting officer receives the request;

(3) the increased contract unit price will not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price, unless failure to deliver before that date results from causes beyond the control and without the fault or negligence of the contractor, within the meaning of the Default clause.

(4) no modification increasing a contract unit price will be executed under this paragraph (c) until the contracting officer verifies the increase in the applicable established price;

(5) within 30 days after receipt of the contractor's written request, the contracting officer may cancel, without liability to either party, any undelivered portion of the contract items affected by the requested increase.

(d) During the time allowed for the cancellation provided for in paragraph (c)(5) of this clause, and thereafter if there is no cancellation, the contractor shall continue deliveries according to the contract delivery schedule, and the judiciary will pay for such deliveries at the contract unit price, increased to the extent provided by paragraph (c) of this clause.

(end)

Clause 4-60, Allowable Cost and Payment

Include the following clause as prescribed in § 410.70.80(a) (Cost Contract Clauses).

Allowable Cost and Payment (JAN 2003)

(a) Invoicing

The judiciary will make payments to the contractor when requested as work progresses, but not more than monthly, in amounts determined to be allowable by the contracting officer. The contractor shall submit an invoice or voucher to the address specified in the schedule, supported by a statement of claimed allowable costs of performing this contract, in such form and detail as the contracting officer may require.

(b) Reimbursing Costs

(1) For the purpose of reimbursing allowable costs, the term “costs” includes only:

(i) those recorded costs that, at the time of the request for reimbursement, the contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(ii) when the contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for:

(A) products and services purchased directly for the contract and associated financing payments to subcontractors, provided payments will be made:

(1) in accordance with the terms and conditions of a subcontract or invoice; and

(2) ordinarily prior to the submission of the contractor’s next payment request to the judiciary;

(B) materials issued from the contractor's inventory and placed in the production process for use on the contract;

(C) direct labor;

(D) direct travel;

(E) other direct in-house costs; and

(F) Properly allocable and allowable indirect costs, as shown in the records maintained by the contractor for purposes of obtaining reimbursement under judiciary contracts; and

(iii) The amount of progress payments that have been paid by cash, check, or other forms of payment to subcontractors.

(2) Accrued costs of contractor contributions under employee pension plans will be excluded until actually paid unless:

(i) the contractor’s practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) the contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid will be excluded from the contractor’s indirect costs for payment purposes).

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (e) of this clause, allowable indirect costs under this contract will be obtained by applying indirect cost rates established in accordance with paragraph (c) of this clause.

(4) Any statements in specifications or other documents incorporated by reference in this contract designating performance of services or furnishing of materials at the contractor's expense or at no cost to the judiciary will be disregarded for purposes of cost reimbursement under this clause.

(c) Final Indirect Cost Rates

(1) Final annual indirect cost rates and the appropriate bases will be established in accordance with the Guide, Vol 14, Ch 4 in effect for the period covered by the indirect cost rate offer.

(2) (i) The contractor shall submit an adequate final indirect cost rate offer to the contracting officer and auditor within 90 days after the end of each of its fiscal years, or by a later date approved in writing by the contracting officer. The contractor shall support the cost data and specify the contract and/or subcontract to which the rates apply.

(ii) The proposed rates shall be based on the contractor's actual cost experience for that period. The contracting officer or contracting officer's representative and the contractor will establish the final indirect cost rates as promptly as practical after receipt of the contractor's offer.

(3) The contractor and the contracting officer will execute a written understanding setting forth the final indirect cost rates. The understanding will specify:

(i) the agreed-upon final annual indirect cost rates;

(ii) the bases to which the rates apply;

(iii) the periods for which the rates apply;

(iv) any specific indirect cost items treated as direct costs in the settlement; and

(v) the affected contract an/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding will not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Failure by the parties to agree on a final annual indirect cost rate will be a dispute within the meaning of the Disputes clause.

(5) Within 120 days (or a period approved in writing by the contracting officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

(6) (i) If the contractor fails to submit a completion invoice or voucher within the time specified in paragraph (c)(5) of this clause, the contracting officer may:

(A) determine the amounts due to the contractor under the contract; and

(B) record this determination in a unilateral modification to the contract.

(ii) The determination constitutes the final decision of the contracting officer in accordance with the Disputes clause.

(d) Billing Rates

Until final annual indirect cost rates are established for any period, the judiciary will reimburse the contractor at billing rates established by the contracting officer subject to adjustment when the final rates are established. These billing rates:

(1) will be the anticipated final rates; and

(2) may be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(e) Audit

At any time or times before final payment, the contracting officer may have the contractor's invoices or vouchers and statements of cost audited. Any payment may be:

(1) reduced by amounts found by the contracting officer not to constitute allowable costs; or

(2) adjusted for prior overpayments or under-payments.

(f) Final Payment

(1) Upon written approval of a completion invoice or voucher, submitted by the contractor in accordance with paragraph (c)(5) of this clause, and upon the contractor’s compliance with all terms of this contract, the judiciary will promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) The contractor shall pay to the judiciary any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the contractor has been reimbursed by the judiciary. Reasonable expenses incurred by the contractor for securing refunds, rebates, credits, or other amounts are allowable costs if approved in writing by the contracting officer. Before final payment under this contract, the contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver:

(i) an assignment to the judiciary, in form and substance satisfactory to the contracting officer, of refunds, rebates, credits, or other

amounts (including interest, if any) properly allocable to costs for which the contractor has been reimbursed by the judiciary under this contract; and

(ii) a release discharging the judiciary, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except:

(A) specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) claims (including reasonable incidental expenses) based upon liabilities of the contractor to third parties arising out of the performance of this contract; provided that the claims are not known to the contractor on the date of the execution of the release, and that the contractor gives notice of the claims in writing to the contracting officer within six years following the release date or notice of final payment date, whichever is earlier; and

(C) claims for reimbursement of costs, including reasonable incidental expenses, incurred by the contractor under the patent clauses of this contract, excluding, however, any expenses arising from the contractor's indemnification of the judiciary against patent liability.

(end)

Clause 4-65, Fixed Fee

Include the following clause as prescribed in § 410.70.80(b) (Cost Contract Clauses).

Fixed Fee (JAN 2003)

(a) The judiciary will pay the contractor for performing this contract the fixed fee specified in the schedule.

(b) Payment of the fixed fee will be made as specified in the schedule; provided that after payment of 85 percent of the fixed fee, the contracting officer may withhold further payment of fee until a reserve is set aside in an amount that the contracting officer considers necessary to protect the judiciary's interest. This reserve will not exceed 15 percent of the total fixed fee or the judiciary’s small purchase threshold, whichever is less. The contracting officer will release 75 percent of all fee withholds under this contract after receipt of the certified final

indirect cost rate offer covering the year of physical completion of this contract, provided the contractor has satisfied all other contract terms and conditions, and is not delinquent in submitting final vouchers on prior years' settlements. The contracting officer may release up to 90 percent of the fee withheld under this contract based on the contractor's past performance related to the submission and settlement of final indirect cost rate offers.

(end)

Clause 4-70, Incentive Fee

Include the following clause as prescribed in § 410.70.80(c) (Cost Contract Clauses).

Incentive Fee (JAN 2003)

(a) General

The judiciary will pay the contractor for performing this contract a fee determined as provided in the contract.

(b) Target Cost and Target Fee

The target cost and target fee specified in the schedule are subject to adjustment if the contract is modified in accordance with paragraph (d) of this clause.

(1) "Target cost" as used in this contract, means the estimated cost of this contract as initially negotiated, adjusted in accordance with paragraph (d) of this clause.

(2) "Target fee"as used in this contract, means the fee initially negotiated on the assumption that this contract would be performed for a cost equal to the estimated cost initially negotiated, adjusted in accordance with paragraph (d) of this clause.

(c) Withholding of Payment

Normally, the judiciary will pay the fee to the contractor as specified in the schedule. However, when the contracting officer considers that performance or cost indicates that the contractor will not achieve target, the judiciary will pay on the basis of an appropriate lesser fee. When the contractor demonstrates that performance or cost clearly indicates that the contractor will earn a fee significantly above the target fee, the judiciary may, at the sole discretion of the contracting officer, pay on the basis of an appropriate higher fee. After payment of 85 percent of the applicable fee, the contracting officer may withhold further

payment of fee until a reserve is set aside in an amount that the contracting officer considers necessary to protect the judiciary's interest. This reserve will not exceed 15 percent of the applicable fee or the judiciary's small purchase threshold, whichever is less. The contracting officer will release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate offer covering the year of physical completion of this contract, provided the contractor has satisfied all other contract terms and conditions, and is not delinquent in submitting final vouchers on prior years' settlements. The contracting officer may release up to 90 percent of the fee withholds under this contract based on the contractor's past performance related to the submission and settlement of final indirect cost rate offers.

(d) Equitable Adjustments

When the work under this contract is increased or decreased by a contract modification or when any equitable adjustment in the target cost is authorized under any other clause, equitable adjustments in the target cost, target fee, minimum fee, and maximum fee, as appropriate, will be stated in a supplemental agreement to this contract.

(e) Fee Payable

(1) The fee payable under this contract will be the target fee increased by ____ cents (*contracting officer inserts contractor's participation*) for every dollar that the total allowable cost is less than the target cost or decreased by _____ cents (*contracting officer inserts contractor's participation*) for every dollar that the total allowable cost exceeds the target cost. In no event will the fee be greater than ____ percent or less than ____ percent (*contracting officer inserts percentages*) of the target cost.

(2) The fee will be subject to adjustment, to the extent provided in paragraph (d) of this clause, and within the minimum and maximum fee limitations in paragraph (e)(1) of this clause, when the total allowable cost is increased or decreased as a consequence of:

(i) payments made under assignments; or

(ii) claims excepted from the release required by paragraph (f)(2) of the Allowable Cost and Payment clause.

(3) If this contract is terminated in its entirety, the portion of the target fee payable will not be subject to an increase or decrease as provided in this paragraph. The termination will be accomplished in accordance with other applicable clauses of this contract.

(4) For the purpose of fee adjustment, “total allowable cost” does not include allowable costs arising out of:

(i) any of the causes covered by the Excusable Delays clause, to the extent that they are beyond the control and without the fault or negligence of the contractor or any subcontractor;

(ii) the taking effect, after negotiating the target cost, of a statute, court decision, written ruling, or regulation that results in the contractor's being required to pay or bear the burden of any tax or duty or rate increase in a tax or duty;

(iii) any direct cost attributed to the contractor's involvement in litigation as required by the contracting officer pursuant to a clause of this contract, including furnishing evidence and information requested pursuant to the Notice and Assistance Regarding Patent and Copyright Infringement clause;

(iv) the purchase and maintenance of additional insurance not in the target cost and required by the contracting officer, or claims for reimbursement for liabilities to third persons pursuant to the Insurance Liability to third Persons clause;

(v) any claim, loss, or damage resulting from a risk for which the contractor has been relieved of liability by the Judicial Property clause; or

(vi) any claim, loss, or damage resulting from a risk defined in the contract as unusually hazardous or as a nuclear risk and against which the judiciary has expressly agreed to indemnify the contractor.

(5) All other allowable costs are included in “total allowable cost” for fee adjustment in accordance with this paragraph (e), unless otherwise specifically provided in this contract.

(f) Contract Modification

The total allowable cost and the adjusted fee determined as provided in this clause will be evidenced by a modification to this contract signed by the contractor and contracting officer.

(g) Inconsistencies

In the event of any language inconsistencies between this clause and provisioning documents or judiciary options under this contract, compensation for spare parts or other products and services ordered under such documents will be determined in accordance with this clause.

(end)

Clause 4-75, Cost Contract – No Fee

Include the following clause as prescribed in § 410.70.80(d) (Cost Contract Clauses).

Cost Contract – No Fee (JAN 2003)

(a) The judiciary will not pay the contractor a fee for performing this contract.

(b) After payment of 80 percent of the total estimated cost shown in the schedule, the contracting officer may withhold further payment of allowable cost until a reserve is set aside in an amount that the contracting officer considers necessary to protect the judiciary's interest. This reserve will not exceed whichever is less — one percent of the total estimated cost shown in the schedule, or:

(1) $10,000 for nonprofit organizations, or

(2) $100,000 for all other organizations.

(end)

Clause 4-80, Cost-Sharing Contract – No Fee

Include the following clause as prescribed in § 410.70.80(e) (Cost Contract Clauses).

Cost-Sharing Contract – No Fee (JAN 2003)

(a) The judiciary will not pay the contractor a fee for performing this contract.

(b) After paying the contractor 80 percent of the judiciary’s share of the total estimated cost of performance shown in the schedule, the contracting officer may withhold further payment of allowable cost until a reserve is set aside in an amount that the contracting officer considers necessary to protect the judiciary's interest. This reserve will not exceed whichever is less:

(1) one percent of the judiciary's share of the total estimated cost shown in the schedule, or

(2) $10,000 for nonprofit organizations, or

(3) $100,000 for all other organizations.

(end)

Clause 4-85, Limitation of Cost

Include the following clause as prescribed in § 410.70.80(f) (Cost Contract Clauses).

Limitation of Cost (JAN 2003)

(a) The parties estimate that performance of this contract, exclusive of any fee, will not cost the judiciary more than (1) the estimated cost specified in the schedule, or, (2) if this is a cost-sharing contract, the judiciary's share of the estimated cost specified in the schedule. The contractor agrees to use its best efforts to perform the work specified in the schedule and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract includes both the judiciary's and the contractor's share of the cost.

(b) The contractor shall notify the contracting officer in writing whenever it has reason to believe that:

(1) the costs the contractor expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the schedule; or

(2) the total cost for the performance of this contract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

(c) As part of the notification, the contractor shall provide the contracting officer a revised estimate of the total cost of performing this contract.

(d) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause:

(1) the judiciary is not obligated to reimburse the contractor for costs incurred in excess of (i) the estimated cost specified in the schedule, or (ii) if this is a cost-sharing contract, the estimated cost to the judiciary specified in the schedule; and

(2) the contractor is not obligated to continue performance under ths contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of the estimated cost or otherwise incur costs in excess of the estimated cost specified in the schedule, until the contracting officer (i) , notifies the contractor in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this contract. If this is a cost-sharing contract, the increase will be allocated in accordance with the formula specified in the schedule.

(e) No notice, communication, or representation in any other form other than that specified in paragraph (d)(2) of this clause, or from any person other than the contracting officer, will affect this contract's estimated cost to the judiciary. In the absence of the specified notice, the judiciary is not obligated to reimburse the contractor for any costs in excess of the estimated cost or, if this is a cost-sharing contract, for any costs in excess of the estimated cost to the judiciary specified in the schedule, whether those excess costs were incurred during the course of the contract or as a result of termination.

(f) If the estimated cost specified in the schedule is increased, any costs the contractor incurs before the increase that are in excess of the previously estimated cost will be allowable to the same extent as if incurred afterwards, unless the contracting officer issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.

(g) Change orders will not be considered an authorization to exceed the estimated cost to the judiciary specified in the schedule, unless they contain a statement increasing the estimated cost.

(h) If this contract is terminated or the estimated cost is not increased, the judiciary and the contractor will negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

(end)

Clause 4-90, Limitation of Funds

Include the following clause as prescribed in § 410.70.80(g) (Cost Contract Clauses).

Limitation of Funds (JAN 2003)

(a) The parties estimate that performance of this contract will not cost the judiciary more than (1) the estimated cost specified in the schedule, or (2) if this is a cost-sharing contract, the judiciary's share of the estimated cost specified in the

schedule. The contractor agrees to use its best efforts to perform the work specified in the schedule and all obligations under this contract within this estimated cost, which if this is a cost-sharing contract, includes both the government's and the contractor's share of the cost.

(b) The schedule specifies the amount presently available for payment by the judiciary and allotted to this contract, the items covered, the judiciary's share of the cost if this is a cost-sharing contract, and the period of performance it is estimated that allotted amount will cover. The parties contemplate that the judiciary will allot additional funds incrementally to the contract up to the full estimated cost to the judiciary specified in the schedule, exclusive of any fee. The contractor agrees to perform, or have performed, work on the contract up to the point at which the total amount paid and payable by the judiciary under the contract approximates but does not exceed the total amount actually allotted by the judiciary to the contract.

(c) The contractor shall notify the contracting officer in writing whenever the it has reason to believe that the costs it expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of (1) the total amount so far allotted to the contract by the judiciary or, (2) if this is a cost-sharing contract, the amount then allotted to the contract by the judiciary plus the contractor's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the schedule.

(d) Sixty days before the end of the period specified in the schedule, the contractor shall notify the contracting officer in writing of the estimated amount of additional funds, if any, required to continue timely performance under the contract or for any further period specified in the schedule or otherwise agreed upon, and when the funds will be required.

(e) If, after notification, additional funds are not allotted by the end of the period specified in the schedule or another agreed-upon date, upon the contractor's written request, the contracting officer will terminate this contract on that date in accordance with the provisions of the Termination clause of this contract. If the contractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the contracting officer may terminate this contract on that later date.

(f) Except as required by other provisions of this contract specifically citing and stated to be an exception to this clause,:

(1) the judiciary is not obligated to reimburse the contractor for costs incurred in excess of the total amount allotted by the judiciary to this contract; and

(2) the contractor is not obligated to continue performance under this contract (including actions under the contract's Termination clause of this contract) or otherwise incur costs in excess of:

(i) the amount then allotted to the contract by the judiciary or;

(ii) if this is a cost-sharing contract, the amount then allotted by the judiciary to the contract plus the contractor's corresponding share, until the contracting officer notifies the contractor in writing that the amount allotted by the judiciary has been increased and specifies an increased amount, which will then constitute the total amount allotted by the judiciary to this contract.

(g) The estimated cost will be increased to the extent (1) the amount allotted by the judiciary or, (2) if this is a cost-sharing contract, the amount then allotted by the judiciary to the contract plus the contractor's corresponding share, exceeds the estimated cost specified in the schedule. If this is a cost-sharing contract, the increase will be allocated in accordance with the formula specified in the schedule.

(h) No notice, communication, or representation in any other form other than that specified in paragraph (f)(2) of this clause, or from any person other than the contracting officer, will affect the amount allotted by the judiciary to this contract. In the absence of the specified notice, the judiciary is not obligated to reimburse the contractor for any costs in excess of the total amount allotted by the judiciary to this contract, whether incurred during the course of the contract or as a result of termination.

(i) When and to the extent that the amount allotted by the judiciary to the contract is increased, any costs the contractor incurs before the increase that are in excess of:

(1) the amount previously allotted by the judiciary or;

(2) if this is a cost-sharing contract, the amount previously allotted by the judiciary to the contract plus the contractor's corresponding share, will be allowable to the same extent as if incurred afterward, unless the contracting officer issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

(j) Change orders will not be considered an authorization to exceed the amount allotted by the judiciary specified in the schedule, unless they contain a statement increasing the amount allotted.

(k) Nothing in this clause will affect the right of the judiciary to terminate this contract. If this contract is terminated, the judiciary and the contractor will negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

(l) If the judiciary does not allot sufficient funds to allow completion of the work, the contractor is entitled to a percentage of the fee specified in the schedule equaling the percentage of completion of the work contemplated by this contract.

(end)

Clause 4-95, RESERVED

Clause 4-100, RESERVED

Clause 4-105, RESERVED

Provision 4-110, RESERVED

Clause 4-115, RESERVED

Provision 4-120, RESERVED

Clause 4-125, RESERVED

Clause 4-130, RESERVED

Clause 4-135, RESERVED

Clause 4-140, RESERVED

Clause 4-145, RESERVED

Clause 4-150, Cancellation Under Multi-Year Contracts

Include the following clause as prescribed in § 410.75.65(a) (Contract Clauses and Provisions).

Cancellation Under Multi-Year Contracts (OCT 2006)

(a) "Cancellation," as used in this clause, means that the Government is canceling all line items for all products or services in the contract year(s) subsequent to that in which notice of cancellation is provided. Cancellation shall occur by the date

or within the time period specified in the contract, unless a later date is agreed to, if the Contracting Officer notifies the Contractor that funds are not available for contract performance for the subsequent contract year(s).

(b) Except for cancellation under this clause or termination under the Default clause, any reduction by the Contracting Officer in the requirements of this contract shall be considered a termination under the Termination for Convenience of the Government clause.

(c) If cancellation under this clause occurs, the Contractor will be paid a cancellation charge not over the cancellation ceiling specified in the contract as applicable at the time of cancellation.

(d) The cancellation charge will cover only:

(1) Costs:

(i) Incurred by the Contractor and/or subcontractor;

(ii) Reasonably necessary for performance of the contract; and

(iii) That would have been equitably amortized over the entire multi-year contract period but, because of the cancellation, are not so amortized; and

(2) A reasonable profit or fee on the costs.

(e) The cancellation charge shall be computed and the claim made for it as if the claim were being made under the Termination for Convenience of the Government clause of this contract. The Contractor shall submit the claim promptly but no later than 1 year from the date:

(1) Of notification that funds will not be made available for continued performance; or

(2) Specified in the contract by which notification of the availability of additional funds for the next succeeding contract year is required to be issued, whichever is earlier, unless extensions in writing are granted by the Contracting Officer.

(f) The Contractor's claim may include:

(1) Reasonable fixed costs which are applicable to and normally would have been amortized in all products or services which are multi-year requirements;

(2) Allocable portions of the costs of facilities acquired or established for the conduct of the work, to the extent that it is impracticable for the Contractor to use the facilities in its commercial work, and if the costs are not charged to the contract through overhead or otherwise depreciated;

(3) Costs incurred for the assembly, training, and transportation to and from the job site of a specialized work force; and

(4) Costs not amortized solely because the cancellation had precluded anticipated benefits of Contractor or subcontractor learning.

(g) The claim shall not include:

(1) Labor, material, or other expenses incurred by the Contractor or subcontractors for performance of the canceled work;

(2) Any cost already paid to the Contractor;

(3) Anticipated profit or unearned fee on the canceled work; or

(4) For service contracts, the remaining useful commercial life of facilities. “Useful commercial life” means the commercial utility of the facilities rather than their physical life with due consideration given to such factors as location of facilities, their specialized nature, and obsolescence.

(h) This contract may include an Option clause with the period for exercising the option limited to the date in the contract for notification that funds are available for the next succeeding contract year. If so, the Contractor agrees not to include in option quantities any costs of a startup or fixed nature that have been fully set forth in the contract. The Contractor further agrees that the option quantities will reflect only those variable costs and a reasonable profit or fee necessary to furnish the additional option quantities.

(i) Quantities added to the original contract through the Option clause of this contract shall be included in the quantity canceled for the purpose of computing allowable cancellation charges.

(end)

Provision 4-155, Evaluation of Price Proposal – Multi-Year Contract

Include the following provision as prescribed in § 410.75.65(d) (Contract Clauses and Provisions).

Evaluation of Price Proposal – Multi-Year Contract (OCT 2006)

In the event that the judiciary determines prior to award that only the first contract year requirements are needed, offers will be evaluated and award made solely on the basis of prices offered on that year's requirements. The cancellation ceiling shall not be part of the price proposal evaluation.

(end)

Clause 4-160, Cancellation Period and Ceiling

Include the following clause as prescribed in § 410.75.65(e) (Contract Clauses and Provisions).

Cancellation Period and Ceiling (JAN 2010)

The cancellation period referred to in the "Cancellation under Multi-Year Contracts" clause (Clause 4-150) applies to each line item period set forth in Section B, at the quantities as set forth in Section B for each contract year. The cancellation ceilings are set forth below:

Contract Year	**Cancellation Period***	**Cancellation Ceiling***
Contract Year 2		
Contract Year 3		
Contract Year 4		
Contract Year 5		

* To be completed by Offeror

(end)

Provision 4-165, Price Proposal Instruction – Multi-Year Contract

Include the following provision as prescribed in § 410.75.65(f) (Contract Clauses and Provisions).

Price Proposal Instruction – Multi-Year Contract (OCT 2006)

As indicated in Section H, offerors are instructed to provide a separate cancellation ceiling (on either a percentage or dollar basis) for each contract year subject to cancellation. Price proposals must include the rationale and supporting data for each proposed cancellation ceiling. If actual cancellation occurs after contract award, the Contractor will be required to submit a claim with supporting data which will be subject to negotiation. The amounts established in Section H are merely ceilings.

(end)

Provisions and Clauses (Chapter 5)

Clause 5-1, Payments under Personal and Professional Services Contracts

Include the following clause as prescribed in § 510.50 (Clause) and § 520.75(c) (Provisions and Clauses).

Payments under Personal and Professional Services Contracts (AUG 2004)

(a) The judiciary will pay the contractor:

(1) for the services performed by the contractor;

(2) as set forth in the schedule of this contract;

(3) at the rates prescribed;

(4) upon the submission by the contractor of proper invoices or time statements to the office or officer designated and at the time provided for in this contract.

(b) The judiciary will also pay the contractor:

(1) a per diem rate in lieu of subsistence for each day the contractor is in a travel status away from home or regular place of employment in accordance with Judiciary Travel Regulations as authorized in appropriate Travel Orders; and

(2) any other transportation expenses if provided for in the schedule.

(end)

Clause 5-5, Non-disclosure (Professional Services)

Include the following clause as prescribed in § 520.75(d) (Provisions and Clauses).

Non-disclosure (Professional Services) (JAN 2003)

The contractor acknowledges that confidential information might be generated or made available during the course of performance of this agreement. In addition to the restrictions on disclosure established under the contractor's code of ethics, the contractor specifically agrees not to disclose any information received or generated under this contract, unless its release is approved in writing by the

contracting officer. The contractor further agrees to assert any privilege allowed by law and to defend vigorously judiciary rights to confidentiality.

(end)

Clause 5-10, Inspection of Professional Services

Include the following clause as prescribed in § 520.75(e) (Provisions and Clauses).

Inspection of Professional Services (SEP 2010)

(a) The contracting officer may, at any time or place, inspect the services performed and the products delivered, including documents and reports. The contracting officer may reject any products or services that do not meet the highest standards of professionalism, no matter what type of contract is employed, and in addition to any specific standards of quality set out in this agreement. No payment will be due for any products or services rejected under this clause.

(b) Acceptance of any product or service does not relieve the contractor of the duties imposed by contractor's code of professional ethics. The contractor remains liable for the period allowed under federal law for claims by the United States, for any errors or omissions occurring during performance. All partners or principals agree that they will be jointly and severably liable for such errors and omissions.

(end)

Clause 5-15, RESERVED

Clause 5-20, Records Ownership

Include the following clause as prescribed in § 520.75(g) (Provisions and Clauses).

Records Ownership (JAN 2003)

Notwithstanding any state law providing for retention of rights in the records, the contractor agrees that the judiciary may, at its option, demand and take without additional compensation all records relating to the services provided under this agreement. The contractor shall turn over all such records upon request but may retain copies of documents produced by the contractor.

(end)

Provision 5-25, Identification of Uncompensated Overtime

Include the following provision as prescribed in § 520.75(h) (Provisions and Clauses).

Identification of Uncompensated Overtime (JAN 2003)

(a) Definitions. As used in this provision:

"Uncompensated overtime" means the hours worked without additional compensation in excess of an average of 40 hours per week by direct charge employees who are exempt from the Fair Labor Standards Act. Compensated personal absences such as holidays, vacations, and sick leave shall be included in the normal work week for purposes of computing uncompensated overtime hours.

"Uncompensated overtime rate" is the rate that results from multiplying the hourly rate for a 40-hour work week by 40, and then dividing by the proposed hours per week. For example, 45 hours proposed on a 40-hour work week basis at $20 per hour would be converted to an uncompensated overtime rate of $17.78 per hour ($20.00 x 40 divided by 45 = $17.78).

(b) For any proposed hours against which an uncompensated overtime rate is applied, the offeror shall identify in its offer the hours in excess of an average of 40 hours per week, by labor category at the same level of detail as compensated hours, and the uncompensated overtime rate per hour, whether at the prime or subcontract level. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct.

(c) The offeror's accounting practices used to estimate uncompensated overtime shall be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.

(d) Offers that include unrealistically low labor rates, or that do not otherwise demonstrate cost realism, will be considered in a risk assessment and will be evaluated for award in accordance with that assessment.

(e) The offeror shall include a copy of its policy addressing uncompensated overtime with its offer.

(end)

Clause 5-30, Authorization and Consent

Include the following clause as prescribed in § 330.10.30(mm) (Provisions and Clauses) and § 530.70.60(a) (Clauses).

Authorization and Consent (JAN 2003)

(a) The judiciary authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the judiciary under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the contracting officer directing the manner of performance. The entire liability to the judiciary for infringement of a patent of the United States will be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the judiciary assumes liability for all other infringement to the extent of the authorization and consent herein above granted.

(b) The contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for products or services (including construction, architect-engineer services, and materials, products, models, samples, and design or testing services expected to exceed the judiciary's small purchase threshold); however, omission of this clause from any subcontract, including those at or below the judiciary's small purchase threshold, does not affect this authorization and consent.

Alternate I: (JAN 2003) *As prescribed in § 330.10.30(mm) (Provisions and Clauses), substitute the following for paragraph (a) of the clause:*

(a) The judiciary authorizes and consents to all use and manufacture in the performance of any order at any tier or subcontract at any tier placed under this contract for communication services and facilities for which rates, charges, and tariffs are **not** established by a judiciary regulatory body, of any invention described in and covered by a United States patent:

(1) embodied in the structure or composition of any article the delivery of which is accepted by the judiciary under this contract; or

(2) used in machinery, tools, or methods whose use necessarily results from compliance by the contractor or a subcontractor with specifications or written provisions forming a part of this contract or with specific written instructions given by the contracting officer directing the manner of performance.

(end)

Clause 5-35, Payments Under Fixed-Price Architect-Engineer Contracts

Include the following clause as prescribed in § 530.70.60(b) (Clauses).

Payments under Fixed-Price Architect-Engineer Contracts (JAN 2003)

(a) Estimates shall be made monthly of the amount and value of the work and services performed by the contractor under this contract which meet the standards of quality established under this contract. The estimates shall be prepared by the contractor and accompanied by any supporting data required by the contracting officer.

(b) Upon written approval of the estimate by the contracting officer, payment upon properly executed vouchers will be made to the contractor, as soon as practicable, of 90 percent of the written approved amount, less all previous payments; *provided*, that payment may be made in full during any months in which the contracting officer determines that performance has been satisfactory. Also, whenever the contracting officer determines that the work is substantially complete and that the amount retained is in excess of the amount adequate for the protection of the judiciary, the contracting officer may release the excess amount to the contractor.

(c) Upon satisfactory completion by the contractor and acceptance by the contracting officer of the work done by the contractor under the "Statement of Architect-Engineer Services," the contractor will be paid the unpaid balance of any money due for work under the statement, including retained percentages relating to this portion of the work. Upon satisfactory completion and final acceptance of the construction work, the contractor shall be paid any unpaid balance of money due under this contract.

(d) Before final payment under the contract, or before settlement upon termination of the contract, and as a condition precedent thereto, the contractor shall execute and deliver to the contracting officer a release of all claims against the judiciary arising under or by virtue of this contract, other than any claims that are specifically excepted by the contractor from the operation of the release in amounts stated in the release.

(e) Notwithstanding any other provision in this contract, and specifically paragraph (b) of this clause, progress payments will not exceed 80 percent on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract including contract modifications for additional products or services, but not including contract modifications that are within the scope and

under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(end)

Clause 5-40, RESERVED

Clause 5-45, Design Within Funding Limitations

Include the following clause as prescribed in § 530.70.60(c) (Clauses), filling in the dollar amount in (c).

Design Within Funding Limitations (JAN 2003)

(a) The contractor shall accomplish the design services required under this contract so as to permit the award of a contract, using standard judiciary procedures for the construction of the facilities designed at a price that does not exceed the estimated construction contract price as set forth in paragraph (c) of this clause. When offers for the construction contract are received that exceed the estimated price, the contractor shall perform such redesign and other services as are necessary to permit contract award within the funding limitation. These additional services shall be performed at no increase in the price of this contract. However, the contractor shall not be required to perform such additional services at no cost to the judiciary if the unfavorable offers are the result of conditions beyond its reasonable control.

(b) The contractor will promptly advise the contracting officer if it finds that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within these limitations. Upon receipt of such information, the contracting officer will review the contractor's revised estimate of construction cost. The judiciary may, if it determines that the estimated construction contract price set forth in this contract is so low that award of a construction contract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth in paragraph (c) of this clause, or the judiciary may adjust such estimated construction contract price. When offers are not solicited or are unreasonably delayed, the judiciary will prepare an estimate of constructing the design submitted and such estimate will be used in lieu of offers to determine compliance with the funding limitation.

(c) The estimated construction contract price for the project described in this contract is $_____.

(end)

Clause 5-50, Responsibility of the Architect-Engineer Contractor

Include the following clause as prescribed in § 530.70.60(d) (Clauses).

Responsibility of the Architect-Engineer Contractor (JAN 2003)

(a) The contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the contractor under this contract. The contractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.

(b) Neither the judiciary's review, approval or acceptance of, nor payment for, the services required under this contract will be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the contractor shall be and remain liable to the judiciary in accordance with applicable law for all damages to the judiciary caused by the contractor's negligent performance of any of the services furnished under this contract.

(c) The rights and remedies of the judiciary provided for under this contract are in addition to any other rights and remedies provided by law.

(d) If the contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

(end)

Clause 5-55, Work Oversight in Architect-Engineer Contracts

Include the following clause as prescribed in § 530.70.60(e) (Clauses).

Work Oversight in Architect-Engineer Contracts (JAN 2003)

The extent and character of the work to be done by the contractor shall be subject to the general oversight, supervision, direction, control, and written approval of the contracting officer.

(end)

Clause 5-60, Requirements for Registration of Designers

Include the following clause as prescribed in § 530.70.60(f) (Clauses).

Requirements for Registration of Designers (AUG 2004)

Architects or engineers registered to practice in the particular professional field involved in a state, the District of Columbia, or an outlying area of the United States shall prepare or review and approve the design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work.

(end)

Clause 5-65, Subcontractors and Outside Associates and Consultants (Architect-Engineer Services)

Include the following clause as prescribed in § 530.70.60(g) (Clauses).

Subcontractors and Outside Associates and Consultants (Architect-Engineer Services) (JAN 2003)

Any subcontractors and outside associates or consultants required by the contractor in connection with the services covered by the contract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The contractor shall obtain the contracting officer's written consent before making any substitution for these subcontractors, associates, or consultants.

(end)

Clause 5-70, Termination (Fixed-Price Architect-Engineer)

Include the following clause as prescribed in § 530.70.60(h) (Clauses).

Termination (Fixed-Price Architect-Engineer) (JAN 2003)

(a) The judiciary may terminate this contract in whole or, from time to time, in part, for the judiciary's convenience or because of the failure of the contractor to fulfill the contract obligations. The contracting officer will terminate by delivering to the contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the contractor shall:

(1) immediately discontinue all services affected (unless the notice directs otherwise); and

(2) deliver to the contracting officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

(b) If the termination is for the convenience of the judiciary, the contracting officer will make an equitable adjustment in the contract price but will allow no anticipated profit on unperformed services.

(c) If the termination is for failure of the contractor to fulfill the contract obligations, the judiciary may complete the work by contract or otherwise and the contractor shall be liable for any additional cost incurred by the judiciary.

(d) If, after termination for failure to fulfill contract obligations, it is determined that the contractor had not failed, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the judiciary.

(e) The rights and remedies of the judiciary provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(end)

Clause 5-75, Suspensions and Delays

Include the following clause as prescribed in § 530.70.60(i) (Clauses).

Suspensions and Delays (JAN 2003)

(a) If the performance of all or any part of the work of this contract is suspended, delayed, or interrupted by:

(1) an order or act of the contracting officer in administering this contract; or

(2) by a failure of the contracting officer to act within the time specified in this contract, or within a reasonable time if not specified, an adjustment will be made for any increase in the cost of performance of this contract caused by the delay or interruption (including the costs incurred during any suspension or interruption). An adjustment will also be made in the delivery or performance dates and any other contractual term or condition affected by the suspension, delay, or interruption. However, no adjustment may be made under this clause for any delay or interruption to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the contractor, or for which an adjustment is provided or excluded under any other term or condition of this contract.

(b) A claim under this clause will not be allowed:

(1) for any costs incurred more than 20 days before the contractor has notified the contracting officer in writing of the act or failure to act involved; and

(2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the delay or interruption, but not later than the day of final payment under the contract.

(end)

Provisions and Clauses (Chapter 6)

Clause 6-1, Performance Bond Requirements

Include the following clause as prescribed in § 610.20.30(a) (Clauses). If the penal amount is less than 100 percent of the contract price, modify the clause accordingly.

Performance Bond Requirements (APR 2011)

(a) Definitions. As used in this clause, “original contract price" means the award price of the contract; or for requirements contracts, the price payable for the estimated quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) The contractor shall furnish a Form SF 1418, Performance Bond for the protection of the judiciary in an amount equal to ___ percent of the original contract price and a Form SF 1416, Payment Bond in an amount equal to ___ percent of the original contract price.

(c) The contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the contracting officer within ___ days, but in any event, before starting work.

(d) The judiciary may require additional performance and payment bond protection if the contract price is increased. The judiciary may secure the additional protection by directing the contractor to increase the penal amount of the existing bonds or to obtain additional bonds.

(e) The bonds shall be in the form of a firm commitment, supported by corporate sureties whose names are listed in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the *Federal Register*, or may be obtained from the:

U.S. Department of Treasury
Financial Management Service
Surety Bond Branch
401 14th Street, NW, 2nd Floor, West Wing
Washington, DC 20227
www.treas.gov

(end)

Alternate I (JAN 2003): *As prescribed in § 610.20.30(b) (Clauses), substitute the following paragraphs (b) and (d) for paragraphs (b) and (d) of the basic clause. If the penal amount is less than 100 percent of the contract price, the clause will be modified accordingly*.

(b) The contractor shall furnish a performance bond (Standard Form 1418) for the protection of the judiciary in an amount equal to ___ percent of the original contract price.

(d) The judiciary may require additional performance bond protection if the contract price is increased. The judiciary may secure the additional protection by directing the contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(end)

Provision 6-5, Fidelity Bond Requirements

Include the following provision as prescribed in § 610.40 (Fidelity Bonds).

Fidelity Bond Requirements (JAN 2003)

Any offeror awarded a contract as a result of this solicitation will be required to submit a fidelity bond in the penal amount set forth in the schedule, in a form acceptable to and within the time specified by the contracting officer. Corporate sureties will appear on the list in Treasury Circular 570 and the amount of the bond may not exceed the underwriting limit stated for the surety on that list. Failure to submit an acceptable bond may be cause for termination of the contract for default.

(end)

Provision 6-10, Deposit of Assets Requirements

Include the following provision as prescribed in § 620.20.50(a) (Clauses/Provisions).

Deposit of Assets Requirements (JAN 2003)

(a) Any offeror required to submit a surety bond as a result of this solicitation may instead deposit assets in a form acceptable to the judiciary in an amount set forth in the schedule.

(b) When assets are deposited, the offeror shall execute a bond in a form as specified in this solicitation. Failure to deposit assets acceptable to the judiciary may be cause for termination of the contract for default.

(end)

Clause 6-15, Deposit of Assets Instead of Surety Bonds

Include the following clause as prescribed in § 620.20.50(b) (Clauses/Provisions).

Deposit of Assets Instead of Surety Bonds (JAN 2003)

(a) If the contractor has deposited assets instead of furnishing sureties for any bond required under this contract and the assets are in the form of checks, currency, or drafts, the contracting officer will hold the assets in an account for the contractor's benefit.

(b) Upon contract completion, the contractor's funds will be returned as soon as possible, unless the contracting officer determines that part or all of the account is required to compensate the judiciary for costs it incurs as a result of the contractor's delay, default, or failure to perform. In such a case, the entire account will be available to compensate the judiciary.

(end)

Clause 6-20, Insurance – Work On or Within a Judiciary Facility

Include the following clause as prescribed in § 630.20.40(a) (Clauses).

Insurance – Work On or Within a Judiciary Facility (APR 2011)

(a) The contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the following kinds and minimum amounts of insurance:

(1) Workman's Compensation and Employee's Liability Insurance

The contractor shall comply with applicable federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy. Employer's liability coverage of at least $100,000 per incident is required.

(2) Automobile Liability Insurance

The contractor shall have coverage at a minimum of $200,000 per person; $500,000 per occurrence for bodily injury; and $20,000 per occurrence for property damage.

(3) General Liability Insurance

The contractor shall have coverage at a minimum of $200,000 per person and $500,000 per occurrence for death or bodily injury and $20,000 per occurrence for property damage.

(4) Self-Insurance

If the contractor has been approved to provide a qualified program of self insurance, the contractor must submit any proposed changes to the program to the contracting officer for approval.

(b) Prior to beginning performance under this contract, the contractor shall provide the insurance carrier certification of the above minimum amounts.

(c) The maintenance of insurance coverage as required by this clause is a continuing obligation, and the lapse or termination of insurance coverage without replacement coverage being obtained will be grounds for termination for default.

(d) The certification evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the judiciary's interest shall not be effective:

(1) for such period as the laws of the state in which this contract is to be performed prescribe; or

(2) until 30 days after the insurer or the contractor gives written notice to the contracting officer, whichever period is longer.

(e) The contractor shall insert the substance of this clause, including this paragraph (e), in subcontracts under this contract that require work in a judiciary facility and shall require subcontractors to provide and maintain the required insurance. The contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the contracting officer upon request.

(end)

Clause 6-25, Insurance – Liability to Third Persons

Include the following clause as prescribed in § 630.20.40(b) (Clauses).

Insurance – Liability to Third Persons (JAN 2003)

(a) (1) Except as provided in paragraph (a)(2) of this clause, the contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the contracting officer may require under this contract.

(2) The contractor may, with the written approval of the contracting officer, maintain a self-insurance program, provided that, with respect to workers' compensation, the contractor is qualified pursuant to statutory authority.

(3) All insurance required by this paragraph shall be in a form and amount and for those periods as the contracting officer may require or approve and with insurers approved in writing by the contracting officer.

(b) The contractor agrees to submit for the contracting officer's written approval, to the extent and in the manner required by the contracting officer, any other insurance that is maintained by the contractor in connection with the performance of this contract and for which the contractor seeks reimbursement.

(c) The contractor shall be reimbursed:

(1) for that portion:

(i) of the reasonable cost of insurance allocable to this contract; and

(ii) required or approved in writing under this clause; and

(2) for certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or the limitation of funds clause of this contract. These liabilities shall arise out of the performance of this contract, whether or not caused by the negligence of the contractor or of the contractor's agents, servants, or employees, and shall be represented by final judgments or settlements approved in writing by the judiciary. These liabilities are for:

(i) loss of or damage to property (other than property owned, occupied, or used by the contractor, rented to the contractor, or in the care, custody, or control of the contractor); or

(ii) death or bodily injury.

(d) The judiciary's liability under paragraph (c) of this clause is subject to the availability of appropriated funds at the time a contingency occurs. Nothing in this contract will be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(e) The contractor will not be reimbursed for liabilities (and expenses incidental to such liabilities):

(1) for which the contractor is otherwise responsible under the express terms of any clause specified in the schedule or elsewhere in the contract;

(2) for which the contractor has failed to insure or to maintain insurance as required by the contracting officer; or

(3) that result from willful misconduct or lack of good faith on the part of any of the contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of:

(i) all or substantially all of the contractor's business;

(ii) all or substantially all of the contractor's operations at any one plant or separate location in which this contract is being performed; or

(iii) a separate and complete major industrial operation in connection with the performance of this contract.

(f) The provisions of paragraph (e) of this clause will not restrict the right of the contractor to be reimbursed for the cost of insurance maintained by the contractor in connection with the performance of this contract, other than insurance required in accordance with this clause; *provided*, that such cost is allowable under the “Allowable Cost and Payment” clause (Clause 4-60) of this contract.

(g) If any suit or action is filed or any claim is made against the contractor, the cost and expense of which may be reimbursable to the contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the contractor shall:

(1) immediately notify the contracting officer and promptly furnish copies of all pertinent papers received;

(2) authorize judiciary representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and

(3) authorize judiciary representatives to settle or defend the claim and to represent the contractor in or to take charge of any litigation, if required by the judiciary, when the liability is not insured or covered by bond. The contractor may, at its own expense, be associated with the judiciary representatives in any such claim or litigation.

(end)

Clause 6-30, RESERVED

Clause 6-35, Errors and Omissions

Include the following clause as prescribed in § 630.40.50 (Clauses).

Errors and Omissions (JAN 2003)

(a) The contractor warrants that it is insured for $200,000 (unless a different amount is set forth in the schedule) for errors and omissions per claim in an amount in excess of the minimum set forth in the schedule in the performance of this contract.

(b) Unless the contractor's policy is prepaid, noncancellable, and issued for a period at least equal to the term of this contract on an occurrence basis, the contractor shall have the policy amended to include substantially the following provision:

> "It is a condition of this policy that the company furnish written notice to the _____(fill in the name of the finance office for the individual court unit, federal public defender organization, or the Administrative Office, whichever required the insurance) 30 days in advance of the effective date of any reduction in or cancellation of this policy."

(c) The contractor shall furnish a certificate of insurance or, if required by the contracting officer, true copies of liability policies and manually countersigned endorsements of any changes. Insurance shall be effective, and evidence of acceptable insurance furnished, before beginning performance under this

contract. Evidence of renewal shall be furnished not later than five days before a policy expires.

(end)

Clause 6-40, Federal, State, and Local Taxes

Include the following clause as prescribed in § 640.30.70(a) (Clauses).

Federal, State, and Local Taxes (JAN 2003)

(a) Definitions.

"Contract Date" means the effective date of this contract or modification.

"All applicable federal, state, and local taxes and duties," as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

"After-Imposed Federal Tax," as used in this clause, means any new or increased federal excise tax or duty, or tax that was exempted on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

"After-Relieved Federal Tax," as used in this clause, means any amount of federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the contractor is not required to pay or bear, or for which the contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

“Local Taxes,” as used in this clause, means any taxes that a local governing organization (i.e. city or county) taxing authority is imposing and collecting on the transactions or property covered by this contract.

(b) The contract price includes all applicable federal, state, and local taxes and duties.

(c) The contract price shall be increased by the amount of any after-imposed federal tax, provided the contractor warrants in writing that no amount for such newly

imposed federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(d) The contract price shall be decreased by the amount of any after-relieved federal tax.

(e) The contract price shall be decreased by the amount of any federal excise tax or duty, except social security or other employment taxes, that the contractor is required to pay or bear, or does not obtain a refund of, through the contractor's fault, negligence, or failure to follow instructions of the contracting officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds $250.

g) The contractor shall promptly notify the contracting officer of all matters relating to any federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the contracting officer directs.

(h) The judiciary shall, without liability, furnish evidence appropriate to establish exemption from any federal, state, or local tax when the contractor requests such evidence and a reasonable basis exists to sustain the exemption.

(end)

Clause 6-45, Federal, State, and Local Taxes (Noncompetitive Contract)

Include the following clause as prescribed in § 640.30.70(b) (Clauses).

Federal, State, and Local Taxes (Noncompetitive Contract) (JAN 2003)

(a) Definitions.

"Contract Date," as used in this clause, means the effective date of this contract and, for any modification to this contract, the effective date of the modification.

"All Applicable Federal, State, and Local Taxes and Duties," as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

"After-Imposed Tax," as used in this clause, means any new or increased federal, state, or local tax or duty, or tax that was excluded on the contract date but whose exclusion was later revoked or amount of exemption reduced during

the contract period, other than an excepted tax, on the transactions or property covered by this contract that the contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date.

"After-Relieved Tax," as used in this clause, means any amount of federal, state, or local tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this contract, but which the contractor is not required to pay or bear, or for which the contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

"Excepted Tax," as used in this clause, means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. "Excepted tax" does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed products covered by this contract, or any tax assessed on the contractor's possession of, interest in, or use of property, title to which is in the judiciary.

“Local Taxes,” as used in ths clause, means any taxes that a local governing organization (i.e. city or county) taxing authority is imposing and collecting on the transactions or property covered by this contract.

(b) Unless otherwise provided in this contract, the contract price includes all applicable federal, state, and local taxes and duties.

(c) The contract price shall be increased by the amount of any after-imposed tax, or of any tax or duty specifically excluded from the contract price by a term or condition of this contract that the contractor is required to pay or bear, including any interest or penalty, if the contractor states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the contractor's fault, negligence, or failure to follow instructions of the contracting officer.

(d) The contract price shall be decreased by the amount of any after-relieved tax. The judiciary shall be entitled to interest received by the contractor incident to a refund of taxes to the extent that such interest was earned after the contractor was paid by the judiciary for such taxes. The judiciary is entitled to repayment of any penalty refunded to the contractor to the extent that the penalty was paid by the judiciary.

(e) The contract price shall be decreased by the amount of any federal, state, or local tax, other than an excepted tax, that was included in the contract price and

that the contractor is required to pay or bear, or does not obtain a refund of, through the contractor's fault, negligence, or failure to follow instructions of the contracting officer.

(f) No adjustment will be made in the contract price under this clause unless the amount of the adjustment exceeds $250.

(g) The contractor shall promptly notify the contracting officer of all matters relating to federal, state, and local taxes and duties that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the contracting officer directs. The contract price will be equitably adjusted to cover the costs of action taken by the contractor at the direction of the contracting officer, including any interest, penalty, and reasonable attorneys' fees.

(h) The judiciary will furnish evidence appropriate to establish exemption from any federal, state, or local tax when:

(1) the contractor requests such exemption and states in writing that it applies to a tax excluded from the contract price; and

(2) a reasonable basis exists to sustain the exemption.

(end)

Provision 6-50, Representation of Rights in Data

Include the following provision as prescribed in § 650.65(a) (Clauses).

Representation of Rights in Data (JAN 2010)

(a) This solicitation sets forth the Government's known delivery requirements for data (as defined in Clause 6-60, Rights in Data – General). Any data delivered under the resulting contract will be subject to Clause 6-60, Rights in Data – General included in this contract. Under Clause 6-60, a Contractor may withhold from delivery data that qualify as limited rights data or restricted computer software, and deliver form, fit, and function data instead. Clause 6-60 also may be used with its Alternates I and/or II to obtain delivery of limited rights data or restricted computer software, marked with limited rights or restricted rights notices, as appropriate.

(b) By completing the remainder of this paragraph, the offeror represents that it has reviewed the requirements for the delivery of technical data or computer software and states (*offeror check appropriate block)*:

[ ] None of the data proposed for fulfilling the data delivery requirements qualifies as limited rights data or restricted computer software; or

[ ] Data proposed for fulfilling the data delivery requirements qualify as limited rights data or restricted computer software and are identified as follows:

_____
_____
_____

(c) Any identification of limited rights data or restricted computer software in the offeror's response is not determinative of the status of the data should a contract be awarded to the offeror.

(end)

Clause 6-55, RESERVED

Clause 6-60, Rights in Data – General

Include the following clause as prescribed in § 650.65(b) (Clauses).

Rights in Data – General (JUN 2012)

(a) Definitions. As used in this clause:

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

"Computer software":

(1) Means:

(i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

(2) Does not include computer databases or computer software documentation.

"Computer Software Documentation" means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

"Data" means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

"Form, Fit, and Function Data" means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

"Limited Rights" means the rights of the judiciary in limited rights data as set forth in the Limited Rights Notice of paragraph (g)(3) if included in this clause.

"Limited Rights Data" means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications.

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

"Restricted Rights," as used in this clause, means the rights of the judiciary in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g)(4) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

"Technical Data" means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other

information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases (**see:** 41 U.S.C. § 116).

"Unlimited Rights" means the rights of the judiciary to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of Rights

(1) Except as provided in paragraph (c) of this clause, the judiciary shall have unlimited rights in:

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The contractor shall have the right to:

(i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause;

(ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;

(iii) Substantiate the use of, add, or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause.

(c) Copyright:

(1) Data First Produced in the Performance of this Contract

(i) Unless provided otherwise in paragraph (d) of this clause, the contractor may, without prior approval of the contracting officer, assert copyright in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings, or similar works. The prior, express written permission of the contracting officer is required to assert copyright in all other data first produced in the performance of this contract.

(ii) When authorized to assert copyright to the data, the contractor shall affix the applicable copyright notices of 17 U.S.C. § 401 or § 402, and an acknowledgment of judiciary sponsorship (including contract number).

(iii) For data other than computer software, the contractor grants to the judiciary, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the judiciary. For computer software, the contractor grants to the judiciary, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of the judiciary.

(2) Data Not First Produced in the Performance of this Contract

The contractor shall not, without the prior written permission of the contracting officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract unless the contractor:

(i) Identifies the data; and

(ii) Grants to the judiciary, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause or, if such data are restricted computer software, the judiciary shall acquire a copyright license as set forth in paragraph (g)(4) of this clause (if included in this contract) or as otherwise provided in a collateral agreement incorporated in or made part of this contract.

(3) Removal of Copyright Notices

The judiciary will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) Release, Publication, and Use of Data

The contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the contractor in the performance of this contract, except:

(1) As prohibited by federal law or regulation (e.g., export control or national security laws or regulations);

(2) As expressly set forth in this contract; or

(3) If the contractor receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the contractor shall treat the data in accordance with such markings unless specifically authorized otherwise in writing by the contracting officer.

(e) Unauthorized Marking of Data

(1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (g)(3) or (g) (4) if included in this clause, and use of the notices is not authorized by this clause, or if the data bears any other restrictive or limiting markings not authorized by this contract, the contracting officer may at any time either return the data to the contractor, or cancel or ignore the markings. The following procedures shall apply prior to canceling or ignoring the markings:

(i) The contracting officer will make written inquiry to the contractor affording the contractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-day period (or a longer time approved in writing by the contracting officer for good cause shown), the judiciary shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the contractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the contracting officer will consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the contracting officer determines that the markings are authorized, the contractor will be so notified in writing. If the contracting officer determines, with concurrence of the judiciary Procurement Executive, that the markings are not authorized, the contracting officer will furnish the contractor a written determination, which determination will become the final agency decision regarding the appropriateness of the markings unless the contractor files suit in a court of competent jurisdiction within 90 days of receipt of the contracting officer's decision. The judiciary will continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by the contracting officer's determination becoming final (in which instance the judiciary will thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) Except to the extent the judiciary's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the contractor is not precluded by paragraph (e) of the clause from bringing a claim, in accordance with the Disputes clause of this contract, that may arise as the result of the judiciary removing or ignoring authorized markings on data delivered under this contract.

(f) Omitted or Incorrect Markings

(1) Data delivered to the judiciary without any restrictive markings shall be deemed to have been furnished with unlimited rights. The judiciary is not liable for the disclosure, use, or reproduction of such data.

(2) If the unmarked data has not been disclosed without restriction outside the judiciary, the contractor may request, within 6 months (or a longer time

approved by the contracting officer in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the contractor's expense. The contracting officer may agree to do so if the contractor:

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the proposed notice is authorized; and

(iv) Acknowledges that the judiciary has no liability for the disclosure, use, or reproduction of any data made prior to the addition of the notice or resulting from the omission of the notice.

(3) If data has been marked with an incorrect notice, the contracting officer may:

(i) Permit correction of the notice at the contractor's expense if the contractor identifies the data and demonstrates that the correct notice is authorized; or

(ii) Correct any incorrect notices.

(g) Protection of Limited Rights Data and Restricted Computer Software

(1) The contractor may withhold from delivery qualifying limited rights data or restricted computer software that are not data identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the contractor shall:

(i) Identify the data being withheld; and

(ii) Furnish form, fit, and function data instead.

(2) Limited rights data that are formatted as a computer database for delivery to the judiciary shall be treated as limited rights data and not restricted computer software.

(h) Subcontracting

The contractor shall obtain from its subcontractors all data and rights therein necessary to fulfill the contractor's obligations to the judiciary under this contract. If a subcontractor refuses to accept terms affording the judiciary those rights, the

contractor shall promptly notify the contracting officer of the refusal and shall not proceed with the subcontract award without authorization in writing from the contracting officer.

(i) Relationship to Patents or Other Rights

Nothing contained in this clause shall imply a license to the judiciary under any patent or be construed as affecting the scope of any license or other right otherwise granted to the judiciary.

(end)

Alternate I (JAN 2010): *As prescribed in § 650.65(c) (Clauses), insert the following paragraph (g)(3) in the basic clause:*

(g) (3) Notwithstanding paragraph (g)(1) of this clause, the contract may identify and specify the delivery of limited rights data, or the contracting officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be entitled to be withheld. If delivery of that data is required, the contractor shall affix the following "Limited Rights Notice" to the data and the judiciary will treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with the notice:

Limited Rights Notice (JAN 2010)

(a) These data are submitted with limited rights under judiciary Contract No. _____ (and subcontract _____, if appropriate). These data may be reproduced and used by the judiciary with the express limitation that they will not, without written permission of the contractor, be used for purposes of manufacture nor disclosed outside the judiciary; except that the judiciary may disclose these data outside the judiciary for the following purposes, if any; provided that the judiciary makes such disclosure subject to prohibition against further use and disclosure: *[COs may list additional purposes as set forth in § 650.65(c) or state there are no additional purposes.]*

(b) This notice shall be marked on any reproduction of these data, in whole or in part.

(End of notice)

Alternate II (JAN 2010): *As prescribed in § 650.65(d) (Clauses), insert the following paragraph (g)(4) in the basic clause:*

(g) (4) (i) Notwithstanding paragraph (g)(1) of this clause, the contract may identify and specify the delivery of restricted computer software, or the contracting officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be entitled to be withheld. If delivery of that computer software is required, the contractor shall affix the following "Restricted Rights Notice" to the computer software and the judiciary will treat the computer software, subject to paragraphs (e) and (f) of this clause, in accordance with the notice:

Restricted Rights Notice (JAN 2010)

(a) This computer software is submitted with restricted rights under judiciary Contract No. _____ (and subcontract _____, if appropriate). It may not be used, reproduced, or disclosed by the judiciary except as provided in paragraph (b) of this notice or as otherwise expressly stated in the contract.

(b) This computer software may be:

(1) Used or copied for use with the computer(s) for which it was acquired, including use at any judiciary installation to which the computer(s) may be transferred;

(2) Used or copied for use with a backup computer if any computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, *provided* that the modified, adapted, or combined portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restricted rights;

(5) Disclosed to and reproduced for use by support service contractors or their subcontractors in accordance with paragraphs (b)(1) through (4) of this notice; and

(6) Used or copied for use with a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is copyrighted computer software, it is licensed to the judiciary with the minimum rights set forth in paragraph (b) of this notice.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the contract.

(e) This notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form notice may be used instead:

Restricted Rights Notice Short Form (JAN 2010)

Use, reproduction, or disclosure is subject to restrictions set forth in Contract No. _____ (and subcontract, if appropriate) with _____ (name of contractor and subcontractor).

(End of notice)

(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. § 401, it will be presumed to be licensed to the judiciary without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

Clause 6-65, Rights in Data – Special Works

Include the following clause as prescribed in § 650.65(e) (Clauses).

Rights in Data – Special Works (JAN 2010)

(a) Definitions. As used in this clause:

"Data" means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

"Unlimited Rights" means the rights of the judiciary to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of Rights

(1) The judiciary shall have:

(i) Unlimited rights in all data delivered under this contract, and in all data first produced in the performance of this contract, except as provided in paragraph (c) of this clause;

(ii) The right to limit assertion of copyright in data first produced in the performance of this contract, and to obtain assignment of copyright in that data, in accordance with paragraph (c)(1) of this clause;

(iii) The right to limit the release and use of certain data in accordance with paragraph (d) of this clause.

(2) The contractor shall have, to the extent permission is granted in accordance with paragraph (c)(1) of this clause, the right to assert claim to copyright subsisting in data first produced in the performance of this contract.

(c) Copyright:

(1) Data first produced in the performance of this contract.

(i) The contractor shall not assert or authorize others to assert any claim to copyright subsisting in any data first produced in the performance of this contract without prior written permission of the contracting officer. When copyright is asserted, the contractor shall affix the appropriate copyright notice of 17 U.S.C. § 401 or § 402 and acknowledgment of judiciary sponsorship (including contract number) to the data when delivered to the judiciary, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The contractor grants to the judiciary, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all delivered data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the judiciary.

(ii) If the judiciary desires to obtain copyright in data first produced in the performance of this contract and permission has not been granted as set forth in paragraph (c)(1)(i) of this clause, the contracting officer shall direct the contractor to assign (with or without registration), or obtain the assignment of, the copyright to the judiciary or its designated assignee.

(2) Data not first produced in the performance of this contract. The contractor shall not, without prior written permission of the contracting officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and that contain the copyright notice of 17 U.S.C. § 401 or § 402, unless the contractor identifies such data and grants to the judiciary, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause.

(d) Release and Use Restrictions

Except as otherwise specifically provided for in this contract, the contractor shall not use, release, reproduce, distribute, or publish any data first produced in the performance of this contract, nor authorize others to do so, without written permission of the contracting officer.

(e) Indemnity

The contractor shall indemnify the judiciary and its officers, agents, and employees acting for the judiciary against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of any data furnished under this contract; or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the judiciary provides notice to the contractor as soon as practicable of any claim or suit, affords the contractor an opportunity under applicable laws, rules, or regulations to participate in the defense of the claim or suit, and obtains the contractor's consent to the settlement of any claim or suit other than as required by final decree of a court of competent jurisdiction; and these provisions do not apply to material furnished to the contractor by the judiciary and incorporated in data to which this clause applies.

(end)

Clause 6-70, Work for Hire

Include the following clause as prescribed in § 520.75(l) (Provisions and Clauses) and § 650.65(f) (Clauses).

Work for Hire (JAN 2003)

The contractor agrees that the work performed under this contract is a work made for hire. The contractor further understands that as such, the work provided under the contract, including all materials, data, and other information developed, delivered, furnished, or otherwise called for under the contract, are works of the United States and are therefore in the public domain. If, for some reason, it is later determined that this is not a work made for hire, the contractor agrees to assign all rights, title, and interest in this program/project/material (whichever is applicable) to the federal judiciary.

(end)

Clause 6-75, Rights to Data in an Offer

Include the following clause as prescribed in § 650.65(g) (Clauses).

Rights to Data in an Offer (JAN 2010)

Except for data contained on pages_____, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the judiciary will have unlimited rights (as defined in the "Rights in Data – General" clause in the contract) in and to the technical data contained in the offer dated _____, upon which this contract is based.

(end)

Clause 6-80, Rights in Data – Existing Works

Include the following clause as prescribed in § 650.65(h) (Clauses).

Rights in Data – Existing Works (JAN 2010)

(a) Except as otherwise provided in this contract, the contractor grants to the judiciary, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the judiciary, for all the material or subject matter called for under this contract, or for which this clause is specifically made applicable.

(b) The contractor shall indemnify the judiciary and its officers, agents, and employees acting for the judiciary against any liability, including costs and expenses, incurred as the result of (1) the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication or use of any data furnished under this contract; or (2) any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the judiciary provides notice to the contractor as soon as practicable of any claim or suit, affords the contractor an opportunity under applicable laws, rules, or regulations to participate in the defense of the claim or suit, and obtains the contractor's consent to the settlement of any claim or suit other than as required by final decree of a court of competent jurisdiction; and do not apply to material furnished to the contractor by the judiciary and incorporated in data to which this clause applies.

(end)

Clause 6-85, Commercial Computer Software License

Include the following clause as prescribed in § 650.65(i) (Clauses).

Commercial Computer Software License (JAN 2010)

(a) Notwithstanding any contrary provisions contained in the contractor's standard commercial license or lease agreement, the contractor agrees that the judiciary will have the rights that are set forth in paragraph (b) of this clause to use, duplicate or disclose any commercial computer software delivered under this contract. The terms and provisions of this contract shall comply with federal laws and Volume 14 of the *Guide to Judiciary Policy*.

(b) (1) The commercial computer software delivered under this contract may not be used, reproduced, or disclosed by the judiciary except as provided in paragraph (b)(2) of this clause or as expressly stated otherwise in this contract.

(2) The commercial computer software may be:

(i) Used or copied for use with the computer(s) for which it was acquired, including use at any judiciary installation to which the computer(s) may be transferred;

(ii) Used or copied for use with a backup computer if any computer for which it was acquired is inoperative;

(iii) Reproduced for safekeeping (archives) or backup purposes;

(iv) Modified, adapted, or combined with other computer software, provided that the modified, adapted, or combined portions of the derivative software incorporating any of the delivered, commercial computer software shall be subject to same restrictions set forth in this contract;

(v) Disclosed to and reproduced for use by support service contractors or their subcontractors, subject to the same restrictions set forth in this contract; and

(vi) Used or copied for use with a replacement computer.

(3) If the commercial computer software is otherwise available without disclosure restrictions, the contractor licenses it to the judiciary without disclosure restrictions.

(c) The contractor shall affix a notice substantially as follows to any commercial computer software delivered under this contract:

Notice: Notwithstanding any other lease or license agreement that may pertain to, or accompany the delivery of, this computer software, the rights of the judiciary regarding its use, reproduction and disclosure are as set forth in judiciary Contract No._____.

(end)

Clause 6-90, Notice and Assistance Regarding Patent and Copyright Infringement

Include the following clause as prescribed in § 660.20(a) (Clauses).

Notice and Assistance Regarding Patent and Copyright Infringement (APR 2010)

(a) The contractor shall report to the contracting officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the contractor has knowledge.

(b) In the event of any claim or suit against the judiciary on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the contractor shall furnish to the judiciary, when requested by the contracting officer, all evidence and information in the contractor's possession pertaining to such claim or suit. Such evidence and information shall be

furnished at the expense of the judiciary except where the contractor has agreed to indemnify the judiciary.

(c) The contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that are expected to exceed the judiciary small purchase threshold.

(end)

Clause 6-95, Patent Indemnity

Include the following clause as prescribed in § 660.20(b) (Clauses).

Patent Indemnity (JAN 2010)

(a) The contractor shall indemnify the judiciary and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. § 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the judiciary of such supplies or construction work.

(b) This indemnity shall not apply unless the contractor shall have been informed as soon as practicable by the judiciary of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to:

(1) An infringement resulting from compliance with specific written instructions of the contracting officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the contractor;

(2) An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or

(3) A claimed infringement that is unreasonably settled without the consent of the contractor, unless required by final decree of a court of competent jurisdiction.

(end)

Alternate I (JAN 2010): *As prescribed in § 660.20(c) (Clauses), add the following paragraph (c) to the basic clause:*

(c) This patent indemnification shall not apply to the following items:

_____

[Contracting Officer list and/or identify the items to be excluded from this indemnity.]

Alternate II (JAN 2010): *As prescribed in § 660.20(d) (Clauses), add the following paragraph (c) to the basic clause:*

(c) This patent indemnification shall cover the following items:

_____

[List and/or identify the items to be included under this indemnity.]

Alternate III (JAN 2010): *As prescribed in § 660.20(e) (Clauses), add the following paragraph (c) to the basic clause:*

(c) As to subcontracts at any tier for communication service, this clause shall apply only to individual communication service authorizations over the simplified acquisition threshold issued under this contract and covering those communications services and facilities:

(1) That are or have been sold or offered for sale by the contractor to the public,

(2) That can be provided over commercially available equipment, or

(3) That involve relatively minor modifications.

Clause 6-100, Waiver of Indemnity

Include the following clause as prescribed in § 660.20(f) (Clauses).

Waiver of Indemnity (JAN 2010)

Any provision or clause of this contract to the contrary notwithstanding, the judiciary hereby authorizes and consents to the use and manufacture, solely in

performing this contract, of any invention covered by the United States patents identified below and waives indemnification by the contractor with respect to such patents:

_____

[Contracting Officer identify the patents by number or by other means if more appropriate.]

(end)

Provisions and Clauses (Chapter 7)

Clause 7-1, Contract Administration

Include the following clause as prescribed in § 715.55(a) (Clauses/Provisions).

Contract Administration (JAN 2003)

(a) The contracting officer and contracting officer's technical representative for the contract will be the judiciary's primary points of contact during the performance of the contract. The contracting officer responsible for the administration of this contract will provide a cover letter providing the contracting officer's name, business address, e-mail address, and telephone number. Written communications from the contractor shall make reference to the contract number and shall be mailed to the address provided in the cover letter. Communications pertaining to contract administration matters will be addressed to the contracting officer.

