

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

WASHINGTON, D.C. 20544

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GUIDE TO JUDICIARY POLICY

TRANSMITTAL 14-025 VOLUME/PART 14 CHAPTER(S) 1-5

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

FROM: Judge Robert J. Conrad, Jr.
Director



RE: PROCUREMENT

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

[Chapter 1 – Overview](#)

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

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

[Appendix 1D – COCP Level 1 – Purchase Card Program](#)

[Appendix 1F – COCP Level 3 – General Delegation](#)

[Appendix 1K – Required COCP Training by Certification Level](#)

[Appendix 1Z – Glossary of Procurement Terms](#)

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

[Chapter 3 – Purchasing Methods](#)

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

[Chapter 5 – Special Categories of Procurements](#)

Significant changes were made as follows:

Chapter 1:

- Updated judiciary general procurement thresholds (as noted in Chapter 3);
- Clarified procurement authority for specific actions for COCP Level 3; and

Guide Transmittal 14-025– Procurement

- Updated Continuing Education hour requirement for COCP Professionals to align with Federal Acquisition Institute (FAI) requirements.

Chapter 2:

- Provided guidance on use of Clause 7-123 (Performance and Obligation in Advance of Funds) during a lapse of appropriations.

Chapter 3:

- Established the Judiciary Micro-Purchase Threshold of \$25,000;
- Increased the judiciary's small purchase threshold to \$350,000;
- Updated and clarified publicizing requirements;
- Provided guidance on determination of offeror responsibility; and
- Clarified and identified differences between judiciary procurement thresholds and executive branch acquisition thresholds (addressed micro-purchase thresholds, executive branch simplified acquisition threshold, and judiciary small purchase threshold).

Chapter 5:

- Revised policy on contracts for experts and consultants to support Judicial Conference committees;
- Updated § 540 to provide guidance on commercial supplier agreements, prohibited terms and conditions, and reviewing and negotiating commercial supplier agreements; and
- Established guidance on no-cost contracts.

Appendix 1B:

- Inserted new Clause 7-123 (Performance and Obligation in Advance of Funds); and
- Updated Clause 3-120 to strengthen the order of precedence in judiciary agreements and add terms that automatically override prohibited terms commonly found in commercial supplier agreements.

Minor updates were also made to:

- Chapter 4 to reflect changes in Chapter 3;
- Appendix 1C to reflect updated clauses and provisions in Appendix 1B and Chapter 2;
- Appendices 1D and 1F to reflect updates to Chapters 1 and 3 involving general procurement thresholds;
- Appendix 1K to reflect update to Appendix 1D related to judiciary purchase card training; and
- Appendix 1Z (Glossary of Procurement Terms), adding, clarifying, and updating entries.

The revision also reflects stylistic changes to improve clarity and readability. The significant changes are detailed in the Redline Comparison below.

Questions regarding this transmittal may be directed to the AO's Acquisition Management Office at [AO AMO Acquisition Policy and Systems@ao.uscourts.gov](mailto:AO_AMO_Acquisition_Policy_and_Systems@ao.uscourts.gov).

REDLINE COMPARISON REFLECTING CHANGES

[Significant changes in Chapter 1 (Overview) follow:]

§ 120 Delegation of Procurement Authority

[. . .]

§ 120.20 Authorized Delegations

[. . .]

§ 120.20.50 Procurement Authority under Exceptional Circumstances

[. . .]

- (a) If the procurement exceeds the judiciary organization's delegated procurement authority, the organization may request a one-time delegation of authority from the PE to conduct and complete the procurement by submitting a request to AMO's Acquisition Training and Certification Branch (ATCB). If granted, the one-time delegation may contain additional requirements and/or conditions relating to the review of the procurement or other aspects of the procurement.

[. . .]

§ 120.40 Special Program Delegations

[. . .]

§ 140 Contracting Officers Certification Program

[. . .]

§ 140.20 Level 1 Certification: Purchase Card Program

[. . .]

§ 140.20.30 Level 1 Delegation

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

- open market procurements, with or without competition, up to ~~\$10,000~~25,000 (Judiciary Micro-Purchase Threshold (JMPT)) per purchase,
- orders placed under GSA federal supply schedules up to the executive branch's micro-purchase threshold (previously GSA's ~~defined~~-competition threshold) (see: Guide, Vol. 14, § 310.50.43 (Ordering Procedures for Supplies and Services Not Requiring a Statement of Work)), and

[. . .]

§ 140.30 Level 3 Certification: General Delegation

[. . .]

§ 140.30.30 Level 3 Delegation

A delegation of Level 3 authority includes the following:

- (a) Open market procurements for products and services, with or without competition, up to ~~\$40~~25,000 (JMPT) per purchase. [. . .]
- (b) Competitive best value and competitive lowest-price technically acceptable open market procurements conducted according to the procedures required for small purchases up to ~~\$400~~350,000.

[. . .]

