

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

WASHINGTON, D. C. 20544

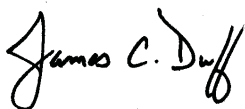
Date: 4/12/11

GUIDE TO JUDICIARY POLICY

TRANSMITTAL 14-003 VOLUME/PART 14 CHAPTER(S) 1, 2, 3, 4, 6

TO: Circuit Executives
Federal Public/Community Defenders
District Court Executives
Clerks, United States Courts
Chief Probation Officers
Chief Pretrial Services Officers
Bankruptcy Administrators
Circuit Librarians
Certified Contracting Officers

FROM: James C. Duff



RE: **PROCUREMENT**

This transmittal provides notice of changes to the *Guide to Judiciary Policy*, Vol. 14 (Procurement):

[Chapter 1 – Overview](#)

[Appendix 1B – Solicitation Provisions and Contract Clauses](#)

[Appendix 1C – Matrix of Solicitation Provisions and Clauses \(Including Key\)](#)

[Chapter 2 – Procurement Planning and Preparation](#)

[Chapter 3 – Purchasing Methods](#)

[Chapter 4 – Types of Contracts and Analysis of Offers](#)

[Chapter 6 – Bonds, Insurance, Taxes, and Intellectual Property](#)

In Chapter 1, new text regarding appropriations law and a cross reference to Volume 13 was added to § 130.20.10.

In Appendix 1B, the pagination was changed to reflect which chapter the clauses/provisions relate to, with each chapter's group of clause/provisions starting with "1" (e.g., 1-1, 2-1, 3-1, etc.). This will enable offices that maintain hard copies to print only those revised pages needed for a specific chapter. Chapter headers have also been inserted at the beginning of each chapter's groups of clauses/provisions. The following changes were also made to specific clauses and provisions:

- **Clause 3-1:** Revised to clarify that purchases are not made directly from the Committee for Purchases from People Who Are Blind or Severely Disabled, but are from qualified nonprofit agencies participating in the program.

Guide Transmittal 14-003 – Procurement

- **Clause 3-3:** Updated to reflect the new version of Clause 3-155 (incorporated by reference), and to add new Service Contract Act exemption clauses and conditions for applicability.
- **Provision 3-5:** Revised to simplify paragraph (g) and to delete text regarding “common parent,” which applies only to executive branch agencies.
- **Provision 3-10:** Deleted.
- **Provision 3-20:** Added representation regarding delinquent federal taxes to clarify the specific circumstances under which tax delinquencies are so serious that suspension or debarment should be considered.
- **Provision 3-60 and Clause 3-65:** Deleted.
- **Provision 3-80:** Deleted.
- **Provision 3-90:** Deleted.
- **Provision 3-100:** Revised paragraph (c)(3)(ii)(A) to clarify when late proposals may be considered.
- **Clause 3-105:** Removed word “Negotiation” from title.
- **Provision 3-125:** Deleted.
- **Clause 3-155:** Updated dollar threshold from \$10,000 to \$15,000 to reflect a statutory change, and added a final sentence to paragraph (2).
- **Clause 3-160:** Added a statement to paragraph (b) on administrative exemptions; revised paragraph (c)(2)(ii) to require use of the Standard Form 1444 for wage conformance actions; changed “judiciary prime contractor” to “government prime contractor,” since applicability of the Act is a function of the entity’s business with all federal organizations; and corrected organizational names in paragraphs (f) and (r).
- **Clauses 3-175 and 3-180:** Revised to distinguish between fixed hourly rates and other types of unit priced labor, such as a fixed price per day.
- **Provision 3-195 (revised), and Clause 3-215, Provision 3-220 and Clause 3-225 (added):** Based on regulatory changes to 29 CFR part 4, these amendments revise the current Service Contract Act (SCA) exemption and add an SCA exemption for contracts for certain additional services (e.g., hotel/motel services, vehicle maintenance, relocation services) that meet specific criteria.
- **Clause 3-300:** Revised instructions for requesting a DUNS number and lowercased terms such as “contractor,” “contracting officer,” and “offeror.”
- **Provisions 4-27 and 4-28 (added) and Clause 4-30 (revised):** These provisions and the clause are for use in labor-hour or time-and-materials contracts over the small purchase threshold. The changes deal with ensuring that subcontractor labor is priced fairly.
- **Clause 6-20:** Revised to combine with Clause 6-30, which was deleted.
- **Clause 7-20:** “PIV Card” was changed to Facility Access Card.
- **Clauses 4-10, 6-1 and 7-125:** Minor rephrasing.

All changes to Appendix 1C are of a conforming nature to ensure titles of clauses/provisions are consistent with Appendix 1B, and to reflect clauses and provisions that have been “Reserved.”

Guide Transmittal 14-003 – Procurement

In Chapter 2, § 220.50.20 was revised to clarify guidance on obligation of funds for various contractual situations and to add new guidance on the use of Blanket Delivery Orders (BDO). Also, certain provisions in § 220.55 were amended to clarify guidance regarding the authority to make advance payment to other federal agencies and when purchasing publications.

In Chapter 3, the following changes were made:

- **§ 325.25.10 (Service Contract Act):** A new exemption was added, along with guidance on the use of new provisions and clauses related to the new exemption, and all guidance related to SCA provisions and clauses was re-organized to § 325.25.80.
- **§ 325.45.10:** Added a paragraph on the use of unpriced purchase orders.
- **§ 325.45.60:** Updated to authorize the use of BDO with a Blanket Purchase Agreement.
- **§ 330.70.10:** Revised to provide detailed guidance on the award of formal contracts exceeding the small purchase threshold.
- **§ 330.70.30:** Revised to delete the requirement to disclose how many offers had been received.
- **§ 335.10.40:** Revised to clarify guidance on when the AO 370 must be completed.

Also, in several places in Chapter 3, text prescribing Procurement Executive (PE) approval for AO actions was removed. These will be the subject of internal guidance from the PE to managers within PMD. Other changes reflect the clause/provision changes made to Appendix 1C.