(b) Notwithstanding the contractor's responsibility for total management during the performance of this contract, the administration of this contract will require the maximum coordination between the judiciary and the contractor. All contract administration will be effected by the contracting officer except as may be re-delegated. In no event will any understanding or agreement, contract modification, change order, or other matter in deviation from the terms of this contract between the contractor and a person other than the contracting officer be effective or binding upon the judiciary. All such actions shall be formalized by a proper contractual document executed by the contracting officer.

(end)

Clause 7-5, Contracting Officer's Technical Representative

Include the following clause as prescribed in § 715.55(b) (Clauses/Provisions).

Contracting Officer's Technical Representative (JAN 2003)

(a) Upon award, a contracting officer's technical representative (COTR) may be appointed by the contracting officer. The COTR will be responsible for coordinating the technical aspects of this contract and inspecting products/services furnished hereunder; however, the COTR will not be authorized to change any terms and conditions of the resultant contract, including price.

(b) The COTR, if appointed, may be assigned one or more of the following responsibilities:

(1) monitoring the contractor's performance under the contract to ensure compliance with technical requirements of the contract;

(2) notifying the contracting officer immediately if performance is not proceeding satisfactorily;

(3) ensuring that changes in work under the contract are not initiated before written authorization or modification is issued by the contracting officer;

(4) providing the contracting officer a written request and justification for changes;

(5) providing interpretations relative to the meaning of technical specifications and technical advice relative to contracting officer's written approvals, and

(6) providing general technical guidance to the contractor within the scope of the contract and without constituting a change to the contract.

(end)

Clause 7-10, Contractor Representative

Include the following clause as prescribed in § 715.55(c) (Clauses/Provisions).

Contractor Representative (JAN 2003)

(a) The contractor's representative to be contacted for all contract administration matters is as follows (*contractor complete the information)*:

Name:
Address:
Telephone:
E-mail:
Fax:

(b) The contractor's representative shall act as the central point of contact with the judiciary, shall be responsible for all contract administration issues relative to this contract, and shall have full authority to act for and legally bind the contractor on all such issues.

(end)

Clause 7-15, Observance of Regulations/Standards of Conduct

Include the following clause as prescribed in § 715.55(d) (Clauses/Provisions).

Observance of Regulations/Standards of Conduct (JAN 2003)

(a) When contractor personnel are performing contract work at a judiciary facility, they shall comply with all rules and regulations of the facility, including, but not limited to, rules and regulations governing security, controlled access, personnel clearances and conduct with respect to health and safety and to property at the site, regardless of whether or not title to such property is vested in the judiciary. The facilities to which the contractor has access belong to the judiciary and will not at any time be considered “Judiciary Property” furnished to the contractor.

(b) The contractor and its employees shall only conduct business covered by the contract during periods paid for by the judiciary, and will not conduct any other business on judiciary premises.

(c) The contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, appearance and integrity. It is the contractor’s responsibility to take disciplinary action with respect to its employees as may be necessary. The contractor is also responsible for ensuring that its employees do not disturb papers on desks, open desk drawers or cabinets, or use judiciary property (such as, but not limited to, telephones or copiers) except as authorized.

(end)

Clause 7-20, Security Requirements

Include the following clause as prescribed in § 330.10.30(o) (Provisions and Clauses) and § 715.55(e) (Clauses/Provisions).

Security Requirements (APR 2011)

(a) Definitions. As used in this clause:

"Access" means physical entry into, and to the extent authorized, mobility within, a judiciary facility.

"Contractor employee" means an employee of the prime contractor or of any subcontractor, affiliate, partner, joint venture, or team members with which the contractor is associated. It also includes consultants engaged by any of those entities.

"Facility" and "judiciary facility" mean buildings, including areas within buildings, owned, leased, shared, occupied, or otherwise controlled by the judiciary.

“Judiciary IT resources” include, but are not limited to, computer equipment, networking equipment, telecommunications equipment, cabling, network drives, computer drives, network software, computer software, software programs, intranet sites, and internet sites.

(b) Requirements.

Contractor employees working on this contract must complete such forms as may be necessary for security purposes or other reasons. Completed forms shall be submitted as directed by the Contracting Officer’s Technical Representative (COTR). Depending upon the level of access required to judiciary facilities or IT resources for performance of the work, contractor employees may be subject to any of the following types of security checks:

Fingerprint Check
Credit Check
National Agency Check with Inquires (NACI)
National Agency Check with Inquiries and Credit (NACIC)
National Agency Check with Law and Credit (NACLC)
Single Scope Background Investigation (SSBI)
Single Scope Background Investigation – Periodic Reinvestigation (SSBI-PR)
Public Trust Special Background Investigation (PTSBI)
Citizenship and Immigration Services (CIS) Check

Contractor employees visiting court sites to provide support covered under this contract may be subjected to additional FBI screening and U.S. Marshal inspection.

(c) Exemption.

Affected contractor employees who have had a Federal background investigation without a subsequent break in Federal employment or Federal contract service exceeding two (2) years may be exempt from the investigation requirements of this clause subject to verification of the previous investigation. For each such employee, the contractor shall submit the following information: employee's full name, Social Security Number, and place and date of birth.

(d) Facility Access Cards (FAC).

The contractor shall be responsible for all Facility Access Cards or other government identification cards issued to the contractor's employees and shall immediately notify the COTR if any Facility Access Card(s) cannot be accounted for. The contractor shall notify the COTR immediately whenever any contractor employee no longer has a need for his/her judiciary-issued FAC (e.g., employee terminates employment with the contractor, employee's duties no longer require access to judiciary facilities). The COTR will instruct the contractor as to how to return the FAC. Upon expiration of this contract, the COTR will instruct the contractor as to how to return all judiciary-issued FACs not previously returned. The contractor shall not return FACs to any person other than the individual(s) named by the COTR.

(e) Control of access.

The judiciary shall have and exercise full and complete control over granting, denying, withholding, and terminating access of contractor employees to judiciary facilities and IT resources. The COTR will notify the contractor immediately when the judiciary has determined that an employee is unsuitable or unfit to be permitted access to a judiciary facility following the completion of any of the security checks/investigations listed in (b) above, or as a result of new information obtained at any time during the contractor’s performance. The contractor shall immediately notify such employee that he/she no longer has access to any judiciary facility and/or judiciary IT resources, remove the employee from any such facility that he/she may be in, and provide a suitable replacement who must comply with the requirements of this and other applicable clauses. In addition, the Contracting Officer may require the contractor to prohibit individuals from access to judiciary facilities or IT resources if the judiciary deems their initial or continued access contrary to the public interest for any reason, including, but not limited to, carelessness, insubordination, incompetence, or security concerns.

(f) The Contractor shall include the substance of this clause in all subcontracts at any tier where the subcontractor may be required to have routine physical access to a judiciary facility or routine access to a judiciary IT resource.

(g) The judiciary reserves the right to refuse to grant facility access for any contractor employee who has been convicted of a felony.

(end)

Clause 7-25, Indemnification

Include the following clause as prescribed in § 715.55(f) (Clauses/Provisions).

Indemnification (AUG 2004)

(a) The contractor assumes full responsibility for and shall indemnify the judiciary against any and all losses or damage of whatsoever kind and nature to any and all judiciary property, including any equipment, products, accessories, or parts furnished, while in its custody and care for storage, repairs, or service to be performed under the terms of this contract, resulting in whole or in part from the negligent acts or omissions of the contractor, any subcontractor, or any employee, agent or representative of the contractor or subcontractor.

(b) If due to the fault, negligent acts (whether of commission or omission) and/or dishonesty of the contractor or its employees, any judiciary-owned or controlled property is lost or damaged as a result of the contractor's performance of this contract, the contractor shall be responsible to the judiciary for such loss or damage, and the judiciary, at its option, may, in lieu of requiring reimbursement therefor, require the contractor to replace at its own expense, all property lost or damaged.

(c) Hold Harmless and Indemnification Agreement

The contractor shall save and hold harmless and indemnify the judiciary against any and all liability claims and cost of whatsoever kind and nature for injury to or death of any person or persons and for loss or damage to any contractor property or property owned by a third party occurring in connection with or in any way incident to or arising out of the occupancy, use, service, operation, or performance of work under the terms of this contract, resulting in whole or in part from the acts or omissions of the contractor, any subcontractor, or any employee, agent, or representative of the contractor or subcontractor.

(d) The contractor shall indemnify and hold the judiciary, its employees, and others acting on its behalf harmless against any and all loss, liability, or damage arising out of the negligence, failure to act, fraud, embezzlement, or other misconduct by the contractor, its employees, subcontractors, agents, or representatives of the contractor or subcontractor.

(e) Judiciary's Right of Recovery

Nothing in the above paragraphs will be considered to preclude the judiciary from receiving the benefits of any insurance/bonds the contractor may carry which provides for the indemnification of any loss or destruction of, or damages to,

property in the custody and care of the contractor where such loss, destruction or damage is to judiciary property. The contractor shall do nothing to prejudice the judiciary's right to recover against third parties for any loss, destruction of, or damage to, judiciary property, and upon the request of the contracting officer will, at the judiciary's expense, furnish to the judiciary all reasonable assistance and cooperation (including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the judiciary) in obtaining recovery.

(f) Judiciary Liability

The judiciary will not be liable for any injury to the contractor’s personnel or damage to the contractor’s property unless such injury or damage is due to negligence on the part of the judiciary and is recoverable under the Federal Torts Claims Act, or pursuant to other statutory authority applicable to the judiciary.

(end)

Clause 7-30, Public Use of the Name of the Federal Judiciary

Include the following clause as prescribed in § 715.55(g) (Clauses/Provisions).

Public Use of the Name of the Federal Judiciary (JAN 2003)

(a) The contractor shall not refer to the judiciary, or to any court or other organizational entities existing thereunder (hereinafter referred to as "the judiciary"), in advertising, news releases, brochures, catalogs, television and radio advertising, letters of reference, web sites, or any other media used generally by the vendor in its commercial marketing initiatives, in such a way that it represents or implies that the judiciary prefers or endorses the products or services offered by the contractor. This provision will not be construed as limiting the contractor's ability to refer to the judiciary as one of its customers.

(b) No public release of information pertaining to this contract will be made without prior judiciary written approval, as appropriate, and then only with written approval of the contracting officer.

(end)

Clause 7-35, Disclosure or Use of Information

Include the following clause as prescribed in § 715.55(h) (Clauses/Provisions).

Disclosure or Use of Information (APR 2010)

(a) Judiciary information made available to the contractor for the performance or administration of this contract shall be used only for those purposes and shall not be used in any other way without the written agreement of the contracting officer. This clause takes precedence over and is an explicit limitation to the rights enumerated in section (d)(2) of Clause 6-60, "Rights in Data – General."

(b) To the extent the information is otherwise publicly available, it is public information and is not restricted by operation of this clause. However, if public information is provided to the contractor for use in performance or administration of this contract in a media, format, or otherwise in a manner in which it is not available the public, such information may not be used for any other purpose by the contractor except with the written permission of the contracting officer. If the contractor is uncertain about the availability or proposed use of information provided for the performance or administration of this contract, the contractor shall consult with the contracting officer regarding use of that information for other purposes.

(c) The contractor agrees to assume responsibility for protecting the confidentiality of judiciary records which are not public information. Such information may include, but is not limited to, all employee data and any written and oral information of a personal nature. Such information is to be safeguarded to ensure that it is not improperly disclosed. Each officer or employee of the contractor to whom information may be made available or disclosed shall be notified in writing by the contractor that such information may be disclosed only for a purpose and to the extent authorized herein, and that further disclosure of any such information for a purpose or to an extent not so authorized may subject the person(s) responsible to criminal sanctions imposed by 18 U.S.C. § 641. That section provides, in pertinent part, that whoever without authority, sells, conveys, or disposes of any record of the United States or whoever receives the same with intent to convert it to their use or gain, knowing it to have been converted, will be guilty of a crime punishable by a fine up to $10,000, or imprisoned up to ten years, or both. The contractor shall obtain written acknowledgment from each officer and employee to whom information is made available, that they are aware of the above penalties associated with unauthorized disclosure. Such acknowledgments are subject to the review of the contracting officer.

(d) Performance of this contract may require the contractor to access and use data and information, proprietary to the judiciary or to a judiciary contractor, which is of such a nature that its dissemination or use, other than in performance of this contract, would be adverse to the interests of the judiciary and/or others.

(e) Contractor and/or contractor personnel shall not divulge or release data or information developed or obtained in performance of this contract until made public by the judiciary, except as authorized by the contracting officer. The contractor shall not use, disclose, or reproduce proprietary data which bears a restrictive legend, other than as required in the performance of this contract. Nothing herein will preclude the use of any data independently acquired by the contractor without such limitations or prohibit an agreement at no cost to the judiciary between the contractor and the data owner which provides for greater rights to the contractor.

(f) The judiciary and contractor agree that neither expects the performance under this contract to involve reporting or handling of classified information or materials. Either party shall notify the other promptly in writing if the expectation of that party changes, and shall include in the notice reasons therefore. If there are sealed records, in camera proceedings or grand jury matters, the contractor shall consult with the contracting officer as to the proper safeguarding, security, and secrecy of the original notes and transcript orders.

(g) The contracting officer will advise the contractor whenever the judiciary places a service order which will require classified information or materials. The contractor will have the right to decline to provide services, in which event such services shall be outside the scope of this contract.

(h) The contractor shall hold inviolate and in strictest confidence any and all information of an official nature not for inclusion in the document, any information which the presiding judicial official designates as “off the record” and all classified information and material.

(i) The contractor shall classify, safeguard, and otherwise act with respect to all classified information and material in accordance with applicable law and requirements of the contracting officer. The contractor shall not permit any individual to have or gain access to the classified information or material without written permission of the contracting officer, except as access may be necessary for authorized employees of the contractor to perform services under this contract.

(j) Notwithstanding any other provision of this contract, the contractor may deliver transcript containing classified material or information only to the judiciary. The contractor shall never sell or deliver such document to a private person without the express written permission of the contracting officer. Notwithstanding any other provision of this contract, the contractor shall never keep a copy of a

document containing classified material or information after the delivery of the original to the contracting officer.

(end)

Clause 7-40, Judiciary-Contractor Relationships

Include the following clause as prescribed in § 715.55(i) (Clauses/Provisions).

Judiciary-Contractor Relationships (JAN 2003)

(a) The judiciary and the contractor understand and agree that the services to be delivered under this contract by the contractor to the judiciary are non-personal services. The parties recognize and agree that no employer-employee or master-servant relationships exist or will exist under the contract between the judiciary and the contractor and/or between the judiciary and the contractor's employees. It is therefore, in the best interest of the judiciary to afford the parties a full and complete understanding of their respective obligations.

(b) The contractor and/or the contractor's personnel under this contract shall not:

(1) be placed in a position where they are appointed or employed by a federal officer, or are under the supervision, direction, or evaluation of a federal officer;

(2) be placed in a staff or policy making position;

(3) be placed in a position of command, supervision, administration or control over judiciary personnel or the personnel of other contractors, or become a part of the judiciary organization;

(4) be used for the purpose of avoiding manpower ceilings or other personnel rules and regulations.

(c) Employee Relationship

(1) The services to be performed under this contract do not require the contractor or its employees to exercise personal judgement and discretion on behalf of the judiciary. The contractor's employees will act and exercise personal judgement and discretion on the behalf of the contractor, as directed by the contractor's supervisory personnel, and in accordance with the contract terms and conditions.

(2) Rules, regulations, directions, and requirements issued by the judiciary under the judiciary's responsibility for good order, administration, security, and safety are applicable to all personnel physically located on-site, inclusive of contractor personnel who are required under the terms and conditions of this contract to be so located. This is not to be construed or interpreted to establish any degree of judiciary control which is inconsistent with a non-personal services contract.

(end)

Clause 7-45, Travel

Include the following clause as prescribed in § 715.55(j) (Clauses/Provisions).

Travel (JAN 2010)

The contractor may propose travel costs based on Judiciary Travel Regulations (JTR) if travel is allowable and required by the contract. Proposed per diem and automobile expense will be based on JTR.

(end)

Clause 7-50, Parking

Include the following clause as prescribed in § 715.55(k) (Clauses/Provisions).

Parking (JAN 2010)

There is no contractor parking available at the Thurgood Marshall Federal Judiciary Building (TMFJB). In the event that this contract requires the delivery of equipment or materials to the TMFJB, the contractor shall park delivery vehicles at designated locations within the TMFJB Complex ONLY WHILE LOADING AND UNLOADING THE VEHICLE. Arrangements for pick-up and delivery at the TMFJB shall be coordinated with the COTR and made in accordance with building management policies.

(end)

Clause 7-55, Contractor Use of Judiciary Networks

Include the following clause as prescribed in § 715.55(l) (Clauses/Provisions).

Contractor Use of Judiciary Networks (JAN 2003)

(a) The judiciary is obligated and committed to ensuring that judiciary property and resources are used appropriately and for the public interest. The judiciary shall confront issues involving contractors and their employees to ensure that judiciary property and resources equating to taxpayer dollars are not wasted or used inappropriately.

(b) Whenever authorized as a user of judiciary networks, the contractor, subcontractor, teaming partner, and all employees (hereinafter referred to as "entities"), shall **not** perform or participate, directly or indirectly, in any of the following:

(1) accessing internet sites which may be inappropriate or reflect poorly on the judiciary: Unless accessing internet sites is case-related, entities shall refrain from creating, downloading, viewing, storing, copying, and transmitting sexually-explicit or sexually-oriented materials which are never appropriate and may be illegal in some cases. Internet sites capture the domain name of all sites accessing them and maintain a record of this information. It could be embarrassing to the judiciary if the judiciary's domain name were found on the access records of inappropriate sites;

(2) logging onto video or audio sites, such as broadcast services or radio stations and downloading music files. This consumes significant disk space on local computers and may be a violation of copyright law. Each of the several thousand video clips downloaded daily can be equal to downloading a 400-page memorandum;

(3) using judiciary systems to send or receive e-mails containing greeting cards, political statements, jokes, pictures, chain letters or other unauthorized mass mailings, regardless of the subject matter, and other items of a personal nature;

(4) sending large attachments unless required for official business. Video, sound, or other large file attachments consume large amounts of network capacity. E-mail attachments, large files, and executable programs present two problems. First, large attachments consume network capacity and storage space on both national and local e-mail servers and desktops, slowing the network down for everyone. Second, executable programs present a risk for infection by computer viruses;

(5) participating in chat rooms or using "instant messaging" software;

(6) checking personal e-mail accounts over the judiciary's network;

(7) using the network connection for personal commercial purposes, private gain, or illegal activities. Unless use is required for official judiciary and contract- related business, all entities shall refrain from using the network connection for commercial purposes (including shopping). It is also inappropriate to use the network connection in support of outside employment activities (including consulting for pay, sales or administration of business transactions, and sales of products or services) or for illegal activities (such as gambling or hacking);

(8) using the e-mail or the network connection for offensive activities. It is inappropriate to use e-mail or the internet to access, send, or receive information on, or in support of, activities that are illegal or offensive. Such activities include, but are not limited to, hate speech or material that ridicules or degrades others on the basis of race, creed, religion, color, sex, disability, national origin, or sexual orientation.

(end)

Provision 7-60, Judiciary-Furnished Property or Services

Include the following provision as prescribed in § 720.10.40(a) (Clauses).

Judiciary-Furnished Property or Services (JAN 2003)

No property or services will be furnished by the judiciary unless specifically provided for in the solicitation.

(end)

Clause 7-65, Protection of Judiciary Buildings, Equipment, and Vegetation

Include the following clause as prescribed in § 720.10.40(b) (Clauses).

Protection of Judiciary Buildings, Equipment, and Vegetation (JAN 2003)

The contractor shall use reasonable care to avoid damaging buildings, equipment, and vegetation (such as trees, shrubs, and grass) on the judiciary installation. If the contractor's failure to use reasonable care causes damage to any of this property, the contractor shall replace or repair the damage at no expense to the judiciary, as the contracting officer directs. If the contractor fails

or refuses to make such repair or replacement, the contractor shall be liable for the cost, which may be deducted from the contract price.

(end)

Clause 7-70, Judiciary Property Furnished "As Is"

Include the following clause as prescribed in § 720.10.40(c) (Clauses).

Judiciary Property Furnished "As Is" (JAN 2003)

(a) The judiciary makes no warranty whatsoever with respect to judiciary property furnished "as is," except that the property is in the same condition when placed at the F.o.b. point specified in the solicitation as when inspected by the contractor pursuant to the solicitation or, if not inspected by the contractor, as when last available for inspection under the solicitation.

(b) The contractor may repair any property made available on an "as is" basis. Such repair will be at the contractor's expense except as otherwise provided in this clause. Such property may be modified at the contractor's expense, but only with the written permission of the contracting officer. Any repair or modification of property furnished "as is" shall not affect the title of the judiciary.

(c) If there is any change in the condition of judiciary property furnished "as is " from the time inspected or last available for inspection under the solicitation to the time placed on board at the location specified in the solicitation, and such change will adversely affect the contractor, the contractor shall, upon receipt of the property, notify the contracting officer detailing the facts and, as directed by the contracting officer, either (1) return such property at the judiciary's expense or otherwise dispose of the property or (2) effect repairs to return the property to its condition when inspected under the solicitation or, if not inspected, last available for inspection under the solicitation. After completing the directed action and upon written request of the contractor, the contracting officer will equitably adjust any contractual provisions affected by the return, disposition, or repair in accordance with the procedures provided for in the Changes clause of this contract. The foregoing provisions for adjustment are the exclusive remedy available to the contractor, and the judiciary shall not be otherwise liable for any delivery of judiciary property furnished "as is" in a condition other than that in which it was originally offered.

(d) Except as otherwise provided in this clause, judiciary property furnished "as is" shall be governed by the Judiciary Property clause of this contract.

(end)

Clause 7-75, Subcontracts

Include the following clause as prescribed in § 725.10.40(a) (Clauses).

Subcontracts (JAN 2003)

(a) Definitions. As used in this clause:

"Approved Purchasing System" means a contractor's purchasing system that has been reviewed and approved in writing.

"Consent to Subcontract" means the contracting officer's written consent for the contractor to enter into a particular subcontract.

"Subcontract" means any contract entered into by a subcontractor to furnish products or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) This clause does not apply to subcontracts for special test equipment.

(c) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced purchase/delivery/task orders), and only if required in accordance with paragraph (d) or (e) of this clause.

(d) If the contractor does not have a written approved purchasing system, consent to subcontract is required for any subcontract that:

(1) is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(2) is fixed price and exceeds either the judiciary's small purchase threshold or five percent of the total estimated cost of the contract.

(e) If the contractor has a written approved purchasing system, the contractor nevertheless shall obtain the contracting officer's written consent before placing the following contracts:

_____

_____

(f) (1) The contractor shall notify the contracting officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (c), (d), or (e) of this clause, including the following information:

(i) a description of the products or services to be subcontracted;

(ii) identification of the type of subcontract to be used;

(iii) identification of the proposed subcontractor;

(iv) the proposed subcontract price;

(v) the subcontractor's detailed cost information, if required by other contract provisions;

(vi) a negotiation memorandum reflecting:

(A) the principal elements of the subcontract price negotiations;

(B) the most significant considerations controlling establishment of initial or revised prices;

(C) the reason detailed cost information was or was not required;

(D) the extent, if any, to which the contractor did not rely on the subcontractor's detailed cost information in determining the price objective and in negotiating the final price;

(E) the extent to which it was recognized in the negotiation that the subcontractor's detailed cost information was not accurate, complete, or current; the action taken by the contractor and the subcontractor; and the effect of any such defective cost information on the total price negotiated;

(F) the reasons for any significant difference between the contractor's price objective and the price negotiated; and

(G) a complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) If the contractor has a written approved purchasing system and consent is not required under paragraph (c), (d), or (e) of this clause, the contractor nevertheless shall notify the contracting officer reasonably in advance of

entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds either the small purchases threshold or five percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (f)(1)(i) through (f)(1)(iv) of this clause.

(g) Unless the consent or approval specifically provides otherwise, neither consent by the contracting officer to any subcontract nor approval of the contractor's purchasing system will constitute a determination:

(1) of the acceptability of any subcontract terms or conditions;

(2) of the allowability of any cost under this contract; or

(3) to relieve the contractor of any responsibility for performing this contract.

(h) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, or any fee payable under cost-reimbursement type subcontracts will not exceed the fee limitations.

(i) The contractor shall give the contracting officer immediate written notice of any action or suit filed and prompt notice of any claim made against the contractor by any subcontractor or vendor that, in the opinion of the contractor, may result in litigation related in any way to this contract, with respect to which the contractor may be entitled to reimbursement from the judiciary.

(j) The judiciary reserves the right to review the contractor's purchasing system.

(k) Paragraphs (d) and (f) of this clause do not apply to the following subcontracts, which were evaluated during negotiations.

(end)

Clause 7-80, Competition in Subcontracting

Include the following clause as prescribed in § 725.10.40(b) (Clauses).

Competition in Subcontracting (JAN 2003)

The contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(end)

Clause 7-85, Examination of Records

Include the following clause as prescribed in § 730.20.20 (Contractor Record Retention).

Examination of Records (JAN 2003)

(a) The judiciary will have access to and the right to examine any directly pertinent books, documents, papers, or other records of the contractor involving transactions related to this contract, until three years after final payment under this contract, or for any shorter period specified for particular records.

(b) The contractor agrees to include in all subcontracts under this contract a provision to the effect that the judiciary will have until three years after final payment under the contract, or for any shorter specified period for particular records, have access to and the right to examine any directly pertinent books, documents, papers, or other records of the subcontractor involving transactions related to the subcontract. The term subcontract as used in this clause excludes:

(1) purchase orders; and

(2) subcontracts for public utility services at rates established for uniform applicability to the general public.

(end)

Clause 7-95, Contractor Inspection Requirements

Include the following clause as prescribed in § 220.10.70(d) (Clauses for Inclusion in Solicitations or Contracts).

Contractor Inspection Requirements (JAN 2003)

The contractor is responsible for performing or having performed all inspections and tests necessary to substantiate that the products or services furnished under this contract conform to contract requirements, including any applicable technical requirements for specified manufacturers' parts. This clause takes precedence over any judiciary inspection and testing required in the contract's specifications, except for specialized inspections or tests specified to be performed solely by the judiciary.

(end)

Clause 7-100A, Limitation of Liability (Products)

Include the following clause as prescribed in § 220.10.70(e) (Clauses for Inclusion in Solicitations or Contracts).

Limitation of Liability (Products) (JAN 2003)

(a) Except as provided in paragraphs (b) and (c) this clause, and except for remedies expressly provided elsewhere in this contract, the contractor shall not be liable for loss of or damage to property of the judiciary (excluding the products delivered under this contract) that:

(1) occurs after judiciary acceptance of the products delivered under this contract; and

(2) results from any defects or deficiencies in the products.

(b) The limitation of liability under paragraph (a) of this clause shall not apply when a defect or deficiency in, or the judiciary's acceptance of, the products results from willful misconduct or lack of good faith on the part of any of the contractor's managerial personnel. The term "contractor's managerial personnel," as used in this clause, means the contractor's directors, officers, and any of the contractor's managers, superintendents, or equivalent representatives who have supervision or direction of:

(1) all or substantially all of the contractor's business;

(2) all or substantially all of the contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) a separate and complete major industrial operation connected with the performance of this contract.

(c) If the contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the judiciary through purchase or use of the products required to be delivered under this contract or the contractor’s performance of services or furnishing of materials under this contract, the contractor shall be liable to the judiciary, to the extent of such insurance or reserve, for loss of or damage to property of the judiciary occurring after judiciary acceptance of, and resulting from any defects or deficiencies in, the products delivered under this contract.

(end)

Clause 7-100B, Limitation of Liability (Services)

Include the following clause as prescribed in § 220.10.70(f) (Clauses for Inclusion in Solicitations or Contracts).

Limitation of Liability (Services) (JAN 2003)

(a) Except as provided in paragraphs (b) and (c) of this clause, and except to the extent that the contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the contractor shall not be liable for loss of or damage to property of the judiciary that:

(1) occurs after judiciary acceptance of services performed under this contract; and

(2) results from any defects or deficiencies in the services performed or materials furnished.

(b) The limitation of liability under paragraph (a) of this clause shall not apply when a defect or deficiency in, or the judiciary's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the contractor's managerial personnel. The term "contractor's managerial personnel," as used in this clause, means the contractor's directors, officers, and any of the contractor's managers, superintendents, or equivalent representatives who have supervision or direction of:

(1) all or substantially all of the contractor's business;

(2) all or substantially all of the contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) a separate and complete major industrial operation connected with the performance of this contract.

(c) If the contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the judiciary through the contractor's performance of services or furnishing of materials under this contract, the contractor shall be liable to the judiciary, to the extent of such insurance or reserve, for loss of or damage to property of the judiciary occurring

after judiciary acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

(end)

Clause 7-105, RESERVED

Clause 7-110, Bankruptcy

Include the following clause as prescribed in § 735.60.40 (Clause).

Bankruptcy (JAN 2003)

In the event the contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the contracting officer responsible for administering the contract. This notification shall be furnished within five calendar days of the initiation of the bankruptcy proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the petition was filed, and a list of judiciary contract numbers and contracting offices for all judiciary contracts pursuant to which final payment has not been made. This obligation remains in effect until final payment under this contract.

(end)

Clause 7-115, Availability of Funds

Include the following clause as prescribed in § 220.50.90(a) (Clauses for Contracting in Advance of Funds).

Availability of Funds (JAN 2003)

Funds are not presently available for this contract. The judiciary's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the judiciary for any payment may arise until funds are made available to the contracting officer for this contract and until the contractor receives notice of such availability, to be confirmed in writing by the contracting officer.

(end)

Clause 7-120, Availability of Funds for the Next Fiscal Year

Include the following clause as prescribed in § 220.50.90(b) (Clauses for Contracting in Advance of Funds).

Availability of Funds for the Next Fiscal Year (JAN 2003)

Funds are not presently available for performance under this contract beyond _____. The judiciary's obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the judiciary for any payment may arise for performance under this contract beyond _____, until funds are made available to the contracting officer for performance and until the contractor receives notice of availability, to be confirmed in writing by the contracting officer.

(end)

Clause 7-125, Invoices

Include the following clause as prescribed in § 740.20.30 (Clause).

Invoices (APR 2011)

(a) Invoices shall be submitted to the address (physical or e-mail) specified in this contract and in accordance with any schedule for payments set forth elsewhere under this contract.

(b) The office that will make payments due under this contract will be designated in the contract at the time of contract award.

(c) To constitute a proper invoice, the billing document shall include the following information and/or attached documentation:

(1) name of business concern and such business's Taxpayer Identification Number;

(2) period(s) covered by invoice and invoice date;

(3) purchase order or contract number or other authorization for delivery of property or services, e.g., delivery/task order number for orders under indefinite delivery contracts ;

(4) for each line item — general description of product delivered or services rendered, measured unit, and associated price;

(5) any applicable payment discount terms;

(6) total amount billed;

(7) a subtotal of any and all fees or credits applied to the invoice;

(8) an amount due (if any) or credit balance;

(9) name (where practicable), title, phone number, fax number, and complete mailing address of the responsible official to whom payment is to be sent. The "remit to" address shall correspond to the remittance address in the contract;

(10) other substantiating documentation or information as required by the purchase/delivery/task order or contract;

(11) all follow-up invoices shall be marked "Duplicate of Original." Contractor questions regarding payment information or check identification shall be directed to the relevant paying authority specified in the contract.

Alternate I (JAN 2010): *As prescribed in § 520.75(f), and when applicable, the contracting officer must substitute the following paragraph (c)(4) for paragraphs (c)(4) of the basic Clause 7-125.*

(4) All invoices for services under this agreement shall indicate in detail the following:

(i) person performing service each day by hour and part of an hour;

(ii) services performed each day by hour and part of an hour;

(iii) rates and charges for each service so detailed; and

(iv) individual expenses charged, if allowed under this agreement.

Note: Minimum charges for portions of an hour may be allowed, if such a charging practice has been disclosed before award of this agreement.

(end)

Clause 7-130, Interest (Prompt Payment)

Include the following clause as prescribed in § 740.30.30 (Payment of Interest).

Interest (Prompt Payment) (JAN 2003)

The provisions of the Prompt Payment Act of 1982 and OMB Budget Circular A-125 concerning interest on overdue payments are not applicable to the judiciary. Therefore, interest is not payable under this contract for overdue payments.

(end)

Clause 7-135, Payments

Include the following clause as prescribed in § 740.30.50(a) (Clauses).

Payments (JAN 2003)

The judiciary will pay the contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for products delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment will be made on partial deliveries accepted by the judiciary if:

(1) the amount due on the deliveries warrants it; or

(2) the contractor requests it and the amount due on the deliveries is at least $1,000 or 50 percent of the total contract price.

(end)

Clause 7-140, Discounts for Prompt Payment

Include the following clause as prescribed in § 740.30.50(b) (Clauses).

Discounts for Prompt Payment (JAN 2003)

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a discount for prompt payment in conjunction with the offer, offerors awarded contracts may include discounts for prompt payment on individual invoices.

(b) In connection with any discount offered for prompt payment, time will be computed from the date of the invoice. If the contractor has not placed a date on the invoice, the due date will be calculated from the date the designated billing office receives a proper invoice, provided the judiciary annotates such invoice

with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment will be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when judiciary offices are closed and judiciary business is not expected to be conducted, payment may be made on the following business day.

(end)

Clause 7-145, Government Purchase Card

Include the following clause as prescribed in § 740.30.50(c) (Clauses).

Government Purchase Card (JAN 2003)

(a) Card holders may use an authorized government purchase card to make payments for orders placed against this contract.

(b) Purchase Card Terms: In accepting the purchase card as payment, the contractor agrees to abide by the terms of the GSA purchase card contract.

(c) Backorder: In accordance with the GSA purchase card contract, the contractor may not charge for back-ordered products before shipment,

(d) Taxes: Government purchases are generally not subject to state or local taxes, with limited exceptions in Arizona, New Mexico and Hawaii**.**

(e) Unauthorized card: If the contractor determines that the card bearer is not an authorized cardholder, or that the card is not an authorized government purchase card, then the contractor shall immediately notify the contracting officer.

(f) Disputes: Any purchase card disputes will be resolved in accordance with the GSA purchase card contract.

(g) Payments: Purchase card payments will be made in accordance with the GSA purchase card contract.

(end)

Clause 7-150, Extras

Include the following clause as prescribed in § 740.30.50(d) (Clauses).

Extras (JAN 2003)

Except as otherwise provided in this contract, no payment for extras will be made unless such extras, and the price for such extras, have been authorized in writing by the contracting officer.

(end)

Clause 7-155, Certification of Final Indirect Costs

Include the following clause as prescribed in § 740.30.50(e) (Clauses).

Certification of Final Indirect Costs (JAN 2003)

(a) The contractor shall:

(1) certify any offer to establish or modify final indirect cost rates;

(2) use the format in paragraph (c) of this clause to certify; and

(3) have the certificate signed by an individual of the contractor's organization at a level no lower than a vice president or chief financial officer of the business segment of the contractor that submits the offer.

(b) Failure by the contractor to submit a signed certificate, as described in this clause, may result in final indirect costs at rates unilaterally established by the contracting officer.

(c) The certificate of final indirect costs shall read as follows:

Certificate of Final Indirect Costs

This is to certify that I have reviewed this offer to establish final indirect cost rates and to the best of my knowledge and belief:

(1) all costs included in this offer _____(*identify offer and date*) to establish final indirect cost rates for _____(*identify period covered by rate*) are allowable in accordance with the cost principles in the Guide, Vol 14, Ch 4 applicable to the contracts to which the final indirect cost rates will apply; and

(2) this offer does not include any costs which are expressly unallowable under cost principles of the Guide, Vol 14, Ch 4.

Firm: _____
Signature: _____
Name of Certifying Official: _____
Title: _____
Date of Execution: _____

(end)

Clause 7-160, Limitation on Withholding of Payments

Include the following clause as prescribed in § 740.40.50(a) (Clauses).

Limitation on Withholding of Payments (JAN 2003)

If more than one clause or schedule term of this contract authorizes the temporary withholding of amounts otherwise payable to the contractor for products delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one clause or schedule term at that time; *provided*, that this limitation shall not apply to:

(1) withholdings pursuant to any clause relating to wages or hours of employees;

(2) withholdings not specifically provided for by this contract;

(3) the recovery of overpayments; and

(4) any other withholding for which the contracting officer determines that this limitation is inappropriate.

(end)

Clause 7-165, Penalties for Unallowable Costs

Include the following clause as prescribed in § 740.40.50(b) (Clauses).

Penalties for Unallowable Costs (JUN 2012)

(a) Definition. "Offer," as used in this clause, means either:

(1) a final indirect cost rate offer submitted by the contractor after the expiration of its fiscal year which:

(i) relates to any payment made on the basis of billing rates; or

(ii) will be used in negotiating the final contract price; or

(2) the final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.

(b) Contractors which include unallowable indirect costs in an offer may be subject to penalties. The penalties are prescribed in 10 U.S.C. § 2324 or 41 U.S.C. § 4303, as applicable.

(c) The contractor shall not include in any offer any cost that is unallowable, as defined in the Guide, Vol 14, Ch 4.

(d) If the contracting officer determines that a cost submitted by the contractor in its offer is expressly unallowable, the contractor shall be assessed a penalty equal to:

(1) the amount of the disallowed cost allocated to this contract; plus

(2) simple interest, to be computed:

(i) on the amount the contractor was paid on a billing payment in excess of the amount to which the contractor was entitled; and

(ii) using the applicable rate effective for each six-month interval prescribed by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).

(e) If the contracting officer determines that a cost submitted by the contractor in its offer includes a cost previously determined to be unallowable for that contractor, then the contractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

(f) Determinations under paragraphs (d) and (e) of this clause are final decisions.

(g) In certain cases, the contracting officer may waive the penalties in paragraph (d) or (e) of this clause. The contracting officer will provide a written determination of the reasons for the waiver in the contract file.

(h) Payment by the contractor of any penalty assessed under this clause does not constitute repayment to the judiciary of any unallowable cost which has been paid by the judiciary to the contractor.

(end)

Clause 7-170, Notice of Intent to Disallow Costs

Include the following clause as prescribed in § 740.40.50(c) (Clauses).

Notice of Intent to Disallow Costs (JAN 2003)

(a) Notwithstanding any other clause of this contract:

(1) The contracting officer may at any time issue to the contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this contract that have been determined not to be allowable under the contract terms; and

(2) The contractor may, after receiving a notice under paragraph (a)(1) of this clause, submit a written response to the contracting officer, with justification for allowance of the costs. If the contractor does respond within 60 days, the contracting officer will, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

(b) Failure to issue a notice under this Notice of Intent to Disallow Costs clause will not affect the judiciary's rights to take exception to incurred costs.

(end)

Clause 7-175, Assignment of Claims

Include the following clause as prescribed in § 740.50.40(a) (Clauses).

Assignment of Claims (JAN 2003)

(a) The contractor may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

(b) Any assignment or reassignment authorized under this clause will cover all unpaid amounts payable under this contract, and will not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The contractor shall not furnish or disclose to any assignee under this contract any sensitive or classified document (including this contract) or information related to work under this contract unless the contracting officer authorizes such action in writing.

(end)

Clause 7-180, Prohibition of Assignment of Claims

Include the following clause as prescribed in § 740.50.40(b) (Clauses).

Prohibition of Assignment of Claims (JUN 2012)

The assignment of claims under the Assignment of Claims Act of 1940, as amended, 31 U.S.C. § 3727, 41 U.S.C. § 6305, is prohibited for this contract.

(end)

Clause 7-185, Changes

Include the following clause as prescribed in § 745.40.40(a) (Clauses).

Changes (JAN 2003)

(a) The contracting officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) drawings, designs, or specifications when the products to be furnished are to be specially manufactured for the judiciary in accordance with the drawings, designs, or specifications;

(2) statement of work or description of services to be performed;

(3) method of shipment or packing of products;

(4) place of delivery of products or place of performance;

(5) delivery or performance schedule, time (i.e. hours of the day, days of the week, etc.) or place of delivery or performance of services;

(6) judiciary-furnished property or facilities.

(b) Any other written or oral order (including direction, instruction, interpretation, or determination) from the contracting officer that causes a change will be treated as a change order under this clause, provided that the contractor gives the contracting officer written notice stating (1) the date, circumstances, and source of the order and (2) that the contractor regards the order as a change order.

(c) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the contracting officer will make an equitable adjustment in the contract price, the delivery schedule, or both, and will modify the contract.

(d) The contractor shall assert its right to an adjustment within 30 days from the date of receipt of the written order. However, if the contracting officer decides that the facts justify it, the contracting officer may receive and act upon an offer submitted before final payment of the contract.

(e) If the contractor's offer includes the cost of property made obsolete or excess by the change, the contracting officer will have the right to prescribe the manner of the disposition of the property.

(f) Failure to agree to any adjustment is a dispute under the Disputes clause. However, nothing in this clause will excuse the contractor from proceeding with the contract as changed.

(g) No products or services for which an additional cost or fee will be charged by the contractor will be furnished without the prior written authorization of the contracting officer.

(end)

Clause 7-190, Change Order Accounting

Include the following clause as prescribed in § 745.40.40(b) (Clauses).

Change Order Accounting (JAN 2003)

The contracting officer may require change order accounting whenever the estimated cost of a change or series of related changes exceeds the judiciary's

small purchase threshold. The contractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The contractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by the contracting officer or the matter is conclusively disposed of in accordance with the Disputes clause.

(end)

Clause 7-195, Excusable Delays

Include the following clause as prescribed in § 745.45.55(a) (Clauses).

Excusable Delays (JAN 2003)

(a) Except for defaults of subcontractors at any tier, the contractor will not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the government in its sovereign capacity or of the judiciary in its contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform shall be beyond the control and without the fault or negligence of the contractor. “Default” includes failure to make progress in the work so as to endanger performance.

(b) If failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the contractor and subcontractor, and without the fault or negligence of either, the contractor will not be deemed to be in default, unless:

(1) the subcontract products or services were obtainable from other sources;

(2) the contracting officer ordered the contractor in writing to purchase these products or services from the other source; and

(3) the contractor failed to comply reasonably with this order.

(c) Upon request of the contractor, the contracting officer will ascertain the facts and extent of the failure. If the contracting officer determines that any failure to

perform resulted from one or more of the causes above, the delivery schedule will be revised, subject to the rights of the judiciary under the termination clause of this contract.

(end)

Clause 7-200, Judiciary Delay of Work

Include the following clause as prescribed in § 745.45.55(b) (Clauses).

Judiciary Delay of Work (JAN 2003)

(a) If the performance of all or any part of the work of this contract is delayed or interrupted (1) by an act of the contracting officer in the administration of this contract that is not expressly or impliedly authorized by this contract, or (2) by a failure of the contracting officer to act within the time specified in this contract, or within a reasonable time if not specified, an adjustment (excluding profit) will be made for any increase in the cost of performance of this contract caused by the delay or interruption and the contract will be modified in writing accordingly. Adjustment will also be made in the delivery or performance dates and any other contractual term or condition affected by the delay or interruption. However, no adjustment will be made under this clause for any delay or interruption to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the contractor, or for which an adjustment is provided or excluded under any other term or condition of this contract.

(b) A claim under this clause will not be allowed:

(1) for any costs incurred more than 20 days before the contractor shall have notified the contracting officer in writing of the act or failure to act involved; and

(2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the delay or interruption, but not later than the day of final payment under the contract.

(end)

Clause 7-205, Payment for Judiciary Holidays

Include the following clause as prescribed in § 745.45.55(c) (Clauses).

Payment for Judiciary Holidays (JAN 2003)

On judiciary holidays, on-site contractors are not entitled to compensation unless: 1) the contract requires the contractor to be on-site at the judiciary facility during the holiday; 2) the contract specifically provides for compensation to the contractor on Judiciary holidays; or 3) the contractor obtains approval from the Contracting Officer or designated Contracting Officer's Technical Representative to perform work at an off-site location. The following holidays are observed by the judiciary: New Years Day, Martin Luther King's Birthday, Presidential Inauguration Day (metropolitan DC area only), President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day.

(end)

Clause 7-210, Payment for Emergency Closures

Include the following clause as prescribed in § 745.45.55(d) (Clauses).

Payment for Emergency Closures (AUG 2004)

During an emergency closure of the government taken in its sovereign capacity for the public good, the Judiciary is not obligated to compensate contractors during the emergency closure unless: 1) the contract specifically requires the contractor to be on-site at the Judiciary facility during an emergency closure; 2) the contract specifically provides for compensation to the contractor even when the government acts in its sovereign capacity; or 3) the contractor obtains approval from the Contracting Officer or designated Contracting Officer's Technical Representative to perform work at an off-site location.

(end)

Clause 7-215, Notification of Ownership Changes

Include the following clause as prescribed in § 745.55.40(i) (Novation Agreements).

Notification of Ownership Changes (JAN 2003)

(a) The contractor shall make the following notifications in writing:

(1) when the contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the contractor shall notify the contracting officer within 30 days;

(2) the contractor shall also notify the contracting officer within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The contractor shall:

(1) maintain current, accurate, and complete inventory records of assets and their costs;

(2) provide the contracting officer or designated representative ready access to the records upon request;

(3) ensure that all-individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the contractor's ownership changes; and

(4) retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each contractor ownership change.

(c) The contractor shall include the substance of this clause in all subcontracts under this contract.

(end)

Clause 7-220, Termination for Convenience of the Judiciary (Fixed-Price)

Include the following clause as prescribed in § 755.20.60(a) (Clauses).

Termination for Convenience of the Judiciary (Fixed-Price) (JAN 2003)

(a) The judiciary may terminate performance of work under this contract in whole or, from time to time, in part if the contracting officer determines that termination is in the judiciary's interest. The contracting officer will terminate by delivering to the contractor a notice of termination specifying the extent of the termination and the effective date.

(b) After receipt of a notice of termination, and except as directed by the contracting officer, the contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) stop work as specified in the notice;

(2) place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities except as necessary to complete the continued portion of the contract;

(3) terminate all orders and subcontracts to the extent they relate to the work terminated;

(4) assign to the judiciary, as directed by the contracting officer, all right, title, and interest of the contractor under the subcontracts terminated, in which case the judiciary shall have the right to settle or to pay any termination settlement offer arising out of those terminations;

(5) with written approval or ratification to the extent required by the contracting officer, settle all outstanding liabilities and termination settlement offers arising from the termination of subcontracts; the written approval or ratification will be final for purposes of this clause;

(6) as directed by the contracting officer, transfer title and deliver to the judiciary:

(i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and

(ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the judiciary;

(7) complete performance of the work not terminated;

(8) take any action that may be necessary, or that the contracting officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the contractor and in which the judiciary has or may acquire an interest;

(9) use its best efforts to sell, as directed or authorized by the contracting officer, any property of the types referred to in paragraph (b)(6) of this clause, *provided*, however, that the contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved in writing by, the contracting officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the judiciary under this contract, credited to the price or cost of the work, or paid in any other manner directed by the contracting officer.

(c) The contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the contracting officer upon written request of the contractor within this 120-day period.

(d) After expiration of the plant clearance period, the contractor may submit to the contracting officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the contracting officer. The contractor may request the judiciary to remove those items or enter into an agreement for their storage. Within 15 days, the judiciary will accept title to those items and remove them or enter into a storage agreement. The contracting officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and will correct the list, as necessary, before final settlement.

(e) After termination, the contractor shall submit a final termination settlement offer to the contracting officer in the form and with the certification prescribed by the contracting officer. The contractor shall submit the offer promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the contracting officer upon written request of the contractor within this 1-year period. However, if the contracting officer determines that the facts justify it, a termination settlement offer may be received and acted on after the 1 year or any extension. If the contractor fails to submit the offer within the time allowed, the contracting officer may determine, on the basis of information available, the amount, if any, due the contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the contractor and contracting officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in paragraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract will be modified, and the contractor paid the agreed amount. Paragraph (g) of this clause will not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the contractor and the contracting officer fail to agree on the whole amount to be paid because of the termination of work, the contracting officer will pay the contractor amounts determined by the contracting officer as follow, but without duplication of any amounts agreed on under paragraph (f) of this clause:

(1) the contract price for completed products or services accepted by the judiciary (or sold or acquired under paragraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges;

(2) the total of:

(i) the costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to products or services paid or to be paid under paragraph (g)(1) of this clause;

(ii) the cost of settling and paying termination settlement offers under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(2)(i) of this clause; and

(iii) a sum, as profit on subdivision (g)(2)(i) of this clause, determined by the contracting officer; in effect on the date of the contract, to be fair and reasonable; however, if it appears that the contractor would have sustained a loss on the entire contract had it been completed, the contracting officer will allow no profit under this subdivision (g)(2)(iii) and will reduce the settlement to reflect the indicated rate of loss.

(3) the reasonable costs of settlement of the work terminated, including:

(i) accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement offers and supporting data;

(ii) the termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that the judiciary expressly assumed the risk of loss, the contracting officer will exclude from the amounts payable to the contractor under paragraph (g) of this clause, the fair value, as determined by the contracting officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the judiciary or to a buyer.

(i) The cost principles and procedures of the Guide, Vol 14, Ch 4, in effect on the date of this contract, will govern all costs claimed, agreed to, or determined under this clause.

(j) The contractor shall have the right of appeal under the Disputes clause, from any determination made by the contracting officer under paragraph (e), (g), or (l) of this clause, except that if the contractor has failed to submit the termination settlement offer or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request an extension of time, there is no right of appeal.

(k) In arriving at the amount due the contractor under this clause, there will be deducted:

(1) all unliquidated advance or other payments to the contractor under the terminated portion of this contract;

(2) any claim which the judiciary has against the contractor under this contract; and

(3) the agreed price for, or the proceeds of sale of materials, products, or other things acquired by the contractor or sold under the provisions of this clause and not recovered by or credited to the judiciary.

(l) If the termination is partial, the contractor may file an offer with the contracting officer for an equitable adjustment of the price(s) of the continued portion of the contract. The contracting officer will make any equitable adjustment agreed upon. Any offer by the contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the contracting officer.

(m) (1) The judiciary may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the contractor for the terminated portion of the contract, if the contracting officer believes the total of these payments will not exceed the amount to which the contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the contractor shall repay the excess to the judiciary upon demand, together with interest computed at the rate established by the Secretary of the Treasury under P. L. 92-41 (85 Stat. 97). Interest will be computed for the period from the date the excess is repaid. Interest will not be charged on any excess payment due to a reduction in the contractor's termination settlement offer because of retention or other disposition of termination

inventory until 10 days after the date of the retention or disposition, or a later date determined by the contracting officer because of the circumstances.

(n) Unless otherwise provided in this contract, or by statute, the contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The contractor shall make these records and documents available to the judiciary, at the contractor's office, at all reasonable times, without any direct charge. If approved in writing by the contracting officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(end)

Clause 7-223 Termination for Convenience of the Judiciary (Short Form)

Include the following clause as prescribed in § 755.20.60(b) (Clauses).

Termination for Convenience of the Judiciary (Short Form) (AUG 2004)

The contracting officer, by written notice, may terminate this contract, in whole or in part, when it is in the judiciary's interest. If this contract is terminated, the judiciary shall be liable only for payment under the payment provisions of this contract for products received or services rendered before the effective date of termination.

(end)

Clause 7-225, Termination (Cost-Reimbursement)

Include the following clause as prescribed in § 755.20.60(c) (Clauses).

Termination (Cost-Reimbursement) (JAN 2010)

(a) The judiciary may terminate performance of work under this contract in whole or, from time to time, in part, if:

(1) the contracting officer determines that a termination is in the judiciary's interest; or

(2) the contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the contracting officer) after

receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

(b) The contracting officer will terminate by delivering to the contractor a notice of termination specifying whether termination is for default of the contractor or for convenience of the judiciary, the extent of termination, and the effective date. If, after termination for default, it is determined that the contractor was not in default or that the contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the judiciary.

(c) After receipt of a Notice of Termination, and except as directed by the contracting officer, the contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) stop work as specified in the notice;

(2) place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract;

(3) terminate all subcontracts to the extent they relate to the work terminated;

(4) assign to the judiciary, as directed by the contracting officer, all right, title, and interest of the contractor under the subcontracts terminated, in which case the judiciary will have the right to settle or to pay any termination settlement offer arising out of those terminations;

(5) with written approval or ratification to the extent required by the contracting officer, settle all outstanding liabilities and termination settlement offers arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; written approval or ratification will be final for purposes of this clause;

(6) transfer title (if not already transferred) and, as directed by the contracting officer, deliver to the judiciary:

(i) the fabricated or unfabricated parts, work in process, completed work, products, and other material produced or acquired for the work terminated;

(ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the judiciary; and

(iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the contractor has been or will be reimbursed under this contract;

(7) complete performance of the work not terminated;

(8) take any action that may be necessary, or that the contracting officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the contractor and in which the judiciary has or may acquire an interest; and

(9) use its best efforts to sell, as directed or authorized by the contracting officer, any property of the types referred to in paragraph (c)(6) of this clause; *provided*, *however*, that the contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved in writing by the contracting officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the judiciary under this contract, credited to the price or cost of the work, or paid in any other manner directed by the contracting officer.

(d) The contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the contracting officer upon written request of the contractor within this 120-day period.

(e) After expiration of the plant clearance period, the contractor may submit to the contracting officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the contracting officer. The contractor may request the judiciary to remove those items or enter into an agreement for their storage. Within 15 days, the judiciary will accept the items and remove them or enter into a storage agreement. The contracting officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and will correct the list, as necessary, before final settlement.

(f) After termination, the contractor shall submit a final termination settlement offer to the contracting officer in the form and with the certification prescribed by the contracting officer. The contractor shall submit the offer promptly, but no later than 1 year from the effective date of termination, unless extended in writing by

the contracting officer upon written request of the contractor within this 1-year period. However, if the contracting officer determines that the facts justify it, a termination settlement offer may be received and acted on after 1 year or any extension. If the contractor fails to submit the offer within the time allowed, the contracting officer may determine, on the basis of information available, the amount, if any, due the contractor because of the termination and will pay the amount determined.

(g) Subject to paragraph (f) of this clause, the contractor and the contracting officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract will be amended, and the contractor paid the agreed amount.

(h) If the contractor and the contracting officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the contracting officer will determine, on the basis of information available, the amount, if any, due the contractor, and will pay that amount, which will include the following:

(1) all costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the written approval of or as directed by the contracting officer; however, the contractor shall discontinue those costs as rapidly as practicable;

(2) the cost of settling and paying termination settlement offers under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in paragraph (h)(1) of this clause;

(3) the reasonable costs of settlement of the work terminated, including:

(i) accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement offers and supporting data;

(ii) the termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the contractor's termination settlement offer may be included;

(4) a portion of the fee payable under the contract, determined as follows:

(i) if the contract is terminated for the convenience of the judiciary, the settlement will include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination offers, less previous payments for fee;

(ii) if the contract is terminated for default, the total fee payable will be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the judiciary is to the total number of articles (or amount of services) of a like kind required by the contract.

(5) If the settlement includes only fee, it will be determined under paragraph (h)(4) of this clause.

(i) The cost principles and procedures in effect on the date of this contract, will govern all costs claimed, agreed to, or determined under this clause.

(j) The contractor shall have the right of appeal, under the Disputes clause, from any determination made by the contracting officer under paragraph (f), (h), or (l) of this clause, except that if the contractor failed to submit the termination settlement offer within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the contracting officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the judiciary will pay the contractor:

(1) the amount determined by the contracting officer if there is no right of appeal or if no timely appeal has been taken or

(2) the amount finally determined on an appeal.

(k) In arriving at the amount due the contractor under this clause, there will be deducted:

(1) all unliquidated advance or other payments to the contractor, under the terminated portion of this contract;

(2) any claim which the judiciary has against the contractor under this contract; and

(3) the agreed price for, or the proceeds of sale of materials, products, or other things acquired by the contractor or sold under this clause and not recovered by or credited to the judiciary.

(l) The contractor and contracting officer shall agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The contracting officer will amend the contract to reflect the agreement.

(m) (1) The judiciary may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the contractor for the terminated portion of the contract, if the contracting officer believes the total of these payments will not exceed the amount to which the contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the contractor shall repay the excess to the judiciary upon demand, together with interest computed at the rate established by the Secretary of the Treasury under P. L. 92-41 (85 Stat. 97) 50 U.S.C. App. 1215(b)(2). Interest will be computed for the period from the date the excess payment is received by the contractor to the date the excess is repaid. Interest will not be charged on any excess payment due to a reduction in the contractor's termination settlement offer because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the contracting officer because of the circumstances.

(n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

Alternate I (JAN 2010): *As prescribed in § 755.20.60(d) (Clauses), substitute the following paragraphs (h) and (l) for paragraphs (h) and (l) of the basic Clause 7-225.*

(h) If the contractor and the contracting officer fail to agree in whole or in part on the amount to be paid because of the termination of work, the contracting officer will determine, on the basis of information available, the amount, if any, due the contractor and will pay the amount determined as follows:

(1) If the termination is for the convenience of the judiciary, include:

(i) an amount for direct labor hours (as defined in the schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the schedule, less any hourly rate payments already made to the contractor;

(ii) an amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination, not previously paid to the contractor;

(iii) an amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination, if they are reasonably incurred after the effective date, with the approval of or as directed by the contracting officer; however, the contractor shall discontinue these expenses as rapidly as practicable;

(iv) if not included in subdivision (h)(1)(i), (ii), or (iii) of this clause, the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract; and

(v) the reasonable costs of settlement of the work terminated; including:

(A) accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(B) the termination and settlement of subcontracts (excluding the amounts of such settlements); and

(C) storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the termination inventory.

(2) If the termination is for default of the contractor, include the amounts computed under paragraph (h)(1) of this clause but omit:

(i) any amount for preparation of the contractor's termination settlement proposal; and

(ii) the portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by the judiciary.

(l) If the termination is partial, the contractor may file with the contracting officer a proposal for an equitable adjustment of price(s) for the continued portion of the contract. The contracting officer will make any equitable adjustment agreed upon. Any proposal by the contractor for an equitable adjustment under this

clause shall be requested within 90 days from the effective date of termination, unless extended in writing by the contracting officer.

(end)

Clause 7-230, Termination for Default (Fixed-Price – Products and Services)

Include the following clause as prescribed in § 755.25.60(a) (Clauses).

Termination for Default (Fixed-Price – Products and Services) (JAN 2003)

(a) (1) The judiciary may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the contractor, terminate this contract in whole or in part if the contractor fails to:

(i) deliver the products or to perform the services within the time specified in this contract or any extension;

(ii) make progress, so as to endanger performance of this contract (*but see* paragraph (a)(2) of this clause); or

(iii) perform any of the other provisions of this contract (*but see* paragraph (a)(2) of this clause).

(2) The judiciary's right to terminate this contract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if the contractor does not cure the failure within 10 days (or more if authorized in writing by the contracting officer) after receipt of the notice from the contracting officer specifying the failure.

(b) If the judiciary terminates this contract in whole or in part, it may acquire, under the terms and in the manner the contracting officer considers appropriate, products or services similar to those terminated, and the contractor will be liable to the judiciary for any excess costs for those products or services. However, the contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the government in its sovereign capacity or of the judiciary in its contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each

instance the failure to perform shall be beyond the control and without the fault or negligence of the contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the contractor and subcontractor, and without the fault or negligence of either, the contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted products or services were obtainable from other sources in sufficient time for the contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the judiciary may require the contractor to transfer title and deliver to the judiciary, as directed by the contracting officer, any (1) completed products, and (2) partially completed products, and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the contracting officer, the contractor shall also protect and preserve property in its possession in which the judiciary has an interest.

(f) The judiciary will pay the contract price for completed products delivered and accepted. The contractor and contracting officer will agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The judiciary may withhold from these amounts any sum the contracting officer determines to be necessary to protect the judiciary against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the judiciary.

(h) The rights and remedies of the judiciary in this clause are in addition to any other rights and remedies provided by law or under this contract.

(end)

Clause 7-235, Disputes

Include the following clause as prescribed in § 755.25.60(b) (Clauses).

Disputes (JAN 2003)

(a) A contract dispute means a written claim, demand or assertion by a contracting party for the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other specific relief arising under or relating to the contract. A dispute also includes a termination for convenience settlement proposal and any request for an equitable adjustment, which is denied. A voucher, invoice, or other routine payment that is not disputed by the parties is not a dispute under this clause.

(b) A contract dispute shall be filed within 12 months of its accrual and shall be submitted in writing to the contracting officer. The dispute shall contain a detailed statement of the legal and factual basis of the dispute and shall be accompanied by any documents that support the claim. The claimant shall seek specific relief, as provided in paragraph (a) above. However, the time periods set forth here shall be superceded if the contract contains specific provisions for the processing of any claim which would otherwise be considered a dispute under this clause.

(c) Contracting officers are authorized to decide or settle all disputes under this clause. If the contracting officer requires additional information the contracting officer shall promptly request the claimant to provide such information. The contracting officer will issue a written determination within 60 days of the receipt of all the requested information from the claimant. If the contracting officer is unable to render a determination within 60 days, the claimant shall be notified of the date on which a determination will be made. The determination of the contracting officer shall be considered the final determination of the judiciary.

(d) The contractor shall proceed diligently with performance of this contract pending resolution of the dispute. The contractor shall comply with the final determination of the contracting officer unless such determination is overturned by a court of competent jurisdiction. Failure to diligently continue contract performance during the pendency of the claim or failure to comply with the final determination of the contracting officer may result in termination of the contract for default or imposition of other available remedies.