REDLINE COMPARISON REFLECTING CHANGES

§ 140.30.30 [cont'd]

- (f) Procurements for expert and consultant services up to \$~~25~~350,000. **See also:** [5 U.S.C. § 3109](#); [Guide, Vol. 14, Ch. 5 \(Special Categories of Procurements § 520 \(Expert and Consultants Nonpersonal Services Contracts\)\)](#).
- (g) Procurements using less than full and open competition over \$~~40~~25,000 and up to \$~~25~~350,000 with signed approval of the chief judge or other judiciary official identified at [§ 120.20.10\(b\) \(Delegation to Chief Judges and Certain Judiciary Officials\)](#) (or PLO, if delegated).
- (h) Interagency agreements (IAs) ~~and memoranda of understanding (MOUs)~~ for procurements up to \$~~400~~350,000 when the judiciary is the receiving agency. However, all such IAs ~~and MOUs for procurements~~ require review and approval by the chief judge or other judiciary official identified at [§ 120.20.10\(b\) \(Delegation to Chief Judges and Certain Judiciary Officials\)](#) (or PLO, if delegated), before CO signature. If the proposed IA ~~or MOU~~ is above this delegation authority or if the judiciary is the providing agency, the IA ~~or MOU~~ must be referred to [AMO's ATCBAMO \(see: Service Now\)](#). [. . .]
- ~~(i) Procurement of training products and services up to \$25,000 without competition.~~
- ~~(i)(j) Authority to sign MOUs and memoranda of agreements (MOAs). All such MOUs and MOAs require review and approval by the chief judge or other judiciary official identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials) (or PLO, if delegated), before CO signature. MOUs and MOAs issued by the judiciary organizations must be approved according to local procedures as determined by the organization concerned. See also: Guide Vol. 14, Ch. 5 (Special Categories of Procurements).~~
- ~~(j) Authority to sign cCommercial agreements, license agreements, and special use agreements as supplements and conditions to purchases conducted within the authorized delegation at this level, subject to negotiating terms and conditions and inclusion of clauses negating problematic terms. See also: Guide, Vol. 14, Ch. 5 (Special Categories of Procurements § 540.20 (Problematic Terms in Commercial Supplier Agreements)).~~
- [. . .]
- (m) Contract modifications up to \$~~400~~350,000 within scope of the contract. **See also:** [Guide, Vol. 14, § 745.20.20 \(Determination of "Within Scope"\)](#).

§ 140.30.40 Delegation Limitations

- (a) In addition to the exclusions ~~stated at in~~ [§ 120.20.10\(b\)\(2\) \(Delegation to Chief Judges and Certain Judiciary Officials\)](#), a delegation of Level 3 authority does not include authority for ~~non-competitive procurements over \$10,000 (between \$25,000 for training products or services) awarded without competition, or without signed approval of and \$350,000 unless~~ the chief judge or other judiciary official identified at [§ 120.20.10\(b\) \(Delegation to Chief Judges and Certain Judiciary Officials\)](#) (or PLO, if delegated) ~~has signed the required justification.~~

REDLINE COMPARISON REFLECTING CHANGES

(b) In addition to the exclusions in § 120.20.10(b)(2) (Delegation to Chief Judges and Certain Judiciary Officials), a delegation of Level 3 authority does not include authority for non-competitive procurements between \$15,000 and \$350,000 when using GSA or other federal agency contracts, unless the chief judge or other judiciary official identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials) (or PLO, if delegated) has signed the required justification.

[. . .]

(d) A Level 3 delegation does not include authority for solicitation and award of judiciary-wide or national contracts or BPAs.

§ 140.30.50 Training Requirements

To be eligible for appointment as a Level 3 CO, individuals must complete both online courses [Small Purchase Procedures](#), [Standard Competitive Contracting Procedures](#) and the Judiciary Procurement Workshop classroom training, as well as the online [Appropriations Law for the U.S. Courts](#) course. In addition, individuals appointed as Level 3 COs must complete 16 hours of [continuing education](#) training every two years. ~~The two-year period begins on the date of appointment or upon completion of the Judiciary Procurement Workshop, required to be completed within one year of appointment, whichever is later.~~ **See also:** [§ 140.15.30 \(Appointment Process for PLOs and COs \(Levels 1-3\)\)](#); [§ 140.60.10 \(Required Continuing Education\)](#); and [Appx. 1F \(COCP Level 3 – General Delegation\)](#).

§ 140.60 Continuing Education

[. . .]

§ 140.60.10 Continuing Education Requirements *[table]*

Certification Level	Required Hours Every CE Period
[. . .]	[. . .]
Professional	80 100

§ 150.50 Gratuities or Gifts

For restrictions and exceptions, see: [Guide, Vol. 2C, Ch. 6 \(Gifts\)](#). [. . .]

[Significant changes in Appendix 1B (Solicitation Provisions and Contract Clauses) follow:]

[. . .]

Clause 2-140, Judiciary IT Security Standards

[. . .]