In Chapter 4, the following changes were made:

- **§ 410.30.60(e):** Added provision on the use of Blanket Delivery Orders (BDO) and a cross-reference to Volume 12 on the use of labor-hour contracts for temporary help services, and deleted the requirement for PE approval for the use of labor contracts for temporary help services as well as for expert services when a PMD approved template is used.
- **§ 410.40.35:** Added to provide guidance on the use of new provisions relating to labor-hour and time-and-materials contracts.
- **§ 410.45.50:** Converted into a table, with the new provisions added to it.

In Chapter 6, § 630.20.10 through § 630.20.30 have been reserved, as they merely reiterated the requirements incorporated in Clause 6-20.

Significant changes are detailed in the Redline Comparison below. All other changes are technical corrections. Questions regarding this transmittal may be directed to the Office of Finance and Budget, Procurement Management Division, at 202-502-1330.

REDLINE COMPARISON REFLECTING CHANGES

§ 130 Procurement

[. . .]

§ 130.20 Procurement Statutes

§ 130.20.10 Purpose

Statutes related to Special Delegated Procurement Programs are set forth with each program's description.

See: [§ 120.40](#). 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.

[Appendix 1B]

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

Include the following clause as prescribed in [§ 310.20.70](#).

Contractor Use of Mandatory Sources of Products or Services (~~JAN~~APR 200311)

- (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 (~~JWOD~~) ([41 U.S.C. § 48](#)). 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 schedule.
- (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 a ~~JWOD~~AbilityOne central nonprofit agency has authorized purchase from other sources.
- (c) Price and delivery information for ~~the~~ mandatory products is available from the contracting officer for ~~the~~ products obtained through the DLA/GSA/VA distribution facilities. For mandatory products or services ~~that are~~ 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 ~~JWOD~~AbilityOne central nonprofit agencies are:

(1) National Industries for the Blind (NIB)
1310 Braddock Place
Alexandria, VA ~~22314~~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)

REDLINE COMPARISON REFLECTING CHANGES

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 (~~SEP~~APR 2010~~1~~)

[. . .]

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

[. . .]

(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](#) (~~JAN~~APR 200311) (Applies to product procurements~~purchase orders~~ over \$105,000 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, as amended](#) (JAN 2003) (Applies ~~if the to~~ any purchase order ~~amount is~~ over \$2,500 ~~and will require, 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.)

[. . .]

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

[. . .]

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.)

[. . .]

(end)

REDLINE COMPARISON REFLECTING CHANGES

Provision 3-5, Taxpayer Identification and Other Offeror Information

Include the following provision as prescribed in [§ 325.30.20\(b\)](#) and [§ 330.10.30\(a\)](#).

Taxpayer Identification and Other Offeror Information (~~SEP~~APR 2010~~1~~)

(a) Definitions.

~~“Common parent,” as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its federal income tax returns on a consolidated basis, and of which the offeror is a member.~~

“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) ~~through~~and (f) 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 6050M~~, 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.

[. . .]

(f) ~~Common Parent~~

~~[] Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.~~

~~Name and TIN of common parent~~

~~Name _____~~

~~TIN _____~~

(g) Contractor representations.

~~Definitions. As used in this provision—~~

~~“Women-owned business concern” means a business concern—~~

~~(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and (2) whose The offeror represents as part of its offer that it is 51% owned and the management and daily business operations are controlled by one or more members of the selected socio-economic group(s) below: women.~~

~~“Minority-owned business concern” means a business concern (1) which is at least 51 percent owned by one or more individuals within one or more of the categories listed below; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more individuals within one or more of the categories listed below; and (2) whose management and daily business operations are controlled by one or more individuals within one or more of the categories listed below.~~

~~Black American _____~~

REDLINE COMPARISON REFLECTING CHANGES

Provision 3-5 [cont'd]

☐ 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)-

~~Representations~~

~~The offeror represents as part of its offer that it ☐ is, ☐ is not minority-owned business concern.~~

~~The offeror represents as part of its offer that it ☐ is, ☐ is not a women-owned business concern~~

☐ Individual/concern, other than one of the preceding.

(end)

Provision 3-10, ~~Data Universal Numbering System (DUNS) Number~~RESERVED

[Provision deleted]

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

Include the following provision as prescribed in [§ 330.10.30\(d\)](#).

Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters (~~JAN~~APR 200311)

- (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;

REDLINE COMPARISON REFLECTING CHANGES

Provision 3-20 [cont'd]

- (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; ~~and~~
- (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.

REDLINE COMPARISON REFLECTING CHANGES

Provision 3-20 [cont'd]

- (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~~s~~," for the purposes of this certification, means an officer~~s~~; director~~s~~; owner~~s~~; partner~~s~~; or ~~and~~; person~~s~~ having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a ~~subsidiary~~, division, or business segment, and similar positions).
- ~~(3)~~ 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.

[. . .]

Provision 3-60, RESERVED~~Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions~~

[Provision deleted]

Clause 3-65, RESERVED~~Limitation on Payments to Influence Certain Federal Transactions~~

[Clause deleted]

Provision 3-80, RESERVED~~Submission of Offers~~

[Provision deleted]

REDLINE COMPARISON REFLECTING CHANGES

Provision 3-90, ~~RESERVED~~~~Late Submissions, Modifications and Withdrawals of Offers~~

[Provision deleted]

Provision 3-100, Instructions to Offerors

Include the following provision as prescribed in [§ 330.10.30\(t\)](#).

Instructions to Offerors (~~SEP~~APR 2010~~1~~)

[. . .]

(c) Submission, Modification, Revision, and Withdrawal of Offers

- (1) Unless some other methods (e.g., ~~electronic commerce or~~ facsimile) ~~are~~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 electronic~~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 electronic~~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

[. . .]

- (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:

REDLINE COMPARISON REFLECTING CHANGES

Provision 3-100 [cont'd]

- (1) ~~if it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the judiciary infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or~~
- ~~(2)~~ there is acceptable evidence to establish that it was received at the judiciary installation office designated for receipt of offers ~~and was under the judiciary's control~~ prior to the time set for receipt ~~of offers~~; or
- ~~(32)~~ 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 installation office includes the time/date stamp of that installation office on the offer wrapper, other documentary evidence of receipt maintained by the installation office, or oral testimony or statements of judiciary personnel.