(end)

Guide to Judiciary Policy

Vol 14: Procurement
Ch 1: Overview

Appx 1C: Matrix of Solicitation Provisions and Clauses (including Key)

Key to Matrix

Prov or Cls = Provision or Clause
IBR? = Incorporation by Reference authorized or not
UCF Sec = Uniform Contract Format Section
FP PROD = Fixed-Price Product
CR PROD = Cost-Reimbursement Product
FP SERV = Fixed-Price Service
CR SERV = Cost-Reimbursement Service
T&M LH = Time & Material/Labor Hours
A&E = Architect-Engineering
IND DEL = Indefinite Delivery
SM PUR = Small Purchase (Open Market up to the judiciary's small purchase threshold)
GSA/FSS/GWAC = Inclusion in delivery/task orders under these types of contracts
R = Required
A = Required when Applicable (See Provision or Clause prescription)
* = See Clause 3-3 (Provision or Clause is already included when Clause 3-3 is used for open market small purchases)

Note 1: The following clauses are prescribed for Experts or Consulting Services in addition to all other Required and Required When Applicable clauses:

Clause 1-5, Conflict of Interest
Clause 2-65, Key Personnel
Clause 5-1, Payments under Personal and Professional Services Contracts
Clause 5-5, Nondisclosure (Professional Services)
Clause 5 10, Inspection of Professional Services
Clause 5-20, Records Ownership
Provision 5-25, Identification of Uncompensated Overtime
Clause 6-70, Work for Hire
Clause 7-125 Invoices, Alternate I

Note 2: The following clauses are prescribed for Letter Contracts in addition to all other Required and Required When Applicable clauses:

Clause 4-35, Execution and Commencement of Work (Letter Contract)
Clause 4-40, Limitation of Judiciary Liability (Letter Contract)
Clause 4-45, Contract Definitization
Clause 4-50, Payment of Allowable Costs Before Definitization

GUIDE VOLUME 14 SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Clause #	Title	Presc. (all references are to Volume 14)	Prov or Cls	IBR?	UCF Sec	FP PROD	CR PROD	FP SERV	CR SERV	T&M LH	A&E	IND DEL	SM PUR	GSA/ FSS/ GWAC
B-1	Solicitation Provisions Incorporated by Reference	Appx B, § B.2.1.(a)	P	No	L	R	R	R	R	R	R	R	R	R
B-5	Clauses Incorporated by Reference	Appx B, § B.2.1.(b)	C	No	I	R	R	R	R	R	R	R	R	R
B-10	RESERVED													
B-15	RESERVED													
B-20	Computer Generated Forms	Appx B, § B.2.1.(c)	C	Yes	I	A	A	A	A	A	A	A	*	A
1-1	Employment by the Government	§ 150.30.40	C	Yes	H			R	R	R	A	A	*	A
1-5	Conflict of Interest (note 1)	§ 150.30.40 and § 520.75(a)	C	Yes	I			R	R	R	A	A	*	A
1-10	Gratuities or Gifts	§ 150.50.50	C	Yes	I	R	R	R	R	R	R	R		R
1-15	Disclosure of Contractor Information to the Public	§ 170.70	C	Yes	I	R	R	R	R	R	R	R		R
2-1	Request for Information or Solicitation for Planning Purposes	§ 210.60.40	P	No	L	A	A	A	A	A	A	A		
2-5A	Inspection of Products	§ 220.10.70(a)	C	Yes	E	R	R			A	A	A		
2-5B	Inspection of Services	§ 220.10.70(b)	C	Yes	E			R	R	R	A	A		
2-10	Responsibility of Products	§ 220.10.70(c)	C	Yes	E	R		A				A		
2-15	Warranty Information	§ 220.20.40(a)	P	Yes	L	A	A	A	A	A	A	A		
2-20A	Incorporation of Warranty	§ 220.20.40(b)	C	Yes	I	A	A	A	A	A	A	A		
2-20B	Contractor Warranty (Products)	§ 220.20.40(c)	C	Yes	I	A	A	A	A	A	A	A		
2-20C	Warranty of Services	§ 220.20.40(d)	C	No	I			A	A	A	A	A		
2-25A	Delivery Terms and Contractor's Responsibilities	§ 220.25.70(a)	C	Yes	F	R	R	R	R	R	R	R	*	A
2-25B	Commercial Bill of Lading Notations	§ 220.25.70(b)	C	No	F	A	A					A		
2-30A	Time of Delivery	§ 220.25.70(c)	C	Yes	F	A	A	A	A	A	A	A	A	
2-30B	Desired and Required Time of Delivery	§ 220.25.70(d)	C	No	F	A	A	A	A	A	A	A	A	
2-35	F.o.b. Destination, Within Judiciary's Premises	§ 220.25.70(e)	C	Yes	F	A	A					A	A	A
2-40A	Variation in Quantity	§ 220.25.70(f)	C	No	F	A		A				A	A	
2-40B	Delivery of Excess Quantities	§ 220.25.70(g)	C	Yes	F	A						A	A	
2-45	Packaging and Marking	§ 220.25.70(h)	C	Yes	D	R	R	A	A	A		A	*	A
2-50	Continuity of Services	§ 220.25.80(a)	C	Yes	I			A	A	A		A	A	A
2-55	Privacy or Security Safeguards	§ 220.25.80(b)	C	Yes	I	A	A	A	A	A		A	A	A
2-60	Stop-Work Order	§ 220.25.80(c)	C	Yes	F	R	R	R	R	R	R	R	*	A
2-65	Key Personnel (note 1)	§ 220.25.80(d) and § 520.75(b)	C	No	H			A	A	A		A	A	A
2-70	Site Visit	§ 220.25.80(e)	P	Yes	L			A	A	A	A	A	A	
2-75	Liquidated Damages	§ 220.30.50	C	No	F	A	A	A	A	A	A	A		A
2-80	Judiciary Property	§ 220.35(c)	C	Yes	I			A	A	A	A	A	A	A
2-85A	Evaluation Inclusive of Options	§ 220.40.60(a)(1)	P	Yes	M	A	A	A	A	A		A	A	
2-85B	Evaluation Exclusive of Options	§ 220.40.60(a)(2)	P	Yes	M	A	A	A	A	A		A	A	

Clause #	Title	Presc. (all references are to Volume 14)	Prov or Cls	IBR?	UCF Sec	FP PROD	CR PROD	FP SERV	CR SERV	T&M LH	A&E	IND DEL	SM PUR	GSA/ FSS/ GWAC
2-85C	Evaluation of Options Exercised at Time of Contract Award	§ 220.40.60(a)(3)	P	Yes	M	A	A	A	A	A		A	A	
2-90A	Option for Increased Quantity	§ 220.40.60(b)(1)	C	Yes	I	A		A				A	A	
2-90B	Option for Increased Quantity-Separately Priced Line Item	§ 220.40.60(b)(2)	C	No	I	A	A			A		A	A	
2-90C	Option to Extend Services	§ 220.40.60(b)(3)	C	No	I			A	A	A		A	A	A
2-90D	Option to Extend the Term of the Contract	§ 220.40.60(b)(4)	C	No	I	A	A	A	A	A		A	A	A
2-95	Material Requirements	§ 220.25.70(i)	C	Yes	I	R	R					A	A	
2-100	Brand Name or Equal	§ 230.40.30	P	Yes	L	A	A			A		A	A	
2-105	Economic Purchase Quantity - Products	§ 220.25.70(j)	P	No	K	A	A					A	A	
2-110	Option to Purchase Equipment	§ 220.45.70	C	Yes	I	A	A	A	A	A	A	A	A	A
2-115	Terms for Commercial Advance Payment of Purchases	§ 220.55.70(a)	C	Yes	I	A		A				A	A	
2-115, Alt I		§ 220.55.70(b)	C	Yes	I	A		A				A	A	
2-120	Submission of Invoice	§ 220.55.70(c)	C	Yes	G	A		A				A	A	
2-125	Security for Advance Payment	§ 220.55.70(d)	C	Yes	I	A		A				A	A	
2-130	Energy Efficiency in Energy-Consuming Products	§ 220.60.70(a)	C	Yes	I	A	A			A	A	A	A	A
2-135	IEEE Standard for the Environmental Assessment of Personal Computer Products	§ 220.60.70(b)	C	Yes	I	A	A			A	A	A	A	A
3-1	Contractor Use of Mandatory Sources of Products or Services	§ 310.20.70	C	Yes	I	A	A	A	A	A		A	A	
3-3	Provisions, Clauses, Tems and Conditions - Small Purchases	§ 310.50.30(d), § 325.30.20(b), and § 325.45.10(c)	C	Yes		A		A		A			R	A
3-5	Taxpayer Identification And Other Offeror Information	§ 325.30.20(b) and § 330.10.30(a)	P	No	K	R	R	R	R	R	R	R	R	
3-10	RESERVED													
3-15	Place of Performance	§ 330.10.30(c)	P	Yes	K	R	R	R	R	R	R	R		
3-20	Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters	§ 330.10.30(d)	P	No	K	R	R	R	R	R	R	R		
3-25	Protecting the Judiciary's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment	§ 330.10.30(e)	C	Yes	I	R	R	R	R	R	R	R		
3-30	Certificate of Independent Price Determination	§ 330.10.30(f)	P	No	K	R		R		R	R	R		
3-35	Covenant Against Contingent Fees	§ 330.10.30(g)	C	Yes	I	R	R	R	R	R	R	R		
3-40	Restrictions on Subcontractor Sales to the Government	§ 330.10.30(h)	C	Yes	I	R	R	R	R	R	R	R		
3-45	Anti-Kickback Procedures	§ 330.10.30(i)	C	Yes	I	R	R	R	R	R	R	R		
3-50	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	§ 330.10.30(j)	C	Yes	I	R	R	R	R	R	R	R		
3-55	Price or Fee Adjustment for Illegal or Improper Activity	§ 330.10.30(k)	C	Yes	I	R	R	R	R	R	R	R		
3-60	RESERVED													
3-65	RESERVED													

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3-70	Determination of Responsibility	§ 330.10.30(n)	P	Yes	M	R	R	R	R	R	R	R		
3-75	RESERVED													
3-80	RESERVED													
3-85	Explanation to Prospective Offerors	§ 330.10.30(q)	P	Yes	L	R	R	R	R	R	R	R		
3-90	RESERVED													
3-95	Preparation of Offers	§ 330.10.30(s)	P	Yes	L	R	R	R	R	R	R	R		
3-100	Instructions to Offerors	§ 330.10.30(t)	P	Yes	L	R	R	R	R	R	R	R		
3-100, Alt I		§ 330.10.30(t)(1)	P	Yes	L	A	A	A	A	A	A	A		
3-100, Alt II		§ 330.10.30(t)(2)	P	Yes	L	A	A	A	A	A	A	A		
3-105	Audit and Records	§ 330.10.30(u)	C	Yes	I	R	R	R	R	R	R	R		
3-110	RESERVED													
3-115	Facsimile Offers	§ 330.10.30(v)	P	No	L	A	A	A	A	A	A	A		A
3-120	Order of Precedence	§ 330.10.30(w)	C	Yes	I	R	R	R	R	R	R	R		
3-125	RESERVED													
3-130	Authorized Negotiators	§ 330.10.30(y)	P	No	K	R	R	R	R	R	R	R		
3-135	Single or Multiple Awards	§ 330.10.30(z)	P	Yes	L	A	A	A	A	A		A		
3-140	Notice to the Judiciary of Labor Disputes	§ 330.10.30(aa)	C	Yes	I	A	A	A	A	A	A	A		
3-145	Payment for Overtime Premiums	§ 330.10.30(bb)	C	No	I		R		R	A	A	A		
3-150	Contract Work Hours and Safety Standards Act-Overtime Compensation	§ 330.10.30(cc)	C	Yes	I			A	A	A		A		
3-155	Walsh-Healey Public Contracts Act	§ 330.10.30(dd)	C	Yes	I	A	A			A		A	*	
3-160	Service Contract Act of 1965, as Amended	§ 325.25.80(a)	C	Yes	I			A	A	A	A	A	*	
3-165	RESERVED													
3-170	RESERVED													
3-175	Fair Labor Standards Act and Service Contract Act-Price Adjustment (Multiple Year and Option Contracts)	§ 325.25.80(b) and § 410.75.65(c)	C	Yes	I			A		A	A	A		
3-180	Fair Labor Standards Act and Service Contract Act-Price Adjustment	§ 325.25.80(c)	C	Yes	I			A		A	A	A		
3-185	Evaluation of Compensation for Professional Employees	§ 330.10.30(hh)	P	Yes	L			A	A	A		A		
3-190	RESERVED													
3-195	Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment - Certification	§ 325.25.80(d)	P	No	K			A	A	A		A	A	
3-200	Service Contract Act - Place of Performance Unknown	§ 325.25.80(e)	C	No	I			A	A	A		A	A	
3-205	Protest after Award	§ 330.10.30(kk)	C	Yes	I	R	R	R	R	R	R	R	*	
3-210	Protests	§ 330.10.30(ll)	P	No	L	R	R	R	R	R	R	R		
3-215	Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment - Requirements	§ 325.25.80(f)	C	Yes	I			A	A	A	A	A	*	
3-220	Exemption from Application of the Service Contract Act to Contracts for Certain Services - Certification	§ 325.25.80(g)	P	No	L			A	A	A	A	A	*	

Clause #	Title	Presc. (all references are to Volume 14)	Prov or Cls	IBR?	UCF Sec	FP PROD	CR PROD	FP SERV	CR SERV	T&M LH	A&E	IND DEL	SM PUR	GSA/ FSS/ GWAC
3-225	Exemption from Application of the Service Contract Act to Contracts for Certain Services - Requirements	§ 325.25.80(h)	C	Yes	I			A	A	A	A	A	*	
3-300	Central Contractor Registration	§ 330.10.30(nn)(1)	C	Yes	I	A	A	A	A	A	A	A		
3-305	Payment by Electronic Funds Transfer - Central Contractor Registration	§ 330.10.30(nn)(2)	C	Yes	G	A	A	A	A	A	A	A		
3-310	Payment by Electronic Funds Transfer - Other Than Central Contractor Registration	§ 330.10.30(nn)(3)	C	Yes	G	A	A	A	A	A	A	A		
3-315	Submission of Electronic Funds Information with Offer	§ 330.10.30(nn)(4)	P	Yes	L	A	A	A	A	A	A	A		
4-1	Type of Contract	§ 410.15.20	P	No	L	R	R	R	R	R	R	R		A
4-5	Ordering	§ 410.30.70(a)	C	Yes	I							R		A
4-10	Order Limitations	§ 410.30.70(b)	C	No	I							R		
4-15	RESERVED													
4-20	Requirements	§ 410.30.70(c)	C	Yes	I							R		
4-25	Indefinite Quantity	§ 410.30.70(d)	C	Yes	I							A		
4-27	Time-and-Materials/Labor-Hour Proposal Requirements - Competitive Pricing	§ 410.45.50(a)	P	No	L					R		A		
4-28	Time-and-Materials/Labor-Hour Proposal Requirements - Non-Competitive Pricing	§ 410.45.50(b)	P	No	L					R		A		
4-30	Payment (Time-and-Materials and Labor-Hour Contracts)	§ 410.45.50(c)	C	Yes	I					R		A	A	
4-35	Execution and Commencement of Work (Letter Contract) (Note 2)	§ 410.50.80(a)	C	No	I	R	R	R	R	R	R	R		
4-40	Limitation of Judiciary Liability (Letter Contract) (Note 2)	§ 410.50.80(b)	C	No	I	R	R	R	R	R	R	R		
4-45	Contract Definitization (Note 2)	§ 410.50.80(c)	C	No	I	R	R	R	R	R	R	R		
4-50	Payments of Allowable Costs Before Definitization (Note 2)	§ 410.50.80(d)	C	Yes	I		R		R	A	A	A		
4-55	Economic Price Adjustment - Standard Products	§ 410.65.50 and § 410.75.65(b)	C	No	I	A	A					A		
4-60	Allowable Cost and Payment	§ 410.70.80(a)	C	Yes	I		A		A	A	A	A		
4-65	Fixed Fee	§ 410.70.80(b)	C	Yes	I		A		A	A	A	A		
4-70	Incentive Fee	§ 410.70.80(c)	C	No	I		A		A	A	A	A		
4-75	Cost Contract-No Fee	§ 410.70.80(d)	C	Yes	I		A		A	A	A	A		
4-80	Cost-Sharing Contract - No Fee	§ 410.70.80(e)	C	Yes	I		A		A	A	A	A		
4-85	Limitation of Cost	§ 410.70.80(f)	C	Yes	I		A		A	A	A	A		
4-90	Limitation of Funds	§ 410.70.80(g)	C	Yes	I		A		A	A	A	A		
4-95	RESERVED													
4-100	RESERVED													
4-105	RESERVED													
4-110	RESERVED													
4-115	RESERVED													
4-120	RESERVED													

Clause #	Title	Presc. (all references are to Volume 14)	Prov or Cls	IBR?	UCF Sec	FP PROD	CR PROD	FP SERV	CR SERV	T&M LH	A&E	IND DEL	SM PUR	GSA/ FSS/ GWAC
4-125	RESERVED													
4-130	RESERVED													
4-135	RESERVED													
4-140	RESERVED													
4-145	RESERVED													
4-150	Cancellation under Multi-Year Contracts	§ 410.75.65(a)	C	Yes	I	A	A	A	A	A				A
4-155	Evaluation of Price Proposal - Multi-Year Contract	§ 410.75.65(d)	P	Yes	M	A	A	A	A	A				A
4-160	Cancellation Period and Ceiling	§ 410.75.65(e)	C	No	H	A	A	A	A	A				
4-165	Price Proposal Instruction - Multi-Year Contract	§ 410.75.65(f)	P	Yes	L	A	A	A	A	A				A
5-1	Payments under Personal and Professional Services Contracts (Note 1)	§ 510.50 and § 520.75(c)	C	Yes	I			A	A	A	A	A		
5-5	Nondisclosure (Professional Services) (Note 1)	§ 520.75(d)	C	Yes	I			A	A	A	A	A		
5-10	Inspection of Professional Services (Note 1)	§ 520.75(e)	C	Yes	E			A	A	A	A	A		
5-15	RESERVED													
5-20	Records Ownership (Note 1)	§ 520.75(g)	C	Yes	I			A	A	A	A	A		
5-25	Identification of Uncompensated Overtime (Note 1)	§ 520.75(h)	P	Yes	L			A	A	A	A	A		
5-30	Authorization and Consent	§ 330.10.30(mm) and § 530.70.60(a)	C	Yes	I						A			
5-30, Alt I		§ 330.10.30(oo)	C	Yes	I						A			
5-35	Payments under Fixed-Price Architect-Engineer Contracts	§ 530.70.60(b)	C	Yes	I						A			
5-40	RESERVED													
5-45	Design Within Funding Limitations	§ 530.70.60(c)	C	No	I						A			
5-50	Responsibility of the Architect-Engineer Contractor	§ 530.70.60(d)	C	Yes	I						A			
5-55	Work Oversight in Architect-Engineer Contracts	§ 530.70.60(e)	C	Yes	I						R			
5-60	Requirements for Registration of Designers	§ 530.70.60(f)	C	Yes	I						R			
5-65	Subcontractors and Outside Associates and Consultants (Architect-Engineer Services)	§ 530.70.60(g)	C	Yes	I						R			
5-70	Termination (Fixed-Price Architect-Engineer)	§ 530.70.60(h)	C	Yes	I						A			
5-75	Suspensions and Delays	§ 530.70.60(i)	C	Yes	F						R			
6-1	Performance Bond Requirements	§ 610.20.30(a)	C	No	I	A	A	A	A	A	A	A		
6-1, Alt I		§ 610.20.30(b)	C	No	I	A	A	A	A	A	A	A		
6-5	Fidelity Bond Requirements	§ 610.40	P	Yes	L	A	A	A	A	A	A	A		
6-10	Deposit of Assets Requirements	§ 610.20.50(a)	P	Yes	L	A	A	A	A	A	A	A		
6-15	Deposits of Assets Instead of Surety Bonds	§ 610.20.50(b)	C	Yes	I	A	A	A	A	A	A	A		
6-20	Insurance - Work On or Within a Judiciary Facility	§ 630.20.40(a)	C	No	G	A	A	A	A	A	A	A	A	A
6-25	Insurance-Liability to Third Persons	§ 630.20.40(b)	C	Yes	I		A		A	A		A		
6-30	RESERVED													
6-35	Errors and Omissions	§ 630.40.50	C	No	I			A	A	A	A	A	A	

Clause #	Title	Presc. (all references are to Volume 14)	Prov or Cls	IBR?	UCF Sec	FP PROD	CR PROD	FP SERV	CR SERV	T&M LH	A&E	IND DEL	SM PUR	GSA/ FSS/ GWAC
6-40	Federal, State, and Local Taxes	§ 640.30.70(a)	C	Yes	I	A		A		A	A	A		
6-45	Federal, State, and Local Taxes (Noncompetitive Contract)	§ 640.30.70(b)	C	Yes	I	A		A		A	A	A		
6-50	Representation of Rights in Data	§ 650.65(a)	P	No	K	A	A	A	A	A	A	A	A	
6-55	RESERVED													
6-60	Rights in Data - General	§ 650.65(b)	C	No	I	A	A	A	A	A	A	A	*	
6-60 ALT I		§ 650.65(c)	C	No	I	A	A	A	A	A	A	A	*	
6-60 ALT II		§ 650.65(d)	C	No	I	A	A	A	A	A	A	A	*	
6-65	Rights in Data-Special Works	§ 650.65(e)	C	Yes	I	A	A	A	A	A	A	A	A	
6-70	Work for Hire (note 1)	§ 520.75(i) and § 650.65(f)	C	Yes	I			A	A	A	A	A	A	
6-75	Rights to Data in an Offer	§ 650.65(g)	C	No	I	A	A	A	A	A	A	A	A	
6-80	Rights in Data - Existing Works	§ 650.65(h)	C	Yes	I	A	A	A	A	A	A	A	A	
6-85	Commercial Computer Software License	§ 650.65(i)	C	Yes	I	A	A	A	A	A	A	A	A	A
6-90	Notice and Assistance Regarding Patent and Copyright Infringement	§ 660.20(a)	C	Yes	I	A	A	A	A	A	A	A	A	
6-95	Patent Indemnity	§ 660.20(b)	C	Yes	I	A	A	A	A	A	A	A	A	
6-95 ALT I		§ 660.20(c)	C	No	I	A	A	A	A	A	A	A	A	
6-95 ALT II		§ 660.20(d)	C	No	I	A	A	A	A	A	A	A	A	
6-95 ALT III		§ 660.20(e)	C	Yes	I	A	A	A	A	A	A	A	A	
6-100	Waiver of Indemnity	§ 660.20(f)	C	No	I	A	A	A	A	A	A	A	A	
7-1	Contract Administration	§ 715.55(a)	C	Yes	G	R	R	R	R	R	R	R		A
7-5	Contracting Officer's Technical Representative	§ 715.55(b)	C	Yes	G	R	R	R	R	R	R	R		A
7-10	Contractor Representative	§ 715.55(c)	C	No	G	R	R	R	R	R	R	R		A
7-15	Observance of Regulations/Standards of Conduct	§ 715.55(d)	C	Yes	I	R	R	R	R	R	R	R		A
7-20	Security Requirements	§ 330.10.30(o) and § 715.55(e)	C	Yes	I	R	R	R	R	R	R	R	*	A
7-25	Indemnification	§ 715.55(f)	C	Yes	I	R	R	R	R	R	R	R	A	A
7-30	Public Use of the Name of the Federal Judiciary	§ 715.55(g)	C	Yes	I	R	R	R	R	R	R	R	*	R
7-35	Disclosure or Use of Information	§ 715.55(h)	C	Yes	I	R	R	R	R	R	R	R	*	R
7-40	Judiciary-Contractor Relationships	§ 715.55(i)	C	Yes	I	A	A	A	A	A	A	A	*	A
7-45	Travel	§ 715.55(j)	C	Yes	H	A	A	A	A	A	A	A	A	A
7-50	Parking	§ 715.55(k)	C	No	H	A	A	A	A	A	A	A	A	A
7-55	Contractor Use of Judiciary Networks	§ 715.55(l)	C	Yes	H	A	A	A	A	A	A	A	A	A
7-60	Judiciary Furnished Property or Services	§ 720.10.40(a)	P	Yes	L	R	R	R	R	R	R	R	*	A
7-65	Protection of Judiciary Buildings, Equipment, and Vegetation	§ 720.10.40(b)	C	Yes	I			A	A	A	A	A	*	A
7-70	Judiciary Property Furnished "As Is"	§ 720.10.40(c)	C	Yes	I	A	A	A	A	A	A	A	A	A
7-75	Subcontracts	§ 725.10.40(a)	C	No	I	A	R	A	R	R	A	A		
7-80	Competition in Subcontracting	§ 725.10.40(b)	C	Yes	I	A	R	A	R			A		

Clause #	Title	Presc. (all references are to Volume 14)	Prov or Cls	IBR?	UCF Sec	FP PROD	CR PROD	FP SERV	CR SERV	T&M LH	A&E	IND DEL	SM PUR	GSA/ FSS/ GWAC
7-85	Examination of Records	§ 730.20.20	C	Yes	I	R	R	R	R	R	R	R	*	
7-95	Contractor Inspection Requirements	§ 220.10.70(d)	C	Yes	I								A	
7-100A	Limitation of Liability (Products)	§ 220.10.70(e)	C	Yes	I	R	R				A	A		
7-100B	Limitation of Liability (Services)	§ 220.10.70(f)	C	Yes	I			R	R	R	R	A		
7-105	RESERVED													
7-110	Bankruptcy	§ 735.60.40	C	Yes	I	R	R	R	R	R	R	R		
7-115	Availability of Funds	§ 220.50.90(a)	C	Yes	I	A	A	A	A	A	A	A	A	A
7-120	Availability of Funds for the Next Fiscal Year	§ 220.50.90(b)	C	No	I			A	A			A		A
7-125	Invoices	§ 740.20.30	C	Yes	G	R	R	R	R	R	R	R		A
7-125, Alt I		§ 520.75(f)	C	Yes	G	R	R	R	R	R	R	R		A
7-130	Interest (Prompt Payment)	§ 740.30.30	C	Yes	I	R	R	R	R	R	R	R	*	R
7-135	Payments	§ 740.30.50(a)	C	Yes	I	R		R		A	A	A	*	A
7-140	Discounts for Prompt Payment	§ 740.30.50(b)	C	Yes	I	R		R		A	A	A	*	A
7-145	Government Purchase Card	§ 740.30.50(c)	C	Yes	I	A	A	A	A	A	A	A	*	A
7-150	Extras	§ 740.30.50(d)	C	Yes	I	R		R		A	A	A	*	
7-155	Certification of Final Indirect Costs	§ 740.30.50(e)	C	No	I		A		A	A	A	A		
7-160	Limitation on Withholding of Payments	§ 740.40.50(a)	C	Yes	I	A	A	A	A	A		A		
7-165	Penalties for Unallowable Costs	§ 740.40.50(b)	C	Yes	I	A	A	A	A	A	A	A		
7-170	Notice of Intent to Disallow Costs	§ 740.40.50(c)	C	Yes	I	A	R	A	R	A	A	A		
7-175	Assignment of Claims	§ 740.50.40(a)	C	Yes	I	A	A	A	A	A	A	A		
7-180	Prohibition of Assignment of Claims	§ 740.50.40(b)	C	Yes	I	A	A	A	A	A	A	A		
7-185	Changes	§ 745.40.40(a)	C	Yes	I	R	R	R	R	R	R	R	*	
7-190	Change Order Accounting	§ 745.40.40(b)	C	Yes	I	A	A				A	A		
7-195	Excusable Delays	§ 745.45.55(a)	C	Yes	I	A	A	A	A	A		A		
7-200	Judiciary Delay of Work	§ 745.45.55(b)	C	Yes	F	R	R	A					*	A
7-205	Payment for Judiciary Holidays	§ 745.45.55(c)	C	Yes	I			A	A	R		A	*	A
7-210	Payment for Emergency Closures	§ 745.45.55(d)	C	Yes	I	R	R	R	R	R	R	R	*	A
7-215	Notification of Ownership Changes	§ 745.55.40(i)	C	Yes	I	R	R	R	R	R	R	R		
7-220	Termination for Convenience of the Judiciary (Fixed Price)	§ 755.20.60(a)	C	Yes	I	R		R		A		A		
7-223	Termination for Convenience of the Judiciary (Short Form)	§ 755.20.60(b)	C	Yes	I	A	A	A	A	A		A		
7-225	Termination (Cost-Reimbursement)	§ 755.20.60(c)	C	Yes	I		A		A		A	A		
7-225, Alt I		§ 755.20.60(d)	C	Yes	I					A		A		
7-230	Termination for Default - Fixed-Price Products and Services	§ 755.25.60(a)	C	Yes	I	R		R		A	A	A		
7-235	Disputes	§ 755.25.60(b)	C	Yes	I	R	R	R	R	R	R	R	*	R

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Appx 1D: Contracting Officers' Certification Program – Level 1 Purchase Card Program

(***Note:*** *The entire chart must be read to determine the authorities and limitations of Level 1*.)

Training Required for Level 1 Certification – *Judiciary Purchase Card Program Training (desktop training – Course 2)*

Contracting Officers' Certification Program – Level 1	
Dollars	**Conditions**
Up to $5,000 per purchase	open market (with or without competition) using the purchase card only
Types of Actions	
Small Purchase Purchase Orders	open market small purchases using the purchase card up to $5,000 per purchase; no authority to sign purchase orders is delegated
Orders Under GSA Federal Supply Schedules or Contracts Awarded by Judiciary	GSA Federal Supply Schedules: up to the GSA competition threshold, provided the terms of the contract allow orders using the Government purchase card. **See:** Guide, Vol 14, § 310.50.43 (Required Ordering Procedures). Judiciary-wide contracts or BPAs up to the specified maximum order limitation if: (1) the contract and/or BPA doesn't require competition; and (2) the terms of the contract/BPA allow orders using the Government purchase card.
Commercial/ License/Special Use Agreements	not delegated

Contracting Officers' Certification Program – Level 1	
Competitive Open Market Contracts and Contract Modifications	not delegated
Procurement Method	
Other Than Full and Open Competition Procurement Actions (over $5,000)	not delegated
Lowest Price Technically Acceptable Competitive Open Market Procurements	up to $5,000: delegated
Best Value Competitive Procurements	not delegated
Products/Services	
Products	delegated up to the authorized dollar limit of Level 1
Services	delegated up to the authorized dollar limit of Level 1. Restrictions on the purchase of services using the purchase card are in the Judiciary Purchase Card Program Manual
Experts and Consultants under 5 U.S.C. § 3109	not delegated
Space Alteration	not delegated with the exception for those courts delegated real property operations and management authority (i.e., a GSA building delegation). Subject to additional restrictions set forth in the Judiciary Purchase Card Program Manual
Lease of Real Property	not delegated
Architect/ Engineering Services	not delegated

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Appx 1E: Contracting Officers' Certification Program – Level 2 Special Delegated Procurement Programs

(***Note:*** *The entire chart must be read to determine the authorities and limitations of Level 2.*)

1: Treatment Services
2: Halfway House Services
3: Copy Center Services
4: Contract Court Reporting Services
5: Law Books
6: GSA Real Property Operations and Management Delegation (GSA Building Delegation)
7: Court Interpreter Services
8: FPD Case-Related Expert or Consultant Services

Training Required for Level 2 Certification – *Judiciary Basic Procurement Seminar (blended training – Course 3)* and any specialized training programs offered by the responsible program office.

Contracting Officers' Certification Program – Level 2		
Dollars	**Special Delegated Procurement Program**	**Conditions**
Up to $100,000	5, 6, 8	5: sole source and open market. Programmatic approval required for online resources over $25,000. 6: up to the COs delegated limit. 8: case-related expert or consultant services purchased by FPDs.

Contracting Officers' Certification Program – Level 2		
Unlimited	1, 2, 3, 4, 7	must follow approved procedures and use approved boilerplate documents.
Types of Actions	**Special Delegated Procurement Program**	**Conditions**
Commercial/License/ Special Use Agreements	3	copy centers only: must use approved boilerplate.
Competitive Open Market Contracts and Contract Mods	1, 2, 3, 4, 5, 6	1, 2, 3, 4: only with use of approved boilerplate document. 6: up to the delegated limit.
Orders Under Contracts Awarded by Judiciary or Other Federal Agencies	1, 2, 5, 6	1, 2: authorized for services up to maximum order of judiciary-wide and other federal agencies' contracts. Use of the approved J-Net template document is not required when using this authority. 5: authorized up to the maximum order limitation of GSA schedules, as well as judiciary-wide contracts and other federal agencies' contracts. 6: authorized within limits established by the building delegation agreement with GSA.
Procurement Method		
Other Than Full and Open Competition Procurement Actions	4, 5, 7	4: refer to programmatic restrictions 5: up to $100,000. Programmatic approval required for online resources over $25,000 7: refer to programmatic restrictions otherwise: not delegated

Contracting Officers' Certification Program – Level 2		
Procurement Method	**Special Delegated Procurement Program**	**Conditions**
Lowest Price Technically Acceptable Competitive Open Market Procurements	1, 2, 3, 4, 5, 6	1, 2, 3, 4: delegated: must use approved boilerplate. 5 and 6: up to the COs delegated limit.
Best Value Competitive Procurements	N/A	Not delegated
Products/Services		
Products	1, 5, 6	only items covered under special delegated procurement program
Services	1, 2, 3, 4, 5, 6, 7	only those specific services authorized under delegated program
Experts and Consultants pursuant to 5 U.S.C. § 3109	8	delegated to FPDs for case-related services up to $100,000; must follow approved procedures and use approved boilerplate documents
Space Alteration	N/A	not delegated with the exception for those courts delegated real property operations and management authority (i.e., a GSA building delegation).
Lease of Real Property	N/A	not delegated
Architect/Engineering Services	6	other than 6: not delegated

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Appx 1F: Contracting Officers' Certification Program – Level 3

(***Note:*** *The entire chart must be read to determine the authorities and limitations of Level 3.*)

Training Required for Level 3 Certification – *Judiciary Basic Procurement Seminar (blended training - desktop and classroom) plus Federal Appropriations Law*, *(desktop training)*. Biennial continuing education = 16 hours

Contracting Officers' Certification Program – Level 3	
Dollars	**Conditions**
Up to $100,000	small purchases and competitive procurements: see other conditions below
Unlimited	AO and other agency contracts: see other conditions below
Types of Actions	
Noncompetitive open market procurements	up to $25,000 for training products and services up to $5,000 for all other purchases. (For guidance on granting procurement authority to an individual for multiple COCP levels, **see:** Guide, Vol 14, § 140.30.20 (Authority).)
Competitive Small Purchase Open Market Purchase Orders	up to $100,000: delegated
Commercial/License/Special Use Agreements	up to $100,000: delegated including short term use of conference and meeting facilities as authorized by 41 CFR 102-73.155(p). Authority to enter into any agreement for the use of facilities or space on continuous basis is not delegated.
Competitive Open Market Contracts and Contract Modifications	up to $100,000: delegated

Contracting Officers' Certification Program – Level 3	
Orders Under Contracts Awarded by Judiciary or Other Federal Agencies	Authorized for competitive lowest price technically acceptable orders placed under: (1) GSA federal supply schedules for IT up to the specified maximum order threshold. (2) Other precompeted contracts awarded by other federal agencies up to the maximum order threshold of the contract. (3) Judiciary-wide contracts delegated up to the maximum order, if any, of the contract.
Interagency Agreements (IAs) and Memoranda of Understanding (MOUs) for Procurements	Interagency agreements and memoranda of understanding for procurements when the judiciary is the receiving agency: delegated up to $100,000 when approved by chief judge, FPD or the FJC Director (PLO, if delegated) *prior* to signing. When the judiciary is the providing agency, this is not delegated and the request is submitted to the PE for processing.
Procurement Method	
Other Than Full And Open Competition Procurements	Up to $25,000: IT products or services Unlimited: (1) Transit Passes/Vouchers (2) Purchase of non-commercial products or services only available from state/local government entities AO 370 in support of above must be approved by chief judge or FPD (or PLO, if delegated). All other purchases exceeding the applicable competition threshold: not delegated.

Contracting Officers' Certification Program – Level 3	
Lowest Price Technically Acceptable Competitive Open Market Procurements	up to $100,000: delegated
Best Value Competitive Procurements	not delegated
Products/Services	
Products	delegated: to be used only up to the authorized dollar limits of Level 3
Services	delegated: to be used only up to the authorized dollar limits of Level 3
Experts and Consultants pursuant to 5 U.S.C. § 3109	up to $25,000: delegated (**see also:** Guide, Vol 14, Ch 5 (Special Categories of Procurements)) For FPD case-related experts and consultants, **see:** Guide, Vol 14, Appx 1E (Contracting Officers' Certification Program – Level 2 Special Delegated Procurement Programs).
Space Alteration	not delegated; court units must use GSA Reimbursable Work Authorization (RWA)
Lease of Real Property	not delegated
Architect/Engineering Services	not delegated

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Appx 1K: Required Training by Certification Level (Contracting Officers Certification Program)

(**Note:** Certification Level 4 is reserved. All "CON" required courses are Federal Acquisition Institute training courses or equivalent. **See:** www.fai.gov)

Required Training	**Hrs**	**Certification Level**						
		1	**2**	**3**	**4**	**5**	**6**	**7**
Procurement Liaison Officers								
Judiciary Executive Procurement Oversight Seminar (desktop training – Course 1)	*							
Contracting Officers								
Judiciary Purchase Card Program Training (desktop training – Course 2)	1	X						
Judiciary Basic Procurement Seminar (blended training – desktop – Course 3 plus two-day classroom)	*		X	X				
Specialized Training Programs Offered by the Responsible Program Office and AO [hours vary by program]			X					
Federal Appropriations Law (desktop training)	8			X		X	X	X
Shaping Smart Business Arrangements (CON 100) (online)						X	X	X
Mission Support Planning (CON 110) (online)						X	X	X
Mission Strategy Execution (CON 111) (online)						X	X	X
Mission Performance Assessment (CON 112) (online)						X	X	X
Mission Focused Contracting (CON 120) (classroom)	80					X	X	X
Judiciary Basic Procurement (online)						E		
Simplified Acquisitions Procedures (classroom)						E		
Business Decisions for Contracting (CON 214) (online)							X	X

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Required Training	**Hrs**	**Certification Level**						
		1	**2**	**3**	**4**	**5**	**6**	**7**
Intermediate Contracting for Mission Support (CON 215)	64						X	X
Legal Considerations in Contracting (CON 216) (online)							X	X
Cost Analysis and Negotiation Techniques (CON 217)	40						X	X
Advanced Contracting for Mission Support (CON 218)	80						X	X
Best Value Source Selection Using Tradeoffs (classroom)							E	
Performance-Based Service Acquisitions (classroom)							E	
Writing Performance Work Statements (classroom)							E	
Strategic Sourcing (online)							E	
Advanced Business Solutions for Mission Support (CON 353)	80							X

X = Mandatory E = Elective

NOTE: Elective training required for COCP Level 5, 6 and 7 may be obtained from FAI or various commercial and educational organizations and is subject to the approval of the PE.

* The approximate time to complete each module will be displayed in the online course.

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Ch 2: Procurement Planning and Preparations

§ 210 Policy
- § 210.10 In General
- § 210.20 Roles and Responsibilities
- § 210.30 Requesting Office Responsibilities
- § 210.40 Purchasing Office Responsibilities
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- § 210.60 Market Research
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§ 220 Terms and Conditions
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- § 220.30 Liquidated Damages
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§ 230 Specifications, Statements of Work and Product Descriptions
- § 230.10 Overview
- § 230.20 Specifications
- § 230.30 Statements of Work (SOW)
- § 230.40 Product Descriptions

Appendix

Appx 2A Sample Evaluation Factors

Last revised (Transmittal 14-003) April 4, 2011

§ 210 Policy

§ 210.10 In General

Procurement planning is the process by which the efforts of all personnel responsible for significant aspects of a procurement are coordinated and integrated comprehensively. The formality and detail of the planning and preparation process will vary with the size, complexity, mission-criticality, and projected dollar value of the requirement. Procurement planning must include the related budget planning. Major purchases must be planned and budgeted consistently with the court's budget process, governance mechanisms and management reporting processes. A summary of planned major procurements is included as part of management reports to the chief judge or federal public defender per the Management Oversight and Stewardship Handbook. It includes one-year, two-year, and five-year planning lead times.

§ 210.20 Roles and Responsibilities

Initiating and planning procurement actions requires a team effort. The team must include those from both the requesting and purchasing offices. For a court unit, federal public defender organization (FPDO), or the Federal Judicial Center (FJC), the purchasing office is the office where the procuring function resides; in the Administrative Office (AO), it is the Procurement Management Division (PMD). Although other judiciary offices play a role in the procurement process, overall responsibility for the contracting aspects within the procurement process lies with the Contracting Officer (CO). However, the planning for major purchases is the responsibility of the unit executive.

§ 210.30 Requesting Office Responsibilities

The requesting office must identify, prepare, and provide procurement requirements to the purchasing office. The procurement requirements will be in a requirements package that contains documents supporting the requirements. Requesting office representatives are responsible for:

(a) identifying potential procurement requirements;

(b) initiating discussions with purchasing office representatives;

(c) providing a complete requisition, including, but not limited to:

(1) properly approved, in writing, expenditure authority;

(2) any required justifications, (for example, preparing a justification for other than full and open competition, if applicable);

(3) description of the essential elements of the proposed purchase;

(A) a clear and specific description of the products or services required;

(B) a schedule for delivery or performance;

(C) a list of deliverable data or reports, including:

- media in which they will be furnished,
- frequency,
- due date, and
- recipients;

(d) an independently developed government price or cost estimate for the requested products or services, including the base period and all option periods, as applicable; and

(e) technical evaluation criteria for use in evaluating offers, if appropriate;

(f) conducting market research and suggesting potential sources of supply;

(g) recommending additional information to be incorporated into the solicitation package, including:

- the need for options,
- applicability of special payment terms,
- license prerequisites,
- insurance or warranty requirements,
- the need for an indemnity,
- limitations on subcontracting, and
- other requirement-specific contractual provisions; and

(h) advising on the necessity of conducting a pre-solicitation or pre-offer conference.

§ 210.40 Purchasing Office Responsibilities

The purchasing office will help the requesting office prepare the requirements packages, as needed. COs are responsible for:

(a) working with the requesting office to identify upcoming requirements, planning how to meet them, and preparing a source selection plan, as applicable;

(b) ensuring that purchasing office resources will be available once the requesting office has established its requirements;

(c) maintaining effective working relationships with requesting office representatives and other organizations that participate in the procurement process;

(d) reviewing requirements packages for completeness and clarity;

(e) conducting market research (**see:** § 210.60) and ensuring that all firms to be solicited are given a fair and equitable opportunity to provide their most effective and economical products or services;

(f) working directly with requesting office representatives to finalize statements of work and/or specifications and resolve any deficiencies;

(g) ensuring that any public announcement or advertising requirements are met (**see:** Guide, Vol 14, § 320);

(h) establishing offer evaluation panels as needed;

(i) determining appropriate contract type and terms and conditions;

(j) sending all procurement actions exceeding the CO's delegation level to the PE for review (court unit, FPDOs, and FJC only);

(k) adhering to the procurement milestone schedule to ensure timely award;

(l) issuing the solicitation package: request for quotations (RFQ); request for proposals (RFP); request for information (RFI) (for definitions of these terms, **see:** Glossary);

(m) serving as the primary point of contact with potential and actual offerors;

(n) reviewing the reports from the offer evaluation panel, source selection boards, etc., to ensure the evaluation criteria stated in the solicitation are applied properly;

(o) determining the most advantageous offer (where there is no designated Source Selection Authority (SSA) other than the CO); and

(p) executing the award.

§ 210.50 Procurement Planning Benefits

Among the benefits of procurement planning are:

(a) saving the judiciary money by obtaining price reductions through quantity discounts;

(b) allowing better workload planning and scheduling;

(c) consolidating requirements for greater economies;

(d) providing sufficient lead time and resources in the selection of appropriate contract types and development of innovative contracting methods;

(e) providing sufficient time to obtain required approvals before submission of requisitions;

(f) identifying and obtaining necessary reviews and approvals throughout the procurement process;

(g) allowing for early identification and resolution of potential problems;

(h) ensuring the adequacy of specifications or statements of work;

(i) identifying a sufficient number of capable sources to promote adequate competition;

(j) preventing unrealistic delivery or performance schedules; and

(k) receiving acceptable products and services in a timely manner.

§ 210.60 Market Research

§ 210.60.10 In General

Market research is central to sound procurement planning and must be addressed by the whole procurement team. Market research helps identify:

(a) products or services that are available to satisfy a requirement;

(b) whether the judiciary's minimum requirements are practical/realistic;

(c) source availability to furnish the required products or services;

(d) how to appropriately describe the requirements; and

(e) whether cost estimates and schedules are realistic.

§ 210.60.20 Market Research Methods

Market research methods include:

(a) conducting industry briefings or presolicitation discussions or conferences with potential contractors to discuss requirements and to obtain recommendations;

(b) publicizing new specifications and, when appropriate, issuing solicitations for informational or planning purposes far enough in advance to permit generation and consideration of industry comments;

(c) attending industry and scientific conferences and acquiring literature about commercial products, industry trends, product availability, business practices, product/service reliability, and prices;

(d) analyzing the purchase history of requirements to determine the level of competition, prices, and performance results;

(e) publishing sources-sought notices in accordance with Guide, Vol 14, § 315; or

(f) consulting with AO staff, other court units, other government agencies, or non-profit organizations.

§ 210.60.30 Market Research Results

Market research results may include:

(a) assessing the suitability and adaptability of commercially available products or services to satisfy judiciary requirements;

(b) identifying those elements of the requirements that may pose significant risks and added costs; or

(c) determining the status of applicable technology and the extent and success of its commercial application.

§ 210.60.40 Solicitation Provision

The CO will insert Provision 2-1, "Request for Information or Solicitation for Planning Purposes" in solicitations issued for planning or informational purposes, and clearly note on the face of the solicitation that it is for information or planning purposes only. The CO will appropriately fill in the provision's blank spaces.

§ 210.70 Source Selection Plans

§ 210.70.10 General

The CO will develop a source selection plan for each competitive procurement which is:

(a) above the judiciary's small purchase threshold (**see:** Guide, Vol 14, § 325.10) or

(b) below the judiciary's small purchase threshold when the CO determines a best value solicitation is appropriate.

§ 210.70.20 Plan Requirements

The CO will develop the source selection plan in collaboration with the evaluation panel, requesting office, and other advisors as needed.

(a) The plan must outline the objective of the procurement and address operational requirements, the independent government estimate of the cost, and any special requirements for quality and reliability.

(b) If using best value, the plan must also include evaluation factors, tailored to the specific needs and nature of the specific procurement. The evaluation factors must address the significant discriminating areas that will be considered in evaluating and determining the best choice. The source selection plan must include:

- the order of relative importance of the factors, and
- the evaluation methods and procedures that will be used in evaluating competing offers.

§ 210.70.30 Source Selection Processes

(a) Technically acceptable lowest price source selection is used when a contract will be awarded to the technically acceptable offeror offering the lowest price. Solicitations using this approach must state the judiciary's

minimum technical requirements. For example, a copy machine's technical standard could be the number of pages photocopied per minute. All offers meeting or exceeding these technical requirements will be evaluated based on price. Technically acceptable lowest price:

(1) is best suited for procurements where the judiciary is acquiring a product or routine service for which it has a well-defined specification or statement of work; and

(2) will include commercial or off-the-shelf products or services where there has been no justification for a best value source selection.

(b) Best value source selection is used for procurements when the quality of performance above the minimum acceptable level is necessary or will enhance critical mission accomplishment. The best value method:

(1) involves an evaluation and comparison of technical, experience and performance factors.

(2) is suitable only for certain types of negotiated procurements and is more complicated to conduct than the technically acceptable lowest price approach.

(3) is preferred when the judiciary is buying professional and technical services, or a product to be built to a performance specification.

(4) requires the CO (or other source selection official) to make a meaningful price/technical trade-off decision, which is derived from an analysis of the offers measured against the evaluation criteria.

(5) requires that the solicitation clearly state all evaluation factors and significant subfactors which will affect the award decision, their relative importance, and whether all evaluation factors other than cost or price, when combined, are significantly more important, equal to, or significantly less important than cost or price.

(6) allows award to other than the lowest price offer, but the price/technical trade-off documentation must justify the determination to make award other than to the lowest priced/technically acceptable offer.

§ 210.70.40 Evaluation Panels

For each source selection plan, the CO must establish an evaluation panel.

(a) The size and membership depends upon the purchase's:

- size,
- scope,
- complexity, and
- mission-criticality of the goods or services being procured.

(b) Evaluation panel responsibilities include the following:

(1) assist the CO in developing a source selection plan;

(2) evaluate the offers received, efficiently and impartially, in accordance with:

- the source selection plan, and
- the evaluation factors included in the solicitation; and

(3) present a written report of its findings to the CO or Source Selection Authority. The report will contain narrative statements discussing the major strengths and weaknesses of the various offers as compared to the evaluation factors. This report will be used by the CO to hold discussions, if necessary, and will be used to select the successful offeror.

(c) Evaluation panel efforts may be limited to:

(1) one panel but two separate reviews:

- first reviewing the technical offers,
- then with cost or price evaluated; or

(2) subpanels may be established for separate evaluation of:

- the technical offer, and
- the proposed price.

(d) It may occasionally be appropriate to contract with outside consultants to participate in evaluation panels when the necessary expertise does not exist within the judiciary. An outside evaluator must sign a non-disclosure agreement prior to being given access to any offer information.

§ 210.70.50 Evaluation Factors and Sub-Factors

Properly chosen and clearly stated evaluation factors are essential to effective offer evaluation and proper ratings by evaluation panel members. For a sample of technical evaluation factors for use in a solicitation for services, **see:** Appx 2A. Evaluation factors to be used for commercial off-the-shelf product solicitations are generally less complex. Evaluation sub-factors may be established under the appropriate factor. For example, under a "management plan" factor, there could be sub-factors for "organization" and "quality control plan".

(a) Evaluation factors and sub-factors must be in accordance with the objectives of the purchase. Cost or price related factors or sub-factors and satisfactory past performance ratings are always evaluated, even if the relative weight is low.

(b) The appropriate weight must be stated for each factor or sub-factor in relation to the other factors/sub-factors.

(c) These weights could be stated as:

(1) a list of the factors and sub-factors with a statement that they are in descending order of importance;

(2) a statement that one factor or sub-factor is more important, or significantly more important, than another; or

(3) any other expression that clearly communicates the relative weight of the factors or sub-factors and indicates factors or sub-factors which are of equal weight.

(d) The absence of a statement in the solicitation reflecting the relative weight(s) of evaluation factors or sub-factors will be construed as all factors or sub-factors being of equal weight.

(e) Use of too many factors and sub-factors can:

- unduly complicate and extend the evaluation process;
- dilute essential evaluation elements; and
- lead to an unintended leveling of the evaluation scores. (**Note:** Leveling of the scores tends to make the offers appear to be equal, when in fact they are not. This will make the final choice more difficult.)

(f) Examples of evaluation factors other than cost or price that may apply are:

- a demonstrated understanding of the solicitation requirement;
- a clearly developed management plan;
- an effective quality assurance plan;
- qualified and experienced key personnel;
- adequate resources;
- appropriate experience; and
- excellence of design.

§ 210.70.60 Cost or Price Related Factors

Cost or price related factors must be treated and evaluated separately from the other evaluation factors. The weight to be given to them must always be stated relative to the other evaluation factors in the solicitation, and may increase in importance if the technical ranking of offerors is close. Cost/price offer specifics, such as the proposed number of hours in each labor category, can also provide insight into an offeror's understanding of the requirement, their resources, or other evaluation factors.

§ 210.70.70 Rating Systems

Many forms of rating systems are suitable for evaluation purposes, from adjectival ratings (outstanding/excellent/good) to color codes (blue/green/yellow/red) to various forms of numerical scoring. Depending on the specific procurement, one system may be preferable to another. However, the rating system used must be:

- simple,
- practical, and
- applied consistently to all proposals by the evaluation panel members.

§ 220 Terms and Conditions

§ 220.10 Quality Control/Assurance Requirements

§ 220.10.10 In General

The CO must include the appropriate quality control/assurance requirements in all solicitations and contracts. The type and extent of contract quality control/assurance requirements depend on the complexity, size, and risks for delivery or completion of service or product involved in the procurement. Such requirements range from inspection at time of delivery to the contractor's implementation of a comprehensive quality control program. Solicitations and contracts may provide for alternate inspection

methods to promote competition and lower costs. The solicitation may also permit contractor-recommended alternatives.

§ 220.10.20 Small Purchase Procedures

For products or services purchased using small purchase procedures, the judiciary usually relies on the contractor to accomplish all appropriate inspection and testing to ensure the deliverables conform to contract quality requirements up to the point of delivery to the judiciary for acceptance.

§ 220.10.30 Inspection Before Delivery

When the CO determines that the judiciary needs to test the products or services before delivery, or decides that the contractor's internal work processes are insufficient, the judiciary should not rely on inspection by the contractor. When making these determinations, the CO must consider the:

(a) nature of the products or services being purchased and their intended use;

(b) potential losses in the event of defects;

(c) likelihood of uncontested replacement or correction of defective work; and

(d) cost of detailed inspection.

§ 220.10.40 Standard Inspection Terms

Both Clause 2-5A, "Inspection of Products", and Clause 2-5B, "Inspection of Services", include the following standard inspection terms/requirements:

(a) the contractor is required to provide and maintain an internal inspection system acceptable to the judiciary;

(b) the judiciary has the right to make inspections and tests while work is in process, if appropriate; and

(c) the contractor is required to keep and make available to the judiciary complete records of its inspection system.

§ 220.10.50 Quality Assurance at Judiciary Site or Destination

(a) Quality assurance performed at destination is normally limited to inspection of the products or services. Inspection is appropriate at destination when:

(1) products are commercial or off-the-shelf and require no technical inspection;

(2) necessary testing equipment is located only at destination;

(3) the procurement is for services performed at destination; or

(4) it is determined to be in the judiciary's interest.

(b) The following suggestions will assist the judiciary in inspecting for the purposes of accepting or rejecting the product or service. The judiciary program representative will routinely examine products or services for the purposes of acceptance at the time of delivery or when an invoice is presented on a monthly basis. Where more complex services or products are involved, the program representative must be a qualified Contracting Officer's Technical Representative (COTR) formally appointed by the Contracting Officer. At this time, the representative/COTR will inspect the effectiveness of the delivery or performance to determine its acceptance. When the CO receives a report from the representative/COTR which indicates that the delivery or performance is not in conformance with the contract requirements, then a deduction from the invoice may be negotiated for an appropriate amount, or the item may be re-delivered or re-performed if it is in the judiciary's best interest, considering time and expense.

§ 220.10.60 Quality Assurance at Contractor Site or Origin

Solicitations and contracts must require that quality assurance, including inspection, be performed at origin (contractor's site) when:

(a) performance at any other place would require uneconomical disassembly or destructive testing;

(b) considerable loss would result from the manufacture and shipment of unacceptable products or from a delay in making necessary corrections;

(c) special required instruments, gauges, or facilities are available only at origin;

(d) performance at any other place would destroy or require the replacement of costly packing and packaging; or

(e) it is determined to be in the judiciary's interest.

§ 220.10.70 Clauses

The CO will include the following clause(s), as indicated, in the solicitation or contract document:

§ 220.10.70 Clauses for Inclusion in Solicitations or Contracts	
Clause or Provision	**is included...**
(a) Clause 2-5A, Inspection of Products	In all solicitations and contracts for products, which are expected to exceed the judiciary's small purchase threshold. The CO may include in solicitations and contracts below the judiciary's small purchase threshold if the CO determines inclusion is in the judiciary's interest.
(b) Clause 2-5B, Inspection of Services	In all solicitations and contracts for services, which are expected to exceed the judiciary's small purchase threshold, unless another appropriate inspection clause applies (e.g., Clause 5-10, "Inspection of Professional Services"). The CO may include in solicitations and contracts below the judiciary's small purchase threshold if the CO determines inclusion is in the judiciary's interest.
(c) Clause 2-10, Responsibility for Products	In solicitations and contracts for (a) products or (b) services involving the furnishing of products, when a fixed-price contract is contemplated and the contract is expected to exceed the small purchase threshold. The CO may include the clause in actions below the small purchase threshold when the CO determines the clause is needed.
(d) Clause 7-95, Contractor Inspection Requirements	In solicitations and contracts for products or services when the contract amount is expected to be at or below the judiciary's small purchase threshold and inclusion of the clause is necessary to ensure an explicit understanding of the contractor's inspection responsibilities.
(e) Clause 7-100A, Limitation of Liability (Products)	In all solicitations and contracts in excess of the judiciary's small purchase threshold requiring delivery of products.

§ 220.10.70 Clauses for Inclusion in Solicitations or Contracts	
Clause or Provision	**is included...**
(f) Clause 7-100B, Limitation of Liability (Services)	In all solicitations and contracts in excess of the judiciary's small purchase threshold requiring performance of services.

§ 220.15 Acceptance of Products and Services

§ 220.15.10 Definition

Acceptance constitutes acknowledgment that the products or services provided conform with applicable quality and quantity requirements of the contract.

§ 220.15.20 Solicitation and Contract Requirements

Solicitations and contracts must specify the time, place and criteria for acceptance. Failure to provide clear and unambiguous criteria for acceptance can undermine the judiciary's ability to reject unacceptable products and/or services. Acceptance may take place before delivery, at the time of delivery, or after delivery. Products or services will ordinarily not be accepted before completion of judiciary contract quality assurance actions. Service contracts may include a deduction schedule stating how much or how to calculate what may be deducted from the contractor's invoice for unsatisfactory performance.

§ 220.15.30 Transfer of Title and Risk of Loss (Products Only)

(a) Title to products will pass to the judiciary upon formal acceptance, regardless of when or where the judiciary takes physical possession, unless the contract specifically provides for earlier transfer of title. An example of when it might be appropriate to specify earlier transfer of title is if it is anticipated that delivery of the product(s) will be significantly in advance of installation and final acceptance, such as when equipment is ordered and delivered during a renovation project and cannot be installed until the renovation is completed, etc. In this instance, if the product will be under the judiciary's control for a lengthy period of time period to acceptance, specifying earlier transfer of title may be appropriate.

(b) Unless the contract specifically provides otherwise, under Clause 2-10 risk of loss of or damage to products will remain with the contractor until, and will pass to the judiciary upon:

(1) delivery of the products to a carrier if transportation is f.o.b. origin; or

(2) acceptance by the judiciary or delivery of the products to the judiciary at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.

(c) Paragraph (b) of this section will not apply to products that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such non-conforming products remains with the contractor until cure or acceptance. After cure or acceptance, paragraph (b) of this section will apply. For information on acceptance and rejection and cure, **see:** Guide, Vol 14, § 735 (Quality Assurance).

(d) The contractor will not be liable for loss of, or damage to, products which is caused by the negligence of officers, agents, or employees of the judiciary acting within the scope of their employment.

§ 220.20 Warranties

§ 220.20.10 In General

A warranty clause must be used when it is in the judiciary's interest to have the right to assert claims regarding defective products or services after their acceptance. A warranty clause gives the CO additional time after acceptance to require contractor correction of deficiencies or defects, reperformance, an equitable adjustment in the price, or other appropriate remedies. Warranties should generally not be used in cost contracts, labor-hour or time-and-material contracts.

§ 220.20.20 Warranty Variables

(a) Warranty coverage may begin with delivery or at the occurrence of a specified event, such as installation of equipment.

(b) This coverage may continue for a given number of days or months or until the occurrence of another specified event.

(c) The value of a warranty clause depends upon the particular products or services being procured.

(d) The clause, its use, terms, and conditions are influenced by many factors and must be tailored to fit the specific purchase and individual risks involved.

(e) It is important to remember that a contractor may factor warranty clause requirements into an item's purchase price, making it more expensive. In addition, there is a cost to the judiciary in administration and enforcement of the warranty.

For additional information on enforcing warranties, **see:** Guide, Vol 14, § 735.50.

§ 220.20.30 Criteria for Requiring a Warranty

With input from the requesting office as to their needs, the CO decides whether or not to require and use a warranty clause. The clause may be used either for individual purchases or classes of purchases. Before making this decision, the CO must consider the following:

(a) cost of the warranty (including the effect of a warranty on vendor pricing and the administrative cost of enforcing the warranty);

(b) criticality of meeting specifications;

(c) potential damage to the judiciary in the event of defective performance;

(d) cost of correction or replacement, either by the contractor or another source, in the absence of a warranty;

(e) ability to take advantage of the warranty, considering shipping time, distance of the user from the source, and other factors;

(f) the effect of the warranty as a deterrent against deficiencies;

(g) the extent to which acceptance is to be based upon contractor inspection or quality control;

(h) whether the inspection and acceptance system provides adequate protection against deficiencies;

(i) reliance on brand-name integrity;

(j) whether a warranty is regularly given for a commercial component of a more complex end item;

(k) whether the product or service is intended for the safety or protection of employees;

(l) the stage of development of the item and the state of the art;

(m) customary trade practices; and

(n) the level of difficulty of detecting defects prior to acceptance.

§ 220.20.40 Clauses and Provisions

A warranty clause may be included in solicitations and contracts as indicated in the table below.

§ 220.20.40 Warranty Clauses for Inclusion in Solicitations or Contracts	
Clause or Provision	**is included in...**
(a) Provision 2-15, Warranty Information	solicitations for products or services, if warranties are customary in the trade.
(b) Clause 2-20A, Incorporation of Warranty	solicitations and contracts when it is anticipated that a contractor's standard commercial warranty will be offered.
(c) Clause 2-20B, Contractor Warranty (Products)	solicitations and contracts for products when the CO has made a written determination for the file that a warranty is appropriate for the products being purchased and that the benefits are expected to outweigh the costs.
(d) Clause 2-20C, Warranty of Services	solicitations and contracts for services when the CO has made a written determination for the file that a warranty is appropriate for the services being purchased and that the benefits are expected to outweigh the costs.

§ 220.25 Delivery or Performance Schedule

§ 220.25.10 In General

An essential element of the solicitation and contract is a realistic delivery or performance schedule, which must be clearly stated. The solicitation and contract must specify the delivery mode, as well as the time and place of delivery or performance.

§ 220.25.20 Solicitation Delivery Instructions

Solicitation delivery instructions must specify the f.o.b. point, defined as follows:

(a) F.o.b. Destination

F.o.b. destination means that the consignor or seller is responsible for delivery of the products to a destination specified in the solicitation, usually a judiciary office. Unless the contract provides otherwise, the cost of shipping and risk of loss are borne by the seller or consignor. Title to the products passes to the judiciary when the products arrive at the stated destination; or

(b) F.o.b. Origin

F.o.b. origin means that the consignor or seller is responsible for delivery of the products to the carrier, i.e., to the rail station, airport, post office, etc. Unless the contract provides otherwise, the cost of shipping and risk of loss must be borne by the judiciary, either as a separately identifiable invoice amount paid to the contractor over and above the price of the product purchased or through use of a Government Bill of Lading or a separately awarded shipping contract. Title passes to the judiciary when delivery is made to the carrier. The contractor's risk is limited to loss or damage caused by improper marking or packing of the products.

§ 220.25.30 Selecting the F.o.b. Point

The f.o.b. point must be determined on the basis of overall costs involved. It is important to remember that delivery clauses impact an item's price. The destination shipment expense may be included in an item's purchase price, and make it more expensive. The CO must consider that lower freight rates may be available to the judiciary and that government-controlled transportation may be available.

§ 220.25.40 Acceptance at Destination

When acceptance of products is at destination, the purchase document delivery terms must specify f.o.b. destination.

§ 220.25.50 Liquidated Damages

If the judiciary can expect to suffer damage from late delivery or performance, liquidated damages may be included in the solicitation or contract (**see:** § 220.30).

§ 220.25.60 Delivery Schedules

(a) Delivery or performance schedules may be expressed in terms of:

(1) Specific calendar dates;

(2) Specific periods from the date of the contract; i.e., from the date of award or from the date shown as the effective date of the contract;

(3) Specific periods from the date of receipt by the contractor of the notice of award (including notice by receipt of an executed contract document from the judiciary); or

(4) Specific time for delivery after receipt by the contractor of each individual delivery order issued under the contract, as in indefinite delivery type contracts.

(b) A solicitation's delivery schedule may be a firm date and state that it is based upon an assumption that award will be made by a certain date. In the event that award is made after that date, the delivery schedule must be appropriately adjusted in order not to curtail the delivery time to the prejudice of the contractor because of delay by the judiciary in making an award.

(c) If the delivery schedule is based on the date of the contract, the contracting officer will mail or otherwise furnish to the contractor the contract, notice of award, or other contract document not later than the date of the contract.

(d) If the delivery schedule is based on the date the contractor receives the notice of award, or expressed in terms of specific calendar dates on the stated assumption that notice of award will be received by a specified date, the CO will send the contract, notice of award or other contract document by certified mail, return receipt requested, or by any other method that will provide evidence of the date of receipt by the contractor.

§ 220.25.70 Product-Related Delivery Clauses and Provisions

The CO will include the following clause(s) as applicable in the solicitation or contract document:

§ 220.25.70 Product-Related Delivery Clauses and Provisions	
Clause or Provision	**is included in...**
(a) Clause 2-25A, Delivery Terms and Contractor's Responsibilities	solicitations and contracts for products or services involving the furnishing of products.

§ 220.25.70 Product-Related Delivery Clauses and Provisions		
Clause or Provision		**is included in...**
(b)	Clause 2-25B, Commercial Bill of Lading Notations	cost-reimbursement or fixed price f.o.b. origin solicitations and contracts for products or services involving the furnishing of products anticipated to exceed the judiciary's small purchase threshold. The CO will appropriately fill in the clause's blank spaces.
(c)	Clause 2-30A, Time of Delivery	solicitations and contracts which specify a required delivery schedule, but the judiciary may consider an earlier delivery advantageous.
(d)	Clause 2-30B, Desired and Required Time of Delivery	solicitations and contracts when the judiciary desires delivery by a certain time, but requires delivery by a specified later time, and the delivery schedule is to be based on the date of the contract award.
(e)	Clause 2-35, F.o.b. Destination, Within Judiciary's Premises	solicitations and contracts when delivery term is f.o.b. destination within the judiciary's premises, for example delivery of heavy equipment by the vendor to a specific room within a building, rather than to a loading dock.
(f)	Clause 2-40A, Variation in Quantity	solicitations and contracts when authorizing a variation in quantity in fixed-price contracts for products or for services that involve the furnishing of products. The CO will appropriately fill in the clause's blank spaces.
(g)	Clause 2-40B, Delivery of Excess Quantities	solicitations and contracts when a fixed-price products contract is contemplated and the judiciary may be willing to accept a quantity greater than that specified.
(h)	Clause 2-45, Packaging and Marking	all solicitations and contracts for products, or for services involving the furnishing of products.
(i)	Clause 2-95, Material Requirements	solicitations and contracts for products which are not commercial or off-the-shelf items.

§ 220.25.70 Product-Related Delivery Clauses and Provisions	
Clause or Provision	**is included in...**
(j) Provision 2-105, Economic Purchase Quantity-Products	solicitations for products unless: • the purchase is being made under a GSA multiple award schedule; • the CO determines the judiciary already has the data; • the data is not otherwise readily available; or • it is impracticable for the judiciary to vary its future requirements to take advantage of economic purchase quantities.

§ 220.25.80 Service-Related Provisions and Clauses

Procurement planning also requires the CO to determine the applicability of various provisions and clauses to the performance of services. Include the following provisions and clauses as indicated:

§ 220.25.80 Service-Related Provisions and Clauses	
Clause or Provision	**is included in...**
(a) Clause 2-50, Continuity of Services	solicitations and contracts for services, when: (1) the services are considered vital to the judiciary; (2) must be continued without interruption; (3) if, upon contract expiration, a successor (either the judiciary or another contractor), is likely to continue the services; and (4) the judiciary anticipates difficulties during the transition from one contractor to another, or from the contractor to the judiciary.

§ 220.25.80 Service-Related Provisions and Clauses	
Clause or Provision	**is included in...**
(b) Clause 2-55, Privacy or Security Safeguards	all solicitations and contracts for information technology that require security of information technology, and/or are for the design, development, or operation of a system of records using commercial information technology services or information technology support services.
(c) Clause 2-60, Stop-Work Order	all solicitations and contracts.
(d) Clause 2-65, Key Personnel	solicitations and contracts for services when it is necessary to identify contractor key personnel because they have the required expertise. The CO may determine that this clause is not necessary, either because contractor flexibility is desired, or it is cost prohibitive to pay extra for specific expertise. The CO will appropriately fill in the clause's blank spaces to identify, for the solicitation, the labor categories or positions considered key and, in the contract award, the individuals identified for these key positions in the successful offeror's proposal.
(e) Provision 2-70, Site Visit	solicitations for services to be performed on judiciary installations, when a site visit is appropriate.

§ 220.30 Liquidated Damages

§ 220.30.10 In General

Liquidated damages are one of several remedies the judiciary may use when a delay in delivery or performance, attributable to the contractor, will cause damage to the judiciary. The CO must receive written approval from the PE before including a liquidated damages clause in the solicitation. For guidance on imposing liquidated damages after contract award, **see:** Guide, Vol 14, § 735.25 (Assessing Liquidated Damages).

§ 220.30.20 Applicability

Liquidated damages may be included in solicitations and contracts when:

(a) the time, delivery, or performance is such an important factor in the performance of the contract that the judiciary may reasonably expect to suffer damage if the delivery or performance is delinquent; and

(b) the amount of actual damages would be difficult or impossible to determine or prove.

§ 220.30.30 Basis of Liquidated Damages Amount

Liquidated damages must not be used punitively for a contractor's failure, or as a negative performance incentive, but only as a re-payment of judiciary loss. Any formula for calculating liquidated damages must be based on an analysis of the procurement-specific anticipated amount of judiciary losses that would directly result from delay in contractor delivery or performance.

§ 220.30.40 Determination and Documentation

(a) The CO must determine and document in the file in each case:

(1) why the use of liquidated damages is appropriate; and

(2) how the rate was determined reasonable, and not punitive.

(b) The determined rate must, at a minimum, cover the estimated cost of inspection and oversight for each day of delay. Whenever the judiciary is likely to suffer other specific damages due to a contractor-caused delay, the rate must also include an amount for these damages. Examples of specific damages are the:

- cost of substitute facilities,
- cost of lost work-hours or productivity, or
- rental of buildings or equipment.

§ 220.30.50 Clause

If the use of liquidated damages is approved by the PE, include Clause 2-75, "Liquidated Damages" in solicitations and contracts, inserting in the blank the dollar amount of the damages to be assessed per day (or per alternate unit of time) in the event of contractor caused delay.

§ 220.35 Judiciary Property

(a) The judiciary may provide materials or other property to a contractor for its use in performance of a contract when doing so will result in significant economies, standardization, expedited production, or when it is otherwise in the judiciary's interest.

(b) Judiciary-furnished property must be specified in the solicitation and the resulting award document in sufficient detail (including inventories or requisitioning procedures) to enable offerors to evaluate the requirement and consider it in their pricing proposal.

(c) When the judiciary will furnish property, the solicitation and resulting award document must include Clause 2-80, “Judiciary Property”. **See also:** Guide, Vol 14, § 720.

§ 220.40 Options

§ 220.40.10 In General

Options may be included in solicitations and contracts when:

(a) increased requirements during the performance period are anticipated and subsequent competition would be impractical due to such factors as production lead-time and delivery requirements;

(b) continuing performance past the original performance period may be required; or

(c) both.

Note: Options that have been priced and evaluated in a competitive procurement are preferable to negotiating a price for additional quantities or time extensions with the successful contractor after award of a contract. The judiciary will generally receive more favorable pricing when the options are identified and priced in the initial offer. If, after award, a need arises for additional quantities or continued performance, the CO must determine whether the new quantity or time extension may be considered to be within the original scope of the contract or not. Additional quantities or continued performance which cannot be considered within scope must be the subject of a new competitive procurement or justified as a sole source procurement. **See:** Guide, Vol 14, § 335.30.

§ 220.40.20 Option Pricing

Solicitations normally should allow option quantities to be offered without limitation as to price, especially if the option quantity is to be considered in the evaluation for award.

An exceptional circumstance when the solicitation may require option quantities to be priced the same as the base quantities is when future competition for the option quantity is impracticable.

§ 220.40.30 Restrictions

Option provisions and clauses may not be included in solicitations or contracts when:

(a) the contractor would be required to incur undue risks (such as when the price or availability of necessary materials or labor cannot be reasonably estimated); or

(b) market prices for the products or services involved are likely to fluctuate or change substantially. This may occur, for example, in procurement of paper or petroleum or petroleum-based products; or,

(c) the option represents known firm requirements for which funds are available, unless:

(1) the basic quantity is a learning or testing quantity and there is some uncertainty as to contractor or equipment performance, and

(2) competition for the option is impracticable once the initial contract is awarded.

§ 220.40.40 Limitations on Options

In the case of options for the performance of services, the total of the base and option periods must not exceed five years for contracts which are subject to the Service Contract Act.

§ 220.40.50 Required Contract Terms

The solicitation and resulting contract must specify:

(a) the limits of the option(s) as to additional quantities of products and/or services that may be purchased; or

(b) the duration of the period for which performance may be extended under the option(s); and

(c) the time period or window within which the option(s) may be exercised. This period must be set to give the contractor adequate notice for performance under the option. In determining the period, consideration

must be given to the necessary lead-time to ensure continuous production in a manufacturing context or employee retention in an on-going services context and the time required for additional funding and other approvals. The time period for exercising the option must always be kept to a minimum.

§ 220.40.60 Option Provisions and Clauses

(a) A solicitation that includes options must inform competing vendors of how the option quantity or option period will be evaluated for award. Incorporate one of the following Evaluation of Options provisions.

§ 220.40.60(a) Evaluation of Options Provisions	
Provision	**is included in solicitations...**
(1) Provision 2-85A, Evaluation Inclusive of Options	when price evaluation will include the option prices.
(2) Provision 2-85B, Evaluation Exclusive of Options	when price evaluation will exclude the option prices.
(3) Provision 2-85C, Evaluation of Options Exercised at Time of Contract Award	when the CO has determined that there is a reasonable likelihood that the option will be exercised, and it may be desirable to exercise the option at the time of award.

(b) Include one of the following option clauses as applicable in solicitations and contracts that include options. For guidance on exercising options after contract award, **see:** Guide, Vol 14, § 745.30 (Exercise of Options).

§ 220.40.60(b) Option Clauses	
Clause	**is included in...**
(1) Clause 2-90A, Option for Increased Quantity	solicitations and contracts for products which express the option quantity as a percentage of the basic quantity or as an additional quantity of a specific line item.
(2) Clause 2-90B, Option for Increased Quantity - Separately Priced Line Item	solicitations and contracts for products when the option quantity is identified as a separately priced line item having the same nomenclature as a corresponding base line item.