Judiciary IT Security Standards (APR 2013~~26~~**26**)

(a) Policy

Contractors developing or managing information systems on behalf of the judiciary are required to implement reasonable and effective security safeguards to protect the confidentiality, integrity, and availability of judiciary information. [. . .]

REDLINE COMPARISON REFLECTING CHANGES

Clause 2-140 [cont'd]

(b) Contractor Responsibilities

The contractor shall:

[. . .]

(2) [. . .] This includes ensuring that [. . .] transmissions of sensitive information taking place over insecure networks (such as the internet) are secure (e.g., VPN, SASE solution); and business continuity assured in the event of a system failure.

(3) Develop, maintain, and periodically provide to the COR a master asset inventory list that reflects all assets, government furnished equipment (GFE) or non-GFE that were used to access and process judiciary information. [. . .]

(4) Ensure that contractor-owned removable media such as removable (external) hard drives, flash drives, CDs, and laptops, containing judiciary data, are encrypted using a NIST FIPS 140-23 (or its successor) approved product.

[. . .]

(9) Follow NIST 800-53A Revision 4.5 (or its successor publication), Guide for Assessing the Security Controls in Federal Information Systems and Organizations, NIST 800-18 Revision 1. (or its successor publication), Guide for Developing Security Plans for Federal Information Systems, the Judiciary Information Security Framework, version 4.02.2, the Guide to Implementing the Judiciary Information Security Framework, version 4.02.5, and other Administrative Office of the US Courts security policies and guidelines [. . .]

[. . .]

(15) [. . .] The specific assessments procedures as outlined in draft NIST Special Publication 800-53A Rev 5 (or its successor), shall be used by the contractor to assess the effectiveness of implemented security safeguards. [. . .]

[. . .]

(20) Report to the COR, within 24 hours of immediately upon discovery, any suspected or confirmed security incidents relative to the systems and data used in fulfillment of this contract and to cooperate in the investigation and resolution thereof. If a data breach occurs or is discovered outside of regular business hours and the COR cannot be reached, the contractor shall call the Judiciary Automated Systems Incident Response Capability (JASIRC) via phone on (202) 502-4370 or via an email message to either SOC@ao.uscourts.gov or JASIRC@ao.uscourts.gov contact the Security Operations Center by phone at 202-502-4370 or by email at SOC@ao.uscourts.gov.

(c) Personally Identifiable Information Notification and Use Requirement

[. . .] The contractor assumes full responsibility for taking corrective action, which may include offering credit monitoring identity protection services when appropriate.

(e) Certification of Destruction/Sanitization

At the expiration of the contract, the contractor shall return all judiciary information and IT resources provided to the contractor during the contract, and provide a certification that all contractor assets (; e.g., laptops, thumb drives, servers, and databases); containing or used to access and process judiciary information have been sanitized or destroyed. Upon submission of the final invoice (or

REDLINE COMPARISON REFLECTING CHANGES

Clause 2-140 [cont'd]

sooner upon COR request), the contractor will certify in writing that sanitization and/or destruction has been performed pursuant to a method allowable under the NIST Special Publication 800-88, Rev 2 (or its successor publication), Guidelines for Media Sanitization (or its successor). [. . .]

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

[. . .]

Provisions, Clauses, Terms and Conditions – Small Purchases (~~JUN 2024~~APR 2026)

[. . .]

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

[. . .]

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

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

[. . .]

~~(7)(5) Clause 3-120 , Order of Precedence (JAN 2026)~~

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

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

[. . .]

Clause 3-120, Order of Precedence

[. . .]

Except that this clause shall not be included in blanket purchase agreements or orders awarded under GSA's Multiple Award Schedule contracts. Contracting officers may also include the clause in solicitations and contracts below the judiciary's small purchase threshold. Contracting Officers, in coordination with the AO's Office of General Counsel, may modify this clause to address unacceptable vendor terms and conditions not otherwise addressed by the standard version of this clause.

Order of Precedence (~~JAN 2003~~APR 2026)

~~(a) Any conflicts or inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:~~

~~(1) The schedule of supplies/services(excluding the specifications);~~

~~(2) Judiciary clauses 7-175, Assignments of Claims; 7-235, Disputes; 7-135, Payments; and 7-125, Invoices; 7-30 Public Use of the Name of the Federal Judiciary; 2-57 Protecting, Reporting, and Responding to Incidents Involving Sensitive Information (if included in the contract) representations and other instructions;~~

~~(3) The "Unauthorized Obligations" and "Commercial Supplier Agreements Unenforceable Clauses" paragraphs of this clausethe solicitation/contract provisions and clauses;~~

REDLINE COMPARISON REFLECTING CHANGES

Clause 3-120 [cont'd]

(4) Addenda to this solicitation or contract, including any commercial supplier agreements as defined in paragraph D of this clause and as amended by the Commercial Supplier Agreements Unenforceable Clauses provision in paragraph (d) of this clause~~other documents, exhibits, and attachments;~~

(5) Solicitation provisions if this is a solicitation.

(6) Contract clauses if this is a contract.

(7) The judiciary's standard contract form.