[. . .]

(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-indisclosed — in~~ whole or in ~~part-for part — for~~ any purpose other than to evaluate this offer. If, however, a contract is awarded to this offeror as a result ~~of-or of — or~~ in connection ~~with-the 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

Provision 3-100 [cont'd]

- (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.

[. . .]

(end)

REDLINE COMPARISON REFLECTING CHANGES

Clause 3-105, Audit and Records – Negotiation

Include the following clause as prescribed in [§ 330.10.30\(u\)](#).

Audit and Records –~~Negotiation~~ (~~JAN~~APR 2010~~1~~)

[. . .]

- (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.
- (h) 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 3-125, ~~RESERVED~~Acknowledgment of Solicitation Amendments

[Provision deleted]

Clause 3-155, Walsh-Healey Public Contracts Act

Include the following clause as prescribed in [§ 330.10.30\(dd\)](#).

Walsh-Healey Public Contracts Act (~~JAN~~APR 200~~3~~1~~1~~)

If this contract is for the manufacture or furnishing of materials, products, articles or equipment in an amount that exceeds or may exceed \$10~~5~~,000, and is subject to the Walsh-Healey Public Contracts Act, as amended ([41 U.S.C. §§ 35-45](#)), the following terms and conditions apply:

[. . .]

- (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 (41 U.S.C. 40).

(end)

REDLINE COMPARISON REFLECTING CHANGES

Clause 3-160, Service Contract Act of 1965, ~~as Amended~~

Include the following clause as prescribed in § 325.25.80(a) ~~and § 330.10.30(ee)~~.

Service Contract Act of 1965, ~~as Amended~~ (JANAPR 200311)

(a) Definitions

“Act”, as used in this clause, means the Service Contract Act of 1965, ~~as amended~~ (41 U.S.C. 351, et seq.).

“Contractor”, ~~as used in when~~ this clause ~~or is used~~ in any subcontract, shall be deemed to refer to the subcontractor, except in the term “~~Judiciary P~~” “government prime C contractor.”

“Service Employee”, ~~as used in this clause~~, 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. 356, as interpreted in Subpart C of 29 CFR Part 4.

[. . .]

(c) Compensation

[. . .]

(2) [. . .]

(ii)

The is conforming procedure shall be initiated by the contractor prior to the performance of contract work by the unlisted class of employees. The contractor shall submit ~~a written report of the proposed conforming action, including information regarding the agreement or disagreement of the employees' authorized representative or, the employees themselves, shall be submitted by the contractor~~ 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 ~~action~~ classification and rate and promptly submit ~~a report of it, including the contractor's information, 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.

REDLINE COMPARISON REFLECTING CHANGES

Clause 3-160 [cont'd]

[. . .]

(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 ~~shall~~should be maintained between job classifications based on the skill required and the duties performed.

[. . .]

(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 ~~will~~shall be a violation of the Act and this contract.

[. . .]

(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; ~~will~~ 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.

[. . .]

(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 ~~the~~is 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.

REDLINE COMPARISON REFLECTING CHANGES

Clause 3-160 [cont'd]

(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 ~~athe~~ minimum wage attachment for this contract setting forth such collectively bargained ~~agreement~~ 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 of Service Contract Appeals, 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.

[. . .]

(i) Records

[. . .]

- (3) Failure to make and maintain or to make available these records for inspection and transcription ~~will~~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.

[. . .]

REDLINE COMPARISON REFLECTING CHANGES

Clause 3-160 [cont'd]

(k) Withholding of Payments and Termination of Contract

The contracting officer will withhold or cause to be withheld from the judiciarygovernment prime contractor under this or any other judiciarygovernment 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 judiciarygovernment may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost.

[. . .]

(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 judiciarygovernment 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 judiciarygovernment 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 judiciaryfederal 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.

[. . .]

(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 judiciarygovernment contracts by virtue of the sanctions imposed pursuant to section 5 of the Act.

(2) No part of this contract will be subcontracted to any person or firm ineligible for award of a judiciarygovernment contract pursuant to section 5 of the Act.

[. . .]

REDLINE COMPARISON REFLECTING CHANGES

Clause 3-160 [cont'd]

(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 ~~judiciary~~government business:

- (1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, ~~or~~ 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](#)).

[. . .]

(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 ~~Bureau~~Office of Apprenticeship ~~and~~ Training, ~~Employment~~Employer, and ~~Training Administration~~Labor Services (OATELS), U.S. Department of Labor. Any employee who is not registered as an apprentice in ~~a~~ written ~~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, pPart 31](#). However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision:

[. . .]

- (3) the employer shall be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through ~~a~~the combination of direct wages and tip credit; and

[. . .]

(end)

REDLINE COMPARISON REFLECTING CHANGES

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 ~~§ 33025.4025.3080(ffb)~~ and ~~§ 410.75.65(c)~~.

Fair Labor Standards Act and Service Contract Act – Price Adjustment (Multi-Year and Option Contracts) (~~JAN~~APR 20101)

[. . .]

- (d) The contract price~~-or~~, 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:
- [. . .]
- (e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (~~cd~~) 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 judiciarygovernment 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 ~~will~~shall continue performance pending agreement on or determination of any such adjustment and its effective date.

[. . .]

(end)

Clause 3-180, Fair Labor Standards Act and Service Contract Act – Price Adjustment

Include the following clause as prescribed in ~~§ 33025.4025.3080(ggc)~~.

Fair Labor Standards Act and Service Contract Act – Price Adjustment (~~JAN-2003~~APR 2011)

[. . .]

- (c) The contract price~~-or~~, 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:
- [. . .]
- (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 judiciarygovernment 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~~-or~~, 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.

[. . .]