§ 220.40.60(b) Option Clauses	
Clause	**is included in...**
(3) Clause 2-90C, Option to Extend Services	solicitations and contracts for services when it is intended to have the option to extend the period of performance up to six months beyond the resulting award's period of performance. The CO will appropriately fill in the clause's blank spaces.
(4) Clause 2-90D, Option to Extend the Term of the Contract	solicitations and contracts for products or services when it is necessary to include any or all of the following: • a requirement that the judiciary must give the contractor a preliminary written notice of its intent to extend the contract; and/or • a statement that an extension of the contract includes an extension of the option; and/or • a specified limitation on the total duration of the contract. The CO will appropriately fill in the clause's blank spaces.

§ 220.45 Equipment Lease or Purchase

§ 220.45.10 In General

This guidance pertains to the decision to obtain equipment by lease or purchase. It applies to both the initial procurement of equipment and the renewal or extension of existing equipment leases. The judiciary should consider whether to lease or purchase equipment or products based on a case-by-case evaluation of comparative costs and other factors.

§ 220.45.20 Timing of Decision

(a) Upon receipt of the requirement from the requesting office, the CO will conduct appropriate market research. A decision to lease or purchase may be possible based solely upon the market research results. In that case, a written decision must be documented in the procurement file and the solicitation issued on the basis of that decision.

(b) If the market research is insufficient to determine whether a lease or a purchase is in the best interest of the judiciary, the solicitation or request for quotes should request vendors to offer both purchase and lease pricing options. In this case, the decision whether to lease or to purchase would then be made at the time of award.

(c) Whether prior to the issuance of the solicitation, or at the time of award, the CO and requesting office must deliberate the lease vs. buy decision to determine which is more advantageous to the judiciary, and the procurement file must be documented with the CO's written decision.

§ 220.45.30 Factors to Consider

The following are factors which should be considered:

(a) estimated length of time the equipment is to be used and the estimated usage within that period;

(b) financial and operating advantages of alternative types and makes of equipment;

(c) cumulative rental payments for the estimated period of use, including option periods. Use an inflation factor for the subsequent year(s). A budget analyst will assist in obtaining this factor;

(d) net purchase price;

(e) any differences in transportation and installation costs;

(f) any maintenance and other service costs;

(g) potential obsolescence of the equipment because of imminent technological improvements;

(h) availability of purchase options;

(i) trade-in or salvage value;

(j) availability of a servicing capability, especially for highly complex equipment, i.e. if it is purchased, whether the equipment will be serviced by the judiciary or other sources. If it will be serviced by the lease contractor, then these costs must be considered;

(k) cost to terminate the lease if the judiciary no longer needs the equipment; and

(l) cost for any damage caused to the equipment.

§ 220.45.40 Purchase Method

(a) Generally, the purchase method is appropriate if the equipment will be used beyond the point in time when cumulative leasing costs exceed the purchase costs. The estimate for cumulative leasing costs will include any proposed option periods, calculated with their inflation factor and any other costs associated with leasing (i.e. cost for termination, maintenance, installation).

(b) COs should not rule out the purchase method of equipment in favor of leasing merely because of the possibility that future technological advances might make the selected equipment less desirable.

§ 220.45.50 Lease Method

(a) The lease method may be appropriate after considering the factors in § 220.45.30 above and determining it is in the judiciary's advantage under the circumstances. The lease method may also serve as an interim measure:

(1) when the circumstances require immediate use of equipment to meet program or system goals; and

(2) the circumstances do not currently support purchase.

(b) If a lease is justified:

(1) a lease with option to purchase is preferable, unless the equipment is needed only temporarily (**see:** § 220.45.50(d));

(2) a lease may be structured as a base period with options. Option period(s) should be negotiated at the time of initial award for the subsequent year(s) to be exercised at the discretion of the government;

(3) advance payment is not authorized for any lease period, except in accordance with § 220.55. Payment must be made in arrears in accordance with a mutually agreed upon time period (e.g. monthly, quarterly, annually);

(4) the cost to terminate the lease must be negotiated and included in the contract.

(c) Generally, a lease with numerous option periods should be avoided, but may be appropriate if an option to purchase or other favorable terms are included.

(d) If a lease with option to purchase is used, the contract will state the purchase price or provide a formula which shows how the purchase price will be established at the time of purchase.

§ 220.45.60 Commercial Agreement

If the lease includes a commercial agreement, then the procedures in Guide, Vol 14, § 540 must be followed.

§ 220.45.70 Clauses

Insert Clause 2-110, “Option to Purchase Equipment” in solicitations and contracts involving a lease with option to purchase.

§ 220.50 Funding Contract Awards

§ 220.50.10 Policy

No officer or employee of the judiciary may create or authorize an obligation in excess of the funds available, or in advance of appropriations (Anti-Deficiency Act, 31 U.S.C. § 1341), unless otherwise authorized by law. Before executing any contract, the contracting officer will:

(a) Ensure that adequate funds are available; or

(b) Expressly condition the contract upon availability of funds in accordance with § 220.50.90.

§ 220.50.20 Contract Funding Requirements

(a) Firm-fixed-price contracts are required to be fully funded, which means obligating funds to cover the entire contract price, even if awarded during a period of a continuing resolution. This includes firm-fixed-price contracts for severable services which cross fiscal years. For example, a firm-fixed-price contract awarded for the period 04/01/2011 through 03/31/2012 should be fully funded from FY11 funds for performance through 03/31/2012.

(b) The estimated total amount of a labor-hour or time-and-materials contract for the entire awarded period of performance; or the estimated cost and the fee (if any) of a cost-reimbursement contract, may be fully funded if the contract is for non-severable services and the funds are available to do so. Where the contract is for a severable service, funding may not exceed that estimated to be required for a twelve (12) month period of performance. Alternatively, these types of contracts, whether severable or non-severable, may be incrementally funded at the discretion of the judiciary organization awarding or administering the contract.

(c) Multi-year contracts may be fully funded or funded annually. For information on minimum funding for multi-year contracts, **see:** Vol 14, § 410.75.15(b).

(d) The amount obligated when funding a blanket delivery order (BDO) or an unpriced purchase order must be based upon the contracting officer's reasonable best estimate of what services/products will actually be ordered during the period covered by the BDO. The file must contain documentation of the basis of the estimate, such as prior annual expenditures for the same or similar services/products. For additional information on unpriced purchase orders, **see:** § 325.45.60

NOTE: The period covered by a BDO may not cross fiscal years. For additional information on BDOs, **see:** Vol 14, § 325.45.10(e) and § 410.30.60.

§ 220.50.30 Fiscal Year Contracts

The contracting officer may initiate a contract action properly chargeable to funds of the new fiscal year before these funds are available, provided that the solicitation and resulting contract include Clause 7-115, "Availability of Funds".

§ 220.50.40 Indefinite-Quantity Contracts

A one-year indefinite-quantity contract that is funded by annual appropriations may extend beyond the fiscal year in which it begins; provided, that any specified minimum quantities are certain to be ordered in the initial fiscal year.

§ 220.50.50 Liability Contingent Upon Obligation of Funds

The judiciary has no liability to pay for supplies or services under a contract conditioned upon the availability of funds until the CO has given the contractor notice that funds are available, which must be confirmed by a contract modification obligating the funds.

§ 220.50.60 Contracts Crossing Fiscal Years

(a) A contract that is funded by annual appropriations may not cross fiscal years, except in accordance with statutory authorization (e.g., 31 U.S.C. § 1308 and 28 U.S.C. § 604(g)(4)(A) and (B)), or when the contract calls for non-severable services that cannot feasibly be subdivided for separate performance in each fiscal year.

(b) The Director is statutorily authorized to enter into a contract, exercise an option, or place an order under a contract for severable services (e.g., equipment maintenance services, court reporting services, interpreter services, etc.) for a period that begins in one fiscal year and ends in the next fiscal year if the period of the contract awarded, option exercised, or order placed does not exceed one year (28 U.S.C. § 604(g)(4)(A)). Current year funds, available as of the date such an award is made, may be obligated for the total amount of the contract, option, or order entered into under this authority.

§ 220.50.70 Limitation of Cost or Funds

(a) When using cost-reimbursement contracts containing Clause 4-85, "Limitation of Cost" or Clause 4-90, "Limitation of Funds", upon learning that the contractor is approaching the estimated cost of the contract or the limit of the funds obligated, the CO will promptly obtain programming and funding information pertinent to the contract's continuation and notify the contractor in writing of one of the following:

(1) Additional funds have been obligated in a specified amount;

(2) The contract is not to be further funded and the contractor should submit a proposal for an adjustment of fee, if any, based on the percentage of work completed in relation to the total work called for under the contract;

(3) The contract is to be terminated; or

(4) The Government is considering whether to obligate additional funds. In this event, the CO's notice must also include the statements that the contractor is entitled by the contract terms to stop work when the obligated funding is reached and that any work beyond the obligated funding will be at the contractor's risk.

(b) Upon learning that a partially funded contract containing either of the clauses referenced in § 220.50.40(a) above will receive no further funds,

the contracting officer must promptly give the contractor written notice of the decision not to provide funds.

§ 220.50.80 Funding for Changes

(a) Under a cost-reimbursement contract, the contracting officer may issue a change order, a direction to replace or repair defective items or work, or a termination notice without immediately increasing the funds available. Since a contractor is not obligated to incur costs in excess of the estimated cost in the contract, the contracting officer must ensure availability of funds for directed actions. The contracting officer may direct that any increase in the funds obligated on a contract be used for the sole purpose of funding termination or other specified expenses.

(b) Under a firm fixed price contract, the contracting officer must ensure that funds are available in the appropriate amount before authorizing changes.

§ 220.50.90 Clauses for Contracting in Advance of Funds

(a) Insert Clause 7-115, “Availability of Funds”, in solicitations and contracts if the contract will be chargeable to funds of the new fiscal year and the contract action will be initiated before the funds are available.

(b) Insert Clause 7-120, “Availability of Funds for the Next Fiscal Year”, in labor-hour, time-and-materials, or cost-type solicitations and contracts if:

(1) the contract is funded using annual appropriations;

(2) the performance period will cross fiscal years; and

(3) there are insufficient funds in the current year for the initial period of performance.

§ 220.55 Contract Financing

§ 220.55.10 Definition

“Contract financing payment” means an authorized judiciary disbursement of monies to a contractor prior to the acceptance of products or services by the judiciary.

(a) Contract financing payments include:

- commercial advance payments,
- performance based payments,

- progress payments based on cost,
- progress payments based on a percentage or stage of completion, and
- interim payments under a cost reimbursement contract.

(b) Contract financing payments do not include:

- routine invoice payments for products and services that have been received and accepted,
- payments for partial deliveries, or
- lease and rental payments paid in arrears.

§ 220.55.20 Authority

The Director has authority under 28 U.S.C. § 604(g)(4)(C) to enter into contracts containing contract financing terms for the purchase of commercial item products and services. Of the various types of contract financing listed above in § 220.55.10(a), only commercial advance payment is currently authorized for judiciary usage. This section prescribes procedures applicable to the inclusion of commercial advance payment terms in purchase orders and contracts.

NOTE: Payment in advance is permitted for publications, whether printed or electronic, under 31 U.S.C. § 3324(d)(2), which is a separate authority from this delegation, and is therefore not subject to any of the limitations of the commercial advance payment delegation described below.

§ 220.55.30 Delegation

(a) Subject to the following limitations, the Director has delegated to chief judges, FPDs, and the FJC Director the authority to use commercial advance payment, subject to the limitations of the bona fide needs rule, in the purchase of services which meet the following conditions:

(1) the purchase is for:

- telephone service purchased under a contract;
- commercial training for an individual employee or group of employees;
- maintenance support services for photocopy equipment, IT equipment, and/or software; or

- extended warranties of commercial items which are ordered at the same time the item is purchased;

(2) the total amount of the commercial advance payment does not exceed $25,000;

(3) the period of performance to be paid in advance does not exceed a 12 month period (not applicable to the purchase of extended warranties); and

(4) no advance payment is made prior to the end of the first month of the period of performance (not applicable to the purchase of commercial training).

(b) The Procurement Executive may approve the inclusion of commercial advance payment terms for transactions outside these limits as one-time specific delegations of authority.

(c) The judiciary may make advance payment to state and local governments, where these entities are furnishing products or services which are reasonably available only from the state/local government organization, such as user fees, sewer service charges, etc. Advance payment to a state/local government for such products or services is not subject to the conditions of this delegation. However, this authority does not extend to the purchase of services from a state/local government which are also readily available in the open market, such as parking. Purchases of this nature, where the court proposes make advance payment to a state/local government for services readily available in the open market, are subject to the conditions of this delegation.

(d) The judiciary may make advance payment to other federal agencies without any special approvals or authorizations. **See:** Guide, Vol 14, § 550 (Interagency Agreements (IAs) and Memoranda of Understanding (MOUs)).

§ 220.55.40 Policy

In approving the use of commercial advance payments, the CO must keep in mind that Congress intended this authority to be used sparingly since it poses certain risks to the judiciary should the contractor declare bankruptcy or fail to perform, for example. The security obtained, the amounts and timing of commercial advance payments, and the anticipated savings to the judiciary must be analyzed as a whole to determine whether making advance payment will be in the best interest of the judiciary. For information on required determinations, **see:** § 220.55.60(e).

§ 220.55.50 Limitations

(a) Any proposed use of a commercial advance payment which does not meet all of the conditions in § 220.55.30 (Delegation) above, must be forwarded to the PE, for review prior to award. If the request is approved, a one-time delegation of authority to enter into the contract will be issued. For information on required determinations, **see:** § 220.55.60(e).

(b) Performance is deemed to commence on the first day of the contract period of performance. While actual performance of services under maintenance support service agreements for photocopy equipment, IT equipment and/or software might not occur on the first day of the performance period, for advance payment purposes, performance is deemed to commence on the first day of the contract period of performance. Similarly, when the award is made in advance of the first day of the contract period of performance (such as, for example, contracts awarded in August or September which begin performance in October), performance commences on the first day of the contract period of performance, not as of the date of award. For commercial training, performance is deemed to commence on the date of the award.

(c) The Contracting Officer must obtain adequate security prior to authorizing a commercial advance payment. **See:** § 220.55.60(c), below.

§ 220.55.60 Procedures

(a) Solicitations

If an offeror proposes commercial advance payment terms in response to a solicitation for the services authorized in § 220.55.30(a)(1) above, and the CO is willing to consider the request, the solicitation must be amended to add Clause 2-115, “Terms for Commercial Advance Payment of Purchases” to the solicitation to notify all offerors of the availability of advance pay, if the clause was not included in the original solicitation.

(b) Evaluating Offers with Different Payment Terms

An offer stating that the commercial advance payment terms will not be used by the offeror does not alter the evaluation of the offer, nor does it render the offer nonresponsive or otherwise unacceptable. In the event of award to an offeror who declined the proposed advance payment, the advance payment provisions may not be included in the resulting contract. Acceptance or refusal of the commercial advance payment term may not

be a basis for adjusting offerors' proposed prices, because the effect is reflected in each offeror's proposed prices.

(c) Evaluating Adequacy of Security for Advance Pay

(1) The CO will review the apparent successful offeror's financial condition to determine whether it is acceptable as adequate security for the risk incurred by making advance payment. Assessment of the contractor's financial condition will consider both net worth and liquidity. If awarding under a GSA schedule, the CO may consider that GSA has previously determined the contractor to be responsible, which includes a finding that the contractor has adequate financial resources to perform. Other methods of verifying the contractor's financial condition to make this determination include the following:

(A) Checking Dun and Bradstreet, if this service is available; and/or

(B) Requesting audited financial statements from the offeror

(2) If the CO finds the offeror's financial condition to be adequate security, Clause 2-125, "Security for Advance Payment" must be included in the awarded contract as well as Clause 2-115, "Terms for Commercial Advance Payment of Purchases".

(3) If the CO does not consider the offeror's financial condition to be adequate security, the offeror must provide an irrevocable letter of credit from a Federally insured financial institution as specified in Clause 2-115. The letter of credit must be at least equal to the amount of the advance payment requested. If the offeror refuses to provide the required letter of credit, the CO may request pricing based upon payment in arrears. If the revised proposal still is the apparent successful offer in accordance with the solicitation's evaluation procedures, the CO may make award upon the basis of payment in arrears. Any award made based upon payment in arrears should not include any advance payment clauses.

(d) Contract Administration

(1) The CO is responsible for receiving, approving, and transmitting all commercial advance payment requests to the payment office.

(2) The CO responsible for approving requests for commercial advance payment(s) will also be responsible for determining that the security provided by the contractor continues to be adequate.

(3) If the contractor's financial condition is the judiciary's security, the CO will monitor the contractor's financial condition at least quarterly.

(4) If the CO determines that the contractor's financial condition has become insufficient, the CO must request additional security under Clause 2-115. In this situation, in addition to an irrevocable letter of credit from a Federally insured financial institution, the following alternative forms of security may be accepted:

(A) A lien paramount to all other liens without filing, notice, or other action by the judiciary. The contractor must identify what the lien is upon, e.g., the work in process, the contractor's plant, or the contractor's inventory, and the CO must issue a modification to the contract to reflect the lien and the asset(s) supporting it. The CO also must ensure the contract gives the judiciary a right to verify the existence and value of the asset. In addition, the contractor must certify that the assets subject to the lien are free from any prior encumbrances that may result from such things as capital equipment loans, installment purchases, working capital loans, lines of credit and revolving credit arrangements;

(B) A bond from a corporate surety listed in Department of Treasury Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies" (**note:** the bond must guarantee repayment of the unliquidated advance payment);

(C) A guarantee of repayment from a person or corporation of demonstrated liquid net worth, connected by significant ownership to the contractor; or

(D) Title to identified contractor assets of adequate worth, such as U.S. Government securities, certificates of deposit, stocks and bonds actively traded on U.S. national stock exchange or real property.

(E) The additional security obtained must be at least equal to the maximum unliquidated amount of the advance payment

already made to the contractor. The following example illustrates this situation: Advance payment of $12,000 has been made based on twelve months of performance at $1,000/month. After seven months of performance the CO determines additional security is required. The value of that security would be $5,000 based upon the remaining five months of performance, since the value of the initial seven months of performance ($7,000) has liquidated that portion of the advance payment. The value of the security may be adjusted periodically during contract performance, as long as it is always equal to or greater than the amount of unliquidated advance payment.

(e) Determinations

The CO must include the following determinations in the contract file:

(1) A determination that it is appropriate or customary in the commercial marketplace to make commercial advance payments for the specific service being purchased (for those types of purchases listed at § 220.55.30(a), this determination has been made and the Contracting Officer will simply state that the purchase meets the conditions of § 220.55.30(a);

(2) A determination that authorizing commercial advance payment is in the best interest of the Government, which will include an analysis of the demonstrable savings expected to be realized by the use of commercial advance payment. The best interest of the judiciary determination will address the following:

(A) A brief summary of the solicitation or contract requirements (description of services, period of performance, etc.);

(B) The contractor's need for commercial advance payments and the potential benefits to the judiciary from providing commercial advance payments;

(C) Actions that the Contracting Officer will take to minimize the judiciary's risk of loss from providing commercial advance payment;

(D) The proposed commercial advance payment contract terms; and

(E) If the CO accepts the contractor's financial condition to be adequate security, the determination will also include the CO's analysis supporting that decision.

§ 220.55.70 Advance Payment Clauses

The CO will include the following clause(s) in solicitations and contracts offering commercial advance payment, as indicated below:

§ 220.55.70 Clauses for Inclusion in Solicitations and Contracts Offering Commercial Advance Payment	
Clause	**is included in...**
(a) Clause 2-115,Terms for Commercial Advance Payment of Purchases	all solicitations and contracts which authorize commercial advance payment
(b) Clause 2-115, Alternate I	solicitations and contracts for photocopy equipment maintenance which authorize commercial advance payment
(c) Clause 2-120, Submission of Invoice	solicitations and contracts which authorize commercial advance payment, except those for commercial training
(d) Clause 2-125, Security for Advance Payment	all contracts authorizing commercial advance payment when the contractor's financial condition is accepted as adequate security

§ 220.60 Energy and Environmental Considerations

§ 220.60.10 Definitions

(a) Energy-Efficient Product

A product that:

- Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or
- Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program (FEMP).

(b) Energy-Efficient Standby Power Devices

Products that use:

- External standby power devices, or that contain an internal standby power function; and
- No more than one watt of electricity in their standby power consuming mode or meet recommended low standby levels as designated by the Department of Energy Federal Energy Management Program.

(c) Personal Computer Product

A notebook computer, a desktop computer, or a computer monitor, and any peripheral equipment that is integral to the operation of such items. For example, the desktop computer together with the keyboard, the mouse, and the power cord would be a personal computer product. Printers, copiers, and fax machines are not included in peripheral equipment, as used in this definition.

(d) Environmentally Preferable

Products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

§ 220.60.20 Statutory Requirement

Under the Energy Policy Act of 2005, 42 U.S.C. § 8259b, judiciary purchases of energy-consuming products, including services involving the provision of energy-consuming products, such as courtroom technology projects, must specify products that comply with the requirements of this section.

§ 220.60.30 Statutory Exemption

The judiciary is not required to purchase an ENERGY STAR® or FEMP-designated product, if the Chief Judge, FPD, FJC Director or PE determines:

(a) there is no ENERGY STAR® or FEMP-designated product reasonably available which meets the judiciary's requirements; or

(b) no ENERGY STAR® or FEMP-designated product is cost-effective over the life of the product taking energy cost savings into account.

See also: Guide, Vol 14, § 130.20.70 (Energy Efficiency).

§ 220.60.40 Procedure

When acquiring energy-consuming products listed in the ENERGY STAR® Program or Federal Energy Management Program (FEMP):

(a) Judiciary COs must purchase ENERGY STAR® or FEMP-designated products; and

(b) For products that consume power in a standby mode and are listed on FEMP's Low Standby Power Devices product listing, judiciary COs must:

(1) Purchase items which meet FEMP's standby power wattage recommendation or document the reason for not purchasing such items; or

(2) If FEMP has listed a product without a corresponding wattage recommendation, purchase items which use no more than one watt in their standby power consuming mode. When it is impracticable to meet the one watt requirement, judiciary COs must purchase items with the lowest standby wattage practicable.

§ 220.60.50 Purchasing Personal Computer Products

The Institute of Electrical and Electronics Engineers (IEEE) 1680 standard for personal computer products is a voluntary consensus standard which meets EPA-issued guidance on environmentally preferable products and services. The IEEE 1680 standard for personal computer products sets forth both required and optional criteria. An ENERGY STAR® rating is one of the minimum required criteria.

The Electronic Product Environmental Assessment Tool (EPEAT) is a tool available to the judiciary to assist in the evaluation of personal computer products based upon environmental attributes. EPEAT "Bronze" registered products must meet all of the IEEE 1680 required criteria. EPEAT "Silver" registered products meet all IEEE 1680 required criteria and 50 percent of the optional criteria. EPEAT "Gold" registered products meet all IEEE 1680 required criteria and 75 percent of the optional criteria. For additional information on EPEAT, **see:** www.epeat.net. EPEAT registration is separate from ENERGY STAR® and FEMP.

The purchase of EPEAT-registered products is encouraged when such products are reasonably available and are cost-effective over the life of the product. EPEAT Silver or Gold registration may be used as an evaluation factor in solicitations for personal computer products.

§ 220.60.60 Additional Resources

(a) ENERGY STAR®

(b) Federal Energy Management Program

§ 220.60.70 Clauses

The CO will include the following clause(s) in solicitations and contracts as indicated below:

§ 220.60.70 Clauses	
Clause	**is included in ...**
(a) Clause 2-130, Energy Efficiency in Energy-Consuming Products	solicitations and contracts when energy consuming products listed in the ENERGY STAR® program or FEMP will be • purchased by the judiciary; • purchased by the contractor for use in contractor-performed services within a judiciary facility; • furnished by the contractor for use by the judiciary; or • specified in the design of a project or incorporated during implementation of a project, such as, for example, courtroom technology
(b) Clause 2-135, IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products	solicitations and contracts for personal computer products when soliciting for EPEAT-registered products. Alternate 1 of the clause may be used when there are a sufficient number of EPEAT Silver registered products available to meet agency needs for meaningful competition

§ 230 Specifications, Statements of Work, and Product Descriptions

§ 230.10 Overview

§ 230.10.10 General Requirements

All procurement actions require a clear and concise description of the products or services to be procured which is devoid of generalizations, ambiguities, and omissions. For requirements processed under small purchase procedures, the description may be less detailed than for complex requirements processed under formal contracting procedures. However, the CO must ensure that products descriptions, specifications, statements of work (SOW), etc. are prepared in a way that promote competition. Unnecessarily restrictive SOWs or specifications may negatively impact competition. Restrictive product descriptions may require only one, or a limited number of vendors or product choices, when other highly similar products could also be considered if the requirement is stated in less restrictive language.

§ 230.10.20 Avoidance of Ambiguity

Product descriptions, specifications and SOWs that are susceptible to more than one reasonable interpretation are ambiguous and objectionable. They impede full and open competition by failing to ensure that offerors are competing on a “common” or “equal” basis. The result may lead to contract administration problems or inadequate contractor performance.

§ 230.20 Specifications

§ 230.20.10 In General

Specifications are normally used when purchasing a product rather than a service. Specifications must fully and completely state the judiciary's needs considering the nature of the products being purchased. Specifications may be stated in terms of:

(a) function, so that a variety of products may be considered as qualified;

(b) performance, including the range of acceptable characteristics or the minimum acceptable standards; or

(c) design requirements, providing exact dimensions, materials, or characteristics.

§ 230.30 Statements of Work (SOW)

(a) Statements of Work (SOW) are most often used when purchasing services rather than end-products. However, a SOW may include specifications or product descriptions. The SOW must describe the work clearly and at a level of detail sufficient to ensure the judiciary obtains the services it requires. After award, the SOW is the standard for measuring performance and is used by both the judiciary and the contractor to determine rights and obligations under the contract.

(b) Two other methods of defining work in solicitations for services are the Performance Work Statement (PWS) and the Statement of Objectives (SOO). Both of these are structured around the results to be achieved rather than the manner in which the work is to be performed. These two methods are closely linked in that if the judiciary solicits using a SOO, the competing offerors propose the PWS for the contract, instead of the PWS being written by the judiciary.

(c) The PWS describes the required results in clear, specific and objective terms with measurable outcomes.

(d) The SOO states the overall performance objectives and is used when the judiciary intends to provide the maximum flexibility to each offeror to propose an innovative approach. The SOO must include the following, at a minimum:

- Purpose,
- Scope or mission statement,
- Period and place of performance,
- Background,
- Performance objectives (i.e., required results), and
- Operating constraints.

(e) Offerors use the SOO to develop a proposed PWS, which must then be evaluated to determine whether the proposed standards (i.e., measurable outcomes) meet judiciary needs. The final contract incorporates the successful offeror's proposed PWS and not the SOO.

§ 230.40 Product Descriptions

§ 230.40.10 In General

Whenever standard or modified commercial products will meet judiciary requirements, product descriptions must be used instead of specifications. Product descriptions may

be either the common generic identification of the item, which is the preferred description, or a brand name description, as follows:

(a) The common generic identification description must include the salient characteristics or function of the product. For example, for a printer, it will be described as having the capability to print a minimum of x pages per minute, in black ink or color, etc.

(b) The brand name description may include known acceptable brand-name products, identified by model or catalog number, and the commercial catalogs in which they appear. If a product with equal characteristics but a different brand name will also meet the requirements of the judiciary, then the brand name is followed by the phrase “or equal.” The CO must then consider other “or equal” products. However, if the brand name is specified without the phrase “or equal,” or 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 and a justification for other than full and open competition is required. **See also:** Note in § 335.10.50.

§ 230.40.20 Equivalent Product Considerations

If offers for equivalent (“or equal”) products will be considered:

(a) the product description must include a description of the item's essential characteristics, such as material, size or capacity, the equipment with which the items will be used, and any restrictive operating environmental conditions; and

(b) space must be provided in the solicitation for offerors to identify the manufacturer's brand names and models or catalog numbers of the “equal” product proposed.

§ 230.40.30 Provision

Include Provision 2-100, “Brand Name or Equal” in solicitations when the product description includes a specific brand name and an “equal” product is also acceptable.

Guide to Judiciary Policy

Vol 14: Procurement
Ch 2: Procurement Planning and Preparation

Appx 2A: Sample Evaluation Factors

Note: This example is for a service contract solicitation and the evaluation factors are specific to that particular procurement. Each procurement will have its own specific evaluation criteria. **This is only an example**. For small purchases there would not be a section L or M. Therefore, for small purchases, it would be appropriate to use another paragraph numbering style, which will correspond to the rest of the procurement.

The following is sample Section L Language:

L.7.2. Technical Approach

The offeror's proposal shall contain the following sections:

L.7.2.1. Section 1 - Staffing Plan/Retention Plan

This section shall contain the offeror’s proposed Staffing Plan and Retention Plan. At a minimum the offeror shall address:

1. Staffing Plan: The offeror shall describe its plan and company approach/policy for ensuring responsive access to adequate numbers of personnel with the qualifications and experience required under this solicitation. This plan shall address the offeror's staffing plan applicable to personnel who are or will be employed by your firm and available for tasking under this contract, as well as any plans/approach/policy regarding access to necessary skills and expertise available through other organizations. This plan shall also identify any teaming/subcontracting arrangements to be used in the performance of the contract and the benefit any such arrangement will bring to the offeror's staffing plan. This plan shall address the offeror's long term staffing plan as well as how specific and unique skills/resources will be acquired for specific tasks identified in the statement of work.

2. Retention Plan: The offeror shall describe its plan/approach/policy for retaining sufficient personnel with the necessary qualifications and skills to support tasks under this contract. This plan should address the retention of employees of the offeror's firm as well as any agreements with other organizations under which the offeror plans to access qualified personnel to support this contract. This plan should fully describe the offeror's approach to retaining and maintaining a

trained, technically proficient staff, with the experience and expertise that will be required by the judiciary for specific tasks under this contract.

L.7.2.2. Section 2 - Past Performance and Past Experience

The offeror's past performance and past experience will be evaluated to assess the offeror's ability to successfully perform similar work required by this solicitation. In particular, the offeror's experience will be evaluated to ascertain the breadth of experience as it relates to the requirements of this solicitation. At a minimum, the offeror shall provide descriptions of three (3) previous government or commercial projects/contracts performed within five (5) years of proposal submission. The offeror shall demonstrate that these projects/contracts were for comparable services of a similar size, scope and complexity. The following information must be submitted for each:

- Name and description of project
- Contract number/project number
- Brief description of the project (including contract number and award date)
- Offeror's role (i.e. prime contractor; subcontractor)
- Percentage of work completed in offeror's role
- Name and address of customer company or government agency
- Names, addresses, and telephone numbers of a customer's technical point of contact and the customer's contracting officer
- Awarded price/cost
- Final, or projected final, price/cost
- Number of offeror's personnel assigned to the contract/project
- Time frame to complete project
- Narrative description of the size/scope/complexity of the project and how it directly relates to the requirements of this solicitation

References provided in this section will be additionally evaluated to assess the successful performance of the contract/project for which a reference was submitted. The judiciary will consider in its assessment the offeror's reliability of services, attention to customer requirements, control of costs, and level of customer satisfaction.

L.7.2.3. Section 3 – Key Personnel

The offeror shall provide the resume of the project director*, identified in Section C.9.1., to be assigned to the contract resulting from this solicitation. Each resume shall be no more than two (2) pages and contain the following information:

- Full name
- Education
- Chronological work experience, with most recent first, that substantiates

by involvement and duration the skill positions and services for which they are being proposed. Include company name and phone number of immediate supervisor for each work experience.

- A brief narrative relating work experience for the proposed effort
- Affiliations with professional organizations
- Relevant licenses and certifications
- A dated and signed statement by the individual certifying that the information of the resume is true and accurate

***Note:** Any other key personnel positions identified in the solicitation will also be identified and a resume for each requested.

The following is sample Section M Language:

M.2.1.2.2. Technical Approach Evaluation

The technical approach factors will be evaluated based upon the information contained in the offeror's proposal. The ultimate objective of the evaluation is to determine which proposal offers the best technical value to the judiciary. Although price/cost is considered secondary to technical capabilities, it will be a significant criterion for award as part of an integrated assessment with the offeror's technical approach. The proposals will be evaluated based on the evaluation factors set forth below:

Technical Approach Factors

A. Staffing Plan/Retention Plan (L.7.2.1.)
B. Past Performance (L.7.2.2.)
C. Past Experience (L.7.2.2.)
D. Key Personnel (L.7.2.3.)

With respect to the evaluation of technical excellence, the technical approach factors identified above are listed in descending order of importance. For each factor, the evaluation will consist of an assessment of the degree to which the services offered in the proposal provide added value, added capability, and/or reduced risk. Additionally, the evaluation will identify the strengths, weaknesses, and risks in each offeror's proposal based on each evaluation factor.

M.2.1.2.3. Price Evaluation

The offeror's proposed pricing will be evaluated for reasonableness. Offers that are unrealistically high or low in price will be considered indicative of a lack of understanding of the complexity and risk associated with work performed under the resulting contract. Offers that contain unreasonable prices will not be considered for award.

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§ 350 Judiciary Protest Procedures
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Appendix

Appx 3A Sample Offering Letter to Randolph-Sheppard Agency

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§ 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. §§ 46-48) 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 its nonprofit agency(ies) 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(ies).

(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(ies).

(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 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 court unit, Federal Public Defender’s Office (FPDO), or Federal Judicial Center (FJC) 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 AO Procurement Management Division (PMD) 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 the Contracts and Blanket Purchase Agreements page on the J-Net. 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:** Court units and FPDOs are not delegated authority to conduct best value procurements and must obtain a one-time delegation from the Procurement Executive (PE) 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 e-mail 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.

§ 310.50.16 Types of Supply Schedules	
Schedule	**Contract Details**
(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. 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**
(a) Orders at or below GSA's competition threshold (generally $3,000), 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)	(1) No competition is required. Judiciary COs may place orders at, or below, GSA's competition threshold with any FSS contractor. (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.

§ 310.50.43 Required Ordering Procedures	
Procedure	**Details**
(b) Minimum Competition	(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. (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. (3) When the CO solicits pricing by sending an RFQ to at least three sources, receipt of at least one of the completed 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	In requesting pricing or quotations for orders exceeding GSA's competition threshold (for definition, **see:** § 310.50.43(a)): (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.

§ 310.50.43 Required Ordering Procedures	
Procedure	**Details**
(d) Orders exceeding GSA's competition threshold (generally $3,000), 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	(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). (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 CO may consider, among other factors, any or all of the following: • 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. **Note:** Under the Contracting Officers' Certification Program (COCP) (**see:** Guide, Vol 14, § 140), 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.

§ 310.50.43 Required Ordering Procedures	
Procedure	**Details**
(e) Orders exceeding the maximum order threshold	(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. (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: • 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). If price reductions are not offered, an order may still be placed.

§ 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**
(a) For orders exceeding GSA's competition threshold (generally $3,000), 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	The judiciary CO must: (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.
(b) For proposed orders exceeding the maximum order threshold or when establishing a BPA	In addition to meeting the requirements of § 310.50.46(a) the judiciary CO must: (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: • 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.

(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.

§ 310.50.53(d) Ordering from BPAs under GSA Schedules	
BPA Situation	**Procedures**
(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. 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 FAS_4T 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 FAS_4T 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: (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 Conditions of Schedule Contracts	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 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. 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 an other 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 an other 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 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:** Court units and FPDOs are not delegated authority to conduct best value procurements and must obtain a one-time delegation from the PE 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:** § 315 through § 340.

§ 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 following 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 $5,000 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 the PE 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. 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)) is less than $25,000;

(b) when public exigencies require the immediate delivery of the articles or performance of the service. 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. Written concurrence by the chief judge, FPD, or Director, FJC, is required within their delegation authority. Advertising exceptions above the court unit's delegation authority, as well as all exceptions at any dollar level within PMD, require the PE's written concurrence. Or,

(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 which is expected to exceed $25,000, (for exceptions, **see:** § 315.10.30). A court unit, FPDO, or the FJC has the 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 web site 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 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:

(1) violations of a judiciary contract or subcontract so serious as to justify debarment action, such as:

(A) willful failure to perform in accordance with the terms of one or more contracts; or

(B) a history of failure to perform or of unsatisfactory performance of one or more contracts or subcontracts.

(C) 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. The notice must be sent by certified mail, return receipt requested. The notice of suspension must be coordinated through OGC before issuance. 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 $5,000 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 $5,000 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 $5,000 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

The Service Contract Act (SCA), 41 U.S.C. § 351 *et seq*., 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. The SCA does not apply to employees employed in bona fide executive, administrative or professional capacities or to computer systems analysts, computer programmers, software engineers, and other similarly skilled computer employees, as defined in 29 CFR 541.

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. SCA applies regardless of the beneficiary of the services (judiciary or general public); the source of funding (judiciary or the public); or the place of performance (judiciary or contractor's premises).

§ 325.25.20 Statutory Requirement

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). 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:

- automobile or other types of vehicle maintenance
- financial services involving issuance of cards (e.g., purchase cards)
- 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)
- 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
- 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)
- 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).

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) web site, www.wdol.gov. The website contains a User Guide and FAQs for its use and also has an e-mail 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 ten (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 http://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 SF-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	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: (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)	solicitations and contracts for fixed price services that: (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	solicitations and contracts for fixed price services that: (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	solicitations for the types of services listed at § 325.25.30(a) when the resultant award may be exempt from Service Contract Act coverage
(e) Clause 3-200, Service Contract Act – Place of Performance Unknown	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: (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.

§ 325.25.80 Required Clauses and Provisions	
Clause or Provision	**Include in ...**
(f) Clause 3-215, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Requirements	solicitations for the types of services listed at § 325.25.30(a) when the resultant award may be exempt from Service Contract Act coverage; resulting contracts when the successful offeror has affirmatively certified that it qualifies for exemption
(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.

§ 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.

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:** Court units and FPDOs are not delegated authority to conduct best value procurements and must obtain a one-time delegation from the PE 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).

§ 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: • quality; • experience; • delivery schedule; • maintainability; • ease of operation; • size or weight, etc.; • past performance; or • qualifications of key personnel.
(b) Evaluation Strategy	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: • 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).
(c) Award	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.

§ 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 FAS_4T 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.

(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), 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 e-mail, 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	(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. (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.
(b) Unpriced BPA	(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. (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.

§ 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); 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 (**see:** § 310.50.43(a) for definition of GSA competition threshold for BPA's awarded under a GSA schedule contract; $5,000 for all other BPAs).	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.

§ 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 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 § 220.50.20(c). 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 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.

§ 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.

§ 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.

§ 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 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 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.);

(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 $5,000 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; § 715.55; and § 755.20.60.

§ 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 or § 450. 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 the AO Form 370, 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 chief judge, FPD, or FJC Director, or, for purchases not within the court units general delegation (**see:** Guide, Vol 14, § 120.20.10(b)), by the PE.

§ 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 non-competitive open market small purchase 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));

(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 court unit, FPDO, or FJC. Above the delegation authority the PE'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 chief judge, FPD, FJC Director, 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 $5,000 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	(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.
(b) Technical	(1) concise title and abstract of the proposed effort (approximately 200 words); (2) a reasonably complete discussion stating: • 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; (3) names and biographical information on the offeror's key personnel who would be involved, including alternates; and (4) type of support needed from the judiciary; e.g., facilities, equipment, materials, or personnel resources.

§ 340.30 Content of Unsolicited Offers	
Information Type	**Contents**
(c) Supporting	(1) proposed price or total estimated cost for the effort in sufficient detail for meaningful evaluation; (2) period of time for which the offer is valid (a six-month minimum is suggested); (3) type of contract preferred; (4) proposed duration of effort; (5) brief description of the offeror's organization, previous experience, relevant past performance, and facilities to be used; (6) other statements, if applicable, about organizational conflicts of interest, security clearance requirements, and environmental impacts; and (7) the names and telephone numbers of judiciary personnel already contacted regarding the offer.

§ 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).

§ 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.

§ 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.

§ 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 ten 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 e-mail 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.

Guide to Judiciary Policy

Vol 14: Procurement
Ch 3: Purchasing Methods

Appx 3A: Sample Offering Letter to Randolph-Sheppard Agency

[Date]

(*Point of Contact Name*)
State Agency Rehabilitation Services
(*Street address*)
(*City, State and Zip Code*)

Dear M :

We need ___ vending machine(s) at our location, which is:
United States xxxxxx Court
xxxxxxx District of xxxxxxx
(Suite, Floor, Street Address, etc.)
(City, State and Zip Code)

This request is made according to the provisions of the Randolph Sheppard Act of 1974. We have enclosed our request for proposal with our specific requirements. Please review the documents and provide us a determination if a blind licensee can meet our needs. Please indicate your interest by completing the information below and returning a copy to the attention of (*name*) via fax at xxx-xxx-xxxx. If you have any questions, or need additional information, please contact (*name*) at xxx-xxx-xxxx.

Sincerely,

Procurement Liaison Officer

Enclosure

(Name)
State Agency Rehabilitation Services

[ ] We have identified a licensed Randolph Sheppard vendor interested in providing copy center services at your location. We will contact you shortly.

[ ] We are unable to provide a licensed Randolph Sheppard vendor to provide copy center services at your location.

Signature:_____

Printed Name:_____

Title:_____

Phone:_____

FAX:_____

Guide to Judiciary Policy

Vol 14: Procurement

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§ 410 Contract Types

§ 410.10 In General

The choice of contract type should be based on the allocation of risks and responsibility between the judiciary and the contractor. Under a firm-fixed price contract, the contractor assumes full cost and performance responsibility. The contractor undertakes less cost and performance risk from uncertainties under cost-reimbursement, labor-hour and time-and-material contracts. Where the contractor does not take on the cost and performance risk, it must be assumed by the judiciary. The profit or fee calculations will also reflect the cost and performance cost responsibilities resulting from the contract type selected. Generally, a contractor will be able to collect more profit or fee as it assumes increased cost risks and performance risks.

§ 410.10.20 Required Documentation

A written determination, explaining why a different contract type was chosen and signed by the Contracting Officer (CO), must be included in the contract file whenever a contract type other than firm-fixed-price is used.

§ 410.10.30 Authorized Contract Types

This chapter describes different contract types that are authorized for use in the judiciary. Contract types that require the prior approval of the Procurement Executive (PE) are listed in § 410.20.10. Any contract type not described in this chapter is not authorized for use in the judiciary. The most commonly used contract types include:

(a) firm-fixed-price (**see:** § 410.25);

(b) indefinite-delivery (**see:** § 410.30)

- indefinite-quantity and
- requirements;

(c) blanket purchase agreement (**see:** § 410.35);

(d) labor-hour (**see:** § 410.40); and

(e) time-and-materials (**see:** § 410.45).

§ 410.15 Selecting Contract Type

§ 410.15.10 Responsibility

The CO is responsible for selecting the contract type appropriate to the circumstances of the procurement.

§ 410.15.20 Solicitation Requirements

Although contract type is a matter for negotiation, competitive purchasing procedures require that the solicitation specify an intended type of contract to provide a basis for comparing competing offers. Solicitation Provision 4-1, Type of Contract, must be included in all solicitations that:

(a) exceed the judiciary's small purchase threshold (**see:** Guide, Vol 14, § 140 and § 325.10.30), and

(b) are not for information or planning purposes.

Note: The CO will appropriately fill in the provision's blank spaces.

§ 410.15.30 Firm-Fixed-Price Contract Preference

A firm-fixed-price contract is generally preferred because it makes the contractor fully responsible for cost control, performance, and minimizes the need for judiciary monitoring of cost performance. However, when there is no reasonable basis for firm fixed pricing, a solicitation requiring a firm-fixed-price contract may reduce competition. It may lead to higher prices because compensation for contingencies will be added by the offerors for protection from real or perceived risks. Whenever the probable cost of performance cannot be reasonably estimated, a firm-fixed-price contract should not be used.

§ 410.15.40 Use of Incentives for Cost Control

When a firm-fixed-price contract is not appropriate, costs may be controlled by using incentives. Efficient performance is promoted by relating the amount of profit or fee available under the contract to the contractor's ability to manage performance costs effectively.

§ 410.15.50 Factors in Selecting Contract Type

Factors to be considered include the following:

(a) realism of cost estimate;

(b) extent of competition;

(c) nature of the required product or service (e.g., commercial or developmental);

(d) performance risks and uncertainties;

(e) complexity of the requirement;

(f) adequacy and firmness of specifications;

(g) likelihood of changes;

(h) prior experience (pricing and production);

(i) extent of subcontracting;

(j) adequacy of contractor's cost estimating and accounting system; and

(k) urgency of the requirement.

§ 410.20 Limitations

§ 410.20.10 Written Approval

COs must obtain the PE's written approval before using any of the following contract types:

(a) indefinite-delivery (**see:** § 410.30);

(b) labor-hour (for exceptions to the requirement for PE written approval, **see:** § 410.40.30);

(c) time-and-materials (**see:** § 410.45);

(d) letter contract (**see:** § 410.50);

(e) fixed-price award fee (**see:** § 410.55);

(f) fixed-price incentive contract (**see:** § 410.60);

(g) fixed-price contract with economic price adjustment (**see:** § 410.65);

(h) cost reimbursement contract (**see:** § 410.70).

§ 410.20.20 Requesting Approval

If a situation develops where the CO determines that one of the contract types listed above would benefit a particular procurement, a justification for the use of the specific contract type, along with a statement of work for the proposed procurement must be forwarded to the PE for review and written approval. **Note:** A cost-plus-a-percentage-of-cost contract may never be used.

§ 410.25 Firm-Fixed-Price Contracts

§ 410.25.10 Description

(a) A firm-fixed-price (FFP) contract is one in which the price is not subject to change or adjustment based on the contractor's cost of performance, provided the specified requirements are not changed during performance, and both parties fulfill their obligations under the contract. The contractor assumes full responsibility for all costs and resulting profits or losses, maximizing the motive to control costs and perform effectively, economically, and efficiently. It is the least burdensome type of contract for the judiciary to administer when requirements are stable. However, if frequent changes are likely, administration will be difficult.

(b) The obligation amount to be recorded is the full contract, delivery order, and/or task order price using funds available in the period awarded, regardless of whether or not performance will continue into future fiscal years.

(1) For a firm fixed price contract, delivery order, or task order in which the government has an option to purchase additional products and/or services, the contract price for the basic products and/or services must be obligated at the time the contract is awarded, and the options are obligated only when they are exercised.

§ 410.25.20 Application

A firm-fixed-price contract is suitable for:

(a) commercial products or services;

(b) modified commercial products or services; or

(c) products or services having reasonably definitive specifications or statements of work; and

(d) whenever fair and reasonable prices can be reasonably estimated at the procurement outset, such as when:

(1) adequate price competition is anticipated;

(2) there are reasonable price comparisons with prior purchases of the same or similar products or services made on a competitive basis;

(3) in noncompetitive procurement situations, it is anticipated that submission of detailed cost information will be adequate to permit realistic and reasonable estimates of the costs of performance; or

(4) the cost impact of performance uncertainties can be estimated closely enough to reach agreement on a reasonable price representing appropriate assumption of the risks involved.

§ 410.30 Indefinite-Delivery Contracts: Indefinite Quantity and Requirements

§ 410.30.10 Description

(a) An indefinite-delivery contract is used for the procurement of supplies and/or services when the exact times and/or exact quantities of future requirements are not known at the time of award. It permits great flexibility in quantities, delivery scheduling and delivery points as well as the ability to order supplies and/or services only after specific requirements materialize.

(b) The judiciary uses two types of indefinite-delivery contracts – indefinite-delivery/indefinite-quantity (IDIQ) contracts and requirements contracts.

§ 410.30.20 Application

An indefinite-delivery contract may be used when it is known or anticipated that there will be requirements for products or services over a period of time, but specific quantities, times, and/or places of delivery are not known at the time of contract award.

§ 410.30.30 Indefinite Quantity Contracts

(a) An indefinite-delivery/indefinite-quantity (IDIQ) contract provides for an indefinite quantity of specific products or services, within contract specified minimum and maximum limits, to be delivered during the contract period to designated locations when ordered. The stated minimum quantity is guaranteed to be ordered. However, the total estimated quantity is not guaranteed. This type is for use when precise quantities for products or services during the contract period, above known minimum requirements, cannot be determined before contract award.

(b) Funding for the guaranteed minimum must be obligated at contract award. As additional quantities are needed - up to the stated contract maximum - funds are obligated on individual delivery orders or task orders. Fixed price orders must be obligated to the full amount of the order at the time it is issued; labor-hour or time-and-materials orders may be incrementally funded.

(c) Maximum contract limits may be stated on an individual order basis or for the contract as a whole or both. Minimums and maximums may be stated in terms of quantities or in terms of dollars.

(d) The contract must require the judiciary to order, and the contractor to deliver, at least a stated minimum quantity or minimum dollar value of products or services during the contract period and requires the contractor to deliver any additional quantities ordered, not to exceed a stated maximum quantity or dollar value. If the judiciary does not order the guaranteed minimum over the stated term of the contract, the contractor is entitled to payment of the guaranteed amount regardless of the circumstances.

(e) The established minimum quantity or dollar value must not exceed known requirements and the maximum quantity or dollar value must be realistic. The contract may specify minimums or maximums for individual delivery orders and a maximum that may be ordered during a specified time. The contractor is not obligated to deliver or perform beyond the stated maximum amounts.

§ 410.30.40 Requirements Contracts

(a) A requirements contract provides for filling all requirements of a designated office or court unit for specific products and services to be delivered as ordered during the contract period. It is for use when recurring requirements are anticipated during the contract period, but

precise quantities cannot be determined before contract award. **Note:** This contract type must be used cautiously, as it obligates the designated judiciary office to place all of their orders for the specific products and services during the life of the contract with the contractor.

(b) The solicitation and contract must state an estimated total quantity or dollar value, and, if feasible, the maximum limit of the contractor's obligation to deliver. The total quantity or dollar estimate must be as realistic as possible, based on records of previous requirements and current information. The contract may specify minimums or maximums for individual delivery orders and a maximum that may be ordered during a specified ordering period. The estimates of a requirements contract are not a commitment that the estimated quantity or dollar value will be ordered and there is no minimum order requirement.

(c) When a requirements contract is for repair, modification, or overhaul of items of judiciary property, the solicitation must state that failure of the judiciary to furnish such items in the amounts described as "estimated" or "maximum" will not entitle the contractor to any price adjustment under any “Property” clause of the contract.

§ 410.30.50 Contract Terms

(a) Both IDIQ contracts and requirements contracts must identify the period of time when orders may be issued against it as well as who is authorized to issue orders against it. It may restrict all ordering to a single contracting office or allow placement of orders by any judiciary CO with appropriate delegated authority. The contract must also state estimated quantities, describe the scope of the products or services to be provided, and contain appropriate terms and conditions.

(b) These two types of contracts are suitable when purchasing an estimated kind and amount of products or services anticipated to be needed, but the requirement is not definite at the time of contract award. In addition, IDIQ solicitations must state whether a single award or multiple awards are anticipated, and, in the case of multiple awards, must state the basis for competing delivery or task orders under the contract. For instructions on use of Provision 3-135, Single or Multiple Awards, **see:** Guide, Vol 14, § 330.10.30(z).

§ 410.30.60 Delivery Orders or Task Orders

(a) Delivery orders (for products) and task orders (for services, or services with some products) are two types of orders that can be placed under

indefinite contracts. Once it is clear what is needed, the CO places orders against the contract. These orders clearly quantify and specify the requirement to deliver products or task the contractor to perform services according to the terms and conditions of the contract.

(b) Each order describes the products to be delivered or task to be performed and specifies the price, either as the price established by the contract or the price agreed to after competition and negotiation.

(c) Each order must be within the scope, period, and maximum value of the contract.

(d) Ordinarily, orders must be placed in writing or by written communication; when necessary, oral orders may be made if they are promptly confirmed in writing. Orders must contain the following information:

(1) date of order, contract number, and order number;

(2) item number and description, unit price, and total price;

(3) place and date of delivery or performance;

(4) packaging, packing, and shipping instructions (if these are not already defined in the contract);

(5) accounting and fiscal data;

(6) any other pertinent information; and

(7) a ceiling price limiting the judiciary's obligation if the unit and total price in (2) above cannot be negotiated before issuance of the order. The definitive price must be negotiated as soon as practicable.

(e) A permissible exception to the above procedures is the use of the blanket delivery order (BDO) when an office anticipates there will be repetitive requirements within a single fiscal year, with little variation in the orders. In this case, a BDO may obligate funds on a not-to-exceed basis. The BDO would not include items (d)(2), (3) and (4) above, but must state –

(1) the period of time which it is expected to cover (**Note:** BDOs may not cross fiscal years due to the bona fide need rule);

(2) the individuals who are authorized to order delivery of products or services;

(3) the applicable not-to-exceed ceiling amount.

§ 410.30.70 Limitation

Indefinite delivery contracts may be used only when approved in writing by the PE.

§ 410.30.75 Clauses	
Clause	**Include in ...**
(a) Clause 4-5, Ordering	Requirements and IDIQ solicitations and contracts
(b) Clause 4-10, Order Limitations	Requirements and IDIQ solicitations and contracts
(c) Clause 4-20, Requirements	Requirements solicitations and contracts
(d) Clause 4-25, Indefinite Quantity	IDIQ solicitations and contracts

§ 410.35 Blanket Purchase Agreements

§ 410.35.10 Description

(a) A blanket purchase agreement (BPA) does not constitute a legally binding contract at the time of award, and thus, no obligation must be recorded. It is a written agreement negotiated between a purchasing office and a contractor that contains terms and conditions applying to future transactions between the parties and provides a simplified way of buying products and services. The BPA contains pre-negotiated terms and conditions that will apply if and when an order (or “call”) is placed against the BPA for products or services.

(b) Funds are not required at the time a BPA is established; funds are obligated at the time a call is placed against the BPA. BPA calls can be made informally by telephone, fax, letter, email, etc.

§ 410.35.20 Application

BPAs are very useful for a repetitive requirement over a period of time. There are two sources for BPAs — open market and GSA — and two types — single and multiple.

For further information on awarding BPAs and placing orders, **see:** Guide, Vol 14, § 325.45.15.

§ 410.35.30 Limitations

(a) A BPA may not state or imply any obligation or agreement by the judiciary to place future calls or orders with the contractor.

(b) A BPA may be changed only by modifying the BPA itself and not by individual orders issued under it. Modifying a BPA does not retroactively affect calls or orders previously issued under it.

(c) A BPA extending for more than one year must be reviewed annually to determine whether there is a continuing need for the products or services covered by the agreement and whether any revisions to the agreement are necessary.

§ 410.35.40 Content of Agreement

A BPA must include the following information:

(a) a description of the products and/or services to be provided;

(b) pricing for the products or services or describe the method for determining prices to be paid to the contractor for the products or services;

(c) delivery terms and conditions or specify how they will be determined;

(d) a list of the ordering officers authorized to issue orders under the agreement;

(e) the point at which each order becomes a binding contract e.g., issuance of the order, acceptance of the order in a specified manner, or failure to reject the order within a specified number of days; and,

(f) the appropriate contract type clauses for the orders to be placed, i.e., fixed price, labor-hour or time-and-materials. **Note:** For clauses that are prescribed according to dollar amount, the aggregate value of orders expected to be placed under the agreement over its full life must be estimated.

§ 410.35.50 Ordering

A CO or an authorized ordering officer listed in a BPA may issue orders for products or services covered by that agreement. **See:** Guide, Vol 14, § 325.45.60.

§ 410.35.60 Competition

Solicitations for the award of BPAs must clearly describe the process for issuing orders against the BPA, including competition requirements. If individual orders or calls under the awarded BPA are required to be issued on the basis of competition, the solicitation may specify that competition may be by oral or written solicitation, and:

(a) limited to firms holding BPAs for the same products or services;

(b) competed on the open market subject to the estimated dollar value of the requirement and the terms and conditions of the BPA; or

(c) both (a) and (b).

§ 410.35.70 Pricing

Ordinarily, the CO may not authorize the contractor to begin work on an order under a BPA until prices have been established. However, if urgency precludes advance pricing and the order establishes a ceiling price limiting the judiciary's obligation, the CO may place an unpriced order **after** getting the PE's written approval. Pricing must be established as soon as possible after issuance of an unpriced order.

§ 410.40 Labor-Hour Contracts

§ 410.40.10 Description

(a) A labor-hour contract provides for skill categories at fixed hourly rates that include actual wages plus overhead, general and administrative expense, and profit in the fixed rate. It requires labor hours only; no materials are provided by the contractor.

(b) Labor-hour contracts include a description of services ordered and a not to exceed ceiling amount, which may be fully funded at the time of award or may be incrementally funded, provided that:

(1) the funding balance is always at least equal to the cumulative value of the services ordered, and

(2) a clause reserving the right to incrementally fund is contained in the contract.

§ 410.40.20 Application

A labor-hour contract is for use only when it is not possible to estimate in advance the extent or duration of the work required or to anticipate costs with any reasonable degree of confidence. This contract type does not encourage effective contractor management or control of costs. Therefore, it may be used only when provision is made for adequate monitoring by judiciary personnel during performance, to give reasonable assurance that efficient methods and effective cost controls are being used. Examples of situations in which this type of contract might be appropriate are:

(a) work to be done in emergency situations;

(b) development of custom computer software;

(c) development of specialized training programs;

(d) contracts for personal services or for expert or consultant services (**see:** Guide, Vol 14, Ch 5);

(e) contracts for temporary help support services (for additional restrictions on the use of temporary help support services, **see:** Guide, Vol 12, § 560.)

§ 410.40.30 Limitations

This type of contract may be used only if no other type of contract will meet the judiciary's needs. Use of this contract type requires a one-time delegation of authority from the PE prior to issuance of the solicitation, **except** if the contract is for:

(a) temporary help support services; or

(b) expert services where the solicitation and contract are based upon approved templates, such as FPD case-related expert services, or employee dispute resolution services.

The contract must include a stated ceiling price which the contractor exceeds at its own risk. Any contract modification to increase the ceiling amount must be supported by file documentation showing the reason for the change and how the new ceiling amount was determined.

§ 410.40.35 Solicitation Considerations

In order to ensure that fair and reasonable prices are being paid under labor-hour and time-and-materials contracts, the contracting officer must determine at the time of solicitation the extent of price competition, which will determine the proposal instructions with respect to hourly rates. The use of "blended" rates for the specified labor categories, i.e., a single rate per category without distinction as to whether the labor is performed by the prime contractor or a subcontractor, is not authorized when the contract is expected to be awarded without adequate price competition. Solicitations for labor-hour or time-and-materials contracts when there is not adequate price competition must require submission of separate hourly rates for each labor category for labor to be performed by:

- the contractor;
- each subcontractor; and
- each division, subsidiary, or affiliate of the contractor under a common control. (**Note:** The fixed hourly rates for services transferred between divisions, subsidiaries, or affiliates of the contractor under a common control shall not include profit for the transferring organizations, but may include profit for the prime contractor.)

For guidance on clauses and provisions applicable to labor-hour contracts, **see:** Guide, Vol 14, § 410.45.50.

§ 410.40.40 RESERVED

§ 410.45 Time-and-Materials Contracts

§ 410.45.10 Description

(a) Time-and-materials contracts provide for payment to the contractor for labor at fixed labor rates and for materials at cost. The contract must contain a not-to-exceed amount. It may be fully funded at the time of award or incrementally funded provided that:

(1) the funding balance is always at least equal to the cumulative value of the services and materials ordered, and

(2) a clause reserving the right to incrementally fund is contained in the contract.

(b) A time-and-materials contract is similar to a labor-hour contract except that it includes reimbursement at cost for materials. It provides for the purchase of:

(1) labor hours at fixed hourly rates which include wages plus overhead, general and administrative expense, and profit; and

(2) materials at actual cost.

Note: No profit is allowed on the material component of a time and materials contract. When appropriate, material-handling costs are reimbursed as a part of material costs. Material-handling costs may include all indirect costs, including general and administrative expense, allocated to direct materials in accordance with the contractor's usual accounting practices. Such material-handling costs may only include costs clearly not included in the fully-burdened labor-hour rate.

§ 410.45.20 Application

A time-and-materials contract is for use only when it is not possible to estimate in advance the extent or duration of the work required or to anticipate costs with any reasonable degree of confidence. Because it does not encourage effective management control of costs by the contractor, this contract type may be used only when provision is made for adequate monitoring by judiciary personnel during performance, to give reasonable assurance that efficient methods and effective cost controls are being used. Examples of situations in which this type of contract might be appropriate are:

(a) repair, maintenance, and overhaul work in which the extent of the labor required and parts needed cannot be determined in advance; and

(b) work to be done in emergency situations.

§ 410.45.30 Limitations

This type of contract may be used only if no other type of contract will meet the judiciary’s needs. Use of this contract type for situations outside of the two examples above requires a one-time delegation of authority from the PE prior to issuance of the solicitation.

The contract must include a stated ceiling price which the contractor exceeds at its own risk. Any contract modification to increase the ceiling amount must be supported by file documentation showing the reason for the change and how the new ceiling amount was determined.

The additional requirements above at § 410.40.35 (Solicitation Considerations) also apply to time-and-materials contracts.

§ 410.45.40 Optional Method of Pricing Material

When the work to be performed requires the contractor to furnish material that is regularly sold to the public in the normal course of business by the contractor, the CO may provide for charging and reimbursement of material on a basis other than at cost if:

(a) the total estimated contract price does not exceed $25,000 or the estimated price of material so charged does not exceed 20 percent of the estimated contract price;

(b) the material to be so charged is identified in the contract;

(c) no element of profit on material so charged is included in the profit in the fixed hourly labor rates; and

(d) the contract requires that the price to be paid for such material is, or is based on, an established catalog or list price, in effect when material is furnished, less all applicable discounts, and not exceeding the contractor's price to its most favored customer for the same item in like quantity, or the current market price, whichever is lower.

§ 410.45.50 Provisions and Clauses - Labor-Hour and Time-and Materials Contracts	
Provision or Clause	**Include in ...**
(a) Provision 4-27, Time-and-Materials/Labor-Hour Proposal Requirements – Competitive Pricing	solicitations for labor-hour or time-and-materials contracts when the award is expected to be based on competitive quotes or proposals. The contracting officer may amend this provision to make one of the three approaches in paragraph (c) of the provision mandatory, and/or to require the identification of all subcontractors, divisions, subsidiaries, or affiliates included in a blended labor rate.

§ 410.45.50 Provisions and Clauses - Labor-Hour and Time-and Materials Contracts	
Provision or Clause	**Include in ...**
(b) Provision 4-28, Time-and-Materials/Labor-Hour Proposal Requirements – Non-Competitive Pricing	solicitations for labor-hour or time-and-materials contracts when the award is not expected to be based on competitive quotes or proposals. This provision requires the offeror to establish separate individual labor hour rates for prime contractor employees, employees of each subcontractor and employees from affiliates of the offeror. Use of a "blended" rate is not permissible.
(c) Clause 4-30, Payment (Time-and-Materials and Labor-Hour Contracts)	all time-and-materials solicitations and contracts (base clause) and all labor-hour solicitations and contracts (with Alternate I)

§ 410.50 Letter Contract

§ 410.50.10 Description

A letter contract is a written preliminary contractual instrument that authorizes the contractor to begin work immediately, before negotiation of a definitive contract.

§ 410.50.20 Application

A letter contract is for use when:

(a) the requirement demands that the contractor be given a binding commitment so that work can commence immediately; and

(b) it is not possible to negotiate all of the terms and conditions necessary for a definitive contract in sufficient time to meet the requirement.

§ 410.50.30 In General

Each letter contract must be as complete and definitive as possible under the circumstances. When award is based on price competition, an overall price ceiling must be included in the letter contract.

§ 410.50.40 Definitization Schedule

Each letter contract must contain a negotiated definitization schedule including the following information:

(a) date for submission of the contractor's priced offer;

(b) date for the start of negotiation; and

(c) target date for definitization, which must be the earliest practicable date.

§ 410.50.50 Maximum Liability

Each letter contract must state the maximum liability of the judiciary. This is the estimated amount needed to cover performance before contract definitization. This amount may not exceed 50 percent of the total estimated cost of the contract.

§ 410.50.60 Time Frame for Definitization

The definitization schedule must require contract definitization within 180 days after the date of the letter contract or before completion of 40 percent of the work to be performed, whichever occurs first. The PE may, in extreme cases, authorize an additional period if, after exhausting all reasonable efforts, the CO and the contractor cannot negotiate a definitive contract agreement because of failure to agree on price or fee. Clause 4-45, Contract Definitization, requires the contractor to proceed with the work and provides that the CO may determine a reasonable price or fee subject to appeal as provided in Clause 7-235, Disputes.

§ 410.50.70 Limitations

A letter contract:

(a) may be used only if no other type of contract is suitable and if prior written approval is given by the PE;

(b) may not commit the judiciary to a definitive contract in excess of the funds available at the time the letter contract is executed; and

(c) may not be modified to add new work unless the work added is inseparable from the work being performed under the letter contract.

§ 410.50.80 Clauses

A letter contract must include clauses required for the type of definitive contract contemplated and any additional clauses known to be appropriate. All letter contracts must also include the following clauses:

§ 410.50.80 Clauses	
Clause	**Notes**
(a) Clause 4-35, Execution and Commencement of Work (Letter Contract)	The CO will appropriately fill in the clause's blank spaces
(b) Clause 4-40, Limitation of Judiciary Liability (Letter Contract)	The maximum liability in the clause is the amount necessary to cover the contractor's performance before definitization. The CO will appropriately fill in the clause's blank spaces.
(c) Clause 4-45, Contract Definitization	The CO must enter the contract type and definitization schedule established according to § 410.50.40, above.
(d) Clause 4-50, Payment of Allowable Costs Before Definitization	Include when the letter contract is expected to result in a definitive cost-reimbursement contract.

§ 410.55 Fixed-Price Award Fee Contract

§ 410.55.10 Application

A fixed-price award fee contract is used in fixed-price contracts when the judiciary wishes to motivate a contractor and another incentive cannot be used because contractor performance cannot be measured objectively. Such contracts must:

(a) establish a fixed price (including normal profit) for the effort. This price will be paid for satisfactory contract performance. Award fee earned (if any) will be paid in addition to the fixed price; and

(b) provide for periodic evaluation of the contractor's performance against an award-fee plan.

§ 410.55.20 Limitations

A solicitation contemplating award of a fixed-price contract with award fee must not be issued unless the following conditions exist:

(a) the administrative costs of conducting award-fee evaluations are not expected to exceed the expected benefits;

(b) procedures have been established for conducting the award-fee evaluation;

(c) the award-fee board has been established; and

(d) may be used only if no other type of contract is suitable and if prior written approval is given by the PE.

§ 410.60 Fixed-Price Incentive Contract

§ 410.60.10 Description

(a) A fixed-price incentive (FPI) contract is a fixed price contract that provides for adjusting profit and establishing the final contract price by application of a formula based on the relationship of total final negotiated cost to total target cost.

(b) The profit adjustment formula may be applied either at a pre-determined mid-point of performance (successive targets) or upon completion of performance to establish the final contract price (firm target). The formula is based on the relationship of the total actual cost to an established target cost. For each item subject to incentive price revision, the contract must specify a target cost, a target profit, a target price, a price ceiling, and a profit adjustment formula. The price ceiling is the maximum that may be paid to the contractor, except for adjustments specially provided for under contract clauses.

§ 410.60.20 Application

A fixed-price incentive contract is appropriate when the parties can negotiate at the outset an initial target cost, target profit, and profit adjustment formula that will provide a fair and reasonable incentive and a ceiling that provides for the contractor to assume an appropriate share of the risk. When the contractor assumes a considerable or major share of the cost responsibility under the adjustment formula, the target profit must reflect this responsibility.

§ 410.60.30 Limitations

This contract type may be used only when:

(a) no other type of contract is suitable and if the PE gives prior written approval;

(b) the nature of the products or services being procured and other circumstances of the procurement make it advantageous for the judiciary to offer the contractor an economic incentive to establish effective cost control and efficient performance;

(c) if the contract also includes incentives on technical performance or delivery, the performance requirements offer a reasonable opportunity for the incentives to have a meaningful impact on the contractor's management of the work;

(d) the contractor's accounting system is adequate for providing data for negotiating firm targets and a realistic profit adjustment formula, and later negotiation of final costs;

(e) adequate cost or pricing information for establishing a firm target is reasonably expected to be available for contract negotiations;

(f) the CO determines that this type of contract would be less costly than another type or that it is impractical to obtain products or services of the kind or quality required without the use of this contract type.