[. . .]

(59) The specifications.

(b) When an order utilizing clause 3-120 is placed against an indefinite delivery vehicle (IDV) or a Blanket Purchase Agreement (BPA) that contains Federal Acquisition Regulation (FAR) clause 52.212-4, paragraphs (a) and (b) of clause 3-120, except for (a)(2) (Judiciary clauses), shall be considered replaced with FAR 52.212-4's order of precedence provision. The remaining paragraphs of clause 3-120, together with section (a)(2) of this clause shall be considered "Other Compliances" under FAR 52.212-4(s)(2).

(c) Unauthorized Obligations

(1) Except as stated in paragraph (c)(2) of this clause, when any supply or service acquired under this contract is subject to any commercial supplier agreement that includes any language, provision, or clause requiring the judiciary to pay any future fees, penalties, interest, legal costs or to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Antideficiency Act violation (31 U.S.C. § 1341), the following shall govern:

(A) Any such language, provision, or clause is unenforceable against the Government.

(B) Neither the judiciary nor any judiciary authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the commercial supplier agreement. If the commercial supplier agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the judiciary or any judiciary authorized end user to such clause.

(C) Any such language, provision, or clause is deemed to be stricken from the commercial supplier agreement.

(2) Paragraph (c)(1) of this clause does not apply to indemnification or any other payment by the judiciary that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(d) Commercial Supplier Agreements Unenforceable Clauses.

When any supply or service acquired under this contract is subject to a commercial supplier agreement, the following language shall be deemed incorporated into the commercial supplier agreement. As used herein, "this agreement" means the commercial supplier agreement:

REDLINE COMPARISON REFLECTING CHANGES

Clause 3-120 [cont'd]

- (1) Notwithstanding any other provision of this agreement, when the end user is an agency or instrumentality of the judiciary, the following shall apply:
- (A) Applicability. This agreement is a part of a contract between the commercial supplier and the judiciary for the acquisition of the supply or service that necessitates a license or other similar legal instrument (including all contracts, task orders, and delivery orders).
- (B) End user. This agreement shall bind the ordering activity as end user but shall not operate to bind a judiciary employee or person acting on behalf of the judiciary in his or her personal capacity.
- (C) Law and disputes. This agreement is governed by Federal law.
- (i) Any language purporting to subject the judiciary to the laws of a U.S. state, U.S. territory, district, or municipality, or a foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted.
- (ii) Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted.
- (iii) Any language prescribing a different period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted.
- (D) Continued performance. The supplier or licensor shall not unilaterally revoke, terminate or suspend any rights granted to the judiciary except as allowed by this contract. If the supplier or licensor believes the ordering activity to be in breach of the agreement, it shall pursue its rights in accordance with Clause 7-235 or other applicable Federal statute while continuing performance as set forth in the disputes clause.
- (E) Arbitration; equitable or injunctive relief. In the event of a claim or dispute arising under or relating to this agreement, a binding arbitration shall not be used.
- (F) Updating terms.
- (i) After award, the Contractor may unilaterally revise commercial agreement terms if they are not material. A material change is defined as:
- (a) Terms that change judiciary rights or obligations;
- (b) Terms that increase judiciary prices;
- (c) Terms that decrease overall level of service; or
- (d) Terms that limit any other judiciary right addressed elsewhere in this contract, Blanket Purchase Agreement (BPA), Basic Ordering Agreement (BOA), task order, or call order.

REDLINE COMPARISON REFLECTING CHANGES

Clause 3-120 [cont'd]

- (ii) For revisions that will materially change the terms of the contract, BPA, BOA, task order, or order, the revised commercial agreement must be incorporated into the contract, BPA, BOA, task order, or order using a bilateral modification.
- (iii) Any agreement license terms or conditions unilaterally revised subsequent to award that are inconsistent with any material term or provision of this BPA, contract, or order shall not be enforceable against the judiciary, and the judiciary shall not be deemed to have consented to them.
- (G) Automatic renewals. If any license or service tied to periodic payment is provided under this agreement (e.g., annual software maintenance or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express consent by an authorized judiciary representative.
- (H) Indemnification of end user. Any clause of this agreement requiring the commercial supplier or licensor to defend or indemnify the end user is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with 28 U.S.C. § 516.
- (I) Audits. Any clause of this agreement permitting the commercial supplier or licensor to audit the end user's compliance with this agreement is hereby amended as follows:

 - (i) Discrepancies found in an audit may result in a charge by the commercial supplier or licensor to the ordering activity. Any resulting invoice must comply with the proper invoicing requirements specified in the underlying judiciary contract or order.
 - (ii) This charge, if disputed by the ordering activity, will be resolved in accordance with the disputes clause; no payment obligation shall arise on the part of the ordering activity until the conclusion of the dispute process.
 - (iii) Any audit requested by the contractor will be performed at the contractor's expense, without reimbursement by the judiciary.
- (J) Taxes or surcharges. Any taxes or surcharges which the commercial supplier or licensor seeks to pass along to the judiciary as end user will be governed by the terms of the underlying judiciary contract or order and, in any event, must be submitted to the Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the judiciary contract.
- (K) Non-assignment. This agreement may not be assigned, nor may any rights or obligations thereunder be delegated, without the judiciary's prior approval.
- (L) Confidential information. If this agreement includes a confidentiality clause, such clause is hereby amended to state that neither the agreement nor the contract price list, as applicable, shall be deemed "confidential information." Issues regarding release of "unit pricing" or "line-item pricing" will be resolved consistent with Judiciary Clause 1-15, Disclosure of Contractor Information to the Public. Notwithstanding

REDLINE COMPARISON REFLECTING CHANGES

Clause 3-120 [cont'd]

anything in this agreement to the contrary, the judiciary may retain any confidential information as required by law, regulation or its internal document retention procedures for legal, regulatory or compliance purposes; provided, however, that all such retained confidential information will continue to be subject to the confidentiality obligations of this agreement.

(M) Credit application/Master account. Any language requiring the use of a credit application or master account is hereby deleted. Credit provisions are not applicable to the judiciary.

(N) Advance payments. Except for publications printed or recorded in any way for the auditory or visual use of the agency, any language requiring the judiciary to pay for more than the value of services already provided or articles already delivered is hereby deleted unless expressly authorized in writing by the Contracting Officer and provided for in the schedule of supplies/services.

(O) Insurance. Because the judiciary is self-insured, any language requiring the judiciary to pay for insurance is hereby deleted.

(P) Damage deposits. Any language requiring the judiciary to pay a deposit for damages is hereby deleted.

(Q) Any section in a commercial supplier agreement related to Artificial Intelligence that conflicts with a judiciary contract clause or requirement is hereby deleted.

(R) Any term that claims to provide authority or approval for judiciary data to be moved outside the United States is hereby deleted. Any movement of judiciary data outside the United States must first be approved in writing by the CO and COR and must be explicitly stated in the contract.

(2) If any language, provision, or clause of this agreement conflicts or is inconsistent with this clause, then the language in this clause shall prevail to the extent of such inconsistency.

(e) If the Contractor is providing or using as part of performance of this contract a commercial item that is owned, operated, developed, or licensed by a third party, the Contractor is responsible for the third party's adherence to this clause.

(f) Definitions

Commercial Items – See Vol. 14, Appendix 1Z – Glossary of Procurement Terms

Commercial supplier agreement means terms and conditions customarily offered to the public by vendors of supplies or services that meets the definition of “commercial item” set forth in the Glossary of Procurement Terms in Volume 14 (Procurement) of the Guide to Judiciary Policy intended to create a binding legal obligation on the end user. The term applies–

REDLINE COMPARISON REFLECTING CHANGES

Clause 3-120 [cont'd]

(1) Regardless of the format or style of the document. For example, a commercial supplier agreement may be styled as standard terms of sale or lease, Terms of Service (TOS), End User License Agreement (EULA), Acceptable Use Policy, Data Processing Agreement, or another similar legal instrument or agreement, and may be presented as part of a proposal or quotation responding to a solicitation for a contract or order;

(2) Regardless of the media or delivery mechanism used. For example, a commercial supplier agreement may be presented as one or more paper documents or may appear on a computer or other electronic device screen during a purchase, software installation, other product delivery, registration for a service, or another transaction.

Judiciary data means information created, collected, processed, maintained, disseminated, disclosed, or disposed of by or for the federal judiciary, in any medium or form.

(end)

Clause 7-123, Performance and Obligation in Advance of Funds (Class Deviation)

Include the following clause as prescribed in § 220.50.90(c) (Clauses for Contracting in Advance of Funds)

Performance and Obligation in Advance of Funds (Class Deviation) (APR 2026)

The judiciary has determined that this contract either (1) supports activities excepted under the Anti Deficiency Act and may incur obligations in advance of appropriations, or (2) is funded by sources that remain available during a lapse. The contractor is authorized to proceed with performance and should submit invoices in accordance with the contract's terms and the contractor's normal invoicing practices. However, the judiciary cannot pay invoices during a lapse, regardless of the contract's funding source or status. Payments will resume once appropriated funds are available and the shutdown has ended. This clause supersedes any conflicting contract terms regarding payment until funds are restored and the shutdown concludes.

(end)

Clause 7-220, Termination for Convenience of the Judiciary (Fixed-Price)

[. . .]

Termination for Convenience of the Judiciary (Fixed-Price) (~~JAN 2003~~APR 2026)

[. . .]

(m) [. . .]

- (2) If the total payments exceed the amount finally determined to be due, the contractor shall repay the excess to the judiciary upon demand, ~~together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2).~~ [. . .]

REDLINE COMPARISON REFLECTING CHANGES

[Significant changes in Appendix 1C (Matrix of Solicitation Provisions and Clauses (Including Key)) follow:]

Key to Matrix

[. . .]