(end)

REDLINE COMPARISON REFLECTING CHANGES

Provision 3-195, Exemption from Application of the Service Contract Act ~~Provisions for~~ Contracts for Maintenance, Calibration, ~~and/or~~ Repair of Certain ~~Information Technology, Scientific and Medical and/or Office and Business~~ Equipment ~~—Contractor—~~ Certification

Include the following provision as prescribed in § 325.3025.2080(b) and § 330.10.30(ii).

Exemption from Application of the Service Contract Act ~~Provisions for~~ Contracts for Maintenance, Calibration, ~~and/or~~ Repair of Certain ~~Information Technology, Scientific and Medical and/or Office and Business~~ Equipment ~~—Contractor—~~ Certification (JANAPR 200311)

- (a) The offeror shall check following certification ~~shall be checked~~:

CERTIFICATION

The offeror ~~certifies~~ [] does [] does not certify ~~[] that~~ —

- (1) the items of equipment to be serviced under this contract are ~~commercial items which are~~ used regularly for other than judiciary government purposes, and are sold or traded by the ~~contractor~~ 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 ~~contract~~ services ~~are~~ will be furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, ~~and/or repair of certain information technology, scientific and medical and/or office and business equipment.~~ or repair of equipment.
 - (i) An "established catalog price" is a price ~~(including discount price) recorded~~ included in a catalog, price list, schedule, or other ~~verifiable and established record~~ form that is regularly maintained by the manufacturer or the ~~contractor and 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 ~~ordinary and usual~~ trade between buyers and sellers free to bargain, which can be substantiated ~~by data~~ from sources independent of the manufacturer or contractor; and
 - (3) the ~~contractor utilizes the same~~ compensation (wage and fringe benefits) plan for all service employees performing work under the contract ~~as is~~ the ~~contractors same as that~~ uses ~~sd~~ for these employees and equivalent employees servicing the same equipment of commercial customers.
- (b) ~~If a negative certification is made and a~~ 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 wage determination is not attached to the solicitation, the contractor of 1965, will not be included in any resultant contract to this offeror.

REDLINE COMPARISON REFLECTING CHANGES

Provision 3-195 [cont'd]

- (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-
- (e) Failure, 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 clauseprovision or to contact the contracting officer as required in paragraph (bc) of this clause may render the offer non-responsiveprovision.

(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).

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.

REDLINE COMPARISON REFLECTING CHANGES

Clause 3-215 [cont'd]

- (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).

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.

REDLINE COMPARISON REFLECTING CHANGES

Provision 3-220 [cont'd]

- (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).

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.

REDLINE COMPARISON REFLECTING CHANGES

Clause 3-225 [cont'd]

- (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).

Central Contractor Registration (~~JUL~~APR 200711)

- (a) Definitions. As used in this clause –

"Central Contractor Registration (CCR) database" means the primary Government repository for ~~E~~Contractor information required for the conduct of business with the Government.

[. . .]

"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 ~~parent~~ concern.

"Registered in the CCR database" means that –

- (1) The ~~E~~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 ~~E~~Contractor will be required to provide consent for TIN validation to the Government as a part of the CCR registration process.

REDLINE COMPARISON REFLECTING CHANGES

Clause 3-300 [cont'd]

- (b) [. . .]
- (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 ~~E~~Contracting ~~O~~Officer to verify that the offeror is registered in the CCR database.
- (c) If the offeror does not have a DUNS number, it ~~may obtain one by calling~~ 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 or via if located within the Internet at www.dnb.com. Vendors United States; or
- (ii) if located outside the United States ~~should contact~~ 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 request a DUNS number.
- ~~(d) If the Offeror~~ 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 ~~E~~Contracting ~~O~~Officer, the ~~E~~Contracting ~~O~~Officer will proceed to award to the next otherwise successful registered ~~O~~Offeror.

REDLINE COMPARISON REFLECTING CHANGES

Clause 3-300 [cont'd]

- (d) If the offeror does not become registered in the CCR database within the time prescribed by the Econtracting Officer, the Econtracting Officer will proceed to award to the next otherwise successful registered Offeror.
- [. . .]
- (f) The Econtractor 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 Econtractor 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 Econtractor 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 Econtractor shall provide the responsible Econtracting 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 Econtracting Officer. The Econtractor must provide with the notification sufficient documentation to support the legally changed name.
- (2) If the Econtractor 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 ~~that~~ showsshowing the Econtractor to be other than the Econtractor 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 Econtractor 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 Econtractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than the Econtractor 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 Econtractors may obtain information on registration and annual confirmation requirements via the internet at ~~www~~http://www.ccr.gov or by calling 1-888-227-2423, or 269-961-5757.

(end)

Clause 4-10, Order Limitations

Include the following clause as prescribed in § 410.30.70(b).

Order Limitations (~~JAN~~APR 200311)

REDLINE COMPARISON REFLECTING CHANGES

Provision 4-27, Time-and-Materials/Labor-Hour Proposal Requirements – Competitive Pricing

Include the following provision as prescribed in § 410.45.50(a)

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)

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.

REDLINE COMPARISON REFLECTING CHANGES

Clause 4-30, Payment (Time-and-Materials and Labor-Hour Contracts)

Include the following clause as prescribed in ~~§ 410.40.40~~ and ~~§ 410.45.50(c)~~.

Payment (Time-and-Materials and Labor-Hour Contracts) (~~OCT~~APR 200611)

(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:

~~(a1)~~ 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 ~~schedule~~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.

REDLINE COMPARISON REFLECTING CHANGES

Clause 4-30 [cont'd]

- (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 time cards, or 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 ~~in writing~~ by the contracting officer or authorized representative.
- (2vii) Unless otherwise prescribed in the ~~schedule~~contract, the contracting officer ~~will withhold~~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 ~~this~~ 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 ~~execution~~contractor executes and delivery ~~of as the~~ release ~~by the contractor as provided in paragraph (f) of this section.~~
- (3)— Unless the schedule required by paragraph (g) of this clause.
- (viii) Unless the contract prescribes otherwise, the hourly rates in the ~~schedule~~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 ~~schedule~~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 ~~schedule~~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 ~~and Subcontracts~~

—(1)— ~~The contracting officer will determine allowable costs of direct materials.—~~

(1) For the purposes of this clause –

- (i) Direct materials, ~~as used in this clause, are 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.