§ 410.60.40 Fixed-Price Incentive – Firm Target

A fixed-price incentive contract with a firm target must, at the outset of the contract, specify these negotiated elements:

(a) a target cost;

(b) a target profit;

(c) a price ceiling (but not a profit ceiling or floor);

(d) a profit adjustment formula that includes the following:

(1) when the final cost is less than the target cost, application of the formula will result in a final profit greater than the target profit;

(2) when the final cost is more than the target cost, application of the formula will result in a final profit less than the target profit or net loss; and

(3) if the final negotiated cost exceeds the price ceiling, the contractor will absorb the difference as a loss.

(e) the price ceiling must be the maximum that may be paid to the contractor, except for any adjustment under other contract clauses; and

(f) when the contractor completes contract performance, the CO and the contractor must negotiate the contractor's final cost and establish the final price by applying the profit adjustment formula.

§ 410.60.50 Fixed-Price Incentive – Successive Targets

A fixed-price incentive contract with successive targets must, at the outset of the contract, specify these negotiated elements:

(a) an initial target cost;

(b) an initial target profit;

(c) an initial profit adjustment formula to be used for establishing the firm target profit, including a ceiling and floor for the firm target profit;

(d) the production point at which the firm target cost and firm target profit will be negotiated;

(e) a ceiling price that is the maximum that may be paid to the contractor, except for any adjustment under any other contract clauses providing for equitable adjustment or other revision of the contract price under stated conditions.

When the production point specified in the contract is reached, the parties negotiate the firm target cost, giving consideration to cost experience under the contract and other pertinent factors. The firm target profit is established by the formula.

§ 410.65 Fixed-Price Contract with Economic Price Adjustment

§ 410.65.10 Description

A fixed-price contract with economic price adjustment (EPA) provides for the upward and downward revision of the contract price based upon the occurrence of contingencies that are defined in the contract.

§ 410.65.15 Application

This type of contract is appropriate when there is serious doubt as to the stability of market and labor conditions that will exist during an extended period of contract performance and contingencies that would otherwise be included in a firm-fixed-price contract are identifiable and can be covered separately. Its usefulness is limited by the difficulties of its administration.

§ 410.65.20 Limitation

The CO must not use a fixed-price contract with economic price adjustment unless the CO first determines that it is necessary to protect the contractor and the judiciary against significant fluctuations in labor or material costs or to provide for contract price adjustment in the event of changes in the contractor's established prices. This contract type may be used only if no other type of contract is suitable and the PE gives prior written approval.

§ 410.65.25 Types of Adjustments

An economic price adjustment may be one of the following general types:

(a) adjustment in price based on increases or decreases from an agreed-upon level in published or otherwise established prices of specific items or the contract end items e.g., Consumer Price Index;

(b) adjustment based on increases or decreases in specified costs of labor or material that the contractor actually experiences during contract performance; or

(c) adjustment based on increases or decreases in labor or material cost standards or indices that are specifically identified in the contract.

§ 410.65.30 Price Adjustments Based on Catalog Prices

Price adjustments based on established catalog prices must be restricted to industry-wide contingencies. Industry-wide contingencies must be those affecting a particular

industry as a whole and not be dependent on circumstances within the contractor's control.

§ 410.65.35 Price Adjustments Based on Costs

Price adjustments based on labor and material costs must be limited to contingencies beyond the contractor's control.

§ 410.65.40 Base Level Establishment

When establishing the base level from which price adjustments may be made, the CO must ensure that contingency allowances are not duplicated by inclusion in both the base price and the adjustment requested by the contractor. In contracts that do not require submission of detailed cost information, the CO must obtain adequate information to establish the base level from which adjustments will be made and may require verification of data submitted.

§ 410.65.45 Economic Price Adjustment Contingencies

Fixed-price contracts provide for economic price adjustment when:

(a) there is no major element of design engineering or development work involved,

(b) there are identifiable labor or material cost factors subject to change, and

(c) the CO determines it is necessary to protect the contractor and the judiciary against significant fluctuations in labor or material costs or to provide for contract price adjustment in the event of changes in the contractor's established prices.

§ 410.65.50 Clauses

When contemplating economic price adjustment in contracts for standard products that have an established catalog or market price Clause 4-55, Economic Price Adjustment – Standard Products must be included. The offeror will appropriately fill in the clause's blank spaces.

§ 410.70 Cost-Reimbursement Contracts

§ 410.70.10 Description

Cost reimbursement contracts may be incrementally funded, as long as the amount obligated is always in excess of the cumulative costs that is anticipated the contractor

will accrue during the following voucher period. These contracts establish an estimate of the total cost for the purpose of obligating funds. They also establish a total estimated reimbursement cost. The contractor may not exceed the total funded amount of the contract, except at its own risk, without the prior written approval of the CO. Cost-reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit the establishment of fixed prices. There are several types of cost-reimbursement contracts as described below. A cost-plus-percentage-of-cost contract type is not an authorized contract type under any circumstances.

§ 410.70.20 Limitations

Any of the cost-reimbursement contracts described below may be used only when:

(a) no other type of contract is suitable and the PE has given prior written approval;

(b) the contractor's accounting system is adequate for recording and segregating costs applicable to the contract;

(c) appropriate judiciary monitoring during performance will provide reasonable assurance that efficient methods and effective cost controls are used; and

(d) the CO determines in writing, that:

(1) the use of a cost-reimbursement type contract is likely to be less costly than any other type; or

(2) it is impractical to obtain products or services of the kind or quality required without the use of this contract type.

§ 410.70.30 Cost Contract

A cost contract is a cost-reimbursement contract under which the contractor receives no fee (profit).

§ 410.70.40 Cost-Sharing Contract

A cost-sharing contract is a cost-reimbursement type contract under which the contractor does not receive a fee and is reimbursed only for an agreed upon portion of its allowable costs. It is suitable for use where there is a high probability that the contractor will receive substantial commercial benefits as a result of contract performance.

§ 410.70.50 Cost-Plus-Incentive-Fee Contract

(a) Description

A cost-plus-incentive-fee contract is a cost-reimbursement contract that provides for the initially negotiated fee to be adjusted later by application of a formula based on the relationship of total allowable performance costs to target costs. This contract type specifies a target cost, a target fee, minimum and maximum fees, and a fee adjustment formula.

(b) Application

A cost-plus-incentive-fee contract is suitable when a cost-reimbursement contract is appropriate and a target cost and fee adjustment formula likely to motivate the contractor to manage the contract effectively can be negotiated. The fee adjustment formula must provide an incentive effective over the full range of reasonably foreseeable variations from target cost. If a high maximum fee is negotiated, the contract must provide for a low minimum fee, or even a zero or negative fee.

§ 410.70.60 Cost-Plus-Fixed-Fee Contract

(a) Description

A cost-plus-fixed-fee contract is a cost-reimbursement contract that provides for payment to the contractor of a negotiated fee in a fixed amount. The fixed fee amount does not vary with actual performance costs incurred, but may be adjusted as a result of changes made in contract requirements. This contract type gives the contractor only a minimum incentive to control costs.

(b) Application

The CO may use a cost-plus-fixed-fee contract when contracting for efforts that might otherwise present too great a risk to the contractor, such as when the contract is for a study and the level of effort cannot be reasonably estimated.

(c) Completion or Term Form

A cost-plus-fixed-fee contract must be in one of two basic forms: the completion form or the level-of-effort or term form.

(1) Completion Form

The completion contract form describes the scope of work by stating a definite goal or target and specifying an end product deliverable. This form of contract normally requires the contractor to complete and deliver the specified end product within the estimated cost, if possible, as a condition for payment of the entire fixed fee. If the work cannot be completed within the estimated cost, the judiciary may require more effort without an increase in fee, but the estimated cost and funding must be increased.

(2) Term Form

The term form describes the scope of work in general terms and obligates the contractor to devote a specified level of effort for a stated time period. Under this form, if performance is satisfactory, the fixed fee is payable at the expiration of the agreed upon period, upon contractor certification that the level of effort specified in the contract has been expended in performing the contract work. It does not require a deliverable end product. Renewal for further periods of performance requires new cost and fee arrangements and is treated as a new purchase.

(d) Preference

Because of the greater risks and obligation assumed by the contractor, the completion form is preferred over the term form whenever the work can be defined well enough to permit a reasonable cost estimate within which the contractor can be expected to complete the work.

§ 410.70.70 Cost-Plus-Award-Fee Contract

(a) Description

A cost-plus-award-fee contract is a cost-reimbursement contract that provides for a fee consisting of:

(1) a base amount (which may be zero) fixed at inception of the contract; and

(2) an award amount that the contractor may earn in whole or in part during performance and that is sufficient to provide motivation for excellence in such areas as quality, timeliness, technical ingenuity, and cost-effective management. The amount of the award fee to

be paid is determined by the judiciary's judgmental evaluation of the contractor's performance in terms of the criteria stated in the contract. This determination and the methodology for determining the award fee are unilateral decisions made solely at the discretion of the judiciary.

(b) Application

(1) The cost-plus-award-fee contract is suitable for use when:

(A) the work to be performed is such that it is neither feasible nor effective to devise predetermined objective incentive targets applicable to cost, technical performance, or schedule;

(B) the likelihood of meeting procurement objectives will be enhanced by using a contract that effectively motivates the contractor toward exceptional performance and provides the judiciary with the flexibility to evaluate both actual performance and the conditions under which it was achieved; and

(C) any additional administrative effort and cost required to monitor and evaluate performance are justified by the expected benefits.

(2) The number of award fee evaluation criteria and the requirements they represent will differ widely among contracts. The criteria and rating plan must motivate the contractor to improve performance in the areas rated, but not at the expense of at least minimum acceptable performance in all other areas.

(3) Cost-plus-award-fee contracts must provide for evaluation at stated intervals during performance, so that the contractor will periodically be informed of the quality of its performance and the areas in which improvement is expected. Partial payment of fee must generally correspond to the evaluation periods. This makes effective the incentive which the award fee can create by inducing the contractor to improve poor performance or to continue good performance.

(c) Additional Limitation

In addition to the general limitations on cost-reimbursement contracts stated in § 410.70.20, an additional limitation on the use of cost-plus-

award-fee contracts is that the contract amount, performance period, and expected benefits must be sufficient to warrant the additional administrative effort and cost involved.

§ 410.70.80 Cost Contract Clauses	
Clause	**Include in ...**
(a) Clause 4-60, Allowable Cost and Payment	All cost reimbursement solicitations and contracts.
(b) Clause 4-65, Fixed Fee	Solicitations and contracts when a cost-plus-fixed-fee contract is contemplated.
(c) Clause 4-70, Incentive Fee	Solicitations and contracts when a cost-plus-incentive-fee contract is contemplated. The CO will appropriately fill in the clause's blank spaces.
(d) Clause 4-75, Cost Contract – No Fee	Solicitations and contracts when a cost contract with no fee is contemplated.
(e) Clause 4-80, Cost-Sharing Contract – No Fee	Solicitations and contracts when a cost-sharing contract is contemplated.
(f) Clause 4-85, Limitation of Cost	Solicitations and contracts when a fully funded cost reimbursable contract is contemplated, whether or not the contract provides for payment of a fee.
(g) Clause 4-90, Limitation of Funds	Solicitations and contracts when an incrementally funded cost reimbursable contract is contemplated.

§ 410.75 Multi-Year Contracts

§ 410.75.10 Definitions

(a) Cancellation

The cancellation (within a contractually specified time) of the total requirements of all remaining contract years. Cancellation results when the contracting officer notifies the contractor that funds will not be made available for contract performance for any subsequent contract year.

(b) Cancellation Ceiling

The maximum cancellation charge that the contractor can receive in the event of cancellation.

(c) Cancellation Charge

The amount of unrecovered costs which would have been recouped through amortization over the full term of the contract, including the term canceled.

(d) Multi-Year Contract

A contract for the purchase of products or services for more than 1, but not more than 5, contract years. A multi-year contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds, and (if it does so provide) may provide for a cancellation payment to be made to the contractor if appropriations are not made. The key distinguishing difference between multi-year contracts and multiple year contracts is that multi-year contracts represent more than one year's commitment to a vendor without establishing and having to exercise an option for each contract year after the first.

(e) Fixed Costs

Those costs that are generally incurred on a one-time basis and include such costs as plant or equipment relocation, plant rearrangement, special tooling and special test equipment, preproduction engineering, initial spoilage and rework, and specialized work force training.

(f) Variable Costs

Costs that vary with the quantity being produced, such as labor and materials.

§ 410.75.15 Description

(a) A multi-year contracting allows the judiciary to order products or services to meet known requirements over a period of up to a maximum of five years, unless otherwise authorized by statute. Multi-year contracts are not indefinite ordering vehicles and the solicitation and contract are limited to definite known requirements for the proposed multi-year period.

(b) Multi-year contracts may either be fully funded for the entire multi-year period at the time of award or may be funded by contract year. For information regarding requirements to fund cancellation charges when annually funding multi-year contracts, **see:** § 410.75.35(a).

(c) Multi-year contracting offers flexibility for a wide range of acquisitions. The extent to which cancellation terms are used in multi-year contracts will depend on the circumstances of each contract.

(d) The funds obligated for multi-year contracts must be sufficient to cover any potential cancellation and/or termination costs; and multi-year contracts for the acquisition of products should be fully funded or funded in stages that are economically or programmatically viable. If funded in stages, the funding must always include the potential cancellation costs. If fully funded from current year funds and incorporating advance payment terms, it is important to note that payment against those funds may not be made in a single lump amount. For limitations on advance payment, **see:** Guide, Vol 14, § 220.55.50.

(e) The termination for convenience procedure may apply to any government contract, including multi-year contracts. As contrasted with cancellation, termination can be effected anytime during the life of the contract (cancellation is effected between contract years) and can be for the total quantity or partial quantity (where as cancellation must be for all subsequent contract years' quantities).

§ 410.75.20 Use of Multi-Year Contracting

(a) Before issuance of a multi-year solicitation or contract, the CO must obtain a one-time delegation of authority from the PE by first preparing and obtaining PE approval of a determination addressing the following factors:

(1) The need for the products or services is reasonably firm and continuing over the period of the contract; and

(2) A multi-year contract will serve the best interests of the judiciary by encouraging full and open competition or promoting economy in administration, performance, and operation of the judiciary's programs. Factors that should be addressed within the required determination and finding to the extent that they are applicable include:

(A) lower costs;

(B) enhancement of standardization;

(C) reduction of administrative burden in the placement and administration of contracts;

(D) substantial continuity of production or performance, thus avoiding annual startup costs, preproduction testing costs, make-ready expenses, and phaseout costs;

(E) stabilization of contractor work forces;

(F) avoidance of the need for establishing quality control techniques and procedures for a new contractor each year;

(G) broadening the competitive base with opportunity for participation by firms not otherwise willing or able to compete for lesser quantities, particularly in cases involving high startup costs; and

(H) providing incentives to contractors to improve productivity through investment in capital facilities, equipment, and advanced technology.

(b) Once the determination and finding has been approved, the CO may proceed to issue the solicitation if using the lowest price/technically acceptable evaluation method. If the solicitation uses the best value method of evaluation, additional PE approval of the solicitation itself is required before issuance.

(c) All proposed contract awards and the supporting analysis of competing offers (if competitively awarded) must be submitted to the PE for review and issuance of the one-time delegation of authority.

§ 410.75.25 Type of Contract

If a fixed price multi-year contract is planned, the CO may consider inclusion of economic price adjustment terms and profit objectives commensurate with contractor risk and financing arrangements. **See:** § 410.65 (Fixed-Price Contracts with Economic Price Adjustment).

§ 410.75.30 Cancellation Procedures

(a) All contract years except the first are subject to cancellation. For each contract year subject to cancellation, the CO will establish a cancellation

ceiling. Ceilings must exclude amounts for requirements included in prior contract years. The CO will reduce the cancellation ceiling for each contract year in direct proportion to the remaining requirements subject to cancellation. If a multi-year contract is not fully funded upon award, but is funded at the beginning of each contract year, the modification obligating each year's funds must also establish and obligate the cancellation ceiling or cancellation charge applicable in the event the contract is cancelled at the end of that contract year.

(b) The CO will incorporate in the contract cancellation dates for each contract year's requirements and the date by which funding for these requirements can reasonably be established.

§ 410.75.35 Payment of Cancellation Charges

If cancellation occurs, the government's liability will be determined by the terms of the applicable contract.

§ 410.75.40 Payment Limit

The contracting officer will limit the government's obligation to an amount available for contract performance. If funding at the beginning of each contract year, the contracting officer will insert the amount for the first contract year in the contract upon award and modify it for successive contract years upon availability of funds.

§ 410.75.45 Termination Payment

If the contract is terminated for the convenience of the government in whole, including requirements subject to cancellation, the government's obligation may not exceed the amount specified in the contract as available for contract performance, plus the cancellation ceiling.

§ 410.75.50 Basis for Award

Multi-year contracts may be awarded on either a best value or a lowest price/technically acceptable basis. In either case, the solicitation must identify all the factors related to multi-year contracting that will be considered in offer evaluation including the following specific information:

(a) The requirements, by item of supply or service, for:

- the first contract year; and

- the entire multi-year contract including the requirements for each contract year.

(b) Criteria for comparing the lowest evaluated submission on the first contract year requirements to the lowest evaluated submission on the multi-year requirements.

(c) A provision that, if the government determines before award that only the first contract year requirements are needed, the government may evaluate offers and make award solely on the basis of prices offered on that year's requirements.

(d) A provision for the vendor to propose a separate cancellation ceiling (on a percentage or dollar basis) and dates applicable to each contract year subject to a cancellation. The solicitation must also include a requirement that the vendor provide its rationale and supporting data for its proposed cancellation ceiling(s).

(e) A statement that award will not be made on less than the first contract year requirements.

(f) The government's administrative costs of annual contracting (only permissible if they can be reasonably established).

(g) A statement that the cancellation ceiling may not be an evaluation factor.

(h) All other technical evaluation factors.

§ 410.75.55 Price Evaluation

(a) Evaluation of price offers must include:

(1) determination of the lowest overall evaluated cost to the government for both the multi-year and the first contract year requirements, and

(2) comparison of the cost of buying the total requirement under a multi-year acquisition with the cost of buying the total requirement in successive independent acquisitions, or using a contract with option years.

(b) To determine the lowest evaluated unit price, the CO will compare the lowest evaluated offer on the first year alternative against the lowest evaluated offer on the multi-year alternative as follows:

(1) Multiply the evaluated unit price for each item of the lowest evaluated offer on the first year alternative by the total number of units of that item required by the multi-year alternative;

(2) Add the total amount for all the items to the dollar amount of any administrative costs identified in the solicitation; and,

(3) Compare this result against the total evaluated price of the lowest offer on the multi-year alternative.

(c) Where the multi-year acquisition is being competed on a basis other than price alone, the CO must conduct the evaluation based on the evaluation factors contained in the solicitation.

(d) The evaluation procedures contained in this paragraph may be modified if necessary to meet the circumstances of a particular acquisition.

§ 410.75.60 Options

Benefits may accrue by including options in a multi-year contract. In that event, COs must follow the requirements in the Guide, Vol 14, § 220.40. Options should not include charges for plant and equipment already amortized, or other fixed charges that were included in the basic contract. The total duration of a multi-year contract may not exceed five years.

§ 410.75.65 Contract Clauses and Provisions

Include the following clauses in solicitations and contracts for multi-year contracts unless the prescription indicates otherwise:

§ 410.75.65 Contract Clauses and Provisions	
Clause	**Include in ...**
(a) Clause 4-150, Cancellation Under Multi-year Contracts	All multi-year solicitations and contracts.
(b) Clause 4-55, Economic Price Adjustment - Standard Products	Fixed-price multi-year solicitations and contracts meeting the criteria set forth in § 410.65.15.

§ 410.75.65 Contract Clauses and Provisions	
Clause	**Include in ...**
(c) Clause 3-175, Fair Labor Standards Act and Service Contract Act – Price Adjustment (Multi-Year and Option Contracts)	Multi-year solicitations and contracts when contracting for services on a fixed price, labor-hour or time-and-materials basis and the contract includes Clause 3-160, Service Contract Act of 1965, as amended.
(d) Provision 4-155, Evaluation of Price Proposal – Multi-year Contract	All multi-year solicitations and contracts.
(e) Clause 4-160, Cancellation Period and Ceiling	All multi-year solicitations and contracts.
(f) Provision 4-165, Price Proposal Instruction – Multi-year Contract	All multi-year solicitations.

§ 420 Technical Analysis

§ 420.10 In General

(a) A technical analysis may be necessary to assist in price and/or cost analysis. The CO will rely on the technical expertise of the requesting activity's designated expert(s) or other appropriate advisors.

(b) Technical analysis of offers may range from evaluating technical offers according to evaluation factors specified in the solicitation (competitive offers) to extensive analysis of materials, labor hours and labor mix, special tooling and facilities, and other factors. At a minimum, the technical analysis should examine the types and quantities of material proposed and the need for the types and quantities of labor hours and the labor mix. Any other data that may be pertinent to an assessment of the offeror's ability to accomplish the technical requirements or to the cost or price analysis of the service or product being proposed should also be included in the analysis.

§ 430 Price Evaluation

§ 430.10 In General

This section describes procedures for evaluating initial prices, subcontract prices, and pricing modifications. COs are responsible for ensuring that prices are fair and reasonable. To carry out this responsibility, COs must:

(a) evaluate proposed prices using the methods of price or cost analysis described in this chapter; and

(b) evaluate the proposed price of each contract separately and independently without considering:

(1) proposed price reductions under other contracts held by the same contractor; or

(2) losses or profits on other contracts held by the same contractor.

§ 430.20 Offer Analysis

(a) The CO exercises sole responsibility for the final pricing decision with advice and assistance appropriately obtained according to the complexity and dollar value of the offer to be analyzed. As circumstances warrant, the CO must obtain and evaluate the advice of specialists, including, but not limited to, specialists in contracting, finance, law, audit, quality assurance, engineering, and pricing.

(b) The CO must coordinate the team effort involved in the analysis. When complex problems involving significant matters will be addressed, the CO must have appropriate specialists in attendance for advice during the negotiations. The CO may assign responsibility to a negotiator or price analyst for:

(1) determining the necessary extent of specialists' advice;

(2) evaluating the specialists’ advice;

(3) coordinating a team of experts;

(4) consolidating pricing data;

(5) developing a pre-negotiation objective; and

(6) conducting negotiations.

§ 430.30 Adequate Price Competition

§ 430.30.10 General

Price competition exists when:

(a) at least three offers are solicited;

(b) two or more independent and responsible offerors submit priced offers meeting the solicitation's requirements; and

(c) the solicitation identifies price as an evaluation factor for award.

§ 430.30.20 Presumption of Adequacy

If price competition exists, it is presumed as adequate unless:

(a) the solicitation is made under conditions that unreasonably deny one or more known and qualified offerors an opportunity to compete;

(b) the low offeror has such a decided advantage that it is practically immune from competition; or

(c) the CO determines that the lowest price is not fair and reasonable.

§ 440 Price Analysis

§ 440.10 In General

Price analysis (**see:** Guide, Vol 14, § 345.40), rather than cost analysis (**see:** Guide, Vol 14, § 345.50), is the preferred method of evaluating and negotiating pricing for the following:

(a) firm fixed price contracts;

(b) the unit prices of many indefinite delivery contracts;

(c) the burdened hourly rates contained in labor hour and time and material contracts; and

(d) other contract instruments where prices can be compared to prices for the same or similar products or services sold in substantial quantities in the same time frame elsewhere in the market place.

It is a method of determining that the overall price is fair and reasonable without a detailed analysis of its cost and profit components.

§ 440.20 Price Analysis Techniques

The CO is responsible for selecting and using appropriate price analysis techniques to ensure a fair and reasonable price. One or more of the following techniques may be used to perform price analysis:

(a) comparison of proposed prices received from two or more offerors in response to the solicitation;

(b) comparison of prior proposed prices with current proposed prices for the same or similar end items in comparable quantities;

(c) compare with similar products or services purchased previously;

(d) compare with similar products or services purchased at other federal agencies;

(e) application of estimating metrics (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies which may warrant additional pricing inquiry;

(f) comparison with competitive published catalogs or price lists, published market prices or commodities, similar indices, and discount or rebate arrangements;

(g) comparison of proposed prices with independent judiciary estimates (**see:** Guide, Vol 14, § 210.30(d)); or

(h) ascertaining that the price is set by law or regulation.

Comparison of competed prices will ordinarily suffice to meet price analysis requirements. If a determination of fair and reasonable price is based solely upon paragraph (g) above, significant differences between the price awarded and the independent judiciary estimate must be explained in the negotiation memorandum.

§ 450 Cost Analysis

§ 450.10 In General

Cost analysis must be performed when it is necessary to examine individual cost elements, such as labor or material prices and indirect cost rates and profit, to determine the reasonableness of price. Cost analysis and requests for supporting data must be limited only to those cost elements that the CO decides need analysis.

§ 450.20 Cost Analysis Techniques

Cost analysis involves the following techniques and procedures as appropriate:

(a) Verifying and evaluating of individual cost elements, including:

(1) the necessity for, and reasonableness of, proposed costs, including allowances for contingencies;

(2) projection of the offeror's cost trends, on the basis of current and historical detailed cost information;

(3) a technical appraisal of the estimated labor, material, tooling, and facilities requirements and of the reasonableness of scrap and spoilage factors; and

(4) the application of audited or negotiated indirect cost rates and labor rates.

(b) Evaluating the effect of the offeror's current practices on future costs. In conducting this evaluation, the CO must ensure that the effects of inefficient or uneconomical past practices are not projected into the future. In pricing production of recently developed, complex equipment, the CO must make a trend analysis of basic labor and materials even in periods of relative price stability.

(c) Comparing costs proposed by the offeror for individual cost elements with:

(1) actual costs previously incurred by the same offeror;

(2) previous cost estimates from the offeror or from other offerors for the same or similar items;

(3) independent judiciary cost estimates; and

(4) forecasts of planned expenditures.

(d) Analyzing contractor make-or-buy decisions in evaluating subcontract costs.

(e) Verifying that the offeror's cost submissions comply with the cost principles in this section.

(f) Reviewing the offer to determine if the contractor has neglected to submit or identify in writing any detailed cost information necessary to make the offer accurate, complete, and current. If the contractor has omitted such data, the CO must attempt to obtain it. If the CO cannot obtain it, satisfactory allowance for the incomplete information must be made in negotiations.

(g) Analyzing any applicable Defense Contract Audit Agency (DCAA) audits for the contractor.

§ 450.30 Detailed Cost Information

§ 450.30.10 Exceptions

The CO may determine that detailed cost information is not required if:

(a) the price reasonableness can be determined by adequate competitive offers;

(b) prices are set by law or regulation;

(c) the prices are based on established catalog or market prices; or

(d) a waiver is granted by the CO.

§ 450.30.20 In General

The CO may obtain detailed cost information before the award of any competitive contract or contract modification if required for the analysis and determination of price reasonableness. Only the detailed information needed to make that determination will be obtained. Requesting detailed cost information is not necessary if the price reasonableness can be determined by one of the following factors:

(a) adequate price competition;

(b) prices are set by law or regulation; or

(c) a commercial item is being acquired

When warranted, and before an agreement on price can be reached, the CO must require the contractor to update the cost information as of the latest dates for which information is reasonably available.

§ 450.30.30 Subcontracts

The CO must require offerors or contractors to obtain detailed cost information for proposed subcontracts or subcontract modifications only when necessary to determine the reasonableness of the proposed subcontract price, including negotiated final pricing actions (such as termination settlements and total final price agreements for fixed-price incentive contracts).

§ 450.30.40 Subcontract Offer Analysis

As part of its detailed cost information, the offeror or contractor is responsible for submitting to the CO its price analysis or cost analysis on subcontract offers, including the results of its subcontract price reviews and analysis. In unusual circumstances, to ensure that adequate analysis is performed, the CO may require the offeror or contractor to submit, along with its own detailed cost information, the subcontract detailed cost information obtained. This in no way diminishes the offeror's or contractor's responsibility to perform subcontract cost or price analysis and negotiate fair and reasonable subcontract prices.

§ 450.30.50 Refusal to Provide Data

If the offeror or contractor refuses to provide detailed cost information, in spite of repeated requests, the CO must withhold the award or contract modification and refer the matter to the PE. The CO must document the ultimate disposition of the matter.

§ 450.40 Profit

§ 450.40.10 In General

(a) Except for architect-engineer contracts (**see:** Guide, Vol 14, § 530), predetermined percentages or limitations on profit or fee must not be used. However, for cost-plus-fixed-fee contracts, the fee must not exceed 10 percent of the contract’s estimated cost, excluding fee.

(b) When adequate price competition is obtained or price analysis techniques are sufficient to ensure a fair and reasonable price, then analysis of profit is not appropriate.

§ 450.40.20 Including Profit in Cost Analysis

When cost analysis is required for price negotiations, profit must also be analyzed. Profit must be analyzed with the objective of rewarding contractors for:

(a) financial and other risks they assume;

(b) resources they use; and

(c) organization, performance, and management capabilities they employ.

§ 450.40.30 Profit Considerations

Due consideration must be given to:

(a) the complexity of materials requirements;

(b) the extent of subcontracting;

(c) the ratio of indirect costs to direct costs;

(d) the contribution of capital investments to contract performance; and

(e) profit analysis.

§ 450.40.40 Contract Changes

If the pricing action involves a contract change or modification that requires essentially the same type and mix of work as the basic contract, and is of relatively small dollar value compared to the total contract amount, then the profit or fee may be established on the basis of the basic contract's profit or fee rate.

§ 460 Cost Principles

§ 460.10 In General

This section contains the principles for determining or negotiating the allowability of costs. When the CO determines that price analysis is not sufficient, then the CO will request detailed cost information and analyze all cost elements to determine the allowability of each proposed element of cost. These principles apply to the:

(a) determination of allowable costs under cost-reimbursement contracts and subcontracts;

(b) determination or negotiation of cost or price when required by a contract clause;

(c) pricing or estimation of costs in change orders or contract modifications; and

(d) settlement of contract costs for contracts which have been terminated.

§ 460.20 Contract Costs

§ 460.20.10 In General

The total cost of a contract is the sum of the allowable direct and indirect costs allocable to the contract, incurred or to be incurred, less any allowable credits. Total cost does not include profit, or fee.

§ 460.20.20 Cost Estimating Methodology

A contractor may use any consistently applied, generally accepted method of determining or estimating costs which is equitable under the circumstances.

§ 460.20.30 Pricing or Cost Estimating Requirements

Whenever a contractor is required by the judiciary to submit a detailed cost proposal, the contractor must:

(a) estimate costs in a manner consistent with generally accepted cost accounting principles;

(b) consistently apply the cost accounting principles to its pricing;

(c) be in accordance with its DCAA audited rates; and

(d) be consistent with the provisions of this chapter.

§ 460.20.40 Direct Cost

(a) A direct cost is any cost that can be specifically identified directly with delivery or performance of a specific contract.

(b) Direct costs are segregated from other costs, recorded into separate accounts, and are identified as costs for a particular contract. They are not mingled with costs associated with other contracts, nor with indirect, administrative or management costs of the business.

§ 460.20.50 Indirect Costs

(a) Indirect costs are those costs that, because of their incurrence for common or joint contractor objectives, are neither readily segregable nor subject to treatment as direct costs. Indirect costs are generally allocated to contracts as a percentage of direct cost and are allowable based on necessity to the overall operation of the contractor's business.

(b) An indirect cost must not be allocated to a judiciary contract if

(1) other costs incurred for the same purpose, in like circumstances, have been included as a direct cost of that contract or any other contract

(2) the costs have been included as any final cost objective not related to the judiciary contract.

(c) Indirect costs must be accumulated into logical groupings known as “indirect cost pools.”

(d) The contractor’s method of allocating indirect costs must comply with generally accepted accounting principles which are consistently applied according to the provisions of this chapter.

(e) The CO must examine the contractor’s method of allocating indirect costs when any of the following apply:

(1) a substantial difference exists between the cost patterns of work performed under the contract and the contractor’s other work;

(2) a significant change occurs in:

- the nature of the contractor’s business;
- extent of subcontracting;
- fixed asset improvement programs;
- inventories;
- volume of sales and production;
- manufacturing processes;

- products; or
- other relevant circumstances;

(3) indirect cost groups developed for a contractor's primary location are applied to off-site locations. Then separate cost groups for costs allocable to off-site locations may be necessary to distribute the contractor's costs on the basis of the benefits accruing to the appropriate cost objective.

(f) The CO must consider the base period for indirect cost allocation as the one in which the costs are incurred and accumulated for distribution to work performed in that period.

§ 460.20.60 Credits

A credit is the applicable portion of any income, rebate, allowance, or other credit relating to any allowable cost and received by or accruing to the contractor.

§ 470 Cost Allowability

§ 470.10 Determining Cost Allowability

(a) Allowability Factors

When determining whether an incurred cost is allowable, the CO must consider the following factors:

- reasonableness;
- allocability;
- consistency with generally accepted accounting principles and practices appropriate to the particular circumstances;
- consistency with the requirements and terms of the contract; and
- consistency with the limitations set forth in this chapter.

(b) Inconsistent Practices

If a contractor's accounting practices are inconsistent with this chapter, the CO must not allow costs resulting from those practices in excess of the

amount that would have resulted from using practices consistent with this chapter.

§ 470.20 Determining Reasonableness

§ 470.20.10 Definition

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

§ 470.20.20 Reviewing Specific Costs

In determining the reasonableness of a specific cost, matters to consider include:

(a) whether it is the type of cost generally recognized as ordinary and necessary for the conduct of the contractor's business or contract performance;

(b) the restraints or requirements imposed by such factors as:

- generally accepted sound business practices;
- arm's-length bargaining; or
- federal and state laws and regulations.

(c) the action that a prudent business person would take under the circumstances considering responsibilities to:

- the owners of the business;
- employees;
- customers;
- the judiciary; or
- the public at large.

(d) any deviations from the established practices of the contractor that may unjustifiably increase the contract costs; and

(e) any other relevant factors.

§ 470.30 Determining Allocability

§ 470.30.10 In General

An incurred cost is allocable to a contract if it:

(a) is incurred specifically for performance of the contract;

(b) benefits both the contract and other work, and can be distributed to them in reasonable proportion to the benefits received; or

(c) is necessary to the overall operation of the business, even though a direct relationship to the contract cannot be shown.

§ 470.30.20 Advance Agreements

(a) Because the reasonableness or allocability of costs may be difficult to determine in some cases, the contracting parties must reach advance agreement on the treatment of special or unusual costs to avoid later disputes and disallowances.

(b) Advance agreements may be negotiated before or during a contract, but must be negotiated before contractor incurrence of the costs involved. The agreements must be in writing, signed by both parties, and incorporated into applicable current and future contracts. An advance agreement must contain a statement of its applicability and duration.

(c) Advance agreements may be negotiated with a particular contractor for a single contract, a group of contracts, or all the contracts of one or more purchasing activities.

(d) Advance agreements may not provide for treatment of costs inconsistent with this chapter.

(e) The absence of an advance agreement on any cost will not, in itself, affect the reasonableness or allocability of that cost.

(f) Examples of costs for which advance agreements may be particularly important are:

(1) compensation for personal service, including but not limited to, allowances for off-site pay, incentive pay, relocation allowances, hardship pay, and cost-of-living differentials;

(2) use charges for fully depreciated assets;

(3) deferred maintenance costs;

(4) pre-contract costs;

(5) independent research and development and bid and proposal costs;

(6) royalties and other costs for use of patents;

(7) selling and distribution costs;

(8) travel and relocation costs;

(9) costs of idle facilities and idle capacity;

(10) costs of information technology;

(11) severance pay to employees on support services contracts;

(12) professional services (for example, legal, accounting, and engineering);

(13) general administrative costs (such as corporate, division, or branch allocations attributable to the general management, supervision, and conduct of the contractor's business as a whole, particularly in construction, job-site, architect-engineer, and facilities contracts);

(14) costs of construction plant and equipment; and

(15) costs of public relations and advertising.

§ 470.40 Selected Costs

This section discusses certain types of costs and whether or not they are allowable. It does not cover every element of cost, nor does the omission of a specific type of cost from this section imply that it is either allowable or unallowable. A determination of allowability must be based upon the principles and standards of this chapter and treatment of similar or related items.

§ 470.40.10 Public Relations and Advertising Costs

Incurred public relations and advertising costs are unallowable except costs of:

(a) responding to inquiries concerning company policies and activities;

(b) essential communication with the public, press, stockholders, creditors, and customers, including communication on matters of public concern;

(c) participation in community service activities, such as blood bank drives, charity drives, and disaster assistance (but not contribution to civil defense funds and projects);

(d) recruitment of personnel needed for contract performance;

(e) acquiring scarce items for contract performance; and

(f) disposing of scrap or surplus materials acquired for contract performance.

§ 470.40.15 Bad Debt

Bad debt costs, including actual or estimated losses arising from uncollectible accounts receivable due from customers and other claims, and any directly associated costs such as collection costs and legal costs are not allowable.

§ 470.40.20 Contributions or Donations

Contractor contributions or donations, including cash, property, and services, except as provided in § 470.40.10(c) above, are not allowable.

§ 470.40.25 Dividends

Dividend provisions or payments and distribution of profits are not allowable when part of an employee's compensation if that compensation is based on changes in stock prices or corporate ownership.

§ 470.40.30 Entertainment Costs

(a) Contractor costs of amusement, diversion, social activities, and directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities are not allowable.

(b) Costs of membership in social, dining, or country clubs or other organizations having the same purposes are not allowable, regardless of whether or not the cost is reported as taxable income to the employees.

§ 470.40.35 Fines and Penalties

Contractor costs of fines and penalties resulting from violations of, or failure of, the contractor to comply with, federal, state, local, or foreign laws and regulations are not allowable, unless incurred because of compliance with specific terms and conditions of the contract or written instructions from the CO.

§ 470.40.40 Life Insurance

Contractor costs for insurance on the lives of officers, partners, or proprietors are not allowable, unless the insurance represents additional compensation.

§ 470.40.45 Interest and Other Financial Costs

Contractor interest costs on borrowings (however represented), bond discounts, costs of financing and refinancing capital, and the costs of preparing and issuing prospectuses and stock rights, are not allowable.

§ 470.40.50 Lobbying Costs

(a) Contractor costs associated with attempts to influence the outcome of any federal, state, or local election, referendum, initiative, or similar procedure through contributions, endorsements, publicity, or similar activities are not allowable.

(b) Costs associated with establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established to influence the outcomes of elections are not allowable.

(c) Costs associated with any attempt to influence (1) the introduction of federal or state legislation, or (2) the enactment or modification of any pending federal or state legislation through communication with any member or employee of the Congress or state legislature (including efforts to influence state or local officials to engage in similar lobbying activity), or with any government official or employee about a decision to sign or veto enrolled legislation are not allowable.

(d) Costs associated with any attempt to influence the introduction of federal or state legislation, or the enactment or modification of pending federal or state legislation by preparing, distributing, or using publicity or propaganda, or by urging members of the public to contribute to or participate in any mass demonstration, march, rally, fund-raising drive, lobbying campaign, or letter-writing or telephone campaigns are not allowable.

(e) Costs associated with legislation liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of, or knowledge of preparation, for an

effort to engage in activities for which the unallowable costs are not allowable.

(f) The costs of providing a technical and factual presentation of information on a topic directly related to the performance of a contract through hearing testimony, statements, or letters to the Congress or state legislature, or subdivision, member, or cognizant staff member thereof, in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the recipient member, legislative body or subdivision, or a cognizant staff member thereof are allowable.

(g) The costs for transportation, lodging or meals in connection with the activities authorized under § 470.40.50 must not be allowable unless incurred offering testimony at a regularly scheduled congressional hearing in response to a written request for such presentation made by the chair or ranking minority member of the committee or subcommittee conducting such hearing.

(h) The costs of lobbying to influence state legislation to directly reduce contract cost, or to avoid material impairment of the contractor's authority to perform the contract are allowable.

(i) The costs of any activity specifically authorized by statute to be undertaken with funds from the contract are allowable.

§ 470.40.55 Losses on Other Contracts

An excess of costs over income under any other contract (including the contractor's contributed portion under cost-sharing contracts) are not allowable.

§ 470.40.60 Taxes

The following costs are not allowable:

(a) federal income and excess profits taxes;

(b) taxes in connection with financing, refinancing, refunding operations, or reorganizations;

(c) taxes from which exemptions are available to the contractor directly, or available to the contractor based on an exemption afforded the judiciary, except when the CO determines that the administrative burden incident to obtaining the exemption outweighs the corresponding benefits accruing to

the judiciary. The term "exemption" means freedom from taxation in whole or in part and includes a tax abatement or reduction resulting from mode of assessment, method of calculation, or otherwise;

(d) special assessments on land that represent capital improvements;

(e) taxes (including excises) on real or personal property, or on the value, use, possession or sale thereof, which is used solely in connection with work other than on judiciary contracts;

(f) taxes on accumulated funding deficiencies of, or prohibited transactions involving, employee deferred compensation plans; and

(g) income tax accruals designed to account for the tax effect of differences between taxable income and pretax income as reflected by the books of account and financial statements.

§ 470.40.65 Defense of Fraud Proceedings

Contractor costs incurred in connection with defense of any of the following are not allowable:

(a) criminal or civil investigation, grand jury proceeding, or prosecution;

(b) civil litigation; or

(c) administrative proceedings such as suspension or debarment, or any combination of the foregoing, brought by the judiciary against a contractor, its agents or employees, are unallowable when the charges that are the subject of the investigation, proceedings, or prosecution involve fraud or similar criminal offenses (including filing of a false certification) on the part of the contractor, its agents or employees, and result in conviction (including conviction entered on a plea of *nolo contendere*), judgment against the contractor, its agents or employees, or decision to debar or suspend, or are resolved by consent or compromise. When the charges of fraud are resolved by consent or compromise, the parties may agree on the extent of allowability of such costs as a part of such resolution.

§ 470.40.70 Termination Costs

(a) General

Contract terminations generally give rise to the occurrence of costs or the need for special treatment of costs that would not have arisen if the

contract had not been terminated. This part describes the cost principles peculiar to termination situations to be used in conjunction with the other cost principles.

(b) Common Items

The costs of items reasonably usable on the contractor's other work are not allowable unless the contractor submits evidence that the items could not be retained at cost without sustaining a loss. The CO must consider the contractor's plans and orders for current and planned production when determining if items can reasonably be used on other work of the contractor.

(c) Costs Continuing after Termination

Costs that cannot be discontinued immediately after the effective date of termination are generally allowable. However, any costs continuing after the effective date of the termination because of the negligent or willful failure of the contractor to discontinue them are unallowable.

(d) Start-Up Costs

Reasonable start-up and preparatory costs are generally allowable. When included in the settlement offer as a direct charge, they must not also be included in overhead. Start-up costs for one contract must not be allocated to others.

(e) Loss of Useful Value

Loss of useful value of special tooling and special machinery and equipment is generally allowable provided the:

(1) special tooling or special machinery and equipment is not reasonably capable of use in the other work of the contractor;

(2) judiciary’s interest is protected by transfer of title or by other means deemed appropriate by the CO; and

(3) loss of useful value for any one terminated contract is limited to that portion of the equipment cost which bears the same ratio to the total cost as the terminated portion of the contract bears to the entire terminated contract and to other judiciary contracts for which the special tooling or special machinery and equipment were acquired.

(f) Rental under Unexpired Leases

Rental costs under unexpired leases, less the residual value of such leases, are generally allowable when shown to have been reasonably necessary for the performance of the terminated contract when the:

(1) amount of rental claimed does not exceed the reasonable use value of the property leased for the period of the contract and such further period as may be reasonable; and

(2) the contractor makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease.

(g) Alterations of Leased Property

The cost of alterations and reasonable restorations required by the lease may be allowed when the alterations are necessary for performing the contract.

(h) Settlement Expenses

Settlement expenses, including the following are generally allowable:

(1) accounting, legal, clerical, and similar costs reasonably necessary for the:

- preparation and presentation, including supporting data, of settlement claims to the CO; and
- termination and settlement of subcontracts.

(2) reasonable costs for storage, transportation, protection and disposition of property acquired or produced for the contract;

(3) indirect costs related to salary and wages incurred as settlement expenses under (a) and (b) above. Normally, such indirect costs must be limited to payroll taxes, fringe benefits, occupancy costs, and immediate supervision costs.

Note: If settlement expenses are significant, a cost account or work order must be established to separately identify and accumulate them.

(i) Subcontractor Claims

Subcontractor claims, including the allocable portion of the claims common to the contract and to other work of the contractor are generally allowable. An appropriate share of the contractor's indirect expenses may be allocated to the amount of settlements with subcontractors, provided that the amount allocated is reasonably proportionate to the relative benefits received and is otherwise consistent with the principles of this chapter. The indirect expense so allocated must exclude the same and similar costs claimed directly or indirectly as settlement expenses.

§ 470.50 Accounting for Unallowable Costs

The CO must identify and exclude from each billing, claim, and offer those costs that are expressly unallowable under this chapter or as mutually agreed to be unallowable under an advance cost agreement. **See:** § 470.30.20.

(a) When costs are identified as unallowable or mutually agreed to be unallowable, all directly associated costs are also unallowable.

(b) Costs and directly associated costs specifically designated as unallowable as a result of a written decision by a CO must be identified when included in or used in computing any billing, claim, or offer applicable to a judiciary contract.

(c) For those costs which have been identified as unallowable, the CO must require records as support for claims, billings, and offers. These must be adequate to establish and maintain visibility of those costs and directly associated costs.

(d) The CO must identify unallowable costs involved in determining rates used for standard costs, indirect cost offers, or billings at the time rates are proposed, established, revised, or adjusted.

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Appendix

Appx 5A Economy Act Determination and Finding

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§ 510 Personal Services Contracts

§ 510.10 Definition

A personal services contract is one in which the personnel performing the services are subject, either by the terms of the contract or by the manner of its administration, to supervision and/or direction characteristic of an employer/employee relationship.

§ 510.20 Prohibition

Personal service contracts are strictly prohibited, with limited exceptions (as described below in § 510.10.30 and § 520). The judiciary is required to obtain employees by direct hire under competitive appointment or under other personnel procedures. Thus, when the judiciary engages the services of a contractor to perform identifiable tasks, the nature of the relationship between the judiciary and the contractor must be as an independent contractor. It must not, in effect, create an employer-employee relationship subject to the supervision by a judiciary employee. Also the contractor must not be placed in a position that requires contractor supervision of any judiciary employees.

§ 510.30 Exceptions to Prohibition

Personal service contracts are only authorized under limited circumstances that have the requisite statutory authority. The Director of the Administrative Office (AO) has statutory authority to procure personal services only in the following circumstances:

(a) Under 28 U.S.C. § 602(c), personal services are authorized by 5 U.S.C. § 3109 for an “expert” or “consultant” for services that are not available within the judiciary. **See:** § 520.10. However, this circumstance does not allow the use of contractors to perform the duties judiciary employees would normally perform.

(b) Under 28 U.S.C. § 612(a), personal services are authorized for the effective management, coordination, operation, and use of information technology equipment, purchased by the Judiciary Information Technology (JIT) fund.

§ 510.40 Personal Services Indicators

When considering a service procurement, the Contracting Officer (CO) must consider all the personal services indicators by answering the following questions. A "yes" answer to any of the following questions, may indicate that the proposed procurement is "personal" in nature. The existence of any of these elements may indicate the likelihood that supervision exists. However, the existence of any one indicator alone must not necessarily lead the CO to conclude that services are "personal." There is no "acid test" for how many indicators must be present to result in a conclusion that personal services exist. Instead, this is necessarily a subjective judgment that the CO makes, based on the individual circumstances, and documents in the file.

(a) Will the individual(s) require frequent direction and supervision?

(b) Will the services be performed on the judiciary site?

(c) Will the principal tools and equipment necessary for performance of the services be provided by the judiciary?

(d) Will the services be applied directly to the integral effort of the judicial organization, and are they in direct furtherance of its assigned function or mission?

(e) Will comparable services, meeting comparable needs, be performed elsewhere in the judiciary using judiciary employees?

(f) Will the need for the type of provided services be reasonably expected to last beyond one year?

(g) Will the inherent nature of the service, or the manner in which it is provided, reasonably require direct or indirect judiciary supervision of contractor employees to:

(1) adequately protect the judiciary's interest;

(2) retain control of the function involved; or

(3) retain full personal responsibility for the function supported in a duly authorized judiciary officer or employee?

§ 510.50 Clause

Include Clause 5-1, Payments under Personal and Professional Services Contracts in solicitations and contracts for personal services.

§ 520 Expert and Consultant Services Contracts

§ 520.10 Authority

The judiciary is authorized to obtain expert and consultant services under 5 U.S.C. § 3109.

§ 520.15 Definitions

(a) Expert

Someone with a high degree of attainment in a professional, scientific, technical, or other field and with excellent qualifications, skills, and knowledge above those of the ordinary person in the field. An expert's knowledge and mastery of the practices, problems, methods, and techniques of a field of activity, or of a specialized field, are clearly superior to those usually possessed by ordinarily competent persons in that activity. An expert usually is regarded as an authority or as a practitioner of unusual competence and skill by other persons in the profession, occupation, or activity. An individual or business entity must meet all of the criteria in this definition in order to satisfy the definition of an "expert."

(b) Consultant

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

§ 520.20 Competition and Advertising Exceptions

These services are not required to be competed or advertised. When retaining the services of a consultant or expert under 5 U.S.C. § 3109, the CO is not required to

prepare a sole source justification, since there is no competition requirement. However, the file documentation must reflect that these services are acquired under the authority of 5 U.S.C. § 3109 so that anyone reviewing the contract file will understand why the requirement was not competed or advertised.

§ 520.25 Contract and Procurement File Requirements

A purchase/delivery/task order cannot be used for expert and consultant services. A formal written contract must be used. The contract must contain all the requisite terms and conditions of a formal government contract. The procurement file must document the price or cost analysis performed, indicating that the compensation is fair and reasonable. This may require an informal market survey (**see:** Guide, Vol 14, § 210.60), or other objective facts, which demonstrate the reasonableness of the price (**see:** Guide, Vol 14, § 470.20).

§ 520.30 Statutory Qualification

Before acquiring the services of an individual or business entity as an expert or consultant, the CO must determine that the individual or business entity qualifies as an "expert" or "consultant" under 5 U.S.C. § 3109 and document this determination in the file.

§ 520.35 Limitations

The use of consultants or experts under 5 U.S.C. § 3109 is only appropriate when:

(a) the work of the position is temporary or intermittent, as opposed to continuous and full time.

(1) Temporary

Continuous performance over a period not exceeding one year. Therefore, it is not appropriate to include options in contracts for temporary expert or consultant services.

(2) Intermittent

Occasional or irregular work on programs, projects, and problems requiring intermittent services as distinguished from continuous. An intermittent service contract cannot exceed 130 days in a service year, but may be renewed from year to year;

(b) the position does not involve policy, management, or operating duties of judiciary employees; and

(c) the individual or business entity possesses the necessary skills and expertise to qualify as an expert or consultant (**see:** § 520.15 (a) and (b)).

§ 520.40 Applicability

Advice to the government from experts or consultants must include the alternatives considered and the rationale for the chosen recommendations. The recommendations may include suggestions for a decision or course of action, but judiciary personnel make the ultimate decision. The following examples of the purposes for which procuring expert and consulting services is appropriate include, but are not limited to, obtaining:

(a) specialized opinions, professional or technical advice not available within the judiciary or from another federal agency;

(b) outside viewpoints, to avoid too limited a judgment on critical administrative or technical issues;

(c) advice on developments in industry;

(d) the opinions of experts whose national or international prestige can contribute to the success of an important project; or

(e) the skills of specialized persons who are not needed continuously.

§ 520.45 Restrictions

(a) A CO cannot contract for expert or consulting services for any of the following purposes:

(1) to perform work of a policy-making, decision-making, or managerial nature that is the direct responsibility of judiciary officials;

(2) to bypass, circumvent, or undermine personnel ceilings, pay limitations, or competitive employment procedures. Also a consultant or expert may not be hired in anticipation of career appointments;

(3) to perform duties which otherwise would be duties required of a judiciary employee, even if the judiciary position is considered as an expert or consultant; or,

(4) to perform full-time, continuous work or to perform a job that can be done by judiciary employees.

(b) The CO must ensure that a contract for expert or consulting services does not establish or allow:

(1) an employer-employee relationship between the judiciary and the contractor, including detailed control or supervision by judiciary personnel of the contractor or its employees with respect to the day-to-day operations of the contractor or the methods of accomplishment of the services; or

(2) supervision of judiciary employees by the contractor.

(c) Services of experts or consultants may not be procured under a succession of short-term contracts for full or part time services where the resulting continuous employment would exceed one year.

§ 520.50 Award and Administration Requirements

Before processing any award or solicitation for expert or consulting services, the CO must ensure that the applicable provisions of this chapter have been complied with and that the following required documentation is complete and included in the contract file:

(a) each requirement is appropriate and fully justified in writing;

Note: The justification must include a statement of need and the requesting official must certify that the services do not unnecessarily duplicate any previously performed work or services.

(b) each work statement is specific and complete, and states a fixed period of performance within which the services are to be provided; and

(c) appropriate disclosure is required of, and warning is given to, contractor personnel to avoid conflicts of interest.

After the award of a contract for expert or consultant services, the CO must ensure that the contract is properly administered and monitored to ensure that performance meets the requirements of the contract.

§ 520.55 Services Exceeding One Year

Since temporary services by definition are not to exceed one year, a contract for temporary expert and consulting services must not include an option and cannot be extended by modification. When additional services are required, a new contract must be awarded subject to the requirements and limitations of this section. If, in fact, the requesting office is interested in procuring services that will be more than a year, they

are probably not appropriate under 5 U.S.C. § 3109. However, contracts for intermittent services may include options and can be renewed from year to year. **See:** Guide, Vol 14, § 520.35.

§ 520.60 Former Government Employees

(a) There is no *per se* prohibition on awarding an expert or consultant contract to a former government employee, and it can, in fact, be appropriate, depending upon the circumstances. The individual must meet the definition of an "expert" or "consultant." However, the definition prohibits procuring services that are to be performed by full-time government employees. Simply because the individual has expertise in a particular matter, which they obtained because of their work on that matter as a government employee, does not mean that they automatically meet the definition of an "expert" or "consultant" under section 3109.

(b) An abuse of this situation would be procuring the services of former government employees to perform the operating duties of the government workforce or to continue with work the individual was involved in as a regular government employee. Then the requesting office could consider other alternatives instead of contracting with the individual, such as re-employment, on a full-time, temporary, or intermittent basis as appropriate.

(c) If the individual satisfies 5 U.S.C. § 3109 criteria as an "expert" or "consultant," the nature of the relationship may, in fact, be personal services rather than that of an independent contractor. This is largely determined by the degree of supervision by the government over the individual's work. The fact that the individual may work independently, does not alone satisfy the independent contractor test. The essence of the test is whether the government, on a close and continuous basis, controls what is done and how the individual contractor employee performs the work.

§ 520.65 Travel Reimbursement

The contract must establish the travel reimbursement terms agreed to by the parties. As a practical matter, however, contractors must not be reimbursed at levels greater than judges.

§ 520.70 Licenses

When purchasing expert or consulting services for which individuals are normally required to be licensed (such as medical, legal, accounting, and architecture), the

solicitation must require a license as a prerequisite to award. Acceptable licenses may be limited to those issued by a particular state or entity, but only when it is necessary for successful contract performance to limit the award to local expertise.

§ 520.75 Provisions and Clauses

Include the following clauses, in addition to those listed in Guide, Vol 14, § 330.10.30, unless otherwise indicated:

§ 520.75 Provisions and Clauses	
Clause or Provision	**Include in:**
(a) Clause 1-5, Conflict of Interest	all solicitations and contracts for experts and consultant services.
(b) Clause 2-65, Key Personnel	solicitations and contracts for professional services when the contractor is a corporate entity rather than an individual, such as awards to law firms, etc. Professional services are those which are provided by an individual whose position requires a license or certification, such as an attorney or a certified public accountant. The clause requires use of the key personnel identified in the contractor's offer, unless the CO approves substitution. It provides for contract termination for failure to comply. The CO will appropriately fill in the clause's blank spaces.
(c) Clause 5-1, Payments under Personal and Professional Services Contract	all solicitations and contracts for personal services as well as expert and consultant services.
(d) Clause 5-5, Nondisclosure (Professional Services)	all solicitations and contracts for experts and consultant services.
(e) Clause 5-10, Inspection of Professional Services	all solicitations and contracts for experts and consultant services. Provides for inspection of the professional's work product and acceptance of only those products that meet reasonable professional standards.

§ 520.75 Provisions and Clauses	
Clause or Provision	**Include in:**
(f) Clause 7-125, Invoices, Alternate I	all non-fixed-price contracts for professional services. The clause requires presentation of invoices showing: • who performed the services; • the hours and partial hours of service provided each day; and • the services provided each hour or partial hour. **Note:** Contractors may be allowed to set minimum charges for partial hours or days.
(g) Clause 5-20, Records Ownership	solicitations and contracts when judiciary ownership of all contractor work papers relating to the services provided is desired.
(h) Provision 5-25, Identification of Uncompensated Overtime	all solicitations valued above the judiciary's small purchase threshold (**see:** Guide, Vol 14, § 325.10) for professional or technical services to be acquired on a: • labor-hour, • time and materials, or • cost-reimbursement basis.
(i) Clause 6-70, Work for Hire	solicitations and contracts for professional services when the CO determines that the contract should be treated as a "work for hire." **See:** Guide, Vol 14, § 650.50.20.
(j) Clause 6-35, Errors and Omissions	solicitations and contracts when errors and omissions insurance is required (**See:** Guide, Vol 14, § 630.40)

§ 520.80 Contract Type

Firm fixed priced contracts are preferred. When a firm fixed price contract is not suitable, the CO must first document the reasons. A labor-hour contract may be used (**see:** Guide, Vol 14, § 410.40.20), subject to the limitations stated at Guide, Vol 14, § 410.40.30.

§ 530 Architect-Engineer Contracts

§ 530.10 Architect-Engineer Services

§ 530.10.10 Delegation

Authority to award Architect-Engineer contracts under this section is delegated only to COCP Levels 6 and 7. If the CO holds a COCP Level 2 delegation for a specific building location for which there is a GSA Real Property Operations and Maintenance Delegation (GSA Building Delegation), the CO must follow the Federal Acquisition Regulation instead of the Guide. **See:** Guide, Vol 14, Appx 1E (Contracting Officers Certification Program (Level 2: Special Delegated Procurement Programs)) and Guide, Vol 14, § 120.40.55.

§ 530.10.20 In General

The following services are considered architect-engineer services for the purpose of this section:

(a) professional services of an architectural or engineering nature, as defined by applicable state law, which the state law requires to be performed or approved in writing by a registered architect or engineer;

(b) professional services of an architectural or engineering nature associated with design or construction of real property;

(c) other professional services of an architectural or engineering nature or services incidental thereto that logically or justifiably require performance by registered architects or engineers or their employees. These services include:

- studies;
- investigations;
- tests;
- evaluations;
- consultations;
- comprehensive planning;
- program management;
- conceptual designs;
- plans and specifications;
- value engineering;
- construction phase services;
- soils engineering;

- drawing reviews;
- preparation of operating and maintenance manuals; and
- other related services;

(d) professional surveying and mapping services of an architectural or engineering nature.

(1) Surveying

Must be procured from registered surveyors or architects and engineers.

(2) Mapping

Mapping associated with the research, planning, development, design, construction, or alteration of real property is considered to be an architectural and engineering service. However, mapping services that are not connected to traditionally understood or accepted architectural and engineering activities, are not incidental to such architectural and engineering activities or have not in themselves traditionally been considered architectural and engineering services and must not be procured under this section.

§ 530.10.30 Source Selection

Sources for contracts for architect-engineer services must be selected according to the procedures in this chapter rather than the solicitation or source selection procedures prescribed elsewhere in this volume.

§ 530.10.40 Publicizing and Response

(a) The judiciary must publicly announce all requirements for contracts of architect-engineer services and negotiate contracts for these services based on the demonstrated competence and qualifications of prospective contractors to perform the services at fair and reasonable prices. The announcement must state that all architect-engineer firms wishing to be considered must submit their qualifications using the SF-330, Architect-Engineer Qualifications. For additional information on methods of publicizing procurements, **see:** Guide, Vol 14, § 315.

(b) The architect-engineer evaluation board and CO (or other designated selection authority) must evaluate each potential contractor based on the following criteria:

(1) professional qualifications necessary for satisfactory performance of the required services;

(2) specialized experience and technical competence in the type of work required;

(3) capacity to accomplish the work in the required time;

(4) past performance on contracts with the judiciary, other governmental entities, and/or private industry concerning:

- cost control;
- quality of work;
- compliance with performance schedules; and
- acceptability under other appropriate evaluation criteria.

§ 530.20 Architect-Engineer Evaluation Board

§ 530.20.10 Composition of Board

When procuring architect-engineer services, the Procurement Liaison Officer (PLO) in the court unit, Federal Public Defender Organization (FPDO), or Federal Judicial Center (FJC), or the Procurement Executive (PE) in the AO, must establish an architect-engineer evaluation board composed of at least three members. One member of the board must be designated as the chairperson. All three members must be individuals who are highly qualified professionals who, collectively, have experience in architecture, engineering, construction, and related matters. Board members are not required to be judiciary employees, but may be outside consultants. For additional guidance applicable to evaluators who are outside consultants, **see:** Guide, Vol 14, § 210.70.40.

§ 530.20.20 Evaluation Board Exclusions

Neither the CO nor anyone delegated to conduct architect-engineer contract negotiations for a given project may be a member of the evaluation board for that project.

§ 530.20.30 Conflict of Interest Exclusion

No firm can be eligible for award of an architect-engineer contract during the period in which any of its principals or associates are participating as members of the awarding evaluation board.

§ 530.30 Architect-Engineer Evaluation Board Functions

The evaluation board must perform the following functions under the PE's general direction:

(a) review the firms furnishing qualification statements in response to any notice publicizing the contemplated contract;

(b) evaluate the firms according to the criteria prescribed above in § 530.10.40(b);

(c) hold discussions with at least three of the most highly qualified firms about concepts and the relative utility of alternative methods of furnishing the required services;

(d) prepare for the CO (or other designated selection authority) a selection report recommending, in order of preference, at least three firms that are evaluated to be the most highly qualified to perform the required services. The selection report must include a description of the discussions and evaluation conducted by the board. This report will allow the CO (or other designated selection authority) to review the considerations upon which the recommendations are based.

§ 530.40 Architect-Engineer Selection

§ 530.40.10 In General

The CO (or other designated selection authority) must:

(a) review the recommendations of the evaluation board, and

(b) with the advice of appropriate technical and staff representatives, approve the final selection report.

§ 530.40.20 List of Most Highly Qualified Firms

The final selection report must be a listing, in order of preference, of the firms considered most highly qualified to perform the work.

§ 530.40.30 File Documentation

If the firm listed as the most preferred is not recommended as the most highly qualified by the evaluation board, the CO must include in the contract file a written explanation of

the reason for the selection. All firms on the final selection report list must be considered "selected firms" with which the CO may negotiate.

§ 530.40.40 Revisions to the Report

The CO (or other designated selection authority) cannot add firms to the selection report. If the firms recommended in the report are not deemed to be qualified, or the report is considered inadequate for any reason, the CO (or other designated selection authority) must record the reasons and return the report to the evaluation board for appropriate revision.

§ 530.50 Short Selection Process for Small Purchases

§ 530.50.10 Conditions to Use the Short Process

When authorized by the delegated CO (**see:** § 530.10.10), the short process set forth in this section may be used as an alternative to the processes set forth in § 530.30 and § 530.40 to select firms for contracts not estimated to exceed the judiciary's small purchase threshold (§ 530.40.10).

§ 530.50.20 Short Process

When the CO decides that formal action by the board is not necessary in connection with a particular selection, the following procedures must be used:

(a) the chairperson of the board must perform the functions of the board set forth in § 530.30;

(b) the CO must review the report and approve it or return it to the chairperson for appropriate revision; and,

(c) upon receipt of a written report, approved and signed by the chairperson of the board, the CO is authorized to commence negotiations.

§ 530.60 Cost Estimate for Architect-Engineer Contracts

Before the CO can negotiate any proposed contract or initiate a contract modification requiring funding, an independent cost estimate for the required Architect-Engineer services must be developed based on a detailed analysis of the costs expected to be generated by the work. The estimate must be prepared by the requiring organization and be sent to the CO with the request for services. Access to information concerning the cost estimate must be limited to judiciary personnel and agents whose official duties require knowledge of the estimate.

§ 530.70 Negotiations of Architect-Engineer Contracts

§ 530.70.10 Initiation of Negotiations

(a) The CO must first attempt to negotiate a contract with the first firm on the selection report list (**see:** § 530.40) for the required services at a price that the CO determines in writing to be fair and reasonable. Negotiations must be conducted according to the Guide, Vol 14, § 345.

(b) The CO must request an offer from the firm, ensuring that the solicitation does not inadvertently preclude the firm from proposing the use of modern design methods.

(c) The CO must:

(1) ensure that the firm has a clear understanding of the scope of work, specifically the essential requirements involved in providing the required services, and determine whether the firm will make available the necessary personnel and facilities to perform the services within the required time; and

(2) limit the firm's subcontracting to firms agreed upon during negotiations or through a formal contract modification.

§ 530.70.20 Termination of Negotiations

If a mutually satisfactory contract cannot be negotiated, the CO must notify the firm that negotiations are terminated. The CO must then initiate negotiations with the next qualified firm rated on the list. This procedure must be continued until a mutually satisfactory contract has been negotiated.

§ 530.70.30 Requesting Additional Firms

If unable to negotiate a satisfactory contract with any of the selected firms, the CO must request a listing of additional firms from the evaluation board and continue negotiations in accordance with this section until an agreement is reached.

§ 530.70.40 Notification of the Final Selection

The CO must promptly inform the evaluation board of the final selection once a mutually satisfactory contract has been negotiated.

§ 530.70.50 Contract Type

Architect-Engineer contracts are normally firm-fixed-price. In addition, if an indefinite-delivery contract is used, the task orders are normally firm-fixed-price.

§ 530.70.60 Clauses

The following clauses are inserted in solicitations and contracts for architect/engineer services as indicated:

§ 530.70.60 Clauses	
Clause	**Include in:**
(a) Clause 5-30, Authorization and Consent	all architect-engineer solicitations and contracts
(b) Clause 5-35, Payments under Fixed-Price Architect-Engineer Contracts	fixed price architect-engineer solicitations and contracts
(c) Clause 5-45, Design Within Funding Limitations	solicitations and contracts when the project must be designed so that construction costs do not exceed a contractually specified dollar limit (funding limitation)
(d) Clause 5-50, Responsibility of the Architect-Engineer Contractor	fixed price architect-engineer solicitations and contracts
(e) Clause 5-55, Work Oversight in Architect-Engineer Contracts	all architect-engineer solicitations and contracts
(f) Clause 5-60, Requirements for Registration of Designers	all architect-engineer solicitations and contracts
(g) Clause 5-65, Subcontractors and Outside Associates and Consultants (Architect-Engineer Services)	all architect-engineer solicitations and contracts
(h) Clause 5-70, Termination (Fixed-Price Architect-Engineer)	fixed price architect-engineer solicitations and contracts
(i) Clause 5-75, Suspensions and Delays	all architect-engineer solicitations and contracts

§ 540 Commercial Agreements

§ 540.10 In General

Commercial agreements, license agreements (including software licenses), and special use agreements are frequently requested by contractors as conditions to entering into contracts with the judiciary for the purchase of products, services, and commercial meeting or conference facilities. These agreements are usually written for commercial entities rather than federal agencies and contain terms and conditions that must be modified or removed.