UCF Sec Uniform Contract Format Section (open market over \$~~400~~350,000 or certain special delegated programs)

FP PROD Fixed-Price Product (open market over \$~~400~~350,000)

CR PROD Cost-Reimbursement Product (open market over \$~~400~~350,000)

FP SERV Fixed-Price Service (open market over \$~~400~~350,000)

CR SERV Cost-Reimbursement Service (open market over \$~~400~~350,000)

[. . .]

SM PUR Small Purchase (open market under \$~~400~~350,000)

Matrix of Solicitation Provisions and Clauses

Clause or Provision #	Title	Presc. (all references are to Volume 14)	Prov or Cls	IBR?	UCF Sec	Open Market over \$ 400 <u>350</u> ,000				T&M LH	A & E	IND DEL	SM PUR	OFA C
						FP PR OD	CR PRO D	FP SVC	CR SVC					
7-123	Performance and Obligation in Advance of Funds	§ 220.50.90 (c)	C	No	I	A	A	A	A	A	A	A	A	A

[Significant changes in Appendix 1D (COCP Level 1 – Purchase Card Program) follow:]

[Judiciary Purchase Card Program training](#) required for Level 1 certification must be completed every two years. **(Note: Judiciary Purchase Card training is required for approving officials every two years from date of completion.)**

Contracting Officers' Certification Program – Level 1 [table]

Dollars	Conditions
Up to \$ 40 <u>25</u> ,000 per purchase (Judiciary Micro-Purchase Threshold – (JMPT))	open market (with or without competition) using the purchase card only
Types of Actions	
Small Purchase Purchase Orders	open market small purchases using the purchase card up to \$ 40 <u>25</u> ,000 per purchase; [. . .]
Orders Under GSA Federal Supply Schedules or Contracts Awarded by Judiciary	GSA Federal Supply Schedules: up to the executive branch's micro-purchase threshold (GSA competition threshold;) , provided purchase does not exceed the cardholder's single transaction limit , the terms of the contract allow orders using the Government purchase card, and the contract's applicable limitations are observed by the cardholder . See: Guide, Vol 14, § 310.50.43 (Required Ordering Procedures) . [. . .]

REDLINE COMPARISON REFLECTING CHANGES

Procurement Method	
Other Than Full and Open Competition Procurement Actions (over \$ 4025 ,000)	not delegated
Competitive Lowest Price Technically Acceptable Open Market Procurements	up to \$ 4025 ,000: delegated
Products/Services	
Experts and Consultants under 5 U.S.C. § 3109	not delegated – <u>The COCP Level 1 may not independently contract for expert and consultant services. However, the COCP Level 3 may award such a contract and authorize the use of a purchase card as a method of payment (not as a method of purchase) if included in the contract and up to the authorized dollar limit for the COCP Level 1.</u>
<i>[Significant changes in Appendix 1F (COCP Level 3 – General Delegation) follow:]</i>	
Contracting Officers' Certification Program – Level 3 [table]	
Dollars	Conditions
Up to \$ 400350 ,000	Small purchases and competitive procurements: see other conditions below
Types of Actions	
Noncompetitive open market procurements	Up to \$ 4025 ,000 (<u>JMPT</u>) for all purchases (other than including training products or services) Up to \$25,000 for training products and services Above \$10,000 but not more than \$25,000 for products and services (other than training products or services) with signed approval of the chief judge or other judiciary official
Competitive small purchase open market purchase orders	Best value and lowest price technically acceptable competitive procurements up to \$ 400350 ,000: delegated
Use of standard competitive procedures	Requires PE approval <u>Authorized to use when exceeding \$350,000 after receiving a one-time delegation from AMO; however, Level 3 contracting officers are encouraged to use small purchase procedures for all procurements, including those to be conducted on the basis of a one-time delegation of authority for purchases over \$350,000. See: Guide, Vol. 14, § 325.10(b).</u>
Use of small purchase procedures above small purchase threshold	Requires PE approval when <u>Authorized using after receiving a one-time delegation from the procedure</u> AMO following the procedures at Guide, Vol. 14, § 325.10(b) and § 120.30.30.
Contract modifications	Within scope modifications up to \$ 400350 ,000: delegated
Interagency agreements (IAs) and memoranda of understanding (MOUs) for procurements	Interagency agreements and memoranda of understanding for procurements when the judiciary is the receiving agency: delegated up to \$ 400350 ,000 when approved by the chief judge or other judiciary official identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials) (or PLO, if delegated) prior to signing. [. . .]