REDLINE COMPARISON REFLECTING CHANGES

Clause 4-30 [cont'd]

~~(2) — The contractor may include reasonable and allocable material handling costs in the charge for material to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials in accordance with 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 usual accounting practices.

~~(3) — The 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 products and services purchased directly for the contract only when payments of cash, checks, or other forms of payment have been made for such purchased products or services.

~~(4) (i) — The judiciary will reimburse allowable cost of materials provided the contractor for costs of subcontracts that are authorized under the Subcontracts clause of this contract, provided, that the costs are consistent with subparagraph (b)(5) of this clause.~~

~~(ii) — The judiciary will limit reimbursable costs in connection with subcontracts to the amounts paid for products and services purchased directly for the contract only when the contractor has made or will make payments of cash, checks, or other forms of payment to the subcontractor:~~

~~(A) —~~

(i) has made payments for materials in accordance with the terms and conditions of a subcontract the agreement or invoice; and or

~~(B) ii) ordinarily prior to makes these payments within 30 days of the submission of the contractor's next payment request to the judiciary:~~

~~(iii) — The judiciary will not reimburse the contractor for any costs arising from the letting, administration, or supervision of performance of the subcontract, if the costs are included in and such payment is in accordance with the terms and conditions of the agreement or invoice.~~

REDLINE COMPARISON REFLECTING CHANGES

Clause 4-30 [cont'd]

- (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 payable under paragraph (a)(1) of this clause.
- (56) To the extent ~~possible~~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, ~~allowances, credits, salvage,~~ 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.

REDLINE COMPARISON REFLECTING CHANGES

Clause 4-30 [cont'd]

(cd) 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 schedulecontract, and the contractor agrees to use its best efforts to perform the work specified in the schedulecontract 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 schedulecontract, 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 performingthe 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 performingthe 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 ~~then~~ 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.

(de) Ceiling Price

The judiciary will not be obligated to pay the contractor any amount in excess of the ceiling price in the schedulecontract, and the contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the schedulecontract, unless and until the contracting officer ~~will have~~notifieds the contractor in writing that the ceiling price has been increased; and ~~will have~~specifieds 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 schedulecontract has been increased, any hours expended ~~or~~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.

(ef) Audit

At any time ~~or times~~ before final payment under this contract, the contracting officer may request audit of the invoices or vouchers and ~~substantiating materials~~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 ~~substantiating materials~~supporting documentation, and upon compliance by the contractor with ~~any required release and all other~~ 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 ~~substantiating materials~~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.

REDLINE COMPARISON REFLECTING CHANGES

Clause 4-30 [cont'd]

(fg) Assignment and Release of Claims

[. . .]

- (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

[. . .]

~~(g) — Refunds~~

~~— The contractor agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the contractor or any assignee, that arise under the materials portion of this contract and for which the contractor has received reimbursement, shall be paid by the contractor to the judiciary. 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, an assignment to the judiciary of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to the contracting officer.~~

~~(h) — Interim Payments~~

~~— (1) — Interim payments made prior to the final payment under the contract are contract financing payments. The judiciary is not subject to any interest penalty and contract financing payments are also not subject to any interest penalty.~~

~~— (2) — The designated payment office may make interim payments for contract financing after the designated billing office receives a proper payment request. In the event that the judiciary requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.~~

(end)

Alternate I (APR 2011): In accordance with § 410.45.50(c), 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.

REDLINE COMPARISON REFLECTING CHANGES

Clause 6-1, Performance Bond Requirements

Include the following clause as prescribed in [§ 610.20.30\(a\)](#). If the penal amount is less than 100 percent of the contract price, modify the clause accordingly.

Performance Bond Requirements (~~JAN~~APR 200311)

- (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.

[. . .]

- (e) The bonds shall be in the form of a firm commitment, supported by corporate sureties whose names ~~appear on the list contained~~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)

Clause 6-20, Insurance – Work ~~on~~On or Within a Judiciary ~~Installation~~Facility

Include the following clause as prescribed in [§ 630.20.40\(a\)](#).

Insurance – Work ~~on~~On or Within a Judiciary ~~Installation~~Facility (~~JAN~~APR 200311)

- (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 ~~required in the schedule or elsewhere in the contract.~~

~~(b) — Before commencing work:~~

(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.

REDLINE COMPARISON REFLECTING CHANGES

Clause 6-20 [cont'd]

(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 ~~notify the contracting officer in writing that the required insurance has been obtained. The policies 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: [. . .]

(ee) The contractor shall insert the substance of this clause, including this paragraph (ee), in subcontracts under this contract that require work ~~on~~in a judiciary ~~installation~~facility and shall require subcontractors to provide and maintain the ~~insurance required in the schedule or elsewhere in the contract~~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 6-30, ~~RESERVED~~ Insurance

[Clause deleted]

Clause 7-20, Security Requirements

Include the following clause as prescribed in [§ 330.10.30\(o\)](#) and [§ 715.55\(e\)](#).

Security Requirements (~~JAN~~APR 2010~~1~~)

(a) Definitions. As used in this clause:
[. . .]

~~—"PIV Card" means Personal Identity Verification (PIV) Card, a judiciary-issued identification credential (identification badge).-~~

[. . .]

REDLINE COMPARISON REFLECTING CHANGES

Clause 7-20 [cont'd]

(d) PIV Facility Access Cards (FAC).

The contractor shall be responsible for all PIV Facility Access Cards or other government identification cards issued to the contractor's employees and shall immediately notify the COTR if any PIV 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 PIV Card 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 PIV Card FAC. Upon expiration of this contract, the COTR will instruct the contractor as to how to return all judiciary-issued PIV Cards FACs not previously returned. The contractor shall not return PIV Cards FACs to any person other than the individual(s) named by the COTR.

[. . .]

(end)

Clause 7-125, Invoices

Include the following clause as prescribed in § 740.20.30.

Invoices (JANAPR 2010)

[. . .]

(5) any applicable payment discount terms;

[. . .]

§ 220 Terms and Conditions

[. . .]