§ 540.20 Negotiating Commercial Agreement Terms and Conditions

In general, COs should not sign commercial agreements. Instead, the CO should issue a judiciary contract containing the appropriate judiciary terms and conditions. If this is not possible, then the following steps must be taken before the CO signs the commercial agreement:

(a) Prohibited Terms and Conditions

The CO will review the commercial agreement and negotiate with a representative from the company to delete any of the following terms and conditions if they are proposed as part of the commercial agreement:

§ 540.20(a) Prohibited Terms and Conditions	
Term or Condition	**Deletion Mandatory**
(1) Credit Application/Master Account	Credit provisions are not applicable to the judiciary
(2) Attorney Fees	Any clause regarding payment of attorney fees
(3) Automatic Renewals of Agreements	Provisions that automatically renew the commercial agreement from year-to-year
(4) Payments in Advance	Unless the agreement is authorized for advance payment under the Guide, Vol 14, § 220.15.55.
(5) Insurance	The judiciary is self insured
(6) Damage Deposits	Any damage deposit (**see**: § 540.20(a)(8) regarding Indemnification and/or Hold Harmless terms)
(7) Arbitration Clause	Any clause agreeing to arbitration

§ 540.20(a) Prohibited Terms and Conditions	
Term or Condition	**Deletion Mandatory**
(8) Indemnification and/or Hold Harmless	Delete any proposed vendor provisions and replace with the following: "Notwithstanding any other term or provision of this agreement, the liability of the judiciary with respect to any claim for personal injury, death, property loss or damage pursuant to this agreement, is limited by and subject to the procedures and terms of the Federal Tort Claims Act, the Anti-deficiency Act and all other applicable federal laws and regulations."

(b) Terms or Conditions Recommended for Deletion or Modification

In addition, it is strongly recommended as being in the best interests of the judiciary that the CO attempt to delete or modify the following commonly used commercial agreement terms or conditions:

§ 540.20(b) Terms and Conditions Recommended for Deletion or Modification	
Term or Condition	**Recommended Action**
(1) Governing Law	• The agreement should contain a choice of law clause that makes federal law applicable. However, often the agreement lists the governing law as the law of the particular state where the agreement is being performed. If the CO is unable to negotiate the applicability of federal law, and state law remains the governing law, then the CO should ensure that the Chief Judge or Court Unit Executive is aware that any litigation concerning the agreement against the court would be decided based on state law.
(2) Interest	• Any interest charges should be negotiated out because the government is not liable for interest in the absence of express provisions in statutes or a lawful contract. If the requirement to pay interest remains in the agreement, then sufficient funds must be available to pay any such interest charges to avoid violation of the Anti-Deficiency Act, 31 U.S.C § 1341(a)(1), and the agreement should stipulate that the interest rate may not exceed that allowed under the Prompt Payment Act.

§ 540.20(b) Terms and Conditions Recommended for Deletion or Modification	
Term or Condition	**Recommended Action**
(3) Cancellation	(1) Any schedule or fixed rate of liquidated damages or fees associated with the cancellation or reduction of the service should be negotiated out (**but see:** Guide, Vol 14, § 410.75 regarding cancellation charges on multi-year contracts); (2) If the vendor insists on damages for cancellation, replace any schedule of damages with language that states: "In the event of cancellation or reduction, the vendor agrees to make every effort to resell the cancelled or reduced product or service, and any revenue received by the vendor from the resale will be deducted from the amount owed by the judiciary. In the event the vendor is unable to resell all the cancelled or reduced products or services, the judiciary will be responsible for such amounts that reflect the actual losses sustained by the vendor."
(4) Subject to Change Without Notice	Any language that indicates that the terms of the agreement are subject to change by the vendor without notice to the judiciary should be negotiated out.
(5) Provisions Specific to Commercial Meeting or Conference Facilities:	
(A) Early Departure Fee	Any fees for changing departure dates to an earlier date after check-in should be negotiated out
(B) Food and Beverage Policy	Restrictions that require all food and beverages consumed at the facility to be purchased at the facility should be negotiated out
(C) Group Commitment	Charges based upon actual number of attendees rather than an estimated number should be negotiated out
(D) Deposit	The judiciary can provide a "reasonable" deposit in exchange for the hotel or facility to reserve or guarantee a space. **Note:** The funds must be obligated for any deposit paid.
(6) Taxes	The judiciary is immune from paying taxes imposed by state and local governments

(c) In addition to the above mandatory and recommended changes to vendor proposed terms and conditions, when the contract is being awarded in the

current fiscal year to be delivered or performed in a future fiscal year, the CO must incorporate a statement that the agreement is subject to the availability of funds and incorporate Clause 7-115, Availability of Funds by reference.

§ 540.30 Procedures

(a) The CO must ensure that:

(1) either a new commercial agreement is generated which incorporates all the negotiated changes; or

(2) both parties have initialed all modifications made to the original commercial agreement.

(b) If the contractor and the CO cannot agree to the terms, the CO must:

(1) identify and recommend options that may be available to the judiciary. Options could include a recommendation that the product or service be procured elsewhere; or

(2) contact PMD for assistance, if the provisions at issue are those specified above in § 540.20(a).

(c) In the event the CO is unable to negotiate the provisions in § 540.20(b) as recommended and proceeds with the agreement, then the CO must calculate any potential increase in cost that may be incurred to obtain or use the products, services, commercial meeting or conference facility under such terms that may not be favorable to the judiciary. The cost will be calculated using a "worst case scenario."

Note: Sufficient funds must be reserved to cover the costs of the worst case scenario at the time the purchase order is awarded.

§ 550 Interagency Agreements and Memoranda of Understanding for Obtaining Products and Services

§ 550.10 In General

Under some circumstances, judiciary units may wish to acquire goods or services from or through other federal entities. The Director has authority to enter into interagency agreements (IAs) and memoranda of understanding (MOUs) for this purpose and has

delegated this authority to all chief judges, FPDs, and the FJC Director. **See:** 28 U.S.C. § 604(a)(10)(c) and 31 U.S.C. § 1535 ; and Guide, Vol 14, § 140.30.30(h). This section prescribes procedures applicable to these IAs and MOUs for obtaining products and services from other federal agencies for amounts not-to-exceed their delegation authority.

§ 550.20 Types of IAs and MOUs

The judiciary may enter into any of several types of IA or MOU transactions with other federal agencies. Types of IA or MOU transactions include:

(a) IAs or MOUs under which another federal agency (referred to as the providing agency) will perform work for, or provide services to, the judiciary. In this case, the judiciary is the receiving agency and reimburses the other agency for such work. Under this type of agreement, the other federal agency may either perform the work itself, or award a contract for the work to be performed. Regardless of how the work is performed, the payment is to the providing agency, not to a contractor.

(b) IAs or MOUs under which the judiciary will perform work for, or provide services to, another federal agency (referred to as the receiving agency) and receive reimbursement from the receiving agency for such work or services. As with the first type, the judiciary may contract for performance of the work, in which case the judiciary pays the contractor and then receives reimbursement from the receiving agency.

(c) IAs or MOUs under which the judiciary is authorized to issue a task or delivery order directly to a providing agency's contractor following the procedures contained in the Guide, Vol 14, § 310.60 (Other Federal Agency Contracts). In this case, the IA or MOU is non-monetary and no funds are transferred between agencies. Instead, the funds are obligated on the task or delivery order and payment is made directly to the other agency's contractor. The task or delivery order must be issued by an employee with at least a COCP Level 3 delegated procurement authority **See:** Guide, Vol 14, § 140.30.30(h).

§ 550.30 Limitations

§ 550.30.10 Restrictions/Requirements

Interagency Agreements and Memoranda of Understanding:

(a) Can be made only with a federal agency (**see also:** Economy Act Transactions in § 550.40);

(b) Must comply with the bona fide needs rule;

(c) May not be used to circumvent conditions or limitations on the use of appropriated funds; and

(d) May not be used to make prohibited purchases, whether prohibited by the judiciary or by the other agency.

§ 550.30.20 Content

An IA or MOU must be in writing. As in any contract situation, the agreed upon written terms establish the scope of the undertaking and the rights and obligations of the parties. Also, the written IA or MOU can establish a not-to-exceed amount on the judiciary's financial obligation. If the other agency does not provide an agreement or if the judiciary is the providing agency, then Form AO 368 (Interagency Agreement) may be used. The IA or MOU should specify at least the following:

(a) a citation of the statute or authority authorizing the IA or MOU;

(b) period of duration;

(c) responsibilities of the providing agency and the judiciary;

(d) description of services to be provided or products to be furnished;

(e) the cost of performance, including appropriate ceilings when cost is based on estimates. This estimated cost cannot be obligated beyond the fiscal year;

(f) mode of payment – advance or reimbursement (**see:** § 550.50);

(g) any applicable special requirements or procedures for assuring compliance;

(h) mutual termination provisions. The judiciary and providing agency should agree to procedures for the resolution of disagreements that may arise under an IA or MOU, including resolution by the PE. It should also include the requirement and procedures for the providing agency to notify the judiciary if it appears that performance will exceed estimated costs and to cease or curtail performance as may be necessary. This is an important safeguard to protect the judiciary from a potential Anti-Deficiency Act violation; and

(i) approvals and signatures by authorized officials (**see:** § 550.30.30).

§ 550.30.30 Approval Requirements

The chief judge, FPD, FJC Director, or the PLO, if delegated, must approve the use of IAs or MOUs for obtaining products or services from another federal agency subject to the following limitations:

(a) The IA or MOU may not exceed the procurement delegation authority amount. **See:** Guide, Vol 14, § 140.30.30(h). (**Note:** If it is expected to exceed the delegation authority, **see:** § 550.30.50.);

(b) The IA or MOU is signed by the chief judge, FPD, FJC Director or (if delegated) a CO, certified at the appropriate COCP level;

(c) There must be adherence to applicable statutory and/or regulatory requirements, including appropriations law. This means, for example, that the judiciary may not enter into IAs or MOUs that obligate funds from fiscal years that are before or after the current fiscal year. However, the IA or MOU may include yearly option periods that, if the CO exercises the option, will require the obligation of fiscal year funds available for the option period through the execution of a new order with the providing agency.

§ 550.30.40 Authority Not Delegated

Authority is not delegated:

(1) to the Courts, the FJC, or Federal Public Defenders to be providers of products or services to another federal agency;

(2) for the detail of personnel between the judiciary and another federal agency, whether paid or unpaid;

(3) for any IA or MOU exceeding the delegation authority amount (**see:** Guide, Vol 14, § 140.30.30(h)).

§ 550.30.50 Exceeding Delegation Authority

Proposed IAs or MOUs that exceed the delegation authority, or for which authority is specifically not delegated under paragraph (d) above must be forwarded to the PE for review, approval, and issuance of a one-time delegation of authority.

§ 550.40 Requirements for IAs and MOUs

§ 550.40.10 Statutory Authority

IAs and MOUs are authorized under one of the following categories:

(a) specific statutory authority for the purchase; or

(b) the Economy Act (31 U.S.C. § 1535).

§ 550.40.20 Specific Statutory Authority

For those IAs or MOUs for which there is specific statutory authority applicable to the judiciary, no Determination and Finding (D&F) is required. The applicable statutory authority must be specified in the IA or MOU, and the PE, in coordination with OGC, must review and validate its applicability to the judiciary.

§ 550.40.30 Economy Act

(a) The Economy Act (Act) applies when more specific statutory authority does not exist or when the specific authority does not apply to the judiciary. For example, the Clinger-Cohen Act, 40 U.S.C. § 11314, which authorizes government-wide agency contracts (GWACs), does not apply to the judiciary and thus the Economy Act must be relied upon.

(b) The Act does not provide authority to enter into IAs or MOUs with state or local agencies.

(c) All IAs and MOUs under the Act must be supported by a D&F (**see:** § 550.40.40; and Appx 5A (Economy Act Determination and Finding)), which must be maintained in the procurement file.

Note: Appx 5A provides only the initial signature page of the required D&F. It must be accompanied by a statement of facts, regarding the specific IA or MOU, that supports the D&F.

§ 550.40.40 Economy Act Determination and Finding

(a) Before entering into an IA or MOU under the Act, the CO must prepare and sign a D&F. If the providing agency requires a copy of the judiciary's D&F, this should be provided with the IA or MOU. The D&F must determine:

(1) that use of an IA or MOU for obtaining products or services, under the Economy Act (31 U.S.C. § 1535), is in the best interest of the judiciary; and

(2) the products or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise.

(b) To support the determinations required in (1) and (2) above, the following must be considered and included in the D&F and file documentation:

(1) total cost analysis of obtaining the products or services from the providing agency;

(2) factual supporting information describing any pricing advantages in using an IA or MOU for obtaining products or services;

(3) consideration of intangibles, such as ease of use, time savings;

(4) comparison of the expenditure of effort and associated costs with placing an order or contract under other procedures; and

(5) identification of other restrictions (e.g. length of time during which the IA or MOU will remain in force and effect; or specified procedures imposed by the providing agency as a condition of the agreement).

(c) For IAs and MOUs within the delegated procurement authority (**see:** Guide, Vol 14, § 140.30.30(h)), the D&F must be approved by the chief judge, FPD, or FJC Director (or PLO, if delegated).

(d) For IAs and MOUs above the delegated procurement authority the D&F must be approved by the PE.

§ 550.40.50 Economy Act Costs

(a) Payment under the Act, whether in advance, with subsequent adjustment, or by reimbursement, must be based on the actual costs of products or services provided (including a minimal administrative fee) to avoid unauthorized augmentation of either agency's appropriations. It cannot include "profit" to the providing agency.

(b) Actual costs include all direct costs attributable to the performance of a service or the furnishing of products. It also includes only those indirect costs that are funded out of the providing agency's currently available

appropriations and that bear a significant relationship to the service or work performed or materials furnished.

§ 550.40.60 Transfer of Funds

Other federal agencies may require that payment be made by transferring funds via the Department of Treasury's Intra-Governmental Payment and Collection (IPAC) system. If the providing agency requires that payment be made via the IPAC system, the purchasing CO will provide the agency location code in Form AO 368 (Interagency Agreement) or provide it in the other federal agency's form. These set forth the accounting information for both the providing and purchasing agencies besides other relevant details. Because IPAC transfers can only be accomplished at the AO, the CO will seek assistance, if necessary, from the AO Accounting and Financial Systems Division (AFSD) and ensure that the form is properly completed, executed, and a copy forwarded to AFSD. The chief judge, FPD, or FJC Director (or PLO, if delegated) must sign the form as the Authorizing Official, indicating concurrence. These discussions should be carried out and all the funding issues resolved before requesting chief judge, FPD, FJC Director, or PLO approval of the IA or MOU.

§ 550.50 Payment of IAs and MOUs

§ 550.50.10 Advance Versus Reimbursement

Payments to federal agencies may be made in advance or upon receipt of the products or services.

(a) Advance

The provisions of the written IA or MOU may permit advance payment for all or part of the estimated cost of furnishing the products or services. If payment is made in advance, then any adjustments on the basis of actual costs must be made as agreed to by the providing agency and judiciary. Amounts in excess of actual costs must be returned to the judiciary. Bills rendered or requests for payment are not subject to audit or certification in advance of payment.

(b) Reimbursement

If approved by the providing agency, payment for actual costs may be made by the judiciary after the products or services have been furnished on a reimbursement basis.

§ 550.50.20 IAs or MOUs under the Economy Act

If the IA or MOU is under the Economy Act, **see:** § 550.40.30.

§ 550.50.30 Recording IA or MOU Obligations

In most instances, an IA, MOU, or an order placed directly with another agency's contractor obligates the judiciary's appropriations and is recorded as an obligation. If this is an Economy Act transaction, then the original amount obligated must be reduced at the end of the fiscal year to the extent that the providing agency has not incurred costs or made expenditures, before the end of the period of availability of the appropriation, in:

(a) providing products or services; or

(b) making an authorized contract with another person to provide the requested products or services.

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Appx 5A: Economy Act Determination and Finding

Note: The following determination and finding should only be used for procurement using an Interagency Agreement (IA) or Memorandum of Understanding (MOU) under the Economy Act.

As required by the Economy Act, 31 U.S.C. § 1535, the attached documentation includes facts that demonstrate that:

(1) amounts are available to meet the proposed cost;

(2) the order is in the best interest of the judiciary;

(3) the agency filling the order is able to provide, or get by contract, the ordered products and services; and

(4) the ordered products or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise.

To the best of my knowledge and belief, I hereby certify that the information provided in this Determination and Finding, including the attached supporting documentation, is accurate and complete.

Typed Name: _____

Signature: _____

Title: _____

Typed Name of Approving Official: _____

Signature of Approving Official: _____

Title of Approving Official: _____
(Chief Judge or FPD, within their delegation authority (or PLO, if delegated), or at the AO the Procurement Executive)

Last revised June 29, 2010

Guide to Judiciary Policy

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§ 610 Bonds

§ 610.10 In General

(a) A bond is a written instrument executed for the judiciary's benefit as security for the offeror's or contractor's obligations, and to assure payment of any bond loss.

(b) A bond is executed by an offeror or contractor identified in the instrument as the principal, with a second party identified as the surety.

(c) Bonds and performance guarantees will be obtained only when needed to protect the interest of the judiciary.

(d) Procurement plans (**see:** Guide, Vol 14, Ch 2) must describe and explain any requirements for bonds and performance guarantees.

(e) If contemplating the requirement of a bond, the Contracting Officer (CO) must submit that request to the Procurement Executive (PE) for written approval before including the requirement for a bond in the solicitation.

§ 610.20 Performance Bonds for Other than Construction Contracts

§ 610.20.10 Requirement

A performance bond is a bond that secures performance and fulfillment of the contractor's obligations under the contract. Performance bonds may be required only when the CO determines that performance bonding is essential to the interest of the judiciary. Examples of situations when a performance bond may be needed include when:

(a) a contract provides for the contractor's use of judiciary property, or judiciary funds in performance, or

(b) a contractor has sold all its assets to, or has merged with, another firm and the judiciary needs assurance of the new firm's responsibility (**see:** Guide, Vol 14, § 745.55).

§ 610.20.20 Amount

The amount of the bond must be the minimum needed to protect the judiciary's interest.

§ 610.20.30 Clauses

(a) Clause 6-1, Performance Bond Requirements must be included in solicitations for nonconstruction contracts that contain a requirement for both payment bonds (**see:** § 610.30) and performance bonds.

(b) Clause 6-1 with its Alternate I is included when only a performance bond is required.

Note: The CO must determine the amount of each bond for insertion in the clause. If the amount of the bond is less than 100 percent of the contract price, the provision must be modified accordingly. The amount must be adequate to protect the interest of the judiciary. The CO must also designate the period of time after contract award (normally ten days) for return of executed bonds.

§ 610.20.40 Annual Performance Bonds

Annual performance bonds may be used only for contracts other than construction. The amount of such a bond may not be more than the total amount of all contracts secured by the bond.

§ 610.30 Payment Bonds for Other than Construction Contracts

§ 610.30.10 Requirement

A payment bond is a bond that assures payments as required by law to all persons supplying labor or material in the prosecution of the work provided for in the contract. Payment bonds may be required only when the CO determines that payment bonding is essential to the interest of the judiciary. Examples of situations when a payment bond may be needed include when:

(a) a contract is for products or services unique to the judiciary that can be obtained only from a source that is not the producer of the products or services;

(b) a contractor has sold all its assets to, or merged with, another firm and the judiciary needs assurance of the new firm's responsibility (**see:** Guide, Vol 14, § 745.55); or

(c) uninterrupted provision of the products or services is essential to the continued operation of judiciary functions.

§ 610.30.20 Amount

The amount of the bond must be the minimum needed to protect the judiciary's interest.

§ 610.40 Fidelity Bonds

(a) A fidelity bond, in an amount sufficient to protect the judiciary’s interest, may be required for any contract that requires contractor employees to handle judiciary funds or judiciary employee funds.

(b) When a fidelity bond is required, Clause 6-5, Fidelity Bond Requirements must be included in the solicitation and contract and the amount must be reviewed periodically to ensure that the judiciary's interest is adequately protected.

(c) The CO will include the amount of the bond required in the contract’s schedule.

§ 610.50 Other Types of Bonds

Bonds, other than those discussed in this chapter, may be required only when the CO determines such bonds are necessary to protect the judiciary's interest.

§ 610.60 Execution of Bonds

§ 610.60.10 Prescribed Formats

If the applicable clause has not specified a prescribed format for a bond, a suitable commercial bond form may be used. An appropriate format may also be prepared with the PE’s assistance and in consultation with the AO Office of General Counsel (OGC).

§ 610.60.20 Original Copy

Retain an original signed copy of any bond in the solicitation or contract file.

§ 610.60.30 Authority of Agents

Bonds signed by persons acting in a representative capacity must be accompanied by proof that the agent is authorized to act in that capacity. Proof may be a notarized power of attorney, a properly executed corporate certificate, or resolution attested to by the corporate secretary.

§ 610.60.40 Partnership as Principal

When a partnership is a principal, the names of all members of the firm must be listed in the bond following the trade name of the firm (if any) and the phrase: "a partnership composed of." When a corporation is a principal, the state of incorporation must be listed.

§ 610.60.50 Date

Unless an annual bond is accepted, performance or payment bonds must be dated after the effective date of the contract.

§ 610.60.60 Modifications

(a) When a modification changes the contract scope or increases the contract price by 10 percent or more or when the CO determines that the original bond amount must be increased, the contractor and the surety must execute a consent of surety and increase of penal amount of the bond. This is then submitted to the CO. When more than one surety's consent is required, each surety must execute the form.

(b) When an increased bond amount is obtained from a party other than the original surety, the original surety must execute a consent of surety. Novation agreements require the execution of a consent of surety. **See:** Guide, Vol 14, § 745.55.

§ 620 Sureties and Bond Alternatives

§ 620.10 Sureties

§ 620.10.10 In General

Bonds must be supported by acceptable corporate sureties (**see:** § 620.10.20), individual sureties (**see:** § 620.10.30), by assets (**see:** § 620.20) acceptable as

security for the contractor's obligation (**see:** § 620.20), or irrevocable letters of credit (**see:** § 620.30).

§ 620.10.20 Corporate Sureties

Any corporate or individual surety offered for a bond furnished the judiciary must appear on the list contained in Treasury Department Circular 570 (Circular 570), which may also be obtained from the following address:

U.S. Department of the Treasury
Financial Management Service
Surety Bond Branch
401 14th St., SW, 2nd Floor – West Wing
Washington, D.C. 20227

§ 620.10.30 Individual Sureties

On a case by case basis, the judiciary may accept individual sureties.

§ 620.10.40 Amount

The penal amount of the bond should not exceed that surety's underwriting limit as stated in Circular 570. "Penal amount" means the amount of money specified in a bond as the maximum payment for which the surety is obligated or the amount of security required to be pledged to the judiciary in lieu of a corporate or individual surety for the bond.

§ 620.20 Deposit of Assets Instead of Surety Bonds

§ 620.20.10 Assets in Lieu of Bond

In lieu of any bond, the contractor may deposit certain kinds of assets with the judiciary instead of furnishing a bond.

§ 620.20.20 Acceptable Assets

The only assets acceptable in place of a surety bond are described below:

(a) United States bonds or notes with a maturity date less than five years from the date of the contract, together with an agreement authorizing collection or sale in the event of default. The par value of the bonds or notes must be at least equal to the penal amount of the bond.

(b) A certified check, cashier's check, bank draft, postal money order, or currency. The deposit must be at least equal to the penal amount of the surety bond and payable to the finance office of the judiciary organization which required the bond (i.e., individual court unit, Federal Public Defender Organization (FPDO), Federal Judicial Center (FJC) or the AO Accounting and Financial Systems Division (AFSD).

§ 620.20.30 Deposit of Assets

The CO must turn all assets over to finance or another authorized judiciary official for deposit into an interest bearing account at a Federal Reserve Bank (or branch with requisite facilities) with instructions to hold the funds for the benefit of the contractor. A perpetual inventory of all deposited items must be kept by the senior contracting official at the purchasing office.

§ 620.20.40 Bond Form Requirements

When the contractor pledges assets instead of providing a surety bond, the contractor must complete the bond form as principal and the bond form must describe the assets pledged.

§ 620.20.50 Clauses/Provisions

(a) For all contracts involving the furnishing of bonds, Provision 6-10, Deposit of Assets Requirements must be included in the solicitation.

(b) Clause 6-15, Deposit of Assets Instead of Surety Bonds must be included in every solicitation and contract requiring a bond for which assets may be deposited in lieu of bonds.

§ 620.30 Irrevocable Letter of Credit

§ 620.30.10 In General

Any person required to furnish a bond has the option to furnish a bond secured by an Irrevocable Letter of Credit (ILC) in an amount equal to the penal sum required to be secured. A separate ILC is required for each bond.

§ 620.30.15 Requirements

The ILC must be irrevocable and expire only as provided in § 620.30.40. ILCs over $5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least $25 million in the past year.

§ 620.30.20 Issuing Institution Requirements

(a) The ILC must be issued or confirmed by a federally insured financial institution rated investment grade or better.

(b) The contractor must provide the CO a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC.

(c) If the CO learns that a financial institution's rating has dropped below the required level, the CO will give the contractor 30 days to substitute an acceptable ILC or will draw on the ILC using a sight draft.

§ 620.30.25 Cancellation of ILC

Letters of credit must indicate that the financial institution may not cancel the letter of credit before 90 days following the scheduled contract completion date (for contract completion disposition of assets after final contract payment, **see:** § 620.40.30(b).

§ 620.30.30 Failure to Furnish Replacement ILC

If the contractor does not furnish an acceptable replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the CO will immediately draw on the ILC.

§ 620.30.35 Drawing on the ILC

To draw on the ILC, the CO will use a sight draft and present it with the ILC to the issuing financial institution or the confirming financial institution, if any.

§ 620.30.40 Expiration Dates

The expiration dates of the ILC will be the later of:

(a) 90 days following final payment, or

(b) until completion of any warranty period for performance bonds only.

§ 620.30.45 Extended Contract Performance

When the contract performance period is extended, the CO will require the contractor to provide an ILC with an appropriately extended maturity date that meets the requirements in § 620.30.40, above.

§ 620.30.50 ILC in Lieu of Payment Bond

If, after the period of performance of a contract where ILCs are used to support payment bonds, there are outstanding claims against the payment bond, the CO will draw on the ILC before the expiration date of the ILC to cover these claims.

§ 620.40 Administration of Contracts Requiring Bonds

See also: Guide, Vol 14, Ch 7.

§ 620.40.10 Information and Notice to Sureties

(a) Correspondence

A copy of all correspondence relating to contract modification, termination, renewal, or nonperformance must be provided to each surety with proof of delivery requested. Additional information on contract performance and payment must be provided to sureties upon request.

(b) Failure to Perform

The CO must send each surety a copy of any notice of impending termination, demand for adequate assurances, assessment of liquidated or other damages, or other formal notice of failure to perform under the contract with a notice that the surety may be liable for damages suffered by the judiciary.

(c) Claims Against Sureties

If a contractor's failure to perform necessitates a claim against a surety, the CO must give the surety written notice of the amount of and reasons for the claim. If the surety refuses to pay or does not respond, the CO must obtain advice from the PE, who will consult with OGC.

§ 620.40.20 Surety Takeover Agreements

(a) Because of the surety's liability for damages resulting from a contractor's default, the surety has certain rights and interests in the completion of the contract work and the application of any undisbursed funds. Before terminating a contract for default, the CO must consider any offer by the surety for completion of the work. The surety must be permitted to complete the work unless the CO has reason to believe that the persons or firms proposed by the surety to complete the work are not competent or qualified.

(b) Because of the possibility of conflicting demands for the defaulting contractor's unpaid earnings (including retained percentages), the surety may condition its offer of completion upon the execution of a takeover agreement establishing the surety's right to payment from the unpaid earnings. If so, with the PE's prior written concurrence and after consulting with OGC, the CO may enter into such an agreement with the surety in writing after the effective date of contract termination. The CO must consider including the defaulting contractor as a party to the agreement to preclude any disagreement on the contractor's residual rights.

(c) The agreement must provide that the surety will complete the work according to all contract terms and conditions and that the judiciary will pay the surety the balance of the contract price unpaid at termination but not more than the surety's costs and expenses, subject to the following conditions:

(1) Any unpaid earnings of the defaulting contractor, including retained percentages, for work accomplished before termination, are subject to debts owed the judiciary by the contractor except to the extent that the unpaid earnings are required to pay the completing surety the actual costs and expenses it incurs in completing the work exclusive of the surety's payments and obligations under the payment bond given in connection with the contract.

(2) The agreement may not waive or release the judiciary's right to liquidated damages for any delay in completion of the work that is not excusable under the contract.

(3) If the contract proceeds have been assigned to a financing institution, the surety may not be paid from unpaid earnings unless the assignee consents to the payment in writing.

(4) The surety may be reimbursed for discharging its liabilities under the payment bond of the defaulting contractor only when:

(A) there is mutual agreement among the judiciary, the defaulting contractor, and the surety, or

(B) a court of competent jurisdiction orders payment.

§ 620.40.30 Contract Completion

(a) Upon contractor completion of all contract obligations, the CO must issue a Certificate of Completion to any surety. The certificate's terms may not release the surety from any obligation under a payment bond.

(b) When the contractor has deposited assets instead of providing a surety on a payment bond, the CO must refund the assets, with accrued interest (**see:** § 620.20.30), within 90 days after final completion of contract performance, unless notice of a claim is received during the 90-day period. If a claim is received, the assets may be released only by order of a court of competent jurisdiction.

(c) Assets deposited to secure any other bond may be refunded, with accrued interest, upon final completion and receipt of the contractor's written release of claims.

§ 630 Insurance

§ 630.10 In General

Contractors are required by law to provide insurance for certain types of perils (e.g., workers' compensation). Insurance is mandatory also when commingling of property, type of operation, circumstances of ownership, or condition of the contract make it necessary for the protection of the judiciary.

§ 630.20 Types of Insurance

The kinds of insurance and coverage amounts specified in Clause 6-20 are minimums. The CO may require additional coverage and/or higher limits, but should document the reasons for the additional coverage and/or higher limits in the contract file. The CO is authorized to modify Clause 6-20 when such additional coverage and/or higher is required.

§ 630.20.10 Reserved

§ 630.20.20 Reserved

§ 630.20.30 Reserved

§ 630.20.40 Clauses

(a) Clause 6-20, Insurance – Work on or Within a Judiciary Facility, is included in solicitations and contracts when:

(1) a fixed-price contract is contemplated;

(2) the contract amount is expected to exceed the judiciary's small purchase threshold (**see:** § 325.10.30); and

(3) the contract will require work on a judiciary facility; unless only a small amount of work is required (i.e., a few brief visits per month).

(b) Clause 6-25, Insurance – Liability to Third Persons is included in solicitations and contracts (other than those for construction contracts and architect-engineer services) when a cost-reimbursement contract is contemplated.

§ 630.30 Self-Insurance

(a) The CO must obtain the PE's written approval before accepting any contractor proposal for self-insurance.

(b) A qualified program of self-insurance covering any kind of liability may be approved in place of any type of insurance discussed in § 630.20 when found to be in the interest of the judiciary.

(c) However, in a jurisdiction where workers' compensation does not completely cover employers' liability to employees, a program of self-insurance for workers' compensation may be approved only if:

(a) the contractor also maintains a written approved program of self-insurance for any employer's liability that is not covered, or

(b) the contractor has shown that the combined cost to the judiciary of self-insurance for workers' compensation and commercial insurance for employers' liability will not exceed the cost of covering both kinds of risks by commercial insurance.

§ 630.40 Errors and Omissions Insurance

§ 630.40.10 Professional Services

Contractors providing the following categories of services must carry errors and omissions (malpractice) insurance:

- accountants;
- architects;
- engineers; and
- fiscal agents.

§ 630.40.20 Amount

Insurance coverage must be at least $200,000. However, the CO may determine that a different limit is needed to protect the interest of the judiciary. This limit is then set forth in the schedule of the contract.

§ 630.40.30 Waiver

The CO may waive the requirement for errors and omissions insurance, in whole or in part, after first conferring with the PE, who will consult with OGC.

§ 630.40.40 Other Professional Services

The CO may require other professional services contractors to carry errors and omissions insurance when in the interest of the judiciary.

§ 630.40.50 Clauses

Clause 6-35, Errors and Omissions is included in solicitations and contracts when errors and omissions insurance is required under this section.

§ 630.50 Insurance Policies

When insurance is required, it may be provided either by a specific insurance policy or by the contractor's existing insurance policy. When an existing policy is used, it must be amended to name the loss payee as the finance office for the individual court unit, FPDO, FJC or AO (whichever required the insurance).

§ 630.60 Notice of Cancellation or Change

When the CO requires insurance (other than errors and omissions insurance issued on an occurrence basis), the insurance policy must contain an endorsement. The

endorsement must state that a cancellation of, or material change in, the policy that adversely affects the judiciary's interest will not be effective until at least 30 days after the CO receives written notice of the cancellation or change.

§ 640 Taxes

§ 640.10 In General

Contract tax problems are essentially legal in nature and vary widely. Specific tax questions must be resolved by reference to the applicable contract terms and pertinent tax laws and regulations. Therefore, when tax questions arise, COs must confer with the PE, who will consult with OGC.

§ 640.20 Federal Excise Taxes

§ 640.20.10 Applicability

Federal excise taxes are levied on the sale or use of particular products and services. Questions on the applicability of federal excise taxes must be directed to the PE, who will consult with OGC.

§ 640.20.20 Solicitations

COs must solicit price offers on a tax-exclusive basis when it is known that the judiciary is exempt from federal excise taxes and on a tax-inclusive basis when no exemption exists.

§ 640.30 State and Local Taxes

§ 640.30.10 Definition

State and local taxes are taxes levied by the states, the District of Columbia, Puerto Rico, possessions of the United States, or their political subdivisions.

§ 640.30.20 Applicability

(a) As a federal government establishment, the judiciary is constitutionally immune from state and local taxes imposed directly on it. However, the applicability of particular taxes is a legal question often requiring OGC's advice and assistance.

(b) The applicability of a tax depends on the nature of the tax and whether its legal incidence falls directly on the judiciary (as the purchaser) as

compared with a tax imposed directly on a vendor with the vendor passing the cost of the tax onto its customers (including the judiciary) as part of its cost of doing business. In this latter instance, the legal incidence would not fall directly on the judiciary, but on the vendor, and the judiciary would probably not be immune.

(c) Each state's taxing laws are different; therefore, immunity in one state does not automatically transfer to another state. Most states have provided the General Services Administration (GSA) with a copy of their respective state tax letters, regarding purchases made with the government purchase card. These letters may be found in the State Tax Information area of GSA's SmartPay website. These may provide helpful information concerning an individual state's taxes.

§ 640.30.30 Exemptions for Contractors

Prime contractors and subcontractors may not normally be designated as agents of the judiciary for the purpose of claiming exemption from state and local taxes. Such designation, when appropriate, must be accomplished in the solicitation and only after coordination with the PE, who will consult with OGC.

§ 640.30.40 Exemption from Tax

(a) Whenever a state or locality asserts its right to tax judiciary property directly or to tax a contractor's possession, use of, or interest in, judiciary property, the CO must obtain advice from the PE, who will consult with OGC, concerning the appropriate course of action.

(b) If the solicitation or contract includes Clause 6-40, Federal, State and Local Taxes or Clause 6-45, Federal, State and Local Taxes (Noncompetitive Contract), it is the offeror's responsibility to determine to what extent state and local taxes are applicable to its offer. The CO must make no representations concerning the applicability of any state or local tax and, except as provided in paragraph (c) below, the judiciary will have no involvement in resolving any dispute between the contractor and a taxing authority concerning tax applicability.

(c) The judiciary will, upon the contractor's request, furnish the contractor evidence to establish exemption from any specified tax if a reasonable basis for the exemption exists.

§ 640.30.50 Evidence of Exemption

Evidence of exemption may include:

(a) a copy of the contract

(b) copies of other documents (such as shipping documents or invoices) identifying the judiciary as the buyer

(c) a U.S. Tax Exemption Certificate (SF 1094), which may be obtained from the Federal Supply Service, 1-800-525-8027.

(d) a state or local form indicating that the products or services are for the exclusive use of the judiciary or the federal government

(e) any other state or locally required document for establishing exemption, or

(f) shipping documents indicating that shipments are in interstate or foreign commerce.

§ 640.30.60 Matters Requiring Special Consideration

The resolution of tax issues requiring special consideration must be coordinated with the PE, who will consult with OGC, in the course of solicitation preparation. The following are examples of state and local tax issues that may require special treatment:

(a) When there is a reasonable question of the applicability or allocability of a tax or when the applicability of a tax is in litigation, the contract may:

(1) state that the contract price includes or excludes the particular tax and is subject to adjustment upon resolution of the tax question, or

(2) require the contractor to take specific actions regarding payment, non-payment, refund, protest, or other treatment of the tax.

(b) When the applicability of state and local taxes depends on the place and terms of delivery and the effect of tax on the contract price will be substantial, alternative places of delivery and contract terms should be considered in light of tax consequences.

§ 640.30.70 Clauses

(a) Clause 6-40, Federal, State and Local Taxes is included in solicitations and contracts if the contract is to be performed wholly or partly within the United States, its possessions, or Puerto Rico, when a fixed-price competitively awarded contract is contemplated and the contract is expected to exceed the judiciary's small purchase threshold, unless Clause 6-45 is included in the contract.

(b) Clause 6-45, Federal, State, and Local Taxes (Noncompetitive Contract) is included in fixed-price noncompetitive contracts exceeding the judiciary's small purchase threshold to be performed wholly or partly within the United States, its possessions, or Puerto Rico, and when the CO is satisfied that the contract price does not include contingencies for state and local taxes, and that, unless the clause is used, the contract price will include such contingencies.

§ 650 Rights in Data and Copyrights

§ 650.10 Data Rights Policy

§ 650.10.10 In General

It is the judiciary's policy to acquire only those rights in data that are necessary to the fulfillment of its mission and programs. For purposes of this chapter, the term "data" means recorded information, regardless of the form or media on which it is recorded. The term includes technical data and computer software, but does not include information incidental to contract administration, such as financial, administrative, cost or pricing or management information. The judiciary requires rights to data to:

(a) obtain competition among potential suppliers of products and services;

(b) fulfill certain responsibilities for disseminating and publishing the results of activities;

(c) meet specialized acquisitions needs and ensure logistics support; and

(d) meet other programmatic and statutory requirements.

§ 650.10.20 Contractor Proprietary Interest

The judiciary recognizes that its contractors may have a legitimate proprietary interest (a property or other economic interest) in data resulting from private development and investment. Protection of such data from unnecessarily wide dissemination and use is necessary to:

(a) avoid jeopardizing the contractor's commercial position and economic interest;

(b) preclude impairment of the judiciary's ability to obtain access to or use such data; and

(c) encourage prospective contractors to contract with the judiciary.

§ 650.10.30 Determining Scope of Data Rights

Because of the considerations identified in § 650.10.10 and § 650.10.20, COs should pay particular attention to the interests of the judiciary and the contractor when deciding the scope of data rights protection to be included in each solicitation or contract. All contracts that require data to be produced, furnished, acquired or specifically used in meeting contract performance requirements must contain terms that delineate the respective rights and obligations of the government and the contractor regarding the use, duplication and disclosure of such data.

§ 650.15 Unlimited Rights Data

§ 650.15.10 Unlimited Rights under Clause 6-60

Data in the following categories is acquired with unlimited rights (except for copyrights) under Clause 6-60:

(a) data first produced in the performance of the contract, including computer software (except to the extent the data constitute minor modifications to data that are limited rights data or restricted computer software)

(b) form, fit and function data delivered under the contract.

(c) data (except as may be included with restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished under a contract, and

(d) all other data delivered under the contract unless it is limited rights data or restricted computer software.

§ 650.15.20 Contractor's Right to Use Data

Clause 6-60, Rights in Data – General, recognizes that the contractor has the right to use, release to others, reproduce, distribute, or publish data first produced in the performance of the contract. The CO may, however, place restrictions on the contractor's right to use the data for these purposes. However, such restrictions should not be imposed unless they are determined to be necessary to the furtherance of judiciary mission objectives, needed to support specific judiciary programs, or necessary to meet statutory requirements.

§ 650.20 Limited Rights Data

The contractor must identify any data it proposes to deliver as limited right data in its proposal in accordance with Provision 6-50, Representation of Rights in Data. The contracting officer must include this provision in any solicitation that includes Clause 6-60, Rights in Data – General, if the contracting officer desires to have an offeror state in response to a solicitation whether limited rights data or restricted computer software are likely to be used in meeting the data delivery requirements set forth in the solicitation. Such limited rights data will not, without the permission of the contractor, be used by the judiciary for manufacture, and will not be disclosed outside the government except for certain specific purposes as may be set forth in the notice.

§ 650.25 Restricted Computer Software

§ 650.25.10 In General

Restricted computer software normally is acquired with restricted rights. The contracting officer must include Provision 6-50 in any solicitation that includes Clause 6-60, Rights in Data – General, if the contracting officer desires to have an offeror state in response to a solicitation whether limited rights data or restricted computer software are likely to be used in meeting the data delivery requirements set forth in the solicitation. Contractors claiming that software is restricted computer software must identify such software according to Provision 6-50, Representation of Rights in Data, and, when it is delivered to the judiciary, place on it the required restricted rights legend.

§ 650.25.20 Rights Needed with Restricted Software

Unlike other data, computer software is also an end item in itself, such that if withheld and form, fit and function data are provided in lieu thereof, an operational program may not be acquired. Thus, if delivery of restricted computer software is anticipated to be needed to meet contract performance requirements, the CO should assure that the restricted rights acquired permit the computer software to be:

(a) used or copied for use in or with the computer or computers for which it was acquired, including use at any government installation to which such computer(s) may be transferred;

(b) used or copied for use with a backup computer if any computer for which it was acquired becomes inoperative;

(c) reproduced for safekeeping (archives) or backup purposes;

(d) modified, adapted, or combined with other computer software, provided that the modified, combined or adapted portions of any derivative software

incorporating restricted computer software are subject to the same restricted rights to the extent to which the original product is recognizable;

(e) disclosed to and reproduced for use by support service contractors, or their subcontractors in accordance with paragraphs (a) through (d) above, and

(f) used or copied for use in or transferred to a replacement computer.

§ 650.25.30 Scope of Restricted Rights

(a) The restricted rights set forth above are the minimum rights the judiciary will obtain with restricted computer software.

(b) However, the CO may specify either greater or lesser rights, consistent with the purposes and needs for which the software is to be acquired, in a particular solicitation or contract. For example, consideration should be given to any networking needs or any requirements for use of the computer software from remote terminals.

(c) Also, the scope of the restricted rights may be different for the documentation accompanying the computer software than for the programs and databases.

(d) Any additions to, or limitation on the restricted rights set forth in the Restricted Rights Notice are to be expressly stated in the contract or in a collateral agreement incorporated in and made part of the contract.

§ 650.30 Copyrighted Data

§ 650.30.10 In General

To facilitate the dissemination of information produced at government expense, contractors are normally authorized, without prior approval of the CO, to establish claim to copyright in technical or scientific articles based on or containing data first produced in performance of work under a contract containing Clause 6-60, Rights in Data – General, and published in academic, technical, or professional journals, symposia proceedings and similar works. Otherwise, the permission of the CO must be obtained if the contractor desires to establish claim to copyright in data first produced in the performance of a contract.

§ 650.30.20 Denial of Copyright Request

(a) Usually, permission for a contractor to establish copyright in data first produced under the contract will be granted when copyright protection will enhance the transfer or dissemination of data and the commercialization of products or the process to which it pertains.

(b) The request for permission must be in writing, should identify the data involved or furnish copies of the data for which permission is sought, as well as a statement with the intended publication or dissemination media or other purpose for which copyright is requested.

(c) The request will normally be granted unless:

(1) the data consist of a report that represents the official views of the judiciary or that the judiciary is required by statute to prepare;

(2) the data are intended primarily for internal use by the government;

(3) the data are of the type that the judiciary itself distributes to the public; or

(4) the judiciary determines that data should remain in the public domain and be disseminated without restriction.

§ 650.30.30 Judiciary License

Under Clause 6-60, Rights in Data – General, the government is granted a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute to the public, perform publicly and display publicly by or on behalf of the government, all data first produced in the performance of the contract, whether copyrighted or not.

§ 650.30.40 Copyright Notice Requirement

Under Clause 6-60, Rights In Data – General, whenever a contractor establishes a claim to copyright, the contractor is required to affix the applicable copyright notices of 17 U.S.C. § 401 and acknowledgment of government sponsorship (including the contract number) to the data whenever such data are delivered to the government, published, or deposited for registration as a published work in the U.S. Copyright Office. Failure to do so could result in such data being treated as unlimited rights data.

§ 650.35 Data Not First Produced in Performance of a Contract

§ 650.35.10 In General

Contractors may not incorporate in data delivered under a contract any data that is not first produced under the contract (marked as required with the copyright notice of 17 U.S.C. § 401, without either:

(a) acquiring for or granting to the government a copyright license for the data, or

(b) obtaining permission from the CO to do otherwise.

§ 650.35.20 Scope of Copyright for Such Data

The copyright license the judiciary acquires for such data will normally be of the same scope as discussed in § 650.30.30. However, the judiciary may, on a case by case basis, obtain a license of different scope, only with the concurrence of the PE, who will consult with OGC, and only if such a license will not interfere with the judiciary's use of the data as contemplated by the contract. If a license of a different scope is acquired, it must be so stated in the contract and clearly set forth in a conspicuous place on the data when delivered to the judiciary. If the contractor delivers computer software not first produced under the contract, the contractor must grant the judiciary the license set forth in paragraph g(4) of Alternate II of Clause 6-60, or a license agreed to in a collateral agreement made part of the contract.

§ 650.40 Unmarked or Improperly Marked Data or Software

§ 650.40.10 In General

Data or software received without a restrictive legend are deemed to have been furnished with unlimited rights. However, the CO may permit the contractor to place a restrictive legend on the data or software within six months of delivery if the contractor demonstrates that:

(a) its omission was inadvertent, and

(b) use of the legend is authorized.

Even if the CO permits the addition of a restrictive legend after delivery, the judiciary has no liability with respect to the use or disclosure of data or software made before the addition of the legend to the data/software.

§ 650.40.20 Delivery of Data/Software with Unauthorized Legend

Data or software received with a restrictive legend not permitted by the terms of the contract may be used with limited rights only pending inquiry to the contractor. If no response has been received within 30 days, or if the response fails to show that the restriction is authorized, the CO, after consultation with the PE, who will consult with OGC, may obliterate the legend, notify the contractor accordingly, and thereafter use the data/software as if acquired with unlimited rights.

§ 650.45 Special Works

§ 650.45.10 Use of Special Works

Clause 6-65, Rights in Data – Special Works may be used in contracts, or may be made applicable to portions thereof, that are primarily for the production or compilation of data (other than limited rights data or restricted computer software) for the judiciary's own use, or when there is a specific need to limit distribution and use of the data or to obtain indemnity for liabilities that may arise out of the content, performance, or disclosure of the data. Examples of such contracts may include those for:

(a) the production of audiovisual works;

(b) histories of the judiciary;

(c) works pertaining to training or career guidance; and

(d) works pertaining to the instruction or guidance of judiciary employees in the discharge of their duties;

(e) surveys of judiciary establishments;

(f) the compilation of reports, books, studies, surveys, or similar documents;

(g) the collection of data containing personally identifiable information such that the disclosure thereof would violate the right of privacy or publicity of the individual to whom the information relates;

(h) investigatory reports;

(i) the development, accumulation, or compilation of data, the early release of which could prejudice follow-on acquisition activities or agency regulatory or enforcement activities; or

(j) the development of computer software programs, where the program – may give a commercial advantage; or is agency mission sensitive, and release could prejudice agency mission, programs, or follow-on acquisitions.

§ 650.45.20 Additional Contract Considerations

Contracts using Clause 6-65 may specify the purposes and conditions (including time limitations) under which the data may be used, released, or reproduced by the contractor for other than contract performance. In addition, contracts for the production of audiovisual works, sound recordings, etc. may include limitations in connection with talent releases, music licenses, and the like that are consistent with the purposes for which the data in acquired.

§ 650.50 Professional Services/Work for Hire

Contracts for professional consultant, research or other highly specialized services, such as those under 5 U.S.C. § 3109 for expert or consultant services, may require that the judiciary retain broad intellectual property rights. In such cases, the work may be specifically characterized in the contract as a work for hire, in which case the intellectual property rights which accrue to the judiciary are those that would arise if the work were performed by a government employee. In such an instance, the contract must specify that the work is a "work for hire." When the work is classified as a "work for hire," the contractor enjoys no right to the data produced under the contract but rather, all materials, data and other information developed, delivered, furnished or otherwise called for under the contract are works of the United States and are in the public domain. Because the government's needs can generally be met by acquiring unlimited rights in data, as set forth in Clause 6-60, the inclusion of a clause treating all data as a work for hire should be used cautiously and only in those instances where the judiciary or public's needs cannot otherwise be adequately met.

§ 650.55 Commercial Computer Software

§ 650.55.10 In General

(a) When contracting other than from GSA Multiple Award Schedule contracts for the acquisition of commercial computer software — i.e., software which is privately developed and normally sold commercially under a license or lease agreement restricting its use, disclosure, or reproduction — no specific contract clause need be used, but the contract must specifically address the judiciary's right to use, disclose and reproduce the software, and these rights must be sufficient for the judiciary to fulfill the need for which the software is being acquired.

(b) Such rights may need to be negotiated and set forth in the contract. If the computer software is to be acquired with unlimited rights, the contract must specifically provide for this.

(c) In addition, the contract must adequately describe the computer programs and/or databases, the media on which it is to be recorded, and all the necessary documentation.

§ 650.55.20 License Terms

(a) If the contract incorporates, makes reference to, or uses a contractor's standard commercial license, lease, or purchase agreement, the CO must review the agreement to assure that it is consistent with other contract terms and provisions and the judiciary's needs.

(b) Caution should be exercised in accepting a contractor's terms and conditions since these may conflict with other contract provisions and may not be appropriate.

(c) Any inconsistencies in a contractor's standard commercial agreement will be addressed in the contract and the terms will specify that the contract terms take precedence over the contractor's standard commercial agreement. **See also:** § 640.

§ 650.60 Rights to Data in Successful Offers

The judiciary may desire to acquire unlimited rights in technical data contained in a successful offer upon which an award is based. However, before such unlimited rights are acquired, the prospective contractor must be afforded the opportunity either:

(a) to advise the CO that the data, or portions thereof (to be identified by the prospective contractor) are covered by any restrictive notice regarding the disclosure and use of offer information, or

(b) establish to the CO's satisfaction that identified portions of technical data do not relate directly to or will not be used in the work to be performed under the contract, and request that such portions be excluded from the judiciary's rights.

§ 650.65 Clauses	
Clause or Provision	**Include in:**
(a) Clause 6-50, Representation of Rights in Data	solicitations and contracts when: (1) the solicitation includes Clause 6-60, Rights in Data – General; and (2) offerors must state in response to a solicitation whether limited rights data or restricted computer software are likely to be used in meeting the contract requirements. **Note:** The offeror's response will determine whether to incorporate Alternate I or II for Clause 6-60 in the resultant contract.
(b) Clause 6-60, Rights in Data – General	solicitations and contracts when data will be produced, furnished or acquired under the contract unless the contract is for: (1) the acquisition of existing data, commercial computer software, or other existing data; (2) architect-engineer services or construction work; (3) the production of special works
(c) Clause 6-60, Rights in Data – General, Alternate I	solicitations and contracts when obtaining limited rights data. The CO must complete paragraph (g)(3) of the clause to state the purposes, if any, for which limited rights data are to be disclosed outside the judiciary. Examples of such purposes include: (1) use by support contractors; (2) use by non government evaluators in evaluating contractor offers; and (3) use by other contractors participating in judiciary programs for use and information in connection with performance under the contract
(d) Clause 6-60, Rights in Data – General, Alternate II	solicitations and contracts when obtaining restricted computer software. Any greater or lesser rights regarding the use, reproduction, or disclosure of restricted computer software than those set forth in the Restricted Rights Notice of paragraph (g)(4) of the clause must be specified in the contract and the notice modified accordingly.

§ 650.65 Clauses	
Clause or Provision	**Include in:**
(e) Clause 6-65, "Rights in Data – Special Works"	solicitations and contracts when contracting primarily for the production or compilation of data (other than limited rights data or restricted computer software) for the judiciary's internal use, or when there is a specific need to limit distribution and use of the data or to obtain indemnity for liabilities that may arise out of the content, disclosure, or performance of the data. Examples of such contracts are listed at § 650.45. Also include when existing works are to be modified, as by editing, translation, addition of subject matter., etc. With the approval of the PE, who will consult with OGC, the clause may be modified as follows: (1) Paragraph (c)(1)(ii), which enables the judiciary to obtain assignment of copyright in any data first produced in the performance of the contract, may be deleted if the CO determines that such assignment is not needed; (2) Paragraph (e) of the clause, which requires the contractor to indemnify the judiciary against any liability incurred as the result of any violation of trade secrets, copyrights, right of privacy or publicity, or any libelous or other unlawful matter arising out of or contained in any production of compilation of data that are subject to the clause, may be deleted or limited in scope when the CO determines that, because of the nature of the particular data involved, such liability will not arise; (3) When the audiovisual or other special works are produced to accomplish a public purpose other than acquisition for the judiciary's own use (such as for production and distribution to the public of the works by organizations outside the judiciary), the clause may be modified with rights in data provisions that meet judiciary needs yet protect free speech and freedom of expression as well as the artistic license of the creator of the work.
(f) Clause 6-70, Work for Hire	solicitations and contracts where the contract involves the procurement of professional services and it is determined by the CO that the contract should be treated as a "work for hire"
(g) Clause 6-75, Rights to Data in an Offer	solicitations and contracts when it is desired to acquire unlimited rights in technical data contained in a successful proposal upon which a contract award is based. Rights to technical data in a proposal are not acquired by mere incorporation by reference of the proposal in the contract.

§ 650.65 Clauses	
Clause or Provision	**Include in:**
(h) Clause 6-80, Rights in Data – Existing Works	solicitations and contracts when acquiring, without modification, existing audiovisual and similar works of the type set forth in § 650.45. The contract may set forth limitations consistent with the purposes for which the work is being acquired. The clause is not required for the off-the-shelf purchase of books, publications, etc.. However, if reproduction rights are to be acquired, the contract must include terms addressing such rights.
(i) Clause 6-85, Commercial Computer Software License	solicitations and contracts when acquiring commercial computer software (other than from GSA's Multiple Award Schedule contracts).

§ 660 Patents and Copyrights

§ 660.10 In General

(a) Under 28 U.S.C. § 1498, the exclusive remedy for patent or copyright infringement by or on behalf of the Government is a suit for monetary damages against the Government in the Court of Federal Claims. There is no injunctive relief available, and there is no direct cause of action against a contractor that is infringing a patent or copyright with the authorization or consent of the Government (e.g., while performing a contract). The Government may expressly authorize and consent to a contractor's use or manufacture of inventions covered by U.S. patents by inserting Clause 5-30, Authorization and Consent.

(b) Because of the exclusive remedies granted in 28 U.S.C. § 1498, the Government requires notice and assistance from its contractors regarding any claims for patent or copyright infringement by inserting Clause 6-90, Notice and Assistance, Regarding Patent and Copyright Infringement.

(c) The Government may require a contractor to reimburse it for liability for patent infringement arising out of a contract for commercial items by inserting Clause 6-95, Patent Indemnity.

§ 660.20 Clauses	
Clause or Provision	**Include in:**
(a) Clause 6-90, Notice and Assistance Regarding Patent and Copyright Infringement	all solicitations and contracts that include Clause 5-30, Authorization and Consent
(b) Clause 6-95, Patent Indemnity	solicitations and contracts over the small purchase threshold that may result in the delivery of commercial products or services, unless the CO determines, after consultation with legal counsel, that omission of the clause would be consistent with commercial practice
(c) Clause 6-95, Alternate I (identification of excluded items)	solicitations and contracts when Clause 6-95 applies and: (1) the contract includes delivery of both commercial and non-commercial items; or (2) the CO determines, after consultation with legal counsel, that limitation of applicability of the clause would be consistent with commercial practice
(d) Clause 6-95, Alternate II (identification of included items)	solicitations and contracts when Clause 6-95 applies and: (1) the contract includes delivery of both commercial and non-commercial items; or (2) the CO determines, after consultation with legal counsel, that limitation of applicability of the clause would be consistent with commercial practice
(e) Clause 6-95, Alternate III	solicitations and contracts for communication services and facilities where performance is by a common carrier, and the services are unregulated and are not priced by a tariff schedule set by a regulatory body
(f) Clause 6-100, Waiver of Indemnity	solicitations and contracts when it is in the interest of the judiciary to exempt specific U.S. patents from the patent indemnity clause

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§ 710 Maintaining Records

§ 710.10 Procurement Files (Purchase/Delivery/Task Order or Contract Files)

§ 710.10.10 In General

(a) A file must be established and maintained for every purchase action, solicitation, and contract.

(b) Procurement files must be maintained in a secured area and otherwise not left unattended nor in open view when personnel without a need-to-know are present.

(c) Access to procurement files and related documents must be limited to authorized judiciary procurement and audit personnel. For a discussion on obtaining and disclosing procurement documents according to the Procurement Integrity Act, **see:** Guide, Vol 14, § 150.20.

(d) Purchases made with the purchase card are exempt from the requirement to establish files for each individual transaction. However, the transaction must be recorded in either an electronic or manual purchase card log. **See:** Judiciary Purchase Card Program Manual.

(e) The type of file depends on the dollar amount and award type. For contract types, **see:** Guide, Vol 14, Ch 4.

(f) Purchases that are less than the judiciary's small purchase threshold (**see:** Guide, Vol 14, § 325.10.30) are awarded using a purchase order for open market purchases.

(g) Delivery orders are used for products and task orders are used for services according to the contract (e.g., GSA federal supply schedules, other federal agency contract, indefinite delivery contracts).

(h) If the estimated purchase is over the judiciary's small purchase threshold (**see:** Guide, Vol 14, § 325.15.20) or whenever formal contract procedures are required to be used (such as for expert or consultant services), then a contract file is required.

(i) When placing orders against a GSA federal supply schedule or another federal agency contract, the judiciary must comply with the other federal agency's competition threshold and the other federal agency's contract terms and conditions.

(j) Files for each procurement must contain the documentation identified below in § 710.10.20.

§ 710.10.20 Required Documentation

(a) Open Market Purchases Below the Applicable Competition Threshold

(1) requisition or statement of need with the authorizing official's signature;

(2) signed purchase/delivery/task order and any signed modifications;

(3) supporting documentation for each purchase/delivery/task order modification, including the documentation required in Guide, Vol 14, § 310.50.70 for GSA schedule orders;

(4) copies of receiving reports;

(5) copies of all invoices or vouchers;

(6) any other pertinent information (e.g., documented phone conversations with offerors/contractors, evaluation worksheets, correspondence to and from offerors, commercial agreements); and,

(7) copies of any applicable one-time delegations of procurement authority from the PE.

(b) Small Purchases Greater than the Applicable Competition Threshold

(1) determination of need with the authorizing official's signature;

(2) rationale for selection of the source of supply;

(3) evidence of the level of competition required by the specific contract in its terms of use;

(4) justification if other than full and open competition, including required written approvals (**see:** Guide, Vol 14, § 335);

(5) copy of any applicable one-time delegation of procurement authority from the PE;

(6) copies of solicitation, amendments, questions, clarifications, all correspondence with prospective offerors and their replies;

(7) copies of unsuccessful quotes;

(8) determination of fair and reasonable price and basis of selection; **Note:** If price is not the basis of selection, the required PMD written approvals must be included.

(9) signed purchase/delivery/task order and any signed modifications with the supporting documentation;

(10) copies of receiving documents;

(11) copies of all invoices or vouchers;

(12) if multiple payments, a log of payments made and balances remaining; and

(13) any other pertinent information (e.g., documented phone conversations with offerors, evaluation worksheets, commercial agreements, records of the prospective offerors site visits, post-award correspondence);

(14) and copies of the advertisement of the requirement and/or documentation that the requirement was advertised locally or on FedBizOpps (or the approved exception from advertising).

(c) Formal Competitive Open Market Contracts – Over the Judiciary's Small Purchase Threshold

(1) determination of need with the authorizing official's signature;

(2) rationale for selection of source of supply;

(3) any applicable one-time delegation of procurement authority from the PE;

(4) copy of the issued solicitation and any amendments to it;

(5) justification to use other than full and open competition, including required written approvals (**see:** Guide, Vol 14, § 335);

(6) copies of the advertisement of the requirement and/or documentation that the requirement was advertised on FedBizOpps (or the approved exception from advertising);

(7) copies of all offers received;

(8) copies of all correspondence to prospective offerors and their replies;

(9) determination of fair and reasonable price and basis of selection (**Note:** If price is not the basis of selection, include the required written approvals.);

(10) copy of the contract and all modifications and, for indefinite delivery/indefinite-quantity (IDIQ) or requirements contracts, copies of all delivery orders/task orders and all other documents supporting them (e.g., copies of task order solicitations, competitive range determinations, memo of negotiations, pre-negotiation positions, post performance assessment, contractor reports and copies of deliverables, if appropriate);

(11) copies of unsuccessful offers;

(12) copies of debriefing from unsuccessful offerors and documentation of debriefing, if any;

(13) documentation of protests, if any;

(14) copies of receiving documents;

(15) copies of all invoices or vouchers; and

(16) any other pertinent information (e.g., designation of the contracting officer technical representative, documented phone conversations with potential/actual offerors, evaluation worksheets, commercial

agreements, records of site visits by contractors, logs of payments, post-award correspondence.)

§ 715 Responsibilities

§ 715.10 Contract Administration Process

§ 715.10.10 In General

Once a contract is awarded, the contract administration process begins. Every contract-related issue that arises after the contract is awarded becomes part of the contract administration process. Contract administration encompasses a broad range of functions that, together, ensure that the judiciary obtains exactly what it has purchased. For contract administration involving sureties, **see:** Guide, Vol 14, § 620.30. The contract administration process includes:

(a) receiving, inspecting, and either accepting or rejecting contractor deliverables in a timely manner;

(b) monitoring the contractor's progress, making sure deliverable schedules are maintained and that products and services are of acceptable quality;

(c) ensuring that the judiciary is meeting its own contractual obligations, such as timely review of deliverables or providing the contractor data that it may need;

(d) placing orders under some contract types and treating those orders as mini-contracts that must be separately administered;

(e) providing guidance, answering questions, and addressing contractor issues;

(f) changing or modifying the contract as necessary;

(g) ensuring that the contractor is paid only the amount to which it is entitled, but is not paid before delivery and fulfillment of acceptance criteria of each procurement, unless advance payment terms have been included in the contract;

(h) ensuring that other functional specialists provide assistance to the contracting officer in addressing unusual contract actions when necessary, such as protests, disputes or terminations; and

(i) closing out the contract and orders (for closing out purchase orders, **see:** Guide, Vol 14, § 325.60).

There are many individuals involved in the contract administration process. Each of these individuals or groups has specific functions, responsibilities, and accountability.

§ 715.15 Participants in the Contract Administration Process

§ 715.15.10 Contracting Officer

(a) The contracting officer (CO) is the only judiciary employee who is delegated authority to legally commit the judiciary to the purchase of products and services.

(b) The CO is supported by other individuals in the judiciary. One of the support individuals is the contracting officer's technical representative (COTR). This individual is appointed by the CO after the person completes the required COTR training.

(c) Appointments are evidenced by signed certificates.

(d) Such appointments may be renewed only if refresher training is completed every three years.

§ 715.15.20 Designation of COTR

The CO delegates specific contract administration responsibilities to the COTR through a written designation. Through this memo of designation, the COTR is empowered to fulfill the delegated responsibilities on a specific contract and/or delivery or task order as appropriate. For more detail on the respective roles of the CO and COTR, **see:** § 715.25.

§ 715.15.30 Other Participants

(a) AO Office of General Counsel (OGC) staff members provide essential requested legal reviews and guidance.

(b) Financial and budget officials provide the funding that may be required to exercise options, make changes, and settle claims.

(c) The CO, or the COTR when authorized, tracks expenditures against contracts/orders, weighs the adequacy and accuracy of vouchers and invoices, and ultimately approves payments to the contractor.

(d) Other financial officials ultimately provide payments to the contractor after written approval of the CO or COTR. They also track expenditures against contracts/orders, and weigh the adequacy and accuracy of vouchers and invoices.

§ 715.15.40 Authority of Other Participants

With the single exception of the COTR, all support personnel operate under their own authorities derived through their organizations. It is only the COTR who, through formal appointment and designation, shares authorities otherwise reserved exclusively for the CO.

§ 715.20 Distinctions between Contracting Officer (CO) and Contracting Officer's Technical Representative (COTR)

(a) The CO is the only person with the legal authority to commit the judiciary to a business arrangement and obligate appropriated funds for that purpose. It is the sole responsibility of the CO to administer each contract.

(b) The COTR assists the CO by providing specific services as directed by the CO. However, the CO has the final word and signature authority in the contracting matter.

(c) The CO and the COTR are the primary members of a team which provides proper contract administration and oversight. This team's efforts ensure that tax dollars are being wisely and efficiently expended and that the judiciary and, in particular, the customer organization that generates each requirement, is receiving the full measure of the products and/or services which it has purchased.

§ 715.25 Functions of the CO and COTR

§ 715.25.10 Monitoring Process

(a) Monitoring the progress of a contractor and making sure deliverable schedules are maintained is a shared responsibility. However, the CO and the COTR often look at different aspects of the contractor's performance.

(b) The CO will examine delivery and reporting schedules and consult with the COTR to determine if the contractor is making all deliveries according to the contract delivery schedule.

(c) Since the COTR is more closely involved in the contractor's day-to-day activities, the COTR acts as the eyes and ears of the CO and customer. The COTR is in effect an early-warning system. For instance, the COTR will be the first one to know when a contractor does not understand or meet a contract requirement, is making inaccurate assumptions, or is asking questions that suggest that it is not making adequate contract performance progress.

§ 715.25.15 Enforcing Judiciary Contractual Commitments

(a) Making sure that the judiciary is meeting its contractual commitments is a shared responsibility. For instance, when the judiciary is required by the contract to provide the contractor with equipment or publications for the contractor to do its work, it must be done within the time frame set forth in the contract.

(b) If the judiciary is required to provide equipment or publications as in this example, the COTR provides the material or, in some circumstances, oversees the provision of this material by other employees. The CO, in turn, manages the contract to ensure that the judiciary meets all of its contractual responsibilities.

(c) If the judiciary is failing to meet its responsibilities, the contractor may be entitled to an equitable adjustment. The CO may then have to negotiate a change with the contractor, which may ultimately cause the expenditure of further judiciary funds and/or a delay in delivery or other contract performance.

§ 715.25.20 Placing Orders

The CO is responsible for the placement of orders since it normally involves obligating judiciary funds. Administering each of these orders requires similar actions as the administration for the contracts under which the orders were issued, as they are, in effect, mini-contracts.

§ 715.25.25 Receipt, Inspection and Acceptance of Deliverables

The COTR recommends acceptance or rejection of deliverables. If applicable, the COTR will normally provide this recommendation only after consulting with customer organizations to confirm their satisfaction with the contractor's performance. This is because the COTR is generally on-site and either observes the provision of services first-hand or is the delivery point for material deliverables. The CO has the final decision for acceptance or rejection after discussing the delivery or performance with the COTR.

§ 715.25.30 Providing Technical Direction

(a) The COTR provides technical direction, consisting of guidance, answering questions, and addressing other issues that the contractor may have, without "changing" the contract.

(b) Only the CO can change a contract. This is a vital area for both the CO and the COTR since open communication between the contractor and the judiciary can mean the difference between success and failure.

(c) The COTR may provide guidance only within the general scope of the contract and only if the guidance does **not** alter any of the contract specifications or the statement of work, or terms and conditions of the contract.

(d) Guidance and/or direction that is outside the scope of the contract or which alters specifications, terms, or conditions would be considered new work.

(e) Only the CO is empowered to change a contract, whether any adjustment in the contract price will result or not.

(f) COs and COTRs must work together closely in this area as it is often quite difficult to distinguish between "technical direction" and "changes."

§ 715.25.35 Changing or Modifying the Contract

As discussed above, this is a function strictly reserved for the CO and it may not be delegated. However, the COTR will be asked to support this process by, for instance, evaluating offers or participating in negotiations.

§ 715.25.40 Ensuring that the Contractor Is Paid

This is primarily a COTR function which requires the COTR to work closely with accounting/disbursement personnel, to ensure that payments are made in proper amounts and within reasonable or contract specified time frames for services or products which has been delivered and accepted. If it is appropriate to refuse payment of an invoice, in whole or in part, the COTR must notify the CO of the reasons, and CO must provide appropriate notification to the contractor. For additional guidance on withholding payment, **see:** § 740.40.