REDLINE COMPARISON REFLECTING CHANGES

<p><u>Memoranda of Understanding (MOU) and Memoranda of Agreement (MOAs)</u></p>	<p>All MOUs and MOAs require review and approval by the chief judge or other judiciary official identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials) (or PLO, if delegated) before CO signature. See: <u>Guide, Vol. 14, § 550.55 (Interagency Agreements, MOAs, and MOUs).</u></p> <p>MOAs or MOUs issued by judiciary organizations must be approved according to local policy, as determined by the organization concerned.</p>
<p>Procurement Method</p>	
<p><u>Fixed Price Procurements</u></p>	<p>Up to \$350,000: <u>delegated</u></p> <p>Requires PE approval when using the contract methods at <u>Guide, Vol. 14, § 410.20.10.</u></p>
<p>Best Value Competitive Procurements <i>[moved]</i></p>	<p>Up to \$350,000<u>100,000</u>: delegated</p>
<p>Lowest Price Technically Acceptable Competitive Open Market Procurements <i>[moved]</i></p>	<p>Up to \$350,000<u>100,000</u>: delegated</p>
<p><u>Other Than Full And Open Competition Procurements</u></p>	<p>Unlimited <u>for the following:</u></p> <ul style="list-style-type: none"> (1) Transit P<u>p</u>asses/V<u>v</u>ouchers (2) Purchase of non-commercial products or services only available from state/local government entities <p>Up to \$10,000: all purchases (other than training products or services)</p> <p>Up to \$<u>Above the judiciary micro-purchase threshold (\$25,000: training) but not more than the small purchase procedures (\$350,000):</u> products and services</p> <p>Above \$10,000 but not more than \$25,000: products and services (other than training products or services) with signed <u>justification</u> approval of the chief judge or other judiciary official</p> <p>All other non-competitive purchases exceeding the applicable competition threshold: not delegated.<u>Above the Executive Branch's micro-purchase threshold (\$15,000), but not more than the Executive Branch's simplified acquisition threshold (\$350,000): products and services – with signed justification approval of the chief judge or other judiciary official (see: Guide, Vol. 14, § 120.20.10(b), § 130.40.10)</u></p>
<p>Products/Services</p>	
<p>Experts and consultants under <u>5 U.S.C. § 3109</u></p>	<p>Up to \$25<u>350</u>,000: delegated (see also: <u>Guide, Vol. 14, Ch. 5 (Special Categories of Procurements)</u>)</p> <p>For FPD case-related experts and consultants, see: <u>Guide, Vol. 14, Appx. 1E (COCP Level 2 –Special Program Delegation).</u></p>

REDLINE COMPARISON REFLECTING CHANGES

~~Space~~Tenant alteration(s)

Not delegated; court units must use GSA Reimbursable Work Authorization (RWA).

Special condition: Requires PE approval above the Guide, Vol. 16, § 320.40 threshold if GSA provides written authorization for a judiciary unit to undertake a tenant alteration. The PE may require the judiciary unit to furnish evidence of the contracting officer's training and experience in construction contracting.

[Significant changes in Appendix 1K (Required COCP Training by Certification Level) follow:]

(c) Judiciary Purchase Card training is required for approving officials every two years from date of completion.

[Significant changes in Appendix 1Z (Glossary of Procurement Terms) follow:]

Competition Threshold – For ~~the~~ judiciary open market purchases, **see:** Guide, Vol. 14, § 325.15.10.

Note: For purchases using judiciary-wide, GSA federal supply schedules and other federal agency contracts, refer to those agency contracts or their regulations, or ordering procedures.

[. . .]

Executive Branch's Micro-Purchase Threshold – The executive branch's micro-purchase threshold applies to the judiciary when purchasing from other federal agency contracts, including GSA. The judiciary must abide by the terms of the other agency's contract, including the federal agency's micro-purchase threshold for competitive purposes. See also: Judiciary Micro-Purchase Threshold (JMPT).

[. . .]

~~Fair Market Price~~ – ~~See: Fair and Reasonable Price.~~

[. . .]

~~GSA Competition Threshold~~ – ~~The threshold at which GSA contract actions must be competed (\$10,000).~~ See: Executive Branch Micro-Purchase Threshold.

[. . .]

Judiciary Micro-Purchase – An acquisition of supplies or services using small purchase procedures, the aggregate amount of which does not exceed the Judiciary Micro-Purchase Threshold (JMPT).

Judiciary Micro-Purchase Threshold (JMPT) – \$25,000, except:

(a) \$2,000 for acquisitions of construction subject to 40 U.S.C. chapter 31, subchapter IV (Wage Rate Requirements); and

(b) \$2,500 for acquisitions of services subject to 41 U.S.C. chapter 67 (Service Contract Labor Standards).

[. . .]

Limited Source Justification (LSJ) – A document to justify and obtain approval for limiting sources in a procurement that exceeds the executive branch's micro-purchase threshold (previously GSA's micro-purchase threshold) at either the order or BPA level. [. . .]

[. . .]

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

[. . .]

REDLINE COMPARISON REFLECTING CHANGES

Must – ~~This is imperative. Mandatory and non-discretionary. An imperative. Indicates a requirement that is nonnegotiable and unequivocal.~~ **See:** definition of “Shall”.

[. . .]

Open Market Small Purchase Threshold With or Without Competition – The judiciary has established an open market small purchase threshold of ~~\$1025,000~~. Open market purchases for ~~\$1025,000~~ or less may be made without obtaining competitive quotations when the contracting officer determines the price to be reasonable.