§ 220.50 Funding Contract Awards

[. . .]

§ 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 price amount of a labor-hour or time-and-materials contract for the entire awarded period of performance; or the estimated cost and any 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. During a period of a continuing resolution 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 must, whether severable or non-severable, may be incrementally funded:

~~(b)~~ If the contract is incrementally funded (which is permissible in multi-year, labor-hour, time-and-materials, or cost-reimbursement contracts), funds are obligated to cover whatever portion of the total price or estimated cost and corresponding increment of fee the judiciary determines to be appropriate at the discretion of the judiciary organization awarding or administering the contract.

REDLINE COMPARISON REFLECTING CHANGES

§ 220.50.20 [cont'd]

- (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.

§ 220.55 Contract Financing

[. .]

§ 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)-above, 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: ~~In addition to commercial advance payment, p~~Payment in advance is ~~also~~ permitted for publications, whether printed or electronic, under 31 U.S.C. § 3324(d)(2). Advance payment for publications, 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

[. .]

- (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. ~~In addition to commercial advance payment and advance payment for publications, the judiciary may make payment in advance when the vendor is another federal agency. See: Guide, Vol 14, § 550 (Interagency Agreements (IAs) and Memoranda of Understanding (MOUs)). Advance payment to other federal agencies is not subject to the conditions of this delegation.~~
- (c) The judiciary may ~~also~~ 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)).

REDLINE COMPARISON REFLECTING CHANGES

§ 325 Small Purchase Procedures

[. . .]

§ 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 ~~service~~ 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, § 130.20.6055. 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.

[. . .]

§ 325.25.30 **Exceptions**

~~There are exceptions to SCA. For example, professional services or services for the maintenance and repair of automation equipment and~~**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 are excepted, if the services are performed on the office/business machines by, 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.

REDLINE COMPARISON REFLECTING CHANGES

§ 325.25.80 Required Clauses and Provisions [table]

Clause or Provision	Include in ...
(a) <u>Clause 3-160, Service Contract Act of 1965, as Aamended</u>	<p>every<u>solicitations and</u> contracts s over \$2,500 <u>principally</u> for services covered by the Act <u>and performed in the United States, Puerto Rico, Guam or the U.S. Virgin Islands,</u> 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; <u>except if the award includes:</u></p> <p>(1) <u>Clause 3-215, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements; or</u></p> <p>(2) <u>Clause 3-225, Exemption from Application of the Service Contract Act to Contracts for Certain Services - Requirements</u></p>
(b) <u>Clause 3-175, Fair Labor Standards Act and Service Contract Act – Price Adjustment (Multi-Year And Option Contracts)</u>	<p><u>solicitations and contracts for fixed price services that:</u></p> <p>(1) <u>include Clause 3-160;</u></p> <p>(2) <u>exceed the judiciary's small purchase threshold; and</u></p> <p>(3) <u>include options to extend the period of performance or solicit a multi-year proposal.</u></p>
(c) <u>Clause 3-180, Fair Labor Standards Act and Service Contract Act – Price Adjustment</u>	<p><u>solicitations and contracts for fixed price services that:</u></p> <p>(1) <u>include Clause 3-160;</u></p> <p>(2) <u>exceed the judiciary's small purchase threshold; and</u></p> <p>(3) <u>do not include options to extend the period of performance or solicit multi-year proposals.</u></p>
(d) <u>Provision 3-195, Exemption from Application of the Service Contract Act Provisions forto Contracts for Maintenance, Calibration, and/oror Repair of Certain Information Technology, Scientific and Medical and/or Office and Business Equipment-ContractorEquipment – Certification</u>	<p>any solicitation callings<u>solicitations</u> for the maintenance, calibration, and/or repair of information technology, scientific and medical, and office and business equipment if the CO determines that<u>types of services listed at § 325.25.30(a)</u> when the resultant award may be exempt from Service Contract Act coverage:</p>

REDLINE COMPARISON REFLECTING CHANGES

<p><u>(e) Clause 3-200, Service Contract Act – Place of Performance Unknown</u></p>	<p><u>solicitations and contracts when the place of performance is unknown at the time the solicitation is issued. When the procurement is subject For additional clauses related to the Service Contract Act, see: § 330.10.30 (ff), (jj) and II): and publicizing is required (see: § 315.10), the CO will include a statement in the notice to the effect that:</u></p> <p><u>(1) the place of performance is unknown at the time the solicitation was issued;</u></p> <p><u>(2) the CO has requested wage determinations for the possible places or areas of performance; and</u></p> <p><u>(3) the CO will request wage determinations for additional possible places of performance if asked to do so in writing.</u></p>
<p><u>(f) Clause 3-215, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Requirements</u></p>	<p><u>solicitations for the types of services listed at § 325.25.30(a) when the resultant award may be exempt from Service Contract Act coverage;</u></p> <p><u>resulting contracts when the successful offeror has affirmatively certified that it qualifies for exemption</u></p>
<p><u>(g) Provision 3-220, Exemption from Application of the Service Contract Act to Contracts for Certain Services – Certification</u></p>	<p><u>solicitations for the types of services listed at § 325.25.30(b) when the resultant award may be exempt from Service Contract Act coverage</u></p>
<p><u>(h) Clause 3-225, Exemption from Application of the Service Contract Act to Contracts for Certain Services – Requirements</u></p>	<p><u>solicitations for the types of services listed at § 325.25.30(b) when the resultant award may be exempt from Service Contract Act coverage;</u></p> <p><u>in resulting contracts when the successful offeror has affirmatively certified that it qualifies for exemption</u></p>

§ 325.30 Soliciting Under Small Purchase Procedure

[. . .]

§ 325.30.20 Written Solicitations

[. . .]

- (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](#). ~~If the RFQ is for services for the maintenance, calibration, and/or repair of information technology, scientific and medical, and office and business equipment, it must also include Provision 3-195, Exemption from Application of Service Contract Act Provisions. These two provisions~~ This provision must be included in full text to enable the vendor to provide the information requested ~~by them.~~ For additional clauses and provisions related to solicitations for services and when to include them, see: § 325.25.80.