§ 715.25.45 Maintaining Procurement Files

(a) Both the CO and the COTR must maintain files for every purchase action, solicitation, and contract. The file requirements for the CO are located in § 710.10. The COTR must maintain a contract work file.

(b) The CO files, the COTR files, and other procurement documents must be maintained in a secured area and otherwise not left unattended nor in open view when personnel without a need-to-know are present. Access to procurement files and related documents must be limited to authorized judiciary procurement and audit personnel. For a discussion on obtaining and disclosing procurement documents according to the Procurement Integrity Act, **see:** Guide, Vol 14 § 150.20.

(c) The contract work file must contain all relevant documentation such as notes of conversations with the contractor, written instructions given to the contractor and similar items as called for by the CO. The COTR must document all significant actions including any technical directions given to the contractor in an action file. This file must contain enough detail so that if a contract dispute or claim occurs, the CO can reconstruct what the COTR did or did not do. Because it is often difficult to determine what might be the subject of a dispute or claim, the COTR must adequately document significant actions that might develop into a problem later.

(d) The file must also contain copies of the contract, all modifications, the COTR delegation letter, and all correspondence between the COTR and the contractor or the CO.

(e) The file must be maintained intact and updated by each successor COTR until the contract ends.

§ 715.25.50 Closing out Contracts and Orders

(a) This is a shared function. First, the COTR ascertains that final receipt and acceptance of all products and services has occurred, ensures the return of employee badges and judiciary property, if applicable, and recommends that the contractor be relieved of any further performance responsibilities under the contract.

(b) Fixed price awards under the small purchase threshold are considered closed upon the CO's receipt of confirmation of acceptance of the products or services and issuance of final payment.

(c) For awards over the small purchase threshold or awards made on a basis other than fixed price, the CO must determines if a release of claims is required before final payment.

(d) The CO negotiates any final payment issues or actions for the closeout of the contract. **See:** §§ 740.30.40 and 760.

§ 715.25.55 Supporting Unusual Contract Actions When Necessary, Such As Protests, Disputes, Terminations

This is always a joint function but with a clear separation of responsibilities. The COTR plays a major part in the program related aspects of the action, including providing supporting information which impacts the specification or statement of work. The CO has sole responsibility for negotiations and the business and financial aspects of the transaction, such as deciding whether any payments will be made to the contractor.

§ 715.30 COTR's Obligations to the Judiciary End User

§ 715.30.10 In General

(a) Aside from the COTR responsibilities to the CO, the COTR also has concurrent responsibilities to the judiciary end user. The COTR must work closely with end users during contract delivery or performance to ensure that the end user is receiving satisfactory products and services according to the contract.

(b) Moreover, the COTR needs to be involved closely enough with the project to anticipate newly evolving requirements which may result in the need to change the contract.

(c) Under certain types of contracts, the COTR will also be responsible to draft work requirements, which will be assigned to the contractor through task orders.

(d) The COTR will review and approve technical offers and quotations that the contractor may be required to submit, and will participate in negotiations.

§ 715.30.20 Acceptance Responsibilities

The COTR also has the critical responsibility to recommend acceptance or rejection of contract/order deliverables and/or performance. If there is premature acceptance of the performance or deliverables, the judiciary may inadvertently waive many of its rights to require the contractor to perform remedial activities or modify the deliverables. Thus, the COTR must closely observe the contractor's performance or delivery and consult

often with management within the customer office and with the CO before deciding whether or not to accept performance or deliverables.

§ 715.35 Role of COTR's Supervisor

(a) The COTR's direct supervisor must provide as much of the individual's time and resources as needed to allow the COTR to fulfill all of the delegated COTR responsibilities.

(b) Formal COTR appointment and designation comes from the CO. Therefore, the COTR will have contract responsibilities to the CO, as well as having contract and non-contract responsibilities to the COTR's direct supervisor.

(c) If a COTR's work conflicts in fulfilling these concurrent responsibilities, the COTR's direct supervisor must confer with the CO to resolve the conflict.

(d) Finally, in evaluating job performance, the COTR's direct supervisor must take into account performance as a COTR by gathering input from the CO before issuing a rating.

§ 715.40 Becoming a COTR

§ 715.40.10 Nomination

Judiciary employees are normally nominated in writing by the customer organizations. Provided that the individual has completed the required training and is otherwise capable, the CO will appoint the employee as a COTR. Information about the required COTR training is available on the procurement page of the J-Net.

§ 715.40.20 Designation for Specific Contracts

(a) The CO will subsequently designate the COTR for specific contracts, delivery orders, and task orders. Formal designation to act as a COTR on a specific contract, delivery order, and/or task order is evidenced by a letter of designation, signed by the CO. A copy of this designation will be furnished to the COTR's immediate supervisor, and to the contractor.

(b) The designation letter will describe the exact functions the COTR will be required to perform on the particular contract. Separate letters of designation will be required for each contract, delivery order, or task order assigned to the COTR. COTR designations expire automatically at the conclusion of the contract, delivery order, or task order under which the COTR was designated.

§ 715.45 Use of Contractors to Monitor Contract Performance

COs may contract with third parties to perform contract administration responsibilities such as testing for contract conformance (but not acceptance); reviewing contractor submittals, construction shop drawings, written requests for design approval; developing negotiation positions; reviewing offers; advising panels; drafting modifications. However, the CO remains as the signature authority for any contract actions.

§ 715.50 Relationship Between Judiciary and Contractor Representatives

§ 715.50.10 Objective of Purchase Actions

(a) The objective of any purchase action is performance or delivery of the contract requirements, not control of the contractor's business. Judiciary administrative personnel must devote their efforts to tasks associated with that requirement, such as:

- quality assurance,
- cost monitoring, and
- other activities intended to ensure compliance with contract terms.

(b) They may not:

- direct the contractor's management activities, or
- intervene to supervise, train, or discipline contractor personnel (**see:** Guide, Vol 14, § 510 (Personal Services Contracts)).

§ 715.50.20 Disputes with Contractors

Disputes with contractors are an obstacle to contract performance or delivery. CO's and their supporting staffs must seek to resolve contract disputes through businesslike approaches that promote efficiency and cost-effectiveness and enforce the judiciary's interests.

§ 715.55 Clauses/Provisions	
Clause or Provision	**Include in ...**
(a) Clause 7-1, Contract Administration	all formal solicitations and contracts. The CO will provide the CO's name, business address, e-mail address and telephone number in a cover letter accompanying the solicitation or contract or by incorporating this information at the end of the clause.

§ 715.55 Clauses/Provisions	
Clause or Provision	**Include in ...**
(b) Clause 7-5, Contracting Officer's Technical Representative	all formal solicitations and contracts.
(c) Clause 7-10, Contractor Representative	all formal solicitations and contracts.
(d) Clause 7-15, Observance of Regulations/Standards of Conduct	all formal solicitations and contracts.
(e) Clause 7-20, Security Requirements	all solicitations and contracts which require unescorted access to judiciary buildings or access to the judiciary IT network. (For additional information on the types of background checks, procedures for obtaining background checks, and appropriate forms to use, **see:** Guide, Vol 12 § 570.)
(f) Clause 7-25, Indemnification	all solicitations and contracts.
(g) Clause 7-30, Public Use of the Name of the Federal Judiciary	all solicitations and contracts.
(h) Clause 7-35, Disclosure or Use of Information	all solicitations and contracts.
(i) Clause 7-40, Judiciary-Contractor Relationships	all solicitations and contracts which do not involve the use of judiciary information technology funds.
(j) Clause 7-45, Travel	all solicitations and contracts when travel is reimbursable either as a separate line item in an award that is otherwise fixed price or as part of cost-reimbursement or labor-hour contract
(k) Clause 7-50, Parking	all solicitations and contracts when performance will be at the Thurgood Marshall Federal Judiciary Building
(l) Clause 7-55, Contractor Use of Judiciary Networks	all solicitations and contracts when the contractor will use judiciary computer networks during performance

§ 720 Judiciary Property

§ 720.10 In General

§ 720.10.10 Policy

(a) Contractors are ordinarily required to furnish all property necessary to performance judiciary contracts. The CO will provide property to contractors only when it is clearly demonstrated:

- to be in the judiciary's best interest;
- that the overall benefit to the procurement significantly outweighs the increased cost of administration, including ultimate property disposal;
- that providing the property does not substantially increase the judiciary's assumption of risk; and
- that judiciary requirements cannot otherwise be met.

(b) The contractor's inability or unwillingness to supply its own resources is not sufficient reason for the furnishing of judiciary property.

§ 720.10.20 Property Liability and Contract Type

Generally, contractors are not held liable for loss, damage, destruction or theft of judiciary property under the following contract types:

- cost-reimbursement contracts
- time-and-material contracts
- labor-hour contracts

§ 720.10.30 Property Control Systems Review

(a) If judiciary property is provided for a contractor to use in performance of a contract, and it is anticipated that such property will be removed from judiciary facilities for such use, the CO must review the contractor's property control systems to ensure compliance with the contract's property clauses.

(b) In the event that such a review finds deficiencies in the contractor's property control system, the CO must notify the contractor in writing,

requesting prompt correction of deficiencies. If the contractor does not correct the deficiencies within a reasonable period, the CO may:

(1) notify the contractor in writing of any required corrections and establish a schedule for completion

(2) caution the contractor that failure to take the required corrective action within the time specified will result in withholding or withdrawing system approval, and

(3) advise the contractor that its liability for loss of or damage to judiciary property may increase if approval is withheld or withdrawn.

§ 720.10.40 Clauses	
Clause or Provision	**Include in ...**
(a) Provision 7-60, Judiciary Furnished Property or Services	all solicitations
(b) Clause 7-65, Protection of Judiciary Buildings, Equipment, and Vegetation	solicitations and contracts for services to be performed in judiciary buildings
(c) Clause 7-70, Judiciary Property Furnished ‘As Is’	solicitations and contracts when judiciary property is to be furnished "as is"

§ 720.20 Property Records

§ 720.20.10 In General

Contractor records of judiciary property, established and maintained under the terms of the contract, are the judiciary’s official records.

§ 720.20.20 Judiciary Maintenance of Official Records

Contracts must provide for the official records to be maintained by the judiciary when judiciary property is furnished to a contractor:

(a) for repair or servicing and return to the shipping organization;

(b) for use at a judiciary installation;

(c) under a local support service contract;

(d) under a contract with a short performance period or involving judiciary property having a contract cost of $50,000 or less; or

(e) when otherwise determined by the CO to be in the judiciary's interest.

§ 720.20.30 Inventory

A detailed inventory list of judiciary-furnished products, material or services must be maintained in the contract file and kept current at all times, specifying, as applicable:

- quantity
- nomenclature
- serial number
- model number, and
- general condition

§ 725 Subcontracting

§ 725.10 In General

§ 725.10.10 Notification Requirement

When a contract contains Clause 7-75, Subcontracts, the contractor must give the CO advance notice of its intent to subcontract. The contractor may proceed to enter into a subcontract unless notice of disapproval is received from the CO within 15 days from the date the CO was notified. The CO must:

(a) promptly evaluate contractor notices of intent to subcontract;

(b) obtain assistance in this evaluation, as necessary, from audit, technical, or other specialists; and

(c) notify the contractor in writing if the subcontract is disapproved.

§ 725.10.20 Subcontract Review Considerations

The CO must review the notice of intent to subcontract with any supporting data and consider the following:

(a) whether the subcontract is for the purchase of equipment or facilities that are available from judiciary sources;

(b) whether the contractor's selection of the particular products, equipment, or services being purchased under the subcontract is technically justified;

(c) whether adequate price competition was obtained for the subcontract, or its absence is justified;

(d) whether the contractor adequately assessed alternate subcontractor offers;

(e) whether the contractor had a sound basis for selecting and determining the responsibility of the subcontractor;

(f) whether the contractor performed adequate price or cost analysis;

(g) whether the contract type (**see:** Guide, Vol 14, § 410) for the proposed subcontract is appropriate;

(h) whether the contractor has adequately and reasonably translated prime contract technical requirements into subcontract requirements;

i) whether the proposed subcontractor is on the list of debarred, suspended, and ineligible contractors; and,

(j) whether the contractor has incorporated terms and conditions contained in the prime contract which are expressly applicable to subcontracts.

§ 725.10.30 Situations Requiring Special Care

Particularly careful and thorough consideration is necessary when:

(a) the prime contractor's purchasing system or performance is inadequate;

(b) close working relationships or ownership affiliation between the prime and subcontractor may preclude free competition or result in higher prices;

(c) subcontracts are proposed on a noncompetitive basis, at prices that appear unreasonable, or at prices higher than those offered the judiciary in comparable circumstances; or

(d) subcontracts are proposed on other than a fixed-price basis.

§ 725.10.40 Clauses	
Clause or Provision	**Include in ...**
(a) Clause 7-75, Subcontracts	solicitations and contracts when awarding: (1) a cost-reimbursement contract; (2) a letter contract that exceeds the judiciary's small purchase threshold; (3) a fixed-price contract that exceeds the judiciary's small purchase threshold under which unpriced contract actions (including unpriced modifications or unpriced delivery orders) are anticipated; (4) a time-and-materials contract that exceeds the judiciary's small purchase threshold; or (5) a labor-hour contract that exceeds the judiciary's small purchase threshold. The CO will fill in the clause's blank spaces as appropriate.
(b) Clause 7-80, Competition in Subcontracting	solicitations and contracts when the contract amount is expected to exceed the judiciary's small purchase threshold, except when awarding: (1) a firm-fixed-price contract awarded on the basis of adequate price competition or whose prices are set by law or regulation, or (2) a time-and-materials, labor-hour, or architect-engineer contract.

§ 730 Contract Performance

§ 730.10 Contract Performance

§ 730.10.10 Postaward Orientation

Postaward orientation is conducted by the CO. It is optional and is normally conducted in cases of complex service contracts. It is a planned and structured discussion between judiciary and contractor representatives that focuses on:

(a) introducing judiciary and contractor representatives;

(b) ensuring the understanding of the technical aspects of the contract;

(c) identifying and resolving oversight issues;

(d) preventing problems;

(e) averting misunderstandings;

(f) establishing a methodology to solve problems that may occur later; and

(g) reaching agreement on communication issues.

§ 730.10.20 When to Schedule a Postaward Orientation

The CO decides whether postaward orientation is necessary. The CO must consider the following factors:

(a) contract type, value, and complexity;

(b) procurement history of the required products or services;

(c) requirements for spare parts and related equipment;

(d) urgency of the delivery schedule and relationship of the products or services to critical programs;

(e) length of the planned production cycle;

(f) extent of subcontracting;

(g) contractor's performance history and experience with the products or services;

(h) safety precautions required for hazardous materials or operations; and

(i) financing arrangements contemplated.

§ 730.10.30 Timing of Postaward Orientation

When a postaward orientation is conducted, it must be held promptly after award. The CO must prepare an agenda before the orientation and summarize by memorandum the actual topics covered in the orientation session. The CO and the contractor, and,

whenever possible, all principal parties must attend any post-award conference (for example, COTRs, project officers, program managers, and other appropriate subject matter experts).

§ 730.10.40 Contract Changes

A postaward orientation may not be used to change the contract. However, if any changes are identified in a postaward orientation, and are determined by the CO to be necessary, they must be made by the CO in a contract modification.

§ 730.20 Performance Record Keeping

§ 730.20.10 In General

Maintenance of complete records on contract performance is essential in monitoring contractor performance.

§ 730.20.20 Contractor Record Retention

The contractor must maintain records for three years after final payment on the contract. Clause 7-85, Examination of Records is required to be included in all solicitations and contracts.

§ 730.20.30 Judiciary Contract Files

The CO and COTR both maintain records on each contract assigned to them. Records must be maintained by the CO in a separate official contract file (**see:** § 710.10) and by the COTR in a contract work file (**see:** § 715.25.45).

§ 730.30 Performance Monitoring

§ 730.30.10 In General

Performance monitoring involves those contract administration activities that COs, COTRs, and support personnel use to ensure that the products and services received conform to the contract requirements in quality, quantity, and all other specifics.

§ 730.30.20 Judiciary Policy on Performance Monitoring

Judiciary policy requires that the CO ensure that:

(a) procured products or services meet contract requirements and are delivered/performed according to contract delivery schedules;

(b) procedures for assuring that the contract requirements are met are performed before acceptance of products or services under the contract; and

(c) no contract precludes the judiciary from performing inspection.

§ 730.30.30 CO Responsibilities

The CO is responsible for the actions of all other personnel involved in the administration of the contract. The CO must instruct judiciary officials not to require the contractor to do anything that is not specified in the contract.

§ 730.30.40 Monitoring and Inspection Objectives

When a contract is signed, it is the intent of both parties to perform their respective obligations. Poor performance or late deliveries may cause costly delays in the program that the contract supports. The judiciary monitors contract performance closely to ensure that required end items are delivered on time. Monitoring and inspection supports many objectives, including:

(a) identifying potential delinquencies;

(b) isolating specific performance problems;

(c) supporting contractor requests;

(d) pointing out the need for judiciary assistance;

(e) revealing actual or anticipated default; and

(f) identifying judiciary-caused delays.

§ 730.30.50 Review of Contractor Deliverables

(a) Review of contractor deliveries is an important method of enforcing contract requirements and contract terms which require submission and written approval and thus must be strictly enforced.

(b) The CO will ensure that contractor deliveries are disapproved only for failure to meet a material requirement of the contract.

(c) If a contractor delivery fails to meet judiciary expectations because the contract specifications are inadequate, the CO must determine the

appropriate specifications with the assistance of technical personnel and modify the contract to reflect those revised specifications.

§ 730.30.60 Approval Process

(a) COs and their representatives will approve, conditionally approve, or disapprove contractor deliveries promptly and according to any time limits set forth in the contract.

(b) Disapprovals and conditional approvals will clearly indicate what the contractor must do to comply with the contract requirements.

(c) Approval of late deliveries or deliveries of less than fully conforming products or services may constitute relaxation of contract performance or delivery requirements.

(d) When such relaxation occurs for reasons other than conditions caused by the judiciary, they constitute changes to the contract that require the negotiation of consideration. For types of contract remedies, **see:** § 735.20.

§ 735 Quality Assurance

§ 735.10 In General

The CO is responsible for ensuring that products and services received under each contract conform to the quality and quantity requirements of the contract, including inspection, acceptance, warranty, and any other measures associated with quality assurance.

§ 735.15 Contract Remedies

Contract remedies are forms of relief that the judiciary can pursue to compensate for a contractor's nonperformance or noncompliance with a contract term or condition. These forms of relief can be provided by clauses or from basic rights provided in government contract law and, occasionally, in commercial contract law.

§ 735.20 Types of Remedies

§ 735.20.10 Remedies Other than Termination

The judiciary has several methods at its disposal to remedy a given situation without resorting to terminating the contract. Remedies include:

(a) rejecting nonconforming products and services;

(b) invoking written warranties;

(c) invoking implied warranties;

(d) proving the existence of latent defects, fraud, or gross mistakes amounting to fraud;

(e) imposing liquidated damages; and

(f) modifying contracts to relax or delete requirements provided that consideration is obtained from the contractor.

§ 735.20.20 Remedies Involving Cure Notice or Show Cause

The Procurement Executive (PE) must review all proposed application of remedies involving a cure notice or show cause letter. The PE may seek the advice of OGC. For further guidance on the use of cure notices or show cause letters, **see:** § 755.

§ 735.25 Assessing Liquidated Damages

§ 735.25.10 In General

When the contract includes a liquidated damages clause, such as Clause 2-75, assessment of liquidated damages must be reasonable and considered in light of contract requirements and done on a case-by-case basis. Any rate amount established without reference to probable actual damages may be interpreted as punitive and thus unenforceable.

§ 735.25.15 Documentation Required

The CO must document any evidence of the contractor's failure to deliver the products or perform the services within the time specified in the contract. This documentation will focus on the:

(a) stage of completion;

(b) probable amount of damages sustained by the judiciary;

(c) reason and excusability for a delay; and

(d) contractor's ability to complete the contract.

§ 735.25.20 Computation of Assessment Amount

When assessment of liquidated damages is appropriate, the CO must withhold payment based on an accurate computation of the amount due. The actual computation will depend on the specific amount or specific formula in the contract.

§ 735.25.25 Discussion with the Contractor

After the CO has determined the judiciary is entitled to assess liquidated damages, the CO must discuss the situation with the contractor. Before the actual assessment of liquidated damages, the CO will advise the contractor of the:

(a) judiciary's intention to assess liquidated damages unless the contractor provides evidence to the judiciary by a specified date that such an assessment would be improper;

(b) basis or bases for the judiciary's assessment of these damages; and

(c) amount of the planned liquidated damages assessment, detailing the reasons for any reduction in a specified amount stated in the contract.

§ 735.25.30 Liquidated Damages Notice

A liquidated damages notice must indicate:

(a) the reason for assessing the damages provided in the clause;

(b) the dollar amount of the damages; and

(c) any steps the contractor may be able to take to avoid further assessment of liquidated damages.

§ 735.25.35 Waiver of Liquidated Damages

Liquidated damages may occasionally be waived by the CO. A decision to grant a waiver should be based on one of the following reasons:

(a) the contractor documents a reasonable case for an excusable delay;

(b) the contractor claims impossibility of performance; or

(c) the contractor claims the work is substantially complete.

§ 735.25.40 Determination of "Substantial Completion"

Liquidated damages are generally not appropriate after the work can be considered substantially complete. Substantial completion occurs on the day the product or service is delivered to the place required by the contract, ready for use in the manner intended by the judiciary.

§ 735.25.45 CO Actions

Based on the evidence, the CO needs to decide to either:

(a) forego or waive assessing liquidated damages (**see:** § 735.25.35);

(b) assess a reduced amount; or

(c) assess maximum allowable liquidated damages.

§ 735.25.50 Avoiding Unreasonable Assessment

If appropriate to reflect the probable damages, the assessment of liquidated damages may be in two or more increments as the delay continues. To prevent an unreasonable assessment of liquidated damages, the CO may also include:

- an overall maximum dollar amount;
- a specified period of time during which liquidated damages may be assessed; or
- both.

§ 735.25.55 Alternative Actions

The CO also may consider terminating for default (**see:** § 755) or taking other appropriate action in lieu of or following an earlier assessment of liquidated damages.

§ 735.30 Nonconforming Products or Services

§ 735.30.10 In General

COs must normally reject products or services not conforming in all respects to contract requirements. Rejection is mandatory when nonconformance adversely affects safety, health, reliability, durability, performance, or any other basic objective of the specification. In addition, products or services that do not conform to the terms of the

contract must be rejected before any acceptance takes place. Products or services that have been accepted cannot be rejected later, except for:

(a) latent defects;

(b) fraud; and,

(c) gross mistakes amounting to fraud.

§ 735.30.20 Opportunity to Correct or Replace

Contractors may be given an opportunity to correct or replace nonconforming products or to re-perform non-conforming services. Unless the CO specifies otherwise, correction, replacement or re-performance must be at no additional cost to the judiciary. In addition, the CO must reserve the right of the judiciary to charge the contractor the cost of reinspection and retesting needed because of a prior rejection.

(a) For Products

The CO may reject defective products which do not conform to the contract requirements and require replacement or correction of the defects; acquire replacement products from another source and charge the contractor for any costs incurred by the judiciary; or accept the products at a reduced price. The choice of remedy — replacement, correction, or reimbursement for re-procurement — will be determined by the CO. Corrected or replaced products may not be re-delivered for acceptance unless the contractor discloses the prior rejection and correction action taken. If the contractor fails to proceed with reasonable promptness to perform replacement or correction the CO may, by contract, or otherwise, remove, replace, or correct the products and charge the cost to the contractor; or terminate the contract for default. For termination procedures, **see:** Clause 2-5A, Inspection of Products and § 755.

(b) For Services

The CO may require the contractor to perform the services again in conformity with the requirements, at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the CO may require the contractor to take necessary action to ensure that future performance conforms to contract requirements; and reduce the contract price to reflect the reduced value of the services performed. If the services are of a nature which can be corrected by re-performance and the contractor fails to promptly perform the services again, the CO may, by

contract or otherwise, perform the services and charge to the contractor any cost incurred by the judiciary that is directly related to the performance of such service; or terminate the contract for default. For termination procedures, **see:** Clause 2-5B, Inspection of Services and § 755.

§ 735.30.30 Minor Nonconformances

(a) The CO can accept a nonconforming product or service when the nonconformance is minor. In such instances, when the savings realized by the contractor by not conforming does not exceed the administrative cost to the judiciary for processing a formal modification, the nonconformance may be accepted without consideration. For example, there may be no cost variance based on the color of a product, so the contractor realized no savings in delivering an incorrect color. The incorrect color may be either rejected or accepted, at the discretion of the CO, without requiring consideration for acceptance of the nonconformance. **See:** § 735.30.50.

(b) The CO will consult with technical personnel as necessary in making a determination to accept a minor nonconformance. Generally, a minor nonconformance does not adversely affect:

(1) safety;

(2) health;

(3) reliability;

(4) durability;

(5) performance;

(6) interchangeability of parts or assemblies;

(7) weight (if a contract requirement);

(8) appearance (if a contract requirement); or

(9) any other basic requirement of the contract.

§ 735.30.40 Substantial Nonconformance

The CO may not accept products or services whose nonconformance is substantial and adversely affects satisfaction of a basic contract requirement, unless acceptance is

clearly in the judiciary's interest. The CO's determination to accept the products or services must be in writing and must be based on:

(a) information on the nature and extent of the nonconformance;

(b) advice of the technical activity that products or services are safe and will perform the intended purpose;

(c) the contractor's request for acceptance of the products or service;

(d) a recommendation for acceptance by the intended user, with supporting rationale; and

(e) appropriate monetary or other consideration.

§ 735.30.50 Consideration for Acceptance of Defective Performance

(a) COs must discourage the repeated delivery of nonconforming products or services, including those with only minor nonconformances.

(b) In such cases, the CO must take appropriate action, such as rejection and documentation of the contractor's performance record, or acceptance with consideration required from the contractor for the nonconformance.

(c) A downward price adjustment is the most common form of consideration, though consideration may take many other forms, such as additional quantities of items, accelerated deliveries.

(d) In all instances where the savings realized by the contractor by a nonconforming delivery exceed the administrative cost to the judiciary for processing a formal modification, the nonconformance may not be accepted without consideration and the CO must modify the contract.

§ 735.30.60 Notice of Rejection

(a) Contractors must be given prompt written notice of rejection, including the reasons for rejection when:

(1) the products or services have been rejected at a place other than the contractor's facility;

(2) the contractor persists in offering nonconforming products or services for acceptance; or

(3) delivery or performance was late without excusable cause.

(b) A rejection notice does not extend the delivery period. The contractor is still required to provide products and services which conform to the contract's delivery schedule.

(c) Products or services which are otherwise in compliance with the contract are nonconforming when they are late in delivery or performance, and consideration may be required for acceptance of a late delivery.

§ 735.30.70 Contractor Response

A contractor may respond to a notice of rejection by:

(a) offering to correct the work;

(b) offering to provide a downward price adjustment for acceptance;

(c) offering to negotiate a revised delivery schedule for a conforming product with consideration; or

(d) alleging the judiciary specifications were ambiguous or defective.

§ 735.35 Acceptance

§ 735.35.10 Definition

(a) Acceptance constitutes acknowledgment that products or services conform with the quality, quantity, and packaging requirements set forth in the contract.

(b) The acceptance of products or services that do not conform with the contract requirements may only be performed by the CO and, if the non-conformance is significant, must be accompanied by a contract modification and negotiation of an equitable price reduction or other consideration from the contractor. **See:** § 735.30.

(c) Acceptance may take place at delivery or after delivery depending on the contract's requirements.

§ 735.35.20 Evidence of Acceptance

Acceptance may be evidenced by execution of an acceptance certificate on an inspection form, receiving report, or commercial shipping document or packing list, or, in

the case of services, by the COTR's approval of the contractor's invoice. Electronic receiving reports may also be used.

§ 735.40 Responsibility for Acceptance

(a) Product or service acceptance must be specified in the contract and is the responsibility of the CO.

(b) When this responsibility is redelegated to a COTR or another judiciary employee, acceptance by that person is binding on the judiciary.

(c) In addition, the CO may not delegate authority to the COTR to reject products or services. Only the authority to accept may be delegated.

(d) The CO is also responsible for ensuring that the COTR is performing inspection of the goods or services received.

§ 735.45 Place of Acceptance

(a) Each contract must specify the time and place of acceptance. Contracts providing for judiciary inspection at source (i.e., contractor's place of business) ordinarily provide for acceptance at source.

(b) Those providing for inspection at destination (i.e., judiciary's facilities) ordinarily provide for acceptance at destination.

(c) Products accepted at a place other than destination may not be reinspected at destination for acceptance purposes, but must be examined for quantity, damage in transit, and possible substitution or fraud.

§ 735.50 Express Warranties

§ 735.50.10 Definition

An express warranty is a written promise or affirmation given by a contractor to the judiciary regarding the nature, usefulness, or conditions of the products or performance of services furnished under the contract.

§ 735.50.20 Purpose

(a) Written warranties can limit the judiciary's risk when relying upon the contractor's own inspection methods to ensure the quality of the work. For

clauses and other requirements for inclusion of warranties, **see:** Guide, Vol 14, § 220.20.

(b) Express warranties are the contractor's way of assuring the judiciary the product or service:

(1) is free from defects in workmanship, and

(2) will conform to the requirements of the contract.

§ 735.50.30 Required Information

Express warranties must:

(a) state the duration of the warranty, and

(b) specify a period during which notice of any defect must be given to the contractor.

§ 735.50.40 Remedies Provided by Warranties

The CO must accurately determine the contractor's responsibilities and the judiciary's rights under the terms and conditions of the warranty and must verify that the warranty does not erode nor limit any of the judiciary's rights conferred elsewhere in the contract. Warranties may provide alternate remedies such as:

(a) repair the defect;

(b) replace the item;

(c) reperform the service;

(d) make an equitable adjustment; or

(e) pay for repairs, replacements, or reperformance when the judiciary has obtained the products or services from other sources.

§ 735.55 Fraud, Gross Mistake, or Latent Defects

§ 735.55.10 In General

The judiciary's acceptance of contractor products and services is final unless:

(a) the defect is latent;

(b) there is evidence of fraud; or

(c) there is evidence of a gross mistake amounting to fraud.

§ 735.55.20 Latent Defect

For a defect to be latent it must:

(a) not be susceptible to discovery using inspection methods that are reasonable under the circumstances, and

(b) be in existence at the time of acceptance.

§ 735.55.30 Determining Fraud or Gross Mistake Amounting to Fraud

(a) The only difference between fraud and gross mistake is intent.

(b) To prove a gross mistake, the judiciary need only prove that the mistake was truly irresponsible.

(c) Proving fraud requires a showing that the misrepresentation or concealment of fact was made with the intent to mislead.

§ 735.55.40 Evidence of Fraud

A finding of facts for fraud must show evidence of:

(a) a misrepresentation of fact (actual or implied), or a concealment of material fact;

(b) contractor knowledge of the fact concealed or misrepresented;

(c) an intent to mislead the judiciary into relying on its misrepresentation or concealment; and

(d) judiciary injury suffered as a result of the concealment or misrepresentation.

§ 735.55.50 Remedies for Fraud

The contractor can be forced to repair or replace the product or reperform the service at its own cost any time after acceptance when fraud is proven. The judiciary can avail itself of all other remedies, including termination for default.

§ 735.60 Bankruptcy

§ 735.60.10 In General

Once a contractor declares bankruptcy, the right of the judiciary to take unilateral action with respect to the contractor is limited. COs need to monitor the financial strength of the contractor to anticipate possible problems that could arise in this area and take prompt action to protect the interests of the judiciary upon notification of a contractor's bankruptcy.

§ 735.60.20 Procedures

Upon notification that a contractor is in bankruptcy proceedings, the CO must:

(a) furnish the notice of bankruptcy to the PE with a copy to the Procurement Liaison Officer (PLO) (in courts, FPDOs and FJC);

(b) determine the amount of any claims which the judiciary may have against the contractor on any contracts that have not been closed out;

(c) take actions necessary to protect the judiciary's financial interests;

(d) safeguard judiciary property; and

(e) furnish pertinent contract information to the PE.

§ 735.60.30 Consultation with Office of General Counsel

The PE will consult with OGC as necessary before taking any action regarding the contractor's bankruptcy proceedings.

§ 735.60.40 Clause

Include Clause 7-110, Bankruptcy in all solicitations and contracts exceeding the judiciary’s small purchase threshold.

§ 740 Payments

§ 740.10 In General

§ 740.10.10 Payment Categories

Payments fall into two general categories:

(a) Delivery Payment

A payment made once delivery has been made and the product or service has been accepted;

(b) Partial Payment

A partial payment is a method of payment based on acceptance of a particular portion of the contract deliverables.

§ 740.10.20 Partial Payments

(a) Partial payments can assist contractors to participate in judiciary contract with minimal or no contract financing. Partial payments are a method of payment, not a method of contract financing. For contract financing, **see:** Vol 14, § 220.55.

(b) When delivery or performance is authorized in installments or when a number of items of work are called for by the contract, payment of a portion of the price may be made before the entire work is completely delivered or performed.

(c) The schedule of payments must be negotiated and incorporated into the contract.

(d) A payment should reflect the complete value of the deliverable (e.g., product, report) or a time frame of a delivered service (i.e. monthly), so that if the contract is terminated the CO will know the value of the payments for finished work, as well as the value of the terminated work.

(e) Partial payments are not based on amounts which have been expended by the contractor.

§ 740.10.30 Advance or Pre-payments

The judiciary has limited authority to make advance or pre-payments. In addition to commercial advance payment (**see:** Guide, Vol 14, § 220.55), the judiciary may make payment in advance for publications and when making payment to other federal agencies. **See:** Guide, Vol 14, § 550 (Interagency Agreements (IAs) and Memoranda of Understanding (MOUs) for Obtaining Products and Services).

§ 740.10.40 Nonpayment or Payment Delays

Nonpayment and delays in payment have harmful effects on contractors, especially small businesses. COs and financial personnel must ensure that payments legitimately due are made promptly. If a dispute arises regarding the contractor's entitlement to payment, the CO must pay the contractor any amount not in dispute, except for withholding as allowed under § 740.40.

§ 740.10.50 Approving Partial Payments

If partial payments are specified in the payment provisions of the contract, the CO will generally approve requests for partial payment upon partial delivery of products or services that fulfill contract requirements. When the contract does not provide unit prices, the CO may determine an appropriate formula for payment.

§ 740.10.60 Payment Under Cost-Reimbursement Contracts

Requests for payment under cost-reimbursement type contracts must be reviewed and approved for payment by the CO, with the assistance of technical personnel, to determine that such requests comply with the requirements for allowability, allocability, and reasonableness. **See:** Guide, Vol 14, § 470.

§ 740.20 Invoices

§ 740.20.10 In General

Payment will be made only after receipt of an invoice that complies with the applicable Invoices clause of the contract.

§ 740.20.20 Submission

Invoices must be sent to the invoice address specified in the contract. A copy is sent to the CO, if required by the contract. Invoices sent to any other person or office are not considered properly submitted.

§ 740.20.30 Clause

Include Clause 7-125, Invoices in all solicitations and contracts unless another “Invoices” clause is appropriate. The CO will include a schedule of payments in the contract whenever payment is not on a unit price basis (e.g., completion of milestones). For experts and consultant services solicitations and contracts, include the clause with its Alternate I.

§ 740.30 Payment

§ 740.30.10 Means of Payment

Payment may be made by check or electronic funds transfer (if available).

§ 740.30.20 Time of Payment

As a matter of judiciary policy, payment must be made as close as possible to, but not later than, the 30th calendar day after receipt of an invoice or product/service acceptance, whichever occurs later.

§ 740.30.30 Payment of Interest

The Prompt Payment Act of 1982 is not applicable to the judiciary. Include Clause 7-130, Interest (Prompt Payment) in all solicitations and contracts.

§ 740.30.40 Final Payment

(a) Final payment may be made after acceptance of all products or services covered by the contract.

(b) However, final payment may not be made under any contract involving retainage (e.g., liquidated damages, or withholding pending final audit under certain contracts), or under any contract involving payment or performance guarantees, until the CO receives a release of claims from the contractor discharging the judiciary from any further obligations under the contract.

(c) Contract closeout may not be finalized until all delivery and payment issues are settled.

§ 740.30.50 Clauses	
Clause	**Include in ...**
(a) Clause 7-135, Payments	solicitations and contracts for fixed-price products or services, unless another “Payments” clause is appropriate (e.g., Clause 5-1, Payments under Personal and Professional Services Contracts). When the CO uses a “Payments” clause and an “Inspection” clause is not included in the contract, then payment signifies acceptance.

(b)	Clause 7-140, Discounts for Prompt Payment	solicitations and contracts for fixed-price products or services
(c)	Clause 7-145, Government Purchase Card	solicitations and contracts when the CO determines that a purchase card can be used to make payments on the contract
(d)	Clause 7-150, Extras	solicitations and contracts for fixed-price products, services, or transportation
(e)	Clause 7-155, Certification of Final Indirect Costs	solicitations and contracts which provide for establishment of final indirect cost rates

§ 740.40 Withholding Payments

§ 740.40.10 In General

The CO may refuse to pay a contractor, may suspend payments until resolution of an issue, may disallow a cost, or may withhold payments otherwise due, in whole or in part, when:

(a) the contract provides for withholding, such as for cost plus fixed fee or incentive fee contracts when retainage is authorized according to the applicable fee clause;

(b) the CO determines that elements of the amount invoiced by the contractor under a cost-reimbursement contract are not allowable (**see:** Guide, Vol 14, § 470.10), allocable (**see:** § 470.30), or reasonable (**see:** § 470.20);

(c) the contractor has been overpaid or otherwise owes the judiciary money as a result of the contractor's actions or inactions under the contract;

(d) the contractor owes the judiciary money for reasons unrelated to the contract under which payment will be withheld; or

(e) as a result of judicial action or applicable law, parties other than the contractor have made claims against the judiciary, or have not waived rights exercisable against the judiciary. Any time a CO receives a claim from a third party for compensation otherwise due a contractor, the PE must be notified immediately.

§ 740.40.20 Impact of Withholding Payment

Nonpayment may be damaging to a contractor's business and may jeopardize performance. Therefore, the CO must carefully consider the reasons for withholding or refusing payment and process disputes regarding payment expeditiously.

§ 740.40.30 Notice to Contractor

(a) The CO must notify the contractor of any intended withholding or of the CO's intent to disallow specified costs incurred or planned under a cost-reimbursement or fixed price incentive contract.

(b) However, before issuing the notice, the CO must make a reasonable effort to reach a satisfactory settlement through discussions with the contractor and must provide an opportunity for the contractor to respond.

(c) If time permits, notice must be in writing.

§ 740.40.40 Contractor Response

If the contractor disagrees with the deduction from current payments, the contractor may:

(a) request in writing that the CO consider whether the unreimbursed costs must be paid and discuss the matter with the contractor; and/or

(b) file a claim under Clause 7-235, Disputes.

§ 740.40.50 Withholding Under Different Clauses

Some contract clauses, such as Clause 2-75, Liquidated Damages, provide for withholding payment in certain circumstances. In addition, some clauses provide for withholding a percentage or portion of payments otherwise due to induce continued acceptable performance. The CO must strictly enforce such clauses and maintain a complete record of the amounts withheld under any clause, the basis for withholding, and the disposition of funds withheld.

§ 740.40.50 Clauses	
Clause	**Include in ...**
(a) Clause 7-160, Limitation on Withholding of Payments	solicitations and contracts for products or services whenever the contract specifies two or more circumstances authorizing the temporary withholding of amounts otherwise payable to the contractor for products delivered or services performed
(b) Clause 7-165, Penalties for Unallowable Costs	all solicitations and contracts over $500,000, except fixed-price contracts without cost incentives
(c) Clause 7-170, Notice of Intent to Disallow Costs	solicitations and contracts when a cost-reimbursement contract or a fixed-price incentive contract is contemplated

§ 740.50 Assignment of Claims

§ 740.50.10 In General

A contractor may assign monies coming due under a judiciary contract to a single bank, other financial institution or other party approved by the PE, with the written approval of the CO. Any other attempted assignment may be treated as a breach of contract.

§ 740.50.20 Approval

COs may approve in writing any authorized assignment that does not jeopardize contract performance.

§ 740.50.30 Assignments by Law

This part does not govern assignments ordered by a court or by operation of law. COs must notify the PE, who will consult with OGC, in such cases.

§ 740.50.40 Clauses	
Clause	**Include in ...**
(a) Clause 7-175, Assignment of Claims	solicitations and contracts expected to exceed the judiciary's small purchase threshold unless the contract will prohibit the assignment of claims
(b) Clause 7-180, Prohibition of Assignment of Claims	solicitations and contracts for which a determination has been made that the prohibition of assignment of claims is in the judiciary's interest

§ 740.50.50 Assignments

(a) Assignments by corporations must be:

(1) executed by an authorized representative;

(2) attested by the secretary or the assistant secretary of the corporation; and

(3) impressed with the corporate seal or accompanied by a true copy of the resolution of the corporation's board of directors authorizing the signing representative to execute the assignment.

(b) Assignment by a partnership may be signed by one partner, if the assignment is accompanied by adequate evidence that the signer is a general partner of the partnership and is authorized to execute assignments on behalf of the partnership.

(c) Assignments by an individual must be signed by that individual and the signature acknowledged before a notary public or other person authorized to administer oaths.

§ 740.50.60 Filing

(a) The assignee must file the notice of assignment and copy of the instrument of assignment with:

(1) the CO;

(2) the surety on any bond applicable to the contract; and

(3) the disbursing officer designated in the contract to make payment.

(b) The assignee must forward to each party specified above an original and three copies of the notice of assignment together with one true copy of the instrument of assignment. The true copy must be a certified duplicate or photostat copy of the original assignment.

§ 740.50.70 Format for Notice of Assessment

Appx 7A is a suggested format for use by an assignee in providing the notice of assignment.

§ 745 Contract Modifications

§ 745.10 Policy

§ 745.10.10 In General

Only COs are authorized to sign contract modifications on behalf of the judiciary. Other judiciary personnel may not:

(a) sign contract modifications;

(b) act in such a manner as to cause the contractor to believe that they have authority to bind the judiciary;

(c) direct or encourage the contractor to perform work that must be the subject of a contract modification but has not yet been executed; or,

(d) accept products and/or services that are in any way dependent upon a contract modification that has not been executed.

§ 745.10.20 Pricing of Contract Modifications

(a) Contract modifications, including changes that may be issued unilaterally, will be priced before their execution, if doing so can be done without adversely affecting the interest of the judiciary.

(b) If a significant price increase could result from a contract modification and time does not permit negotiation of a price, at least a maximum cost ceiling must be established.

§ 745.10.30 Unpriced Contract Modifications

If an unpriced contract modification is issued (e.g., a unilateral change order under Clause 7-185, Changes), the CO must justify, in writing, the reasons for the issuance of the unpriced modification.

§ 745.10.40 Funds Availability

The CO cannot execute a contract modification, including a change order, if doing so will cause an increase in the funding level of the contract without having first ensured that sufficient funds are available in the judiciary's financial system of record. **See also:** § 745.25. Any related re-programming of funds which must be done in the financial system cannot be performed by the CO. **See also:** Guide, Vol. 11, § 320.

§ 745.10.50 Modifications

Modifications may be:

(a) initiated by either party;

(b) bilateral within scope changes;

(c) a unilateral change (such as an administrative change of the accounting and appropriation data, or a change under Clause 7-185, Changes);

(d) new work within the scope of the contract; or

(e) new work outside the scope of the contract (although this requires either competition or a justification for other than full and open competition (**see:** Guide, Vol 14, § 335)).

§ 745.10.60 Contractor-Requested Modifications

The contractor may request a contract modification. Examples of reasons for a contractor-requested change include:

(a) adjustments to the contract based on circumstances or events beyond the contractor's control (e.g., excusable delay, stop work order issued, constructive change, settlement for contract termination for convenience);

(b) adjustments due to action by the contractor (e.g., name changed, consideration offered for nonexcusable delay, novation agreement); and

(c) adjustments required by or authorized by the terms of the contract (e.g., economic price adjustment, price redeterminations, Department of Labor wage rate increases for an exercised option).

§ 745.10.70 Submission of Modification Requests

Contractor requests for modification must provide all necessary documentation as required by the CO. The CO will review the request and its documentation, process a modification, or make a determination that the change is not warranted.

§ 745.15 Types of Modifications

§ 745.15.10 Bilateral Modification Within the Scope of the Contract

(a) A bilateral modification (also known as a supplemental agreement) is a modification that is signed by both the contractor and the CO and is the preferred type of modification for accomplishing changes. The contractor should always be asked to execute the modification first, with the CO signature being second. Most supplemental agreements involve negotiation of price and other terms, usually relating to tasks that are similar to the award of the basic contract. A bilateral agreement is used when:

(1) the change has an effect on the substantive rights of either party;

(2) there is sufficient time to negotiate a supplemental agreement; or

(3) there is no basis in the contract's terms for issuing a unilateral modification.

(b) Bilateral modifications are used to:

(1) incorporate changes to the contract made under Clause 7-185, Changes;

(2) incorporate negotiated equitable adjustments resulting from the issuance of a unilateral change order;

(3) reflect other agreements of the parties that modify the original contract terms;

(4) definitize a letter contract;

(5) approve changes required by or authorized by the contract, such as economic price adjustments;

(6) incorporate novation agreements where the judiciary is the responsible agency (**see:** § 745.55);

(7) incorporate name-change agreements where the judiciary is the responsible agency (**see:** § 745.55); or

(8) recognize when a sole proprietor originally doing business under a social security number (SSN) changes to a sole proprietor doing business under an Employer Identification Number (EIN).

§ 745.15.20 Unilateral Modification Within the Scope of the Contract

(a) A unilateral modification is a modification that is signed only by the CO as permitted within the operation of an existing contract clause. Unilateral modifications are of three basic types:

(1) Administrative Changes

These are changes that are minor in nature and do not materially affect contract performance or the substantive rights of the parties. Examples include:

(A) correction of a fund citation;

(B) addition of a zip code on a delivery address;

(C) designation of change in COTR or other contract administrators;

(D) recognize a novation agreement executed by another agency on behalf of the government (**see:** § 745.55); and

(E) recognize name-change agreements executed by another agency on behalf of the government (**see:** § 745.55).

(2) Change Orders

This term refers to the actual issuance of a change authorized by Clause 7-185, Changes. A change order is a written order, signed by the CO, directing the contractor to make a change, without the contractor's consent, within the general scope of the contract, including:

(A) changes to the drawings, designs, or specifications, when the products to be furnished are to be specially manufactured for the judiciary according to the drawings, designs, or specifications;

(B) method of shipment or packing;

(C) place of delivery (e.g., changing the delivery address from one state to another);

(D) statement of work or description of services to be performed;

(E) delivery or performance schedule with regard to time (i.e., hours of day, days of the week, etc), or place of performance of services; and

(F) judiciary-furnished property.

Note: A change order is the least preferred method of changing a contract. A supplemental agreement is the preferred method. **See:** § 745.15.10 (Bilateral Modification Within the Scope of the Contract). The Changes clause is cited as the authority for the modification in Block 13.A of the SF 30 (Amendment of Solicitation/Modification of Contract. Change orders must be used only when there is not enough time to negotiate with the contractor and/or the change must be put into effect immediately. Under the terms of the change order, the contractor is required to submit its proposal for an equitable adjustment within 30 days. **See also:** § 745.40 (Changes).

(3) Changes Authorized by Other Contract Clauses

Although these are not termed change orders, unilateral modifications may be issued under other contract clauses. Examples are the issuance of a stop work order or termination notice, obligation of additional funding for a contract which is being funded incrementally, or exercise of an option. Clause 7-185, Changes, only authorizes changes within the scope of the contract and within the conditions specified in the clause. **See also:** § 745.20.10 and § 745.40.

(b) The CO will issue a unilateral modification when:

(1) the change has no effect on the substantive rights of the contractor or the judiciary;

(2) the change can be made unilaterally under a specific contract term (e.g., Stop Work, Termination or Option clauses);

(3) the contractor's agreement with the change is not required; or

(4) in the case of a change order, the time required to negotiate a bilateral agreement would cause a delay that would adversely affect the judiciary's interest.

§ 745.20 Notification of Contract Changes

§ 745.20.10 In General

Under the "Changes" clause, when a contractor considers that any written or oral order (including direction, interpretation, instruction, or determination) from the CO, or another judiciary representative, constitutes a change in the contract, the contractor must notify the CO in writing that the contractor regards the order as a change order. The CO must then evaluate the order and either:

(a) confirm that it is a change, in which case the CO will also:

(1) direct the mode of further delivery or performance,

(2) plan for its funding, and

(3) issue a formal change order;

(b) countermand the alleged change; or

(c) notify the contractor that no change is considered to have been ordered.

§ 745.20.20 Determination of "Within Scope"

(a) Before issuing any contract modification, the CO must determine whether the contract change, initiated by either the judiciary or the contractor, is "within the scope" of the contact. Factors indicating "within scope" changes are:

(1) the function of the product or service has not changed;

(2) the basic contract purpose has not changed;

(3) the dollar magnitude of the change is proportionate to the price of the contract;

(4) competitive factors of the solicitation are the same; and

(5) specification or statement of work changes are not extensive.

(b) Another way of analyzing whether a change is within scope is to ask the following questions. If all these questions can be answered in the affirmative, the change can be considered within scope.

(1) Does the changed work represent what both parties reasonably contemplated at the time of award?

(2) Is the changed work essentially the same as the original agreement?

(3) Is the nature of the requirement altered by the change?

(4) Would this type of change normally be expected for this kind of requirement (e.g., sophisticated, complex requirements)?

§ 745.20.30 Out of Scope Changes

If the CO determines that the contemplated action is not in scope, the change must be regarded as a cardinal change (**see:** § 745.40.30), i.e., new work (possibly subject to further competition). The contractor is not obligated to perform work which constitutes a cardinal change.

§ 745.25 Availability of Funds

§ 745.25.10 In General

The CO may not execute a modification that causes or will cause an increase in required funds without first ensuring that funds are available in the judiciary's financial system of record, except for modifications to contracts that:

(a) are conditioned on availability of funds, or

(b) contain a limitation of cost or funds clause.

See also: § 745.10.40 and Guide, Vol. 11, § 320.

§ 745.25.20 Reserved

§ 745.25.30 Reserved

§ 745.30 Exercise of Options

§ 745.30.10 In General

Options provide the judiciary with firm prices for additional quantities or periods of performance, but only for a specific period of time. That time period for the exercise of the option may extend beyond the basic contract period and must be identified in the basic contract. The judiciary is under no legal obligation to exercise an option and the contractor has no recourse against the judiciary when an option is not exercised.

§ 745.30.20 Notice Requirement

(a) The option clause will normally require that the CO provide advance notification of any intent to exercise an option at a specified period before the option would take effect.

(b) The CO will normally be required to provide notice 60 days before the contract expires (or within another stated time frame in the clause), or at a specified time in advance of the required delivery of additional quantities, or the judiciary will lose its unilateral right to exercise the option.

(c) This notification does not bind the judiciary to exercise the option.

(d) Every option clause will state a date before which the CO may exercise an option.

(e) The modification is generally signed 30 days before the expiration of the contract.

§ 745.30.30 Exercising Options

Options must be exercised exactly as they are stated in the contract. The CO may not change quantities, for instance, unless the option itself authorizes the specific change. Options are generally exercised unilaterally by the CO.

§ 745.30.40 Written Determinations

Before exercising an option, the CO must sign and place a written determination in the official contract file. This written determination must show that:

(a) the judiciary has a need for the products or services covered by the option;

(b) exercise of the option is the most advantageous alternative, price and other factors considered ("other factors" includes any need for continuity of operations and potential costs to the judiciary of disrupting operations);

(c) the option exercise complies with the terms of the contract;

(d) funds are available (or will be available); and

(e) the contractor remains a responsible source (**see:** Guide, Vol 14, § 320).

§ 745.30.50 Reviewing Option Prices

A determination that the option price is the most advantageous must be based on one of the following:

(a) an informal investigation of prices, or other examination of the market, indicates clearly that a better price than that offered by the option cannot be obtained;

(b) the time between the award of the contract containing the option and the exercise of the option is so short that it indicates the option price is the lowest price obtainable under the conditions;

(c) consideration of such factors as market stability and a comparison of the time since award with the usual duration of contracts for such products and services; or

(d) a new solicitation failed to produce a better price than that offered by the option.

§ 745.30.60 Economic Price Adjustments

If the contract provides for economic price adjustment, the effect of such adjustment on prices under the option must be determined when considering whether or not to exercise the option.

§ 745.30.70 Option Procedures

When an option is to be exercised, the CO must:

(a) make a written determination that the option may properly be exercised according to the availability of funds (**see:** § 745.25);

(b) give written advance notification of intent to the contractor within the time period specified in the contract; and

(c) give the contractor written notification of the exercise of the option by executing a modification, citing the option clause as authority for the modification.

§ 745.35 Correction of Mistakes

§ 745.35.10 In General

A contract may be modified to correct or mitigate the effect of a mistake such as the following:

(a) a mistake, ambiguity, or unclear expression in a written contract of the agreement as both parties understood it;

(b) a contractor's mistake so obvious that it was or must have been apparent to the CO; and

(c) a mutual mistake as to a material fact.

§ 745.35.20 Procedure

A claim of mistake asserted by the contractor after award is a claim subject to the procedures of Clause 7-235, Disputes. A decision to deny, in whole or in part, a claim of mistake asserted after award is a final decision under the clause.

§ 745.40 Changes

§ 745.40.10 In General

The “Changes” clause permits the CO to make unilateral changes, as specified in the clause, within the general scope of the contract. These changes are accomplished by issuing written change orders. **See also:** § 745.15.20(a)(2) (Change Orders).

§ 745.40.20 Constructive Change

A constructive change is an implied change. It occurs when judiciary officials, without CO authority, change the contract via verbal or written action. Constructive changes are considered unauthorized commitments. If the unauthorized commitment is ratified, the CO may issue a modification to the contract confirming the change and making an appropriate equitable adjustment.

For procedures concerning ratifying unauthorized acts, **see:** Guide, Vol 14, § 160 (Ratification).

§ 745.40.30 Contractor's Obligation to Perform

Under a change order issued by the CO under the "Changes" clause, the contractor must continue performance of the contract as changed, except that in cost reimbursement or incrementally funded contracts the contractor is not obligated to continue performance or incur costs beyond the amount incrementally funded, or limits established in Clause 4-85, Limitation of Cost or Clause 4-90, Limitation of Funds.

§ 745.40.40 Clauses	
Clause	**Include in ...**
(a) Clause 7-185, Changes	all solicitations and contracts
(b) Clause 7-190, Change Order Accounting	solicitations and contracts for products of significant technical complexity if numerous changes are anticipated

§ 745.45 Equitable Adjustments

§ 745.45.10 In General

Change orders are not required to be priced before performance. They usually require two documents: the change order, and a supplemental agreement reflecting a resulting equitable adjustment.

(a) If an equitable adjustment in the price or delivery terms, or both, can be agreed upon in advance, only a supplemental agreement need be issued.

(b) If the change order has no effect on price or delivery, no equitable adjustment is needed and there will be no related supplemental agreement.

(c) Administrative changes (such as a change in an accounting citation) and changes issued under a clause giving the judiciary an unilateral right to make a change (such as an option clause) require only one document, signed only by the CO.

§ 745.45.15 Judiciary Policy

COs must promptly negotiate equitable adjustments resulting from change orders and follow up when claims for equitable adjustment are not received within 30 days after issuance of any change order.

§ 745.45.20 Price and/or Cost Analysis

Before negotiating an equitable adjustment, the CO must ensure that a price and/or cost analysis, as appropriate, is accomplished to also consider the contractor's segregable costs of the change. If additional funds are required as a result of the change, the funds must be available before the supplemental agreement accomplishing the equitable adjustment is executed. In fixed price contracts, analysis should include ensuring that the proposed equitable adjustment does not include recovery of overruns on the original work which the contractor is not entitled to recover.

§ 745.45.25 Settlement of Change Orders

To avoid controversies that may result from a supplemental agreement making an equitable adjustment, the CO must ensure:

(a) that all elements of the equitable adjustment have been presented and resolved, and

(b) a release of claims is included in the supplemental agreement.

§ 745.45.30 Equitable Adjustments for Delays

(a) The contractor bears the risk of schedule and cost effects for delays it causes or for delays within its control.

(b) Generally, the contractor is excused from nonperformance due to delays caused by factors for which neither the contractor nor the judiciary is responsible.

(c) However, the contractor must bear the cost impact of such delays.

(d) The judiciary is responsible for the schedule and cost effects of delays it causes, delays that are under its control, or delays for which it has agreed to compensate the contractor.

§ 745.45.35 Excusable Delays

(a) A contractor may be granted an extension of the delivery or performance schedule for an excusable delay.

(b) A contractor's failure to perform may be considered due to an excusable delay when it arises out of either of the following types of causes:

(1) causes beyond the control and without the negligence of the contractor, including:

- acts of God or of the public enemy;
- acts of the judiciary in its sovereign capacity or its contractual capacity; and
- fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather; or

(2) a subcontractor default due to causes beyond the control and without the fault or negligence of both the contractor and the subcontractor, unless the products or services were obtainable from other sources in time to permit the contractor to meet the delivery schedule.

§ 745.45.40 Compensable Delays

A contractor may be granted an extension of the contract delivery or performance schedule, a price adjustment, or both, as the CO deems appropriate, when an unreasonable delay in performance is caused by the judiciary or is under its control. Situations that may entitle the contractor to an equitable adjustment (schedule, cost, or both) include:

(a) delay in issuing a notice to proceed;

(b) delay in availability of the site;

(c) differing site conditions;

(d) actual or constructive changes or delays;

(e) delay in providing funding;

(f) delay in inspections;

(g) delay in issuing changes;

(h) delay in providing judiciary-furnished equipment; and

(i) failure of performance of other judiciary contractors.

§ 745.45.45 Contractor's Burden of Proof

The contractor has the burden of proof in establishing the basis for the equitable adjustment to which it is entitled as compensation for the delay, both in terms of a price increase and in terms of a revised delivery date.

§ 745.45.50 Concurrent Causes

When a delay is attributable to both the judiciary and the contractor, a delivery or performance schedule adjustment must not normally be granted for a period of delay caused at least in part by actions or failures on the part of the contractor. Damages may not be assessed against the contractor in such situations.

§ 745.45.55 Clauses	
Clause	**Include in**
(a) Clause 7-195, Excusable Delays	all solicitations and contracts for products and services, when using a cost-reimbursement contract, time-and-materials contract or labor-hour contract
(b) Clause 7-200, Judiciary Delay of Work	solicitations and contracts for products. The clause may also be used in solicitations and contracts for fixed-price services
(c) Clause 7-205, Payment for Judiciary Holidays	all solicitations and contracts when awarding a time-and-materials or labor-hour contract
(d) Clause 7-210, Payment for Emergency Closures	all solicitations and contracts

§ 745.50 Acceleration of Performance

§ 745.50.10 In General

The judiciary has the right to require accelerated performance under Clause 7-185, Changes. However, acceleration can be very costly. Therefore, this right must be exercised only when required to maintain the operational capability of the judiciary or when the CO otherwise determines acceleration is necessary.

§ 745.50.20 Documentation

COs must document the specific facts that require acceleration of performance and the estimated impact on price. Whenever possible, the CO must negotiate acceleration actions as supplemental agreements, rather than by issuance of change orders.

§ 745.50.30 Constructive Acceleration

COs must be alert to constructive acceleration situations. Constructive acceleration occurs when the judiciary does not agree to a delivery or performance schedule extension to which the contractor is entitled, or is later determined to be entitled. This has the effect of causing the contractor to accelerate performance. Such acceleration may form the basis for a claim against the judiciary for an increase in price.

§ 745.55 Novation and Change of Name Agreements

§ 745.55.10 Policy

(a) The government, including the judiciary, generally prohibits the transfer of government contracts from the contractor to a third party by contract novation. However, when it is in its interest, the government may recognize a third party as the successor in interest when the third party's interest arises out of the transfer of:

(1) all the contractor's assets, or

(2) the entire portion of the assets involved in performing the contract.

(b) Examples of situations in which novation may be permitted include, but are not limited to:

(1) sale of the contractor's assets with a provision for assuming liabilities;

(2) transfer of assets as part of a merger or corporate consolidation; and

(3) incorporation of a sole proprietorship or partnership, or formation of a partnership.

NOTE: The decision of a sole proprietor to obtain a Employer Identification Number (EIN) from the IRS for business purposes instead of using a Social Security Number (SSN) is not considered to require a novation agreement, although it may require a change to the financial system’s vendor record, provided that the business entity remains a sole proprietorship.

(c) Federal policy is that contractors should deal with a single contracting officer when executing novation and change-of-name agreements, who will execute them on behalf of all affected agencies. The specific agency

responsible for processing and executing novation and change-of-name agreements for an individual contractor is determined as follows:

(1) If administration of any of the contractor's affected contracts — regardless of awarding agency — has been assigned to an Administrative Contracting Officer (ACO), usually in an agency such as the Defense Contract Management Agency, that agency contracting office is responsible for executing novation and change-of-name agreements for the contractor.

(2) If none of the contractor's affected contracts have been assigned to an ACO, the contracting office responsible for the largest unsettled (unbilled plus billed but unpaid) dollar balance of contracts will be the responsible contracting office. This will often be an executive agency contracting office, rather than the judiciary CO.

§ 745.55.20 Recognizing Novation/Change of Name Executed by Another Agency

If, under § 745.55.10(b), an executive agency is responsible for executing the novation or change of name agreement, the judiciary CO, upon receipt of a copy of the executed agreement signed by the executive agency CO, will recognize such agreement by modification of the judiciary contract incorporating the agreement. This may be accomplished as an administrative change order issued with only the signature of the judiciary CO, and does not require review or approval by the PE.

§ 745.55.30 Procedures When Judiciary Is Responsible Contracting Officer

If, under § 745.55.10(b), the judiciary CO is determined to be the responsible CO for executing a novation or change of name agreement with a specific contractor, upon request from that contractor for novation or change of name recognition the CO will:

(a) identify and request from the contractor the information necessary to evaluate the proposed agreement for recognizing a successor in interest or a name change (**see:** § 745.55.40 and § 745.55.50);

(b) notify every other federal contract administration office and contracting office, including non-judiciary offices, affected by a proposed agreement for recognizing a successor in interest, and provide those offices with a list of all affected contracts; and

(c) request submission of any comments or objections to the proposed transfer within 30 days after notification.

(d) upon receipt of all information above, the CO will determine whether or not it is in the Government's best interest to recognize the proposed successor in interest of the basis of –

(1) the comments received from the other affected federal agencies;

(2) the proposed successor's responsibility (**see:** Guide, Vol 14, § 320.10); and

(3) any factor relating to the proposed successor's performance of contracts with the Government that the Government determines would impair the proposed successors' ability to perform the contract satisfactorily.

§ 745.55.40 Novation Agreements

(a) Any contractor's request for recognition of a successor in interest, must include three signed copies of the proposed novation agreement (**see:** Appx 7B) and one copy each, as applicable, of the following:

(1) the document describing the proposed transaction, e.g., purchase/sale agreement or memorandum of understanding

(2) a list of all affected contracts between the transferor and the Government, including non-judiciary contracts, as of the date of sale or transfer of assets, showing for each, as of that date, the:

- contract number and contract type
- name and address of the CO
- total dollar value, as amended; and
- approximate remaining unpaid balance.

(3) evidence of the transferee's capability to perform, and

(4) any other relevant information requested by the CO.

(b) Except as provided in § 745.55.40(c), the contractor must submit to the CO one copy of each of the following applicable documents as the documents become available:

(1) an authenticated copy of the instrument effecting the transfer of assets; e.g., bill of sale, certificate of merger, contract, deed, agreement, or court decree;

(2) a certified copy of each resolution of the corporate parties' boards of directors authorizing the transfer of assets;

(3) a certified copy of the minutes of each corporate party's stockholder meeting necessary to approve the transfer of assets;

(4) an authenticated copy of the transferee's certificate and articles of incorporation, if a corporation was formed for the purpose of receiving the assets involved in performing the judiciary contracts;

(5) the opinion of legal counsel for the transferor and transferee stating that the transfer was properly effected under applicable law and the effective date of transfer;

(6) balance sheets of the transferor and transferee as of the dates immediately before and after the transfer of assets, audited by independent accountants;

(7) evidence that any security clearance requirements have been met; and

(8) the consent of sureties on all contracts listed under § 745.55.40(a)(2) of this section if bonds are required, or a statement from the transferor that none are required.

(c) If the judiciary CO has acquired the documents listed under § 745.55.40(b) during participation in the pre-merger or pre-contract review process, or the government's interests are adequately protected with an alternative formulation of the information, the CO may modify the list of documents to be submitted by the contractor.

(d) When recognizing that a successor in interest to a government contract is consistent with the government's interest, the judiciary CO will execute a novation agreement with the transferor and the transferee. It will ordinarily provide in part that:

(1) the transferee assumes all the transferor's obligations under the contract;

(2) the transferor waives all rights under the contract against the judiciary

(3) the transferor guarantees performance of the contract by the transferee (a satisfactory performance bond may be accepted instead of the guarantee), and

(4) nothing in the agreement will relieve the transferor or transferee from compliance with any federal law.

(e) The CO will use the Novation Agreement format (**see:** Appx 7B) when the transferor and transferee are corporations and all the transferor's assets are transferred. This format may be adapted to fit specific cases, such as when the transferor or transferee are not corporate entities or not all the transferor's assets are transferred.

(f) Before executing a contract novation as the responsible agency on behalf of the government, the CO must determine that the successor in interest is a responsible contractor (**see:** Guide, Vol 14, § 320.10) and obtain PE approval with OGC concurrence.

If, for any reason, it is determined not to be in the government's interest to concur in the transfer of a contract from one company to another company via a contract novation, the original contractor remains responsible for contract performance and the contract may be terminated for default should the original contractor fail to perform.

(g) A novation agreement must be signed by:

(1) the contractor (transferor)

(2) the successor in interest (transferee), and

(3) the judiciary CO.

(h) After execution by all three parties, the CO will:

(1) forward a fully signed copy of the executed novation or change of name agreement to both the transferor and the transferee;

(2) retain a fully signed copy in the case file;

(3) prepare an SF 30 (Amendment of Solicitation/Modification of Contract), incorporating a summary of the agreement and attaching a complete list of contracts affected, including non-judiciary contracts;

(4) retain the original SF 30 with the attached list in the case file;

(5) send a signed copy of the SF 30, with the attached list, to the transferor and the transferee; and

(6) send a copy of the signed SF 30, with attached list, to each other agency contracting office involved, which will be responsible for any further appropriate distribution.

(i) Clause 7-215, Notification of Ownership Changes is included in all open market solicitations and contracts.

§ 745.55.50 Change of Name Agreements

(a) If only a change of the contractor's name is involved and the government's and contractor's rights and obligations remain unaffected, the parties must execute an agreement to reflect the name change. For guidance on determining which federal contracting office is responsible for executing a change of name agreement for a specific contractor on behalf of the government, **see:** § 745.55.10(b). If the judiciary is the responsible contracting office, the proposed change of name agreement must be reviewed by the PE, who will consult with OGC. The contractor must forward to the responsible contracting officer three signed copies of the proposed Change-of-Name Agreement, and one copy each of the following:

(1) the document effecting the name change, authenticated by a proper official of the state having jurisdiction;

(2) the opinion of the contractor's legal counsel stating that the change of name was properly effected under applicable law and showing the effective date;

(3) a list of all affected contracts and purchase orders remaining unsettled between the contractor and the government, showing for each the contract number and contract type, and name and address of the contracting office. If there is any question as to which federal contracting office is responsible for executing the agreement, the contracting officer may also request the total dollar value as modified and the remaining unpaid balance for each contract.

(b) When the judiciary is the responsible contracting office, upon approval by the PE and concurrence by OGC, the CO is responsible for:

(1) processing and signing the change-of-name agreements (**see:** Appx 7C), and

(2) processing and signing the contract modification specifying that the name has been changed using the following language:

"The purpose of this modification is to incorporate the attached Change-of-Name Agreement between the contractor and the government. This contract is hereby modified by substituting the name (contractor's previous name) for the name (contractor's changed name) wherever it appears in the contract. All other terms and conditions remain unchanged."