REDLINE COMPARISON REFLECTING CHANGES

§ 325.45 Ordering Methods Under Small Purchase Procedures

§ 325.45.10 Purchase Order

[. . .]

(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)).

§ 325.45.60 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.

REDLINE COMPARISON REFLECTING CHANGES

§ 330 Standard Competitive Contracting Procedures

§ 330.10 Applicability

[. . .]

§ 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**). ~~Include the listed provisions or clauses in all solicitations and contracts~~ unless the prescription indicates otherwise.

[. . .]

(b) ~~Provision 3-10, Data Universal Numbering System (DUNS) Number~~Reserved;

[. . .]

(l) ~~Provision 3-60, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions~~;

~~(m) Clause 3-65, Limitation on Payments to Influence Certain Federal Transactions~~Reserved;

(m) Reserved;

[. . .]

(p) ~~Provision 3-80, Submission of Offers~~Reserved;

[. . .]

(r) ~~Provision 3-90, Late Submissions, Modifications and Withdrawal of Offers~~Reserved;

[. . .]

(u) Clause 3-105, Audit and Records ~~— Negotiation~~;

[. . .]

(x) ~~Provision 3-125, Acknowledgment of Solicitation Amendments~~Reserved

[. . .]

(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 \$105,000;

(ee) ~~Clause 3-160, Service Contract Act of 1965, as Amended is included in every solicitation and award for services covered by the Act expected to exceed \$2,500 or modified to exceed \$2,500. This includes indefinite delivery contracts and ordering agreements when orders are expected to aggregate more than \$2,500;~~

~~(ff) Clause 3-175, Fair Labor Standards Act and Service Contract Act — Price Adjustment (Multi-Year And Option Contracts) is included in solicitations and contracts when:~~

~~(1) A fixed price service contract is solicited;~~

~~(2) The solicitation includes Clause 3-160;~~

~~(3) The award is expected to exceed the judiciary's small purchase threshold; and~~

~~(4) The solicitation includes options to extend the period of performance or is a multi-year contract.~~

~~(gg) Clause 3-180, Fair Labor Standards Act and Service Contract Act — Price Adjustment is included in solicitations and contracts when:~~

~~(1) A fixed price service contract is solicited;~~

REDLINE COMPARISON REFLECTING CHANGES

§ 330.10.30 [cont'd]

- ~~(2) The solicitation includes Clause 3-160;~~
- ~~(3) The award is expected to exceed the judiciary's small purchase threshold; and~~
- ~~(4) The solicitation does not include options to extend the period of performance and does not solicit multi-year proposals. 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) Provision 3-195, Exemption from Application of Service Contract Act Provisions is included in any solicitation calling for the maintenance, calibration, and/or repair of information technology, scientific and medical, and office and business equipment if the CO determines that the resultant award may be exempt from Service Contract Act coverage;~~
- ~~(jj) Clause 3-200, Service Contract Act – Place of Performance Unknown is included in 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 when a public notice is required (~~see: § 325.10~~), 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) and the CO has requested wage determination 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;~~
- ~~(4) The CO will appropriately fill in the clause's blank spaces;Reserved~~
- ~~(jj) Reserved~~
- [. . .]
- (nn) Court organizations ~~with the capability~~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:
- [. . .]
- (B) the contractor is a foreign vendor; or,
- (C) awards under \$5,000 that do not use EFT for payment.
- [. . .]

REDLINE COMPARISON REFLECTING CHANGES

§ 330.26 Receipt of Offers

[. . .]

§ 330.26.50 Late Proposal Documentation

~~As prescribed in § 330.10.30(r), Provision 3-90, Late Submissions, Modifications, and Withdrawal of Offers is included in all solicitations exceeding the judiciary's small purchase threshold.~~ Each late offer and modification must be retained in the solicitation file with a statement as to whether it was considered, with the reasons.

§ 330.30 Failure to Acknowledge Amendments

[. . .]

§ 330.30.30 ~~Solicitation Provision~~

~~As prescribed in § 330.10.30(x), include Provision 3-125, Acknowledgment of Solicitation Amendments in all solicitations.~~ **RESERVED**

§ 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.

§ 330.70.30 Award Notification

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

~~—— (a) —— the number of offers received;~~

(~~b~~a) the name and address of each offeror receiving an award;

[. . .]

REDLINE COMPARISON REFLECTING CHANGES

§ 335 Other than Full and Open Competition

§ 335.10 In General

[. . .]

§ 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

[. . .]

§ 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, in the AO, the PE, 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:

[. . .]

- (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](#));

[. . .]

- (f) orders placed under single-award indefinite-delivery contracts (see: [Guide, Vol 14](#) ~~Vol. 14, § 410.30~~);

[. . .]

- (~~h~~) purchases from utilities ~~and local/state government entities where they are the only source for the product or service.~~ **Note:** "Utilities" does not include local and long distance voice and data services, but services such as water, sewer, gas, and electric.

§ 410 Contract Types

§ 410.10 In General

[. . .]

§ 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:

[. . .]

- (c) ~~ordering agreement — a commonly used type of instrument even though it is not a contract (see: § 410.35)~~ blanket purchase agreement (see: § 410.35);

[. . .]

REDLINE COMPARISON REFLECTING CHANGES

§ 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~~indefinite-delivery (see: [§ 410.30](#));
- (b) ~~Labor-Hour~~ (see: ~~§ 410.40~~);
- ~~(c) Time and Materials~~labor-hour (for exceptions to the requirement for PE written approval, see: [§ 410.40.30](#));
- ~~(c)~~ time-and-materials (see: [§ 410.45](#));
- (d) ~~L~~etter ~~C~~ontract (see: [§ 410.50](#));
- (e) ~~Fixed-Price~~Afixed-price award ~~F~~fee (see: [§ 410.55](#));
- (f) ~~Fixed-Price~~Ifixed-price incentive ~~C~~ontract (see: [§ 410.60](#));
- (g) ~~Fixed-Price~~Cfixed-price contract with ~~E~~economic ~~P~~price ~~A~~adjustment (see: [§ 410.65](#));
- (h) ~~C~~ost ~~R~~reimbursement ~~C~~ontract (see: [§ 410.70](#)).

§ 410.30 Indefinite-Delivery Contracts: Indefinite Quantity and Requirements

[. . .]

§ 410.30.60 Delivery Orders or Task Orders

[. . .]

- (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.

§ 410.40 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 ~~not supplied~~provided by the contractor.
- (b) Labor-hour contracts ~~that~~ include a description of services ordered and ~~contain~~ a not to exceed ceiling amount, which may be fully funded at the time of award or may be incrementally funded, provided that:
[. . .]

REDLINE COMPARISON REFLECTING CHANGES

§ 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. ~~It~~This contract type does not encourage effective contractor management or control of costs. Therefore, ~~this contract type~~it may be used only when provision is made for adequate monitoring by judiciary personnel during performance, to give reasonable assurance that ~~inefficient or wasteful~~efficient methods and effective cost controls are ~~not~~ being used. Examples of situations in which this type of contract might be appropriate are:

(a) ~~repair, maintenance, and overhaul work; and~~

~~(b)~~ 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 ~~and when the PE approves its use in writing. The CO must establish a ceiling price that.~~ 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 ~~only~~ at its own risk. ~~The CO must document the contract file to show the basis for any change in the ceiling.~~

REDLINE COMPARISON REFLECTING CHANGES

§ 410.40.40 Clause

Include Clause 4-30, Payment (Time-and-Materials and Labor-Hour Contracts) when a~~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 contract ~~is contemplated~~, see: Guide, Vol 14, § 410.45.50.

§ 410.40.40 RESERVED

§ 410.45 Time-and-Materials Contracts

[. . .]

§ 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 ~~inefficient or wasteful~~ efficient methods and effective cost controls are ~~not~~ 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.

REDLINE COMPARISON REFLECTING CHANGES

§ 410.45.30 Limitations

This type of contract may be used only if no other type of contract will meet the judiciary's needs ~~and when approved in writing by the PE. The CO must establish a ceiling price that.~~ 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. The CO must document the Any contract file to show the basis for any change in the ceiling. ~~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.

[. . .]

§ 410.45.50 ~~Clause~~Provisions and Clauses - Labor-Hour and Time-and Materials Contracts [table]

Provision or Clause	Include Clause 4-30 in ...
(a) <u>Provision 4-27, Time-and-Materials/Labor-Hour Proposal Requirements – Competitive Pricing</u>	<u>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.</u>
(b) <u>Provision 4-28, Time-and-Materials/Labor-Hour Proposal Requirements – Non-Competitive Pricing</u>	<u>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.</u>
(c) <u>Clause 4-30, Payment (Time-and-Materials and Labor-Hour Contracts)</u>	<u>when all time-and-materials contract is contemplated; solicitations and contracts (base clause) and all labor-hour solicitations and contracts (with Alternate I)</u>

§ 410.50.80 Clauses [table]

Clause	Notes
[. . .] (c) <u>Clause 4-45, Contract Definitization</u>	The CO must enter the contract type and definitization schedule established according to § 410.50.40 above. If the contract is not awarded on the basis of price competition, use Alternate I, which omits § 410.50.40 of the clause.
(d) <u>Clause 4-50, Payment of Allowable Costs Before Definitization</u>	<u>Include when the letter contract is expected to result in a definitive cost-reimbursement contract.</u>

REDLINE COMPARISON REFLECTING CHANGES

§ 410.75 Multi-Year Contracts

[. . .]

§ 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. ~~See: § 410.75.35(a)~~For information regarding requirements to fund cancellation charges when annually funding multi-year contracts, ~~see: § 410.75.35(a).~~

[. . .]

§ 630 Insurance

§ 630.10 In General

~~GOs may require c~~Contractors ~~to carry insurance only when necessary to protect the interest of the judiciary. Examples of situations that may warrant requiring insurance are when:~~

- ~~—— (a) —— it is desirable to use the facilities and services of the insurance industry (for example, safety protection and claim services);~~
- ~~—— (b) —— insurance is necessary or desirable in connection with performance; or~~
- ~~—— (c) —— are required by law to provide insurance for certain types of perils (e.g., workers' compensation). Insurance is mandatory also when commingling of property or other contract conditions makes insurance reasonably necessary for, type of operation, circumstances of ownership, or condition of the contract make it necessary for the protection of the parties' interests~~judiciary.

§ 630.20 Types of Insurance

~~The GO will specify the~~ kinds of insurance and ~~the~~coverage amounts specified in the contract. ~~The following amounts~~Clause 6-20 are minimums. The CO may require additional coverage ~~and higher limits~~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 Workers' Compensation and Employers' Liability

~~Compliance with applicable workers' compensation and occupational disease statutes is required, and employers' liability coverage must be obtained when available. In jurisdictions where occupational disease is not compensable by law, the contractor must carry insurance for occupational disease under the employers' liability section of the insurance policy.~~

REDLINE COMPARISON REFLECTING CHANGES

§ 630.20.20 ~~General Liability~~Reserved

- ~~— (a) — The contractor must carry bodily injury liability insurance, with minimum limits of \$200,000 per person and \$500,000 per occurrence for death or bodily injury.~~
- ~~— (b) — The contractor must carry property damage liability insurance in an amount of at least \$20,000 per occurrence.~~

§ 630.20.30 ~~Automobile Liability Insurance~~Reserved

- ~~— (a) — The contractor must carry automobile liability insurance on a comprehensive form of policy that provides for bodily injury and property damage liability covering the operation of all automobiles used in contract performance.~~
- ~~— (b) — Minimum limits of \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage must be carried.~~

§ 630.20.40 Clauses

[. . .]

§ 630.20.40 Clauses

- (a) Clause 6-20, Insurance – Work on or Within a Judiciary Installation 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 installation 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.
- ~~— (c) — Clause 6-30, Insurance is included in solicitations and contracts when the CO requires insurance and neither Clause 6-20 nor Clause 6-25 are applicable.~~