(3) distributing a copy of the executed change of name agreement to all other affected federal agencies which will be responsible for any further appropriate distribution.

§ 750 Claims and Disputes

§ 750.10 Policy

§ 750.10.10 In General

It is the policy of the judiciary to resolve contractual issues by mutual agreement at the level of the CO whenever possible. The CO must consider holding informal discussions to resolve differences before issuing a final decision on a claim.

§ 750.10.20 Initiation of Contract Disputes

A contract dispute is initiated by a written claim, demand or assertion by a contracting party for:

(a) the payment of money in a sum certain;

(b) the adjustment or interpretation of contract terms; or

(c) other specific relief arising under or relating to the contract.

A dispute may also be initiated by:

(d) any termination for convenience settlement proposal which is denied in whole or in part, and

(e) any request for an equitable adjustment which is denied in whole or in part.

§ 750.10.30 Submission of a Claim

(a) The contract claim must be submitted in writing to the CO and must be filed within 12 months of its accrual unless superseded by a different time period as specified in the contract's terms and conditions. The CO must document the contract file with evidence of the date of receipt of any submission that the CO deems to be a claim.

(b) The claim must contain a detailed statement of the legal and factual basis of the claim with any accompanying documents to support the claim.

(c) The claimant must specify the specific relief requested as provided above in § 750.10.20(a)-(c).

(d) If the CO requires additional information the CO will promptly request the claimant to provide such information.

(e) The contractor must proceed with performance of the contract pending resolution of the claim.

§ 750.20 Decisions and Appeal

§ 750.20.10 CO Authority and Responsibility

(a) Judiciary COs are authorized to decide or settle all disputes under the Disputes clause.

(b) The CO must issue a written determination on any contractor claim against the judiciary within 60 days of receipt of all the requested information from the vendor.

(c) If the CO can not render a determination within 60 days, the CO will notify the vendor of the date on which a determination will be made.

(d) The claim may be denied when the CO determines that the contractor is unable to support any part of the claim and there is evidence that the inability is attributable to either misrepresentation of fact or fraud on the contractor's part.

(e) The determination of the CO will be considered the final determination of the judiciary.

§ 750.20.20 Issuance of CO Determination

When a claim by or against a contractor cannot be resolved by agreement and a determination under Clause 7-235, Disputes is necessary, the CO must:

(a) review the facts pertinent to the claim;

(b) obtain assistance from the PE, who will consult with OGC and other advisors; and

(c) issue a final determination in writing.

§ 750.20.30 Contents of Final Determination

The final determination must include:

(1) a description of the claim or dispute with references to the pertinent contract provisions;

(2) a statement of the factual areas of agreement and disagreement;

(3) a statement of the CO's determination with supporting rationale; and

(4) the following paragraph:

> This is the final determination of the contracting officer pursuant to the clause of your contract entitled Disputes. This determination may be appealed to a court of competent jurisdiction.

§ 750.20.40 Evidence of Contractor Receipt

The CO must furnish a copy of the determination to the contractor by:

- certified mail
- return receipt requested, or
- another method that provides evidence of receipt.

§ 750.20.50 Modification of Contract

If the CO is able to resolve the claim through discussions and negotiation, the settlement agreement must be incorporated in a bilateral modification to the contract. Contract modifications should be executed on an SF 30 (Amendment of

Solicitation/Modification of Contract). The modification must include the following statement:

> "This modification is intended to and does constitute a full and final settlement and disposition of all matters relating to the claim dated (*insert date*) and is a full release, accord and satisfaction of any and all claims, demands or causes of action that the contractor has against the judiciary arising out of or related to this claim."

§ 750.20.60 Appeal

Contractors may appeal the CO's final determination to a court of competent jurisdiction. The contractor must comply with the final determination of the CO unless such determination is overturned by a court of competent jurisdiction. If the contractor fails to continue contract performance while the claim is being settled or fails to comply with the final determination of the CO, the CO may terminate the contract for default or impose other available remedies.

§ 755 Contract Termination

§ 755.10 In General

§ 755.10.10 Termination for Default or Convenience

(a) Contracts may be terminated for default or convenience only when such action is in the interest of the judiciary. The CO should consider a no-cost termination settlement of the contract when:

(1) the contractor will accept it;

(2) there is no judiciary furnished property; and

(3) there are no outstanding payments, debts due to government or other contractor obligations, such as warranty or data rights issues.

(b) The potentially high price to pay for a wrongful termination requires the CO to carefully review the clauses and surrounding circumstances before making a decision to recommend termination.

§ 755.10.20 Applicability

This section applies to contracts that contain clauses permitting termination for the convenience of the judiciary or for contractor default. **See:** § 755.20.60 and

§ 755.25.60. It establishes uniform procedures for the complete or partial termination of such contracts.

§ 755.10.30 Subcontract Termination Settlements

The provisions of this section must be used by the CO as a guide in evaluating settlement of a subcontract terminated for the convenience of a contractor whenever the settlement could be the basis of a contractor claim for reimbursement by the judiciary.

§ 755.10.40 Review and Approval

The PE must review and approve, in writing, all proposed contract terminations whether for convenience or default.

§ 755.15 Notice of Termination

§ 755.15.10 In General

(a) The CO may terminate contracts only by written notice to the contractor. For sample notice, **see:** Appx 7D.

(b) Notice of termination for convenience may be done at any time.

(c) Notice of termination for default should be done only after following the termination procedures at § 755.30.

(d) Issuance of any termination notice must be by certified mail, return receipt requested or any other method that provides evidence of receipt.

(e) The notice must state:

(1) the type of termination contemplated (convenience or defaults) and the contract clause authorizing the termination;

(2) the effective date of termination;

(3) the extent of the termination and, if a partial termination, the portion of the contract to be continued; and

(4) any special instructions.

(f) Additional information required to be included in a notice of termination for default is at § 755.35.

§ 755.15.20 Distribution

When the termination notice is sent to the contractor, the CO must also distribute a copy of the notice to any known assignee, guarantor, or surety of the contractor.

§ 755.15.30 Amendment of Notice

The CO may amend a termination notice to:

(a) correct nonsubstantive mistakes in the notice;

(b) add supplemental data or instructions;

(c) rescind the notice if the items of work terminated have been completed or shipped before the contractor receives the notice; and/or

(d) reinstate the terminated portion of a contract.

§ 755.15.40 Reinstatement

The CO may, with the consent of the contractor, reinstate the terminated portion of a contract in whole or in part by amending the notice of termination when:

(a) circumstances clearly indicate a requirement for the terminated items, or

(b) reinstatement is otherwise advantageous to the judiciary.

§ 755.20 Termination for Convenience

§ 755.20.10 In General

Termination for convenience is appropriate when the judiciary no longer requires the contracted products or services.

§ 755.20.15 Applicability

The provisions of this part apply to all contracts containing Clause 3-3, Provisions, Clauses, and Terms – Small Purchases, Clause 7-220; Termination for Convenience of the Judiciary (Fixed Price); or Clause 7-225, Termination (Cost-Reimbursement).

§ 755.20.20 Settlement Methods

The CO may settle contracts terminated for convenience by:

(a) negotiated agreement (including a no cost settlement);

(b) CO determination (used only when a negotiated agreement cannot be reached);

(c) costing vouchers, if the contract is a cost-reimbursement contract; or

(d) a combination of these methods.

§ 755.20.25 Policy

When possible, the CO must negotiate a fair and prompt settlement with the contractor according to the applicable clause and within the appropriate allocable, allowable, and reasonable amounts. **See also:** Guide, Vol 14, § 470.

§ 755.20.30 Contractor's Duties

After receiving a termination notice and, except as otherwise directed by the CO, the contractor must comply with the clause and the termination notice, which generally require the contractor to:

(a) stop work immediately on the terminated portion of the contract and stop placing subcontracts under that portion;

(b) terminate all subcontracts related to the terminated portion of the contract;

(c) immediately advise the CO of any special circumstances precluding the stoppage of work;

(d) perform the continued portion of the contract, if any, and promptly submit any request for an equitable adjustment of price with respect to the continued portion, supported by evidence of any increase in the cost;

(e) take necessary actions to protect and preserve property in which the judiciary has or may acquire an interest, and, as directed by the CO:

(1) deliver the property to the judiciary, or

(2) otherwise dispose of it;

(f) promptly notify the CO in writing of any legal proceedings growing out of a subcontract or other commitment related to the terminated portion of the contract;

(g) settle outstanding liabilities and claims arising out of subcontract terminations, with prior written approval or ratification as required by the CO;

(h) promptly submit a settlement offer, supported by appropriate documentation; and

(i) dispose of any termination inventory, as the CO directs or authorizes.

§ 755.20.35 Settlement of Subcontractor Claims

(a) Subcontractor Rights

A subcontractor has no contractual rights against the judiciary, since it lacks what is known as “privity of contract”. However, the subcontractor may have rights against the prime contractor or the immediate subcontractor with which it has contracted. Upon termination of a judiciary contract, or a change that necessitates subcontract termination, the contractor is responsible for prompt settlement of the termination claims of all their immediate subcontractors. The subcontractors have responsibility for settlement of any of their next lower tier subcontractors.

(b) Prime Contractor Rights and Obligations

The termination clauses provide that, upon contract termination, the contractor must, except as otherwise directed by the CO, terminate all subcontracts to the extent that they relate to performance of the terminated work.

§ 755.20.40 Subcontractor Settlements

The reasonableness of the contractor's settlement with a subcontractor must be measured by the aggregate amount that would be due under an equivalent judiciary termination clause. The CO may allow reimbursement in excess of that amount only in unusual cases, and then only when satisfied that the subcontract terms were negotiated in good faith and did not unreasonably increase the subcontractor's rights.

§ 755.20.45 Delay in Settlement of Subcontractor Claims

When a contractor's inability to reach settlement with a subcontractor delays the settlement of the judiciary contract, the CO may settle with the contractor for all amounts except the subcontractor settlement offer, and reserve judiciary and contractor rights as to the subcontractor settlement offer.

§ 755.20.50 Assistance in Subcontract Settlements

In unusual cases, the CO may determine that it is in the interest of the judiciary to offer to assist the contractor in the settlement of a particular subcontract. The judiciary, the contractor, and the subcontractor may then enter into an agreement covering settlement of the subcontract. In such case, the subcontractor must be paid through the contractor as part of the overall settlement.

§ 755.20.55 Direct Settlement with Subcontractors

(a) Clause 7-220, Termination for Convenience (Fixed Price) clause gives the judiciary the right, but not the obligation, to settle and pay any claims arising out of subcontract terminations.

(b) Direct settlements with subcontractors are not encouraged, since the judiciary contractor is obligated to settle and pay subcontractor termination claims.

(c) However, when the CO determines that it is in the interest of the judiciary to settle a subcontractor claim directly and such direct settlement has been approved by the PE, the CO may, after notifying the contractor, direct the assignment of all contractor rights to the judiciary, and settle the subcontractor claim using the termination procedures for settlement of judiciary contracts. An example in which the interest of the judiciary would be served is when a subcontractor is the sole source of a product and it appears that a delay by the contractor in settling the subcontractor's claim will jeopardize the subcontractor's financial position.

§ 755.20.60 Clauses	
Clause	**Include in ...**
(a) Clause 7-220, Termination for Convenience of the Judiciary (Fixed-Price)	solicitations and contracts when a fixed-price contract is contemplated and the contract amount is expected to be over the judiciary’s small purchase threshold, except in contracts for architect-engineer services, which are required to include Clause 5-70.

(b)	Clause 7-223, Termination for Convenience of the Judiciary (Short Form)	solicitations and contracts when the contract is expected to be at or less than the judiciary's small purchase threshold, except when the contracting officer has determined that another termination for convenience clause is appropriate (i.e., Clause 3-3 for small purchases, Clause 5-70 for architect and engineer contracts, or Clause 7-220 for situations when a CO believes the longer form is more appropriate, or Clause 7-225 for cost reimbursement contracts).
(c)	Clause 7-225, Termination (Cost-Reimbursement)	solicitations and contracts when a cost-reimbursement contract is contemplated.
(d)	Clause 7-225, Alternate I	solicitations and contracts when a time-and-materials or labor-hour contract is contemplated.

§ 755.25 Termination for Default

§ 755.25.10 In General

Termination for default is the exercise of the judiciary's contractual right, under the applicable Termination for Default clause, to completely or partially terminate a contract by reason of the contractor's actual or anticipated failure to perform its contractual obligations. The judiciary's right to terminate is subject to the notice requirements of the clause. The judiciary may terminate all or any part of a contract without regard to severability of contract obligations when the contractor fails to:

(a) complete any material requirement of the contract within the time specified in the contract (including any extensions);

(b) make progress to a degree that this failure endangers performance of the contract;

(c) perform any other contract provision; or

(d) give adequate assurances of performance after issuance of a delinquency notice.

§ 755.25.20 Waiver and Reinstatement of Termination Rights

(a) When the CO has the right to terminate a contract for default, the total undelivered contract quantity, whether delinquent or not, may be terminated for default.

(b) Failure of the CO to terminate a contract within a reasonable time when a contractor fails to make timely delivery may result in a waiver of the right of the judiciary to terminate for default. In this event, a new delivery date must be established by bilateral or unilateral modification of the contract. The new delivery date must be reasonable considering all the circumstances of contract performance. When the new date is established, the right to terminate for default is reinstated.

§ 755.25.30 Conversion for Convenience Termination

If the contractor can establish that its failure to perform arose out of causes beyond its control and without its fault or negligence, the default termination clause provides that a termination for default will be deemed a termination for the convenience of the judiciary, and the rights and obligations of the parties will be governed accordingly. For this reason, the CO should make every attempt to determine if the reason for the failure to perform is excusable before issuing a notice of termination for default.

§ 755.25.40 Mitigation of Liquidated Damages

If the contract includes a liquidated damages clause, the CO must take all reasonable steps to mitigate liquidated damages. If the CO is considering terminating the contract for default, the CO must seek expeditiously to obtain performance by the contractor or terminate the contract.

§ 755.25.50 Termination Factors to Consider

When a default termination is being considered, the CO must ensure that termination for default rather than for convenience is appropriate. The CO must consult with program officials, technical personnel, and the PE, and consider the following factors:

(a) the specific failure of the contractor and, unless time does not permit, the excuses for the failure;

(b) the availability of the products or services from other sources;

(c) the urgency of the need for the products or services, and whether or not they can be obtained sooner from sources other than the delinquent contractor;

(d) the degree to which the contractor is essential to the judiciary, and the effect of a termination for default on the contractor's capability as a supplier under other contracts;

(e) the effect of a termination for default on the ability of the contractor to liquidate progress payments; and

(f) any other pertinent facts and circumstances.

§ 755.25.60 Clauses	
Clause	**Include in**
(a) Clause 7-230, Termination for Default (Fixed-Price – Products and Services)	fixed-price solicitations and contracts expected to exceed the judiciary's small purchase threshold
(b) Clause 7-235, Disputes	all solicitations and contracts

§ 755.30 Termination for Default Procedures

§ 755.30.10 Issuing Delinquency and Termination Notices

The following table indicates which action by the CO is generally most appropriate based upon the point in time at which a contractor's performance becomes unsatisfactory.

§ 755.30.10 Issuing Delinquency and Termination Notices	
If ...	**the CO should issue ...**
(a) the contract's required delivery date is in the future, but there is reason to believe that the contractor will not meet that date (failure to make progress so as to endanger performance); or if services being performed are not in conformance with the contract	a cure notice (**see:** § 755.30.20)
(b) the contract's required delivery date has been passed without delivery or with delivery that has been rejected	a show cause notice (**see:** § 755.30.40)
(c) a cure notice has been issued, and the contractor has failed to correct the performance issue	a show cause notice (**see:** § 755.30.40)
(d) a show cause notice has been issued, and the contractor has failed to respond or to correct the performance issue, or the contractor's response does not show that the failure to perform was excusable	a notice of termination (**see:** sample at Appx 7D)

Note: While a cure notice is not mandatory when termination is based upon failure to meet a contract delivery date(s), issuance of a show cause notice is advised to allow the contractor the opportunity to assert any alleged excusable delay. If the CO

determines that termination for default is proper, including analyzing any potential waiver of the right to terminate and any excusable delays asserted by the contractor, the CO must issue a termination notice at once.

§ 755.30.20 Issuing a Cure Notice

(a) A written cure notice must be issued when the CO determines that the contractor is failing to make satisfactory progress to a degree that this failure endangers contract performance, or determines that some other failure, under the contract or otherwise (other than failure to make timely delivery) is cause for concern.

(b) The notice must specify the failure and give the contractor ten days (or longer, if necessary) to either correct the deficiency or provide written assurance to the judiciary of the steps that will be taken to cure the failure. A cure notice based upon failure to make satisfactory progress may be issued before the contractually specified delivery date if the CO has cause to believe that the contractor is too far behind schedule to be able to deliver by the required date. A cure notice based upon other causes (e.g., unsatisfactory quality of performance) may be issued at any time, provided that there is sufficient time remaining in the contract delivery schedule for the contractor to implement a correction.

(c) At a minimum, a cure notice must:

(1) specifically state the failure endangering performance as it relates to the corresponding requirement in the contract;

(2) allow the contractor at least ten days to “cure” the failure;

(3) be in writing and sufficient to support a default termination; and

(4) follow the following format:

Subject: Cure Notice

You are notified that the judiciary considers your _____(*contracting officer specifies the contractor’s failure or failures)* a condition that is endangering performance of the contract. Therefore, unless this condition is cured within ten days after receipt of this notice (*or the CO inserts any longer time that may be considered reasonably necessary)*, the judiciary may terminate for default under the terms and conditions of the _____*(insert clause title)* clause of this contract.

§ 755.30.30 Actions Following Issuance of Cure Notice

After a cure notice has been issued, the contract cannot be terminated until the ten day "cure" period (or other time period specified in the cure notice) has elapsed unless there is evidence of wrongful conduct, failure to cure the problem, or repudiation of the contract by the contractor.

§ 755.30.40 Issuing a Show Cause Notice

(a) When the CO makes a preliminary determination that termination for default is appropriate, the contractor should be notified in writing of the government's intent to terminate. The CO must issue this notice, if practicable, when termination is based upon causes other than failure to make timely delivery. Use of the notice is optional when the proposed termination is based upon failure to make timely delivery. Its use is, however, encouraged before any termination as it affords the contractor an opportunity to provide evidence the delinquency was beyond its control.

(b) A show cause notice is used:

(1) after a cure notice time elapses without a satisfactory response from the contractor or

(2) without a preceding cure notice when there is insufficient time remaining in the contract delivery schedule for the contractor to cure or correct the delinquency.

Note: The PE must approve a show cause notice in writing before it is issued. Usually a show cause notice is issued when there is less than ten days remaining in the contract delivery schedule. However, it can be used at any time when it is determined there is an "insufficient amount of time left."

(c) At a minimum, a show cause notice must:

(1) request the contractor to show cause why the contract should not be terminated for default (i.e., identify any waiver of delivery schedule or describe any action or inaction of the judiciary which has contributed to the failure to perform, or describe any other factors contributing to the delinquency which were beyond the control, and without the fault or negligence of the contractor);

(2) inform the contractor that failure to explain the cause of the deficiency/delinquency may be taken as admission that no valid explanation exists;

(3) invite the contractor to discuss the matter at a conference, when appropriate; and

(4) inform the contractor of its liabilities in the event of contract default.

(d) A show cause notice must be in the following format:

Subject: Show Cause Notice

Since you have failed to _____*(insert "perform Contract No. _____)* within the time required by its terms", or "cure the conditions endangering performance under Contract No. _____as described to you in the judiciary' s letter of _____(date)," the judiciary is considering terminating the contract under the provisions for default of this contract. Pending a final decision in this matter, it will be necessary to determine whether your failure to perform arose from causes beyond your control and without fault of negligence on your part. Accordingly, you are given the opportunity to present, in writing, any facts bearing on the question to _____ (*insert the name and complete address of the CO)*, within ten days after receipt of this notice. Your failure to present any excuses within this time may be considered as an admission that none exist. Your attention is invited to the respective rights of the contractor and the judiciary and the liabilities that may be invoked if a decision is made to terminate for default.

Any assistance given to you on this contract or any acceptance by the judiciary of delinquent products or services will be solely for the purpose of mitigating damages, and it is not the intention of the judiciary to condone any delinquency or to waive any right the judiciary has under the contract.

§ 755.30.50 Evaluate Contractor's Response

A contractor's response to a delinquency notice can take several forms:

(a) Cure Notice Response

A contractor is not necessarily required to respond to a cure notice since the contractor is told to correct the problem before the contract becomes delinquent. Often, however, the contractor will respond in writing with its detailed plans to cure performance. Such a response does not absolve

the contractor of actually curing the delinquency within the period specified in the cure notice. However, unless the problem is actually cured, the judiciary, upon expiration of the delivery period, has the option of issuing either a show cause or termination notice.

(b) Show Cause Notice Response

If the CO chooses to issue a show cause (either with or without a prior cure notice), the contractor has ten days to respond.

(c) The CO must evaluate the contractor's response and take one of the following actions, based on that evaluation:

1) defer termination action (appropriate when the contractor's response shows that timely completion of the work is assured or when the response adequately addresses other issues such as quality of work, which were the basis of the cure notice or show cause notice);

(2) modify the contract (appropriate when the COs analysis shows there has been excusable delay or waiver, in which case a modification is required to establish a new delivery date and to reinstate the judiciary's termination rights); or

(3) issue a show cause if the response to a cure notice is inadequate, or issue a notice of termination when the response to a show cause notice is inadequate. The PE must review and approve all proposed terminations for default. When a CO proposes to terminate a contract for default, the CO must prepare for the contract file a memorandum that fully explains the action taken. This memorandum must be submitted to the PE for written concurrence at the same time approval of the termination action is requested.

§ 755.35 Termination for Default Notice

§ 755.35.10 In General

Unless it is determined that the nonperformance will be cured, immediately upon determination that termination is proper under § 755, or upon expiration of the ten day, or longer period allowed by a delinquency notice, the CO may issue a notice of termination for default, provided that such termination has been reviewed and approved by the PE in consultation with OGC.

§ 755.35.20 Termination Notice Contents

The notice of termination for default must meet all the general requirements set forth in § 755.15 and:

(a) set forth the contract number and date;

(b) describe the acts or omissions constituting the default;

(c) state that the contractor's right to proceed with performance of the contract (or a specified portion of the contract) is terminated;

(d) state that the products or services terminated may be procured against the contractor's account, and that the contractor will be held liable for any excess repurchase costs;

(e) state that the judiciary reserves all rights and remedies provided by law or under contract, in addition to charging excess costs; and

(f) inform the contractor that the termination is subject to Clause 7-235, Disputes; and

(g) when the CO has determined that the failure to perform is not excusable, state that the notice reflects that decision, and that the contractor has the right to appeal as specified in Clause 7-235, Disputes.

§ 755.35.30 Notice Distribution

The CO must make the same distribution of the termination notice as was made of the contract, and any surety must be furnished a copy of both the delinquency notices and the notice of termination at both its main and local offices and asked to advise whether it desires to arrange for completion of the work under a takeover agreement. **See also:** Guide, Vol 14, § 620.40.

§ 755.40 Procedure in Lieu of Termination for Default

When the CO determines that the contractor's failure to perform arose from causes beyond its control and without its fault or negligence, the CO may not terminate the contract for default. When it is in the interest of the judiciary to do so, the CO may, in lieu of termination for default:

(a) terminate the contract for convenience;

(b) permit the contractor, its surety, or its guarantor to continue performance of the contract under a revised delivery schedule;

(c) permit the contractor to continue performance of the contract by means of a subcontract or other business arrangement with an acceptable third party, if the rights of the judiciary are adequately preserved; or

(d) execute a no-cost termination settlement agreement (or terminate on notice if allowed under the contract), if the requirement for the products and services specified in the contract no longer exists and the contractor is not liable to the judiciary for damages, as provided below.

§ 755.45 Actions Following Issuance of Termination

§ 755.45.10 Payment Precautions

(a) The CO must notify the payment office to withhold further payments under the terminated contract.

(b) The CO must also guard against the potential for overpayment resulting from outstanding lien rights of laborers and material suppliers against completed products that have been accepted and for which payment have been made to the contractor.

(c) The CO must take one or more of the following measures before making any payment following a termination:

(1) ascertain whether the payment bonds, if any, furnished by the contractor are adequate to satisfy all claims, or whether it is feasible to obtain similar bonds to cover outstanding liens;

(2) require the contractor to furnish appropriate statements from laborers and material suppliers disclaiming any lien rights they may have in the completed products;

(3) obtain appropriate agreement between the judiciary, the contractor, and any claimants to ensure release of the judiciary from any potential liability to the contractor or claimants;

(4) withhold from the amount otherwise due for the completed products an amount the CO determines necessary to protect the judiciary's interest, according to § 740.40; or

(5) take any other action that is appropriate in view of the contractor's degree of solvency and other circumstances.

§ 755.45.20 Determination Following Termination Notice

When the CO is unable to determine, before issuing the notice of termination, whether the contractor's failure to perform arose from causes beyond its control and without its fault or negligence, the CO must make a written decision on that point as soon as practicable after issuing the notice. This decision must be delivered promptly to the contractor, with a notification of the right to appeal as specified in Clause 7-235, Disputes.

§ 755.45.30 Undelivered Work

The judiciary is not liable for the contractor's costs on undelivered work and is entitled to repayment of any advance payments for undelivered work.

§ 755.45.40 Completed Products

The CO may direct the contractor to transfer title and deliver to the judiciary completed products. The judiciary must pay the contractor the contract price for any products completed and delivered.

§ 755.45.50 Excess Costs of Reprocurement

The contractor is liable to the judiciary for any excess costs the judiciary incurs in acquiring products and services similar to those terminated for default, and any other damages, whether or not the repurchase is made.

§ 755.45.60 Mailing Checks to Surety

If requested by the surety, and agreed to by the contractor and any assignees, arrangements may be made to have future checks mailed to the contractor in care of the surety. In this case, the contractor must forward a written request to the designated disbursing officer, specifically directing a change in address for mailing of checks.

§ 755.50 Remedies and Damages Following Termination for Default

§ 755.50.10 Remedies

On rightful rejection or justifiable revocation of acceptance of products or services, the judiciary has a security interest in products delivered under the contract for any payments and expenses reasonably incurred in:

- inspection;
- receipt;
- transportation;
- care; and
- custody.

§ 755.50.20 Repurchase Against Contractor's Account

(a) When products or services are still required after termination for default, the CO may repurchase the same or similar products or services against the contractor's account as soon as practicable. The repurchase must be at a reasonable price, considering the quality required by the judiciary and the time within which the products or services are required. Whenever practicable, the CO must make necessary repurchase decisions before issuing the termination notice.

(b) The CO may repurchase a quantity larger than the quantity terminated for default when needed, but the defaulting contractor may be charged for no more than the terminated quantity (including any variations in quantity permitted by the terminated contract).

(c) If the repurchase is for a quantity not larger than the terminated quantity, the CO may use any terms and contract methods deemed appropriate for the repurchase, following normal written approval or deviation procedures. If the repurchase is for a quantity larger than the terminated quantity, the entire quantity must be treated as a new purchase, adhering to all applicable procedures.

(d) If repurchase is made at a price higher than the price of the terminated products or services, the CO must, after final payment of the repurchase contract, make a written demand on the defaulted contractor for the excess amount, taking into account any increases or decreases in cost due to transportation charges, discounts, and other factors.

§ 755.50.30 Damages

(a) Default

If a contract is terminated for default or if a procedure in lieu of termination for default is followed (other than termination for convenience or a no-cost settlement agreement), the CO must ascertain and demand any damages to which the judiciary may be entitled. These damages are in addition to any excess repurchase cost.

(b) When the CO has accepted defective products, and such acceptance has been revoked on the basis of fraud, for instance, the judiciary may recover as damages for any nonconformity the loss resulting in the ordinary course of events from the contractor's breach as determined in any reasonable manner.

(c) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the products or services accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

§ 755.50.40 Incidental Damages

Incidental damages may be chargeable against the contract. Incidental damages include those resulting from the contractor's breach, such as expenses reasonably incurred in inspection, receipt, transportation, and care and custody of products rightfully rejected; any commercially reasonable charges; expenses in connection with repurchase; and any other reasonable expense incident to the delay or other breach.

§ 755.50.50 Consequential Damages

Consequential damages may be chargeable against the contract. Consequential damages include those resulting from the contractor's breach and include:

(a) any loss resulting from general or particular requirements and needs of which the contractor at the time of contracting had reason to know and which could reasonably be prevented, and

(b) injury to person or property proximately resulting from any breach of warranty.

§ 755.50.60 Deduction of Damages from the Price

The CO, after notifying the contractor, may deduct all or any part of the damages resulting from any breach of the contract, or from late delivery or delay not subject to liquidated damages, from any part of the contract price still due to the contractor.

§ 755.50.70 Damages for Non-Delivery or Repudiation

The measure of damages for non-delivery or repudiation by the contractor when repurchase is not possible is the difference between the market price at the time when the CO learned of the breach and the contract price, together with any incidental and

consequential damages, but less expenses as a consequence of the contractor's breach.

§ 755.50.80 Market Price

Market price is to be determined as of the place of acceptance or, in cases of rejection after arrival or revocation of acceptance, as the place of arrival.

§ 760 Contract Closeout

§ 760.10 Closeout of Contract Files

§ 760.10.10 In General

Contract closeout refers to the procedure of verifying that all administrative matters have been concluded on a contract that is physically complete. That is, the contractor has delivered the required products or performed the required services and the judiciary has inspected and accepted the products or services.

§ 760.10.20 Closeout Time Frames

Standard times for closing out a contract vary depending on the contract type:

(a) files for orders using small purchase procedures are considered closed after receipt of property or services when the CO receives evidence of final payment

(b) files for firm-fixed-price contracts, other than those using small purchase procedures, must be closed within six months after the date on which the CO receives evidence of physical completion

(c) files for contracts requiring settlement of indirect cost rates must be closed within 36 months of the month in which the CO receives evidence of physical completion;

(d) files for all other contracts must be closed within 20 months of the month in which the CO receives evidence of physical completion.

§ 760.10.30 Closeout Actions

When closing out contract files the CO must use the closeout procedures at § 760.20. However, these closeout actions may be modified to reflect the extent of administration that has been performed. A contract file must not be closed if:

(a) the contract is in litigation or under appeal;

(b) all termination actions have not been completed; or

(c) warranties or guarantees provided under the contract are still in effect.

§ 760.10.40 Physically Completed Contracts

(a) Except for rental, use and storage agreements, a contract is physically complete when one of two events has occurred:

(1) all required products or services have been delivered or performed; inspected and accepted; and all existing options have been exercised or have expired; or

(2) a contract termination notice has been issued to the contractor.

(b) Rental, use, and storage agreements are considered to be physically completed when the:

(1) judiciary has given the contractor a notice of complete contract termination; or

(2) contract period has expired.

§ 760.20 Contract Closeout Procedures

§ 760.20.10 Administrative Closeout

The CO is responsible for initiating administrative closeout of the contract after receiving evidence of its physical completion. At the outset of this process, the CO must review the contract funds status and determine whether or not there are payments to be made, claims to be settled, or excess funds to be deobligated. When complete, the administrative closeout procedures must ensure that, as appropriate:

(a) a property clearance is received

(b) all interim or disallowed costs are settled

(c) a price revision is completed

(d) subcontracts are settled by the prime contractor

(e) all indirect cost rates are settled

(f) the termination is settled

(g) contractor's closing statement is completed

(h) contractor's final invoice has been submitted

(i) a contract funds review is completed

(j) excess funds are deobligated, and

(k) either a final release of claims has been obtained from the contractor or a bilateral modification has been completed to effect the final closeout with the contractor's statement of release as follows:

> This modification is intended to and does constitute a full and final settlement and disposition of all matters relating to this contract (including all of its modifications) and is a full release, accord and satisfaction of any and all claims, demands or causes of action that the contractor has against the judiciary arising out of or related to this contract.

§ 760.20.20 Contract Completion Statement

When the actions in the above section have been completed, the CO must ensure that a contract completion statement, containing the following information, is prepared:

(a) contract administration office name and address (if different from the purchasing office)

(b) purchasing office name and address

(c) contract number

(d) last modification number

(e) last order number (if the contract is an IDIQ or requirements contract or a blanket purchase agreement (BPA))

(f) contractor name and address

(g) dollar amount of excess funds, if any

(h) voucher number and date, if final payment has been made

(i) invoice number and date, if the final written approved invoice has been forwarded to a disbursing office and the status of the payment is unknown

(j) a statement that all required contract administration actions have been fully and satisfactorily accomplished

(k) name and signature of the CO, and

(l) date.

When the statement is completed, the CO must ensure that the signed statement is placed in the purchasing office contract file.

§ 760.20.30 Storage, Handling, and Disposal of Contract Files

(a) The process used to create and store records must record and reproduce the document, including signatures and other written and graphic images completely, accurately, and clearly.

(b) Data transfer, storage, and retrieval procedures must protect the data from alteration.

(c) Unless law or other regulations require signed documents to be kept, they may be destroyed after the responsible judiciary official verifies that record copies on alternate media and copies reproduced from the record copy are accurate, complete, and clear representations of the originals. **See:** § 710.10 for contents of contract files, and § 760.30 for destruction of records after closeout.

§ 760.30 Disposition of Contract Files

§ 760.30.10 In General

Contract files, including requisitions, and purchase/delivery/task orders, including correspondence and related papers pertaining to award, administration, receipt, inspection, acceptance, claims, disputes and payment must be destroyed no earlier than the following instructions:

(a) transactions that use small purchase procedures: three years after final payment, or after the judiciary audit, whichever is later.

(b) transactions that use other than small purchase procedures: six years and three months after final payment, or after the judiciary audit, whichever is later.

§ 760.30.20 Solicited and Unsolicited Offers

(a) Successful Offers

Destroy with related contract files

(b) Unsuccessful Offers

If filed separately from the contract file, destroy no earlier than one year after final decision of not awarding. If not filed separately from the contract file, destroy with related contract file.

§ 760.30.30 Canceled Solicitations

Formal solicitations of offers to provide products or services may be canceled before award of a contract. The files include presolicitation documentation on the requirement, any offers that were opened before the cancellation, documentation on any judiciary action up to the time of cancellation, and evidence of the cancellation.

(a) Canceled solicitation files must be destroyed no earlier then five years after date of cancellation, and

(b) Unopened offers must be returned to the offeror.

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Appx 7A: Sample Notice of Assignment

To: _____ [Name of Contracting Officer].

This has reference to Contract No. _____ dated _____, entered into between _____ [Contractor's name and address] and _____ [name of judiciary office and address], for _____ [Describe nature of the contract].

Moneys due or to become due under the contract described above have been assigned to the undersigned under the provisions of the Assignment of Claims Act of 1940, as amended, 31 U.S.C. § 3727, 41 U.S.C. § 15.

A true copy of the instrument of assignment executed by _____ [Contractor's name] on _____ [Date], is attached to the original notice.

Payments due or to become due under this contract should be made to the undersigned assignee.

Please return to the undersigned the three enclosed copies of this notice with appropriate notations showing the date and hour of receipt, and signed by the person acknowledging receipt on behalf of the addressee.

Very truly yours,

_____
[Name of Assignee]

By _____
[Signature of Signing Officer]

_____
[Title of Signing Officer]

_____
[Address of Assignee]

Last revised June 29, 2010

Acknowledgment

Receipt is acknowledged of the above notice and of a copy of the instrument of assignment. They were received ____(a.m.) (p.m.) on _____, 20___.

_____
[Signature]

_____
[Title]

_____
On behalf of

_____
[Name of judiciary office of Addressee of this Notice]

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Appx 7B: Sample Novation Agreement

The _____(i.e. ABC Corporation (Transferor)), a corporation duly organized and existing under the laws of _____ [*insert State*] with its principal office in _____ [*insert city*]; the _____(i.e. XYZ Corporation (Transferee), [if appropriate add "formerly known as the EFG Corporation"] a corporation duly organized and existing under the laws of _____ [*insert State*] with its principal office in _____ [*insert city*]; and the United States Of America (judiciary) enter into this Agreement as of _____ [*insert the date transfer of assets became effective under applicable State law*].

(a) The parties agree to the following facts:

(1) The judiciary, represented by various contracting officers has entered into certain contracts with the Transferor, namely: _____ [*insert contract or purchase order identifications*]; [or *delete "namely" and insert "as shown in the attached list marked `Exhibit A' and incorporated in this Agreement by reference."*]. The term "the contracts," as used in this Agreement, means the above contracts and purchase orders and all other contracts and purchase orders, including all modifications, made between the judiciary and the Transferor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the judiciary or the Transferor has any remaining rights, duties, or obligations under these contracts and purchase orders). Included in the term "the contracts" are also all modifications made under the terms and conditions of these contracts and purchase orders between the judiciary and the Transferee, on or after the effective date of this Agreement.

(2) As of _____, 20___, the Transferor has transferred to the Transferee all the assets of the Transferor by virtue of a _____ [*insert term descriptive of the legal transaction involved]* between the Transferor and the Transferee.

(3) The Transferee has acquired all the assets of the Transferor by virtue of the above transfer.

(4) The Transferee has assumed all obligations and liabilities of the Transferor under the contracts by virtue of the above transfer.

(5) The Transferee is in a position to fully perform all obligations that may exist under the contracts.

(6) It is consistent with the judiciary's interest to recognize the Transferee as the successor party to the contracts.

(7) Evidence of the above transfer has been filed with the judiciary. [*When a change of name is also involved; e.g., a prior or concurrent change of the Transferee's name, an appropriate statement must be inserted (see example in paragraph (8) of this Agreement)*].

(8) A certificate dated _____, 20___, signed by the Secretary of State of _____ [*insert State*], to the effect that the corporate name of _____(EFG Corporation) was changed to _____(XYZ Corporation) on _____, 20__, has been filed with the judiciary.

(b) In consideration of these facts, the parties agree that by this Agreement:

(1) The Transferor confirms the transfer to the Transferee, and waives any claims and rights against the judiciary that it now has or may have in the future in connection with the contracts.

(2) The Transferee agrees to be bound by and to perform each contract in accordance with the conditions contained in the contracts. The Transferee also assumes all obligations and liabilities of, and all claims against, the Transferor under the contracts as if the Transferee were the original party to the contracts.

(3) The Transferee ratifies all previous actions taken by the Transferor with respect to the contracts, with the same force and effect as if the action had been taken by the Transferee.

(4) The judiciary recognizes the Transferee as the Transferor's successor in interest in and to the contracts. The Transferee by this Agreement becomes entitled to all rights, titles, and interests of the Transferor in and to the contracts as if the Transferee were the original party to the contracts. Following the effective date of this Agreement, the term "Contractor," as used in the contracts, must refer to the Transferee.

(5) Except as expressly provided in this Agreement, nothing in it must be construed as a waiver of any rights of the judiciary against the Transferor.

(6) All payments and reimbursements previously made by the judiciary to the Transferor, and all other previous actions taken by the judiciary under the contracts, must be considered to have discharged those parts of the judiciary's obligations under the contracts. All payments and reimbursements made by the judiciary after the date of this Agreement in the name of or to the Transferor must have the same force and effect as if made to the Transferee, and must constitute a complete discharge of the judiciary's obligations under the contracts, to the extent of the amounts paid or reimbursed.

(7) The Transferor and the Transferee agree that the judiciary is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer or this Agreement, other than those that the judiciary in the absence of this transfer or Agreement would have been obligated to pay or reimburse under the terms of the contracts.

(8) The Transferor guarantees payment of all liabilities and the performance of all obligations that the Transferee:

(i) assumes under this Agreement; or

(ii) may undertake in the future if these contracts be modified under their terms and conditions. The Transferor waives notice of, and consents to, any such future modifications.

(9) The contracts must remain in full force and effect, except as modified by this Agreement. Each party has executed this Agreement as of the day and year first above written.

United States of America

By _____

Title _____

ABC Corporation

By _____

Title _____

[Corporate Seal]

XYZ Corporation

By _____

Title _____
[Corporate Seal]

Certificate

I, _____, certify that I am the Secretary of _____(ABC Corporation), that _____, who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand and the seal of this corporation this day of _____ 20 ___.

By _____
[Corporate Seal]

Certificate

I, _____, certify that I am the Secretary of _____(XYZ Corporation), that _____, who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand and the seal of this corporation this day of _____20___.

By _____
[Corporate Seal]

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Appx 7C: Sample Change of Name Agreement

The _____(i.e. ABC Corporation) (*contractor*), a corporation duly organized and existing under the laws of _____ [*insert State*], and the United States Of America (*judiciary)*, enter into this Agreement as of _____ *[insert date when the change of name became effective under applicable State law*].

(a) The parties agree to the following facts:

(1) The judiciary, represented by various contracting officers has entered into certain contracts and purchase orders with the _____(i.e.. XYZ Corporation), namely: _____ [*insert contract or purchase order identifications*]; [or *delete "namely" and insert "as shown in the attached list marked "Exhibit A" and incorporated in this Agreement by reference."*]. The term "the contracts," as used in this Agreement, means the above contracts and purchase orders and all other contracts and purchase orders, including all modifications, made by the judiciary and the contractor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the judiciary or the contractor has any remaining rights, duties, or obligations under these contracts and purchase orders).

(2) The _____(XYZ Corporation), by an amendment to its certificate of incorporation, dated _____ 20___, has changed its corporate name to _____(ABC Corporation).

(3) This amendment accomplishes a change of corporate name only and all rights and obligations of the judiciary and of the contractor under the contracts are unaffected by this change.

(4) Documentary evidence of this change of corporate name has been filed with the judiciary.

(b) In consideration of these facts, the parties agree that:

(1) the contracts covered by this Agreement are amended by substituting the name _____("ABC Corporation") for the name

_____("XYZ Corporation") wherever it appears in the contracts; and

(2) each party has executed this Agreement as of the day and year first above written.

United States of America
By _____
Title _____

ABC Corporation
By _____
Title _____
[Corporate Seal]

Certificate

I, _____, certify that I am the Secretary of _____(ABC Corporation); that _____, who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand and the seal of this corporation this _____ day of _____ 20___.

By _____
[Corporate Seal]

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Appx 7D: Sample Contract Termination Notices

Review and approval by the PE must be obtained prior to issuance of any of the following notices. **See:** Guide, Vol 14, § 755.10.40.

§ 7A.100 No-cost settlement agreement – complete termination.

[Insert the following in Block 14 of SF 30 when executing a no-cost settlement agreement, under a complete termination.]

(a) This supplemental agreement *[insert "modifies the contract to reflect a no-cost settlement agreement with respect to the Notice of Termination dated ____" or, if the contract has not been terminated by prior notice, "terminates the contract in its entirety"]*.

(b) The parties agree as follows:

The contractor unconditionally waives any charges against the judiciary because of the termination of the contract and, except as set forth below, releases it from all obligations under the contract or due to its termination. The judiciary agrees that all obligations under the contract are concluded, except as follows: *[List reserved or excepted rights and liabilities.*]

(End of agreement)

§ 7A.105 No-cost settlement agreement – partial termination.

[Insert the following in Block 14 of SF 30 when executing a no-cost settlement agreement, under a partial termination.]

(a) This supplemental agreement modifies the contract to reflect a no-cost settlement agreement with respect to *[insert "the Notice of Termination dated _____" or, if there has not been a prior termination notice issued, "the partial termination of the contract as outlined below".]*

(b) The parties agree as follows:

(1) The terminated portion of the contract is as follows: *[Specify—*

(i) item numbers,

(ii) descriptions,

(iii) quantity terminated,

(iv) unit and total price of terminated items, and

(v) any other explanation necessary to avoid uncertainty or misunderstanding.]

(2) The contractor unconditionally waives any charges against the judiciary arising under the terminated portion of the contract or by reason of its termination, including, without limitation, all obligations of the judiciary to make further payments or to carry out any further undertakings under the terminated portion of the contract. The judiciary acknowledges that the contractor has no obligation to perform further work or services or to make further deliveries under the terminated portion of the contract. Nothing in this paragraph affects any other covenants, terms, or conditions of the contract. Under the terminated portion of the contract, the following rights and liabilities of the parties are reserved: *[List reserved or excepted rights and liabilities.]*

(End of agreement)

§ 7A.110 Letter Notice of Termination for Convenience.

The following letter is suggested for use if a contract for products is being terminated for convenience, and a no-cost settlement is not possible. With appropriate modifications, it may also be used in terminating contracts for services. This notice shall be sent by certified mail, return receipt requested. Alternatively, it may be hand-delivered to the contractor's representative and a hand receipt obtained.

Notice of Termination

[At the top of the notice, set out all special details relating to the particular termination; e.g., name and address of company, contract number of terminated contract, items, etc.]

(a) **Effective date of termination**. You are notified that Contract No. _____ (referred to as "the contract") is terminated _____ *[insert "completely" or "in part"]* for the judiciary's convenience under the clause entitled _____ *[insert title of appropriate termination*

clause]. The termination is effective _____ *[insert either "immediately upon receipt of this Notice" or "on _____, 20____," or "as soon as you have delivered, including prior deliveries, the following items:" (list items to be delivered)]*. Reduce items to be delivered as follows: *[insert instructions]*.

(b) **Cessation of work and notification to immediate subcontractors**. You shall take the following steps:

(1) Stop all work, make no further shipments, and place no further orders relating to the contract, except for—

(i) The continued portion of the contract, if any;

(ii) Work-in-process or other materials that you may wish to retain for your own account; or

(iii) Work-in-process that the contracting officer authorizes you to continue (A) for safety precautions, (B) to clear or avoid damage to equipment, (C) to avoid immediate complete spoilage of work-in-process having a definite commercial value, or (D) to prevent any other undue loss to the judiciary. (If you believe this authorization is necessary or advisable, immediately notify the contracting officer by telephone or personal conference and obtain instructions.)

(2) Keep adequate records of your compliance with paragraph (b)(1) of this section showing the—

(i) Date you received the Notice of Termination;

(ii) Effective date of the termination; and

(iii) Extent of completion of performance on the effective date.

(3) Furnish notice of termination to each immediate subcontractor and supplier that will be affected by this termination. In the notice—

(i) Specify your judiciary contract number;

(ii) State whether the contract has been terminated completely or partially;

(iii) Provide instructions to stop all work, make no further shipments, place no further orders, and terminate all subcontracts under the contract, subject to the exceptions in paragraph (b)(1) of this section;

(iv) Provide instructions to submit any settlement proposal promptly; and

(v) Request that similar notices and instructions be given to its immediate subcontractors.

(4) Notify the contracting officer of all pending legal proceedings that are based on subcontracts or purchase orders under the contract, or in which a lien has been or may be placed against termination inventory to be reported to the judiciary. Also, promptly notify the contracting officer of any such proceedings that are filed after receipt of this Notice.

(5) Take any other action required by the contracting officer or under the Termination clause in the contract.

(c) **Termination inventory**.

(1) As instructed by the contracting officer, transfer title and deliver to the judiciary all termination inventory of the following types or classes, including subcontractor termination inventory that you have the right to take: *[Contracting officer insert proper identification or "None"]*.

(2) To settle your proposal, it will be necessary to establish that all prime and subcontractor termination inventory has been properly accounted for.

(d) **Settlements with subcontractors**. You remain liable to your subcontractors and suppliers for proposals arising because of the termination of their subcontracts or orders. You are requested to settle these settlement proposals as promptly as possible.

(e) **Completed end items**.

(1) Notify the contracting officer of the number of items completed under the contract and still on hand and arrange for their delivery or other disposal.

(2) Invoice acceptable completed end items under the contract in the usual way and do not include them in the settlement proposal.

(f) **Patents**. If required by the contract, promptly forward the following to the contracting officer:

(1) Disclosure of all inventions, discoveries, and patent applications made in the performance of the contract.

(2) Instruments of license or assignment on all inventions, discoveries, and patent applications made in the performance of the contract.

(g) **Employees affected**.

(1) If this termination, together with other outstanding terminations, will necessitate a significant reduction in your work force, you are urged to—

(i) Promptly inform the local state employment service of your reduction-in-force schedule in numbers and occupations, so that the service can take timely action in assisting displaced workers;

(ii) Give affected employees maximum practical advance notice of the employment reduction and inform them of the facilities and services available to them through the local state employment service offices;

(iii) Advise affected employees to file applications with the state employment service to qualify for unemployment insurance, if necessary;

(iv) Inform officials of local unions having agreements with you of the impending reduction-in-force; and

(v) Inform the local Chamber of Commerce and other appropriate organizations which are prepared to offer practical assistance in finding employment for displaced workers of the impending reduction-in-force.

(2) If practicable, urge subcontractors to take similar actions to those described in paragraph (1) of this section.

(h) **Administrative**. The contracting officer will, upon request, provide the necessary settlement forms. Matters not covered by this notice should be brought to the attention of the undersigned.

(i) Please acknowledge receipt of this notice as provided below.

_____
(Contracting Officer)

_____
(Name of Office)

_____
(Address)

Acknowledgment of Notice

The undersigned acknowledges receipt of a signed copy of this notice on _____, 20____. Two signed copies of this notice are returned.

_____
(Name of Contractor)

By _____
(Name)

_____
(Title)

(End of notice)

§ 7A.115 Letter Notice of Default Termination.

The following letter is suggested for use if a contract for products is being terminated for default. With appropriate modifications, it may be used in terminating contracts for services. This notice shall be sent by certified mail, return receipt requested. Alternatively, it may be hand-delivered to the contractor's representative and a hand receipt obtained.

Notice of Termination

[At the top of the notice, set out all special details relating to the particular termination; e.g., name and address of company, contract number of terminated contract, items, etc.]

(a) **Effective date of termination**. You are notified that Contract No. _____ (referred to as "the contract") is terminated _____ *[insert "completely" or "in part"]* for default under the clause entitled _____ *[insert title of appropriate termination clause]*. The termination is effective _____ *[insert either "immediately upon receipt of this Notice"]*

(b) This termination is based upon your failure to *[describe the acts or omissions constituting the default, including the response, if any, to a cure notice or show cause notice*];

(c) Your right to proceed further under the contract *[or a specified portion of the contract, in the case of a partial determination for default]* is hereby terminated;

(d) In accordance with the termination clause of the contract, you may be held liable for any additional costs incurred by the judiciary in purchasing the goods or services terminated from other sources;

(e) By issuance of this notice of termination, the contracting officer has determined that you failure to perform is not excusable.

(f) The judiciary reserves all rights and remedies provided by law or under the contract in addition to its right to hold you liable for excess reprocurement costs.

(g) You have the right to appeal the contracting officer's termination of this contract under the Disputes clause of the contract.

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Glossary of Procurement Terms

Acceptance – See: Acceptance of Offer, or Acceptance of Work.

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

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

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

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

Acquisition – **See:** Procurement. The term acquisition generally only refers to contracts. Procurement is a more comprehensive term that involves other contractual instruments such as purchase orders, delivery or task orders, contracts, etc. Therefore, the judiciary uses the term procurement.

Acquisition Life-Cycle – **See:** Procurement Life-Cycle.

Acquisition Planning – **See:** Procurement Planning.

Adequate Price Competition – This situation exists when two or more responsible offerors, competing independently, submit reasonable priced offers that satisfy the judiciary's expressed requirement. A statement of the facts must support any finding that the price is unreasonable. If there was a reasonable expectation (based on market research or other assessment) that two or more responsible offerors, competing independently, would submit priced offers in response to the solicitation's expressed requirement, even though only one offer is received from a responsible offeror and if:

(1) based on the offer received, the contracting officer can reasonably conclude that the offer was submitted with the expectation of competition, e.g., circumstances indicate that:

(a) the offeror believed that at least one other offeror was capable of submitting a meaningful offer, and

(b) the offeror had no reason to believe that other potential offerors did not intend to submit an offer; or

(2) the determination that the proposed price is based on adequate price competition, is reasonable.

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

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

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

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

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

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

Amendment – A change in a solicitation prior to contract award.

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

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

Anti-Deficiency Act – Requires that no officer or employee of the government may create or authorize an obligation in excess of the funds available, or in advance of appropriations unless otherwise authorized by law.

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

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

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

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

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

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

Bid Bond – **See:** Offer Bond.

Bid Sample – **See:** Offer Sample.

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

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

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

(a) make negotiated equitable adjustments resulting from the issuance of a change order,

(b) definitize letter contract, and

(c) reflect other agreements of the parties modifying the terms of contracts.

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

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

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

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

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

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

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

(a) notifies the contractor that the judiciary no longer needs the requirement,

(b) notifies the contractor of non-availability of funds for contract performance for any subsequent program year; or

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

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

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

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

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

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

Clause – **See:** Contract Clause.

CO – **See:** Contracting Officer.

Codes of Conduct – **See:** Standards of Conduct.

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

(a) Such services are procured for support of a commercial item, regardless of whether such services are provided by the same source or at the same time as the item; and

(b) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government.

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

(a) Catalog price means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(b) Market prices means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

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

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

Compensation – A payment or reimbursement whether monetary or otherwise.

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

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

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

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

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

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

Computer – A device capable of accepting data, performing prescribed operations on the data, and supplying the results of those operations. It includes any device that operates on (1) discrete data by performing arithmetic and logic processes on the data or (2) analog data by performing physical processes on the data.

Computer Data Base – A collection of data in a form capable of being processed and operated on by a computer.

Computer Program – Instructions or statements including, but not limited to, source code, object code, and algorithms, in computer usable form, that cause a computer to perform specified operations. Computer programs may be machine-dependent or machine-independent, and may be general or specific in purpose.

Computer Software – Computer programs, computer data bases, and their documentation.

Computer Software Documentation – Information, including computer listings and printouts in human-readable form, that (1) documents the design or detail of computer software, (2) explains its capabilities, or (3) provides operating instructions for using it.

Conflict of Interest – Because of other activities or relationships, with other person's, a person or organization is unable or potentially unable to render impartial assistance or advice to the judiciary, the person's or organization's objectivity in performing the contract work is or might be otherwise impaired, or a person or organization has an unfair competitive advantage.

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

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

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

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

Construction Contract – Any contract for construction.

Construction Work – The construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term

also includes the supervision, inspection, and other on-site functions incidental to the actual construction.

Construction Alteration, or Repair – All types of work done on a particular building or work at the site thereof, including without limitation, altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, products, or equipment on the site of the building or work by persons employed by the contractor or subcontractor.

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

Consultant – A person who serves primarily as an adviser to an officer or instrumentality of the government, as distinguished from an officer or employee who carries out the judiciary's duties and responsibilities. A consultant provides views or opinions on problems or questions presented by the judiciary, but neither performs nor supervises performance of operating functions. Generally, a consultant has a high degree of broad administrative, professional, or technical knowledge or experience which must make the advice distinctively valuable to the judiciary.

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

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

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

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

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

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

Contract Administration Office – An office that performs assigned post-award functions related to the administration of contracts. At the AO it is referred to as the Contract Administration Branch (CAB).

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

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

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

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

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

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

Contract Option – **See:** Option.

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

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

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

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

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

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

Contracting Officer (CO) – A person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. A single contracting officer may be responsible for duties in any or all of these areas. A person who has direct purchasing authority or has been delegated purchasing authority. The CO is the only judiciary employee who is delegated authority to legally commit the judiciary to the purchase of products and services. The judiciary COs are delegated authority under the Contracting Officers' Certification Program (COCP). **See:** Guide, Vol 14, Ch 1, § 140.

Contracting Officers' Certification Program (COCP) – The judiciary's program for certifying contracting officers. **See:** Guide, Vol 14, Ch 1, § 140.

Contracting Officer's Representative (COR) – An individual to whom the CO delegates certain contract administration responsibilities. At the judiciary the designation is referred to as COTR. **See:** Contracting Officer's Technical Representative (COTR).

Contracting Officer's Technical Representative (COTR) – An individual to whom the CO delegates certain contract administration responsibilities, usually related to

technical acceptance issues. The CO makes the delegation in writing with a copy furnished to the contractor. The designation does not include any authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract.

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

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

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

(a) cost or pricing data;

(b) indirect costs and direct labor rates;

(c) proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation; and

(d) information marked by the contractor as contractor offer information, in accordance with applicable law or regulation.

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

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

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

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

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

(a) supplier quotations;

(b) nonrecurring costs;

(c) information on changes in production methods and in production or purchasing volume;

(d) data supporting projections of business prospects and objectives and related operating costs;

(e) unit-cost trends such as those associated with labor efficiency;

(f) make-or-buy decisions;

(g) estimated resources to attain business goals;

(h) information on management decisions that could have a significant bearing on costs; and

(i) historical actual costs for the same or similar items.

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

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

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

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

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

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

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

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

Decentralized Funds – **See:** Appropriated and Decentralized Funds.

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

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

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

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

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

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

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

Descriptive Literature – Information furnished by offerors as a part of their offers to describe the products offered, such as cuts, illustrations, drawings, and brochures, that shows the characteristics or construction of a product or explains its operation. The term includes only information required to determine acceptability of the product. It

excludes other information such as that furnished in connection with the qualifications of an offeror or for use in operating or maintaining equipment.

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

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

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

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

Discussion – Any oral or written communication between the judiciary and an offeror (other than communications conducted for the purpose of verification) that is initiated by the judiciary and involves information essential for determining the acceptability of an offer or provides the offeror an opportunity to revise its offer.

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

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

Dunn and Bradstreet Universal Numbering System – A numbering system applied by Dunn and Bradstreet to identify business entities.

DUNS – **See:** Dunn and Bradstreet Universal Numbering System.

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

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

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

Evaluation Criteria – See: Evaluation Factors.

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

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

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

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

Expert – A person with excellent qualifications and a high degree of attainment in a professional, scientific, technical, or other field. An expert's knowledge and mastery of the practices, problems, methods and techniques of a field of activity or of a specialized field are clearly superior to those usually possessed by ordinarily competent persons in that activity. An expert usually is regarded as an authority or as a practitioner of unusual competence and skill by other persons in the profession, occupation, or activity.

Fair and Reasonable Price – A price based on reasonable costs under normal competitive conditions and not on lowest possible cost.

Fair Market Price – **See:** Fair and Reasonable Price.

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

Federal Supply Schedule (FSS) – Publications issued by the General Services Administration (GSA) schedule contracting office containing the information for placing

delivery or task orders under indefinite delivery contracts (including requirements contracts) established with commercial firms to obtain commonly used commercial products and services associated with volume buying. Ordering officers issue delivery or task orders directly to the schedule contractors. **See also:** GSA Advantage!.

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

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

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

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

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

F.o.b. (Free on Board) – Used in conjunction with a physical point to determine (1) the responsibility and basis for payment of freight charges; and (2) unless otherwise agreed, the point where title for goods passes to the buyer or consignee.

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

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

Form, Fit, and Function Data – Data relating to an item component, or process that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements; except that for computer software, it means data identifying origin, functional characteristics, and performance requirements

but specifically excludes the source code, algorithm, process, formulas, and machine-level flow charts of the computer software.

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

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

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

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

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

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

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

Gifts – **See:** Gratuities or Gifts.

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

Government – Also referred to as entity of the government. Any entity of the legislative or judicial branch, any executive agency, military department, government corporation,

or independent establishment, the U.S. Postal Service, or any non-appropriated-fund instrumentality of the Armed Forces.

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

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

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

GSA Competition Threshold – The threshold whereby GSA contract actions must be competed ($2,500).

Hire – See: Leasing.

In Writing – **See:** As Written.

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

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

Information Technology – Any equipment, or interconnected system(s) or subsystems(s) of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by an entity. The term includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.

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

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

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

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

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

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

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

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

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

JIT Funds – **See:** Judiciary Information Technology Funds.

J-Net – The judiciary's intranet. Changes to procurement procedures will be posted on the J-Net.

Judiciary – The judicial branch of government. A system of courts of law and the judges of those courts.

Judiciary-Furnished Property – Property in the possession of, or directly acquired by, the judiciary and subsequently made available to the contractor. It includes materials or

other property to contractors in performance of their contracts when doing so will result in significant economies, standardization, expedited production, or when it is otherwise in the judiciary's interest.

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

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

Judiciary Purchase Card Program – A purchase card, similar in nature to a commercial credit card, issued to authorized judiciary personnel to use to acquire and to pay for products and services. **See:** Guide, Vol 14, Ch 1, § 140 (Contracting Officers' Certification Program (COCP)) as it relates to purchase card authorized use. **See also:** Judiciary Purchase Card Program Manual.

Judiciary's Small Purchase Threshold – A limitation specifying that open market purchases must not exceed. The limit is specified in the Guide, Vol 14, § 325.10.

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

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

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

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

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

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

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

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

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

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

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

Must – This is imperative.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OGC – **See:** AO Office of the General Counsel.

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

Open Market Small Purchase Threshold With or Without Competition – The judiciary has established an open market small purchase threshold of $5,000. Open market purchases for $5,000 or less may be made without obtaining competitive quotations when the contracting officer determines the price to be reasonable.

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

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

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

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

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

Outlying Area – Means:

(a) Commonwealths

(1) Puerto Rico;
(2) the Northern Mariana Islands;

(b) Territories

(1) American Samoa;
(2) Guam;
(3) U.S. Virgin Islands; and

(c) Minor outlying islands

(1) Baker Island
(2) Howland Island
(3) Jarvis Island
(4) Johnston Atoll
(5) Kingman Reef
(6) Midway Islands
(7) Navassa Island
(8) Palmyra Atoll
(9) Wake Atoll

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

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

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

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

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

PE – **See:** Procurement Executive, PMD.

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

Penal Sum See: Penal Amount.

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

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

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

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

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

PLO – **See:** Procurement Liaison Officer.

PMD – **See:** Procurement Management Division, Administrative Office of the US Courts.

PO – **See:** Purchasing Officer.

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

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

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

Preliminary Meeting – A meeting to prepare judiciary representatives for a post-award conference. Purposes include: establish an understanding of conference roles and responsibilities; develop a conference agenda, form a unified judiciary team, and identify any unusual or significant contract requirements.

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

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

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

(a) foreseeable costs or delays to the judiciary resulting from such factors as differences in inspection, locations of products, and transportation;

(b) changes made, or requested by the offeror, in any of the provisions of the RFQ, if the change does not constitute grounds for offer rejection;

(c) advantages or disadvantages to the judiciary that might result from making more than one award; and

(d) federal, state, and local taxes which are not exempted.

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

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

Procurement Action – **See:** Procurement Activity.

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

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

Procurement Authority – Delegated authority as a certified contracting officer to process procurements. **See:** Guide, Vol 14, Ch 1, § 140.

Procurement Executive, PMD (PE) – The individual appointed, who is responsible for management direction of the procurement system, including implementation of the unique judiciary procurement procedures.

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

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

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

Procurement Management Division (PMD) – A Division of the Administrative Office of the U.S. Courts responsible for procurement in the judiciary.

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

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

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

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

Procurement Sensitive Information Legend – This document contains procurement sensitive information related to the conduct of a federal agency procurement, the disclosure of which is restricted by the Office of Federal Procurement Policy Act (41 U.S.C. § 423). The unauthorized disclosure of such information may subject both the disclosor and the recipient of the information to contractual, civil and/or criminal penalties as provided by law. Do not copy enclosed materials.

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

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

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

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

Professional Services – Services provided by an individual whose position requires a license or certification, such as a doctor or a certified public accountant.

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

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

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

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

Proprietary – Information owned by an individual or corporation.

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

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

(a) a solicitation or other request for offers for a contract for the procurement of products or services;

(b) an award or proposed award of a contract;

(c) a cancellation of the solicitation or other request; or

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

Protest After Award – A protest filed after contract award.

Protest Before Award – A protest filed before contract award.

Provision – **See:** Solicitation Provision.

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

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

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

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

Quotation – **See:** Quote.

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

Quoter – Any person who submitted a quote.

Ratification – The act of approving an unauthorized commitment by an official who has the authority to do so. The approval of an unauthorized commitment or act results in the act being given effect as if originally authorized. It is not a desirable method of procurement, because it is not in accordance with the judiciary's policies and procedures, and may result in punitive action against the person(s) who committed the unauthorized act.

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

Rating Systems – A rating system suitable for evaluating offers.

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

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

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

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

Rent – See: Leasing.

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

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

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

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

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

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

Responsible Source – **See:** Responsible Prospective Contractor.

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

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

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

RFP – **See:** Request for Proposal.

RFQ – **See:** Request for Quotation.

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

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

Service – The performance of identifiable tasks.

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

(a) maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or modification of products, systems, or equipment;

(b) routine recurring maintenance of real property;

(c) housekeeping and base services;

(d) advisory and assistance services;

(e) operation of judiciary-owned equipment facilities, and systems;

(f) communications services;

(g) architect-engineering;

(h) transportation and related services; and

(i) research and development.

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

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

Severable Services – Services that are continuing and recurring in nature, and that can be separated into components that independently meet a separate and ongoing need of the government. Common examples are court reporters, court interpreters, local area network and help desk support services, etc. To the extent that a need for a specific portion of a continuing service arises in a subsequent fiscal year, that portion is severable and chargeable to appropriations available in the subsequent FY. Generally,

severable services must be charged to the fiscal year(s) in which they are rendered. However, the judiciary has authority to enter into one-year severable service contracts, beginning at any time during the fiscal year and extending into the next fiscal year, and to obligate the total amount of the contract to the appropriation current at the time of the award, provided that performance commences within the same fiscal year as the award.

Shall – An order, promise, or obligation.

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

Signature or Signed – The discrete, verifiable symbol of an individual which, when affixed to a writing with the knowledge and consent of the individual, indicates a present intention to authenticate the writing. This includes electronic symbols as electronic signatures.

Small Purchase – A purchase made using less strict contract forms and procedures. Small purchases involve the use of a purchase order, rather than a contract. This procurement has a monetary restriction. **See:** Guide, Vol 14, § 325.10.30 and Vol 14, § 140.

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

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

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

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

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

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

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

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

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

(a) offer prices submitted in response to a judiciary solicitation for offers, or lists of those offer prices before award;

(b) proposed costs or prices submitted in response to a judiciary solicitation, or lists of those proposed costs or prices;

(c) source selection plans;

(d) technical evaluation plans;

(e) technical evaluations of offers;

(f) cost or price evaluations of offers;

(g) competitive range determinations that identify offers that have a reasonable chance of being selected for award of a contract;

(h) rankings of offers or competitors;

(i) reports and evaluations of source selection panels, boards, or advisory councils; and

(j) other information marked as source selection information based on a case-by-case determination by the contracting officer that its disclosure would jeopardize the integrity or successful completion of the judiciary procurement to which the information relates.

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

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

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

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

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

(a) is used to describe the service to be performed rather than an end-product,

(b) may contain specifications or other descriptions of requirements,

(c) is usually used in contracts for services or research and development.

(d) defines service contract requirements in clear, concise language identifying specific work to be accomplished,

(e) must be individually tailored to consider the period of performance, deliverable items, if any, and the desired degree of performance. **Note:** In the case of task order contracts, the SOW for the basic contract need only define the scope of the overall contract. Individual task orders must define specific task requirements.

Statute – A law enacted by a legislature

Statutory – Enacted, regulated, or authorized by statute.

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

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

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

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

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

Suspended – **See:** Suspension.

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

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

Tax ID Number – A business number or an individual's social security number to be used to identify the business or individual for tax purposes.

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

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

Technically Acceptable Lowest Price – Used when there is a cost or price competition between offers.

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

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

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

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

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

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

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

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

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

TIN – **See:** Tax ID Number.

Total Cost – All projected judiciary costs over the product life as a result of implementing an offeror's offered approach. In addition to the contract prices or costs,

other elements, such as support and in-house costs over the product life for installing, operating, and disposing of the products are included in total cost.

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

Transition Procurement Official – **See:** Designated Transition Procurement Official.

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

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

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

Unilateral – Signed by the contracting officer only.

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

(a) make administrative changes;

(b) issue change orders;

(c) make changes authorized by clauses other than a changes clause (e.g., Property clause, Options clause, Suspension of Work clause); and

(d) issue termination notices.

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

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

Vendor – A term commonly used for source.

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

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

Walsh-Healey Public Contracts Act – Requires that (unless exempted), all contracts subject to the Act and entered into by any instrumentality of the United States, or by the District of Columbia, for the manufacture or furnishing of materials, products, articles, and equipment in any amount exceeding $10,000, must include or incorporate by reference the stipulations required by the Act pertaining to such matters as minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions.

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

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

Within the Scope – The area covered by the procurement.

Work Statement – **See:** Statement of Work.

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

Written – **See:** As Written.