[. . .]

Other Federal Agency Contract (OFAC) – A contract awarded and administered by another federal agency.

[. . .]

Shall – ~~An order, promise, or obligation. Has a duty; more broadly, is required to. However, depending on context, court may sometimes interpret “shall” to mean “should”.~~ **See:** definition of “Must”.

[. . .]

[Significant changes in Chapter 2 (Procurement Planning and Preparations) follow:]

§ 210 Policy

[. . .]

§ 210.70 Source Selection Plans

§ 210.70.10 General

The CO must develop a source selection plan for competitive procurements ~~above the judiciary’s small purchase threshold~~ when using Standard Competitive Procedures (**see:** Guide, Vol. 14, § 330), but such a plan is optional when using Small Purchase Procedures (**see:** ~~Guide, Vol. 14, § 325.05 (Judiciary’s Small Purchase Threshold)~~). ~~However, the use of a source selection plan is optional for procurements below the small purchase threshold when the award decision will be based on best value.~~

§ 220 Terms and Conditions

[. . .]

§ 220.50 Funding Contract Awards

[. . .]

§ 220.50.90 Clauses for Contracts Conditioned Upon Availability of Funds

[. . .]

(c) Insert Clause 7-123, Performance and Obligation in Advance of Funds, when issuing new solicitations or contracts — including task and delivery orders, BPA calls, and when exercising options or issuing modifications to obligate funds — to obtain supplies and services necessary to carry out or support excepted activities during a lapse in appropriations. The contractor’s written acceptance of Clause 7-123 is required. Clause 7-123 must also be used when issuing new solicitations or contracts — including task and delivery orders, BPA calls, and bilateral option exercises — that are not for excepted activities but are funded from sources available during a lapse. In these cases, the clause informs the contractor that the Judiciary will not pay invoices until the lapse has ended. **See:** Guide, Vol. 14, § 120.20.10(a) (Delegation to the Procurement Executive) and § 120.20.30 (Procurement Executive).

REDLINE COMPARISON REFLECTING CHANGES

[Significant changes in Chapter 3 (Purchasing Methods) follow:]

§ 310 Procurement Sources

[. . .]

§ 310.50 GSA Federal Supply Schedules

[. . .]

§ 310.50.23 eBuy

[. . .] Posting an RFQ on eBuy:

- (a) is one medium for providing fair notice to all schedule contractors offering such supplies and services, as required by § 310.50.43(c) (Orders exceeding executive branch's simplified acquisition threshold (previously GSA's simplified acquisition threshold) (\$2350,000)) and § 310.50.46(c) (Orders using "best value" evaluation method); and

[. . .]

§ 310.50.36 Clauses/Provisions Applicable to FSS Order

[. . .]

- (b) When ordering from GSA FSS, the judiciary is required to follow the GSA schedule ordering procedures (**see: § 310.50 (GSA Federal Supply Schedules)**), the GSA contract's terms and conditions, and ~~GSA's competition~~executive branch's micro-purchase threshold (**see: § 310.50.43(a) (Orders at or below the executive branch's micro-purchase threshold (previously GSA's Competition Threshold))**).

[. . .]

§ 310.50.40 Determination of Fair and Reasonable Price

[. . .]

- (c) Judiciary COs should seek additional discounts. However, COs must seek a price reduction when the order or BPA exceeds the executive branch's simplified acquisition threshold (previously GSA's simplified acquisition threshold). [. . .]

§ 310.50.43 Ordering Procedures for Supplies and Services Not Requiring a Statement of Work [table]

Procedure	Details
(a) Orders at or below the <u>executive branch's micro-purchase threshold (previously GSA's competition threshold)</u> , which is \$ 4015 ,000, except for: [. . .]	Judiciary COs may place orders at, or below, <u>the executive branch's micro-purchase threshold (previously GSA's competition threshold)</u> with any Federal Supply Schedule contractor that can meet the agency's needs. [. . .]
(b) Orders exceeding <u>executive branch's micro-purchase threshold (previously GSA's competition threshold)</u> , but not exceeding <u>executive branch's simplified acquisition threshold (previously GSA's simplified acquisition threshold) (\$2350,000)</u> .	[. . .]
(c) Orders exceeding <u>executive branch's simplified acquisition threshold (previously GSA's simplified acquisition threshold) (\$2350,000)</u> .	[. . .]

REDLINE COMPARISON REFLECTING CHANGES

§ 310.50.46 Ordering Procedures for Services Requiring a Statement of Work [table]

(a) Orders exceeding executive branch's micro-purchase threshold (previously GSA's competition threshold) (generally \$~~4015~~,000) but not exceeding executive branch's simplified acquisition threshold (previously GSA's simplified acquisition threshold) (\$~~2350~~,000).

[. . .]

(b) Orders exceeding executive branch's simplified acquisition threshold (previously GSA's simplified acquisition threshold) (\$~~2350~~,000).

[. . .]

§ 310.50.52 File Documentation

At a minimum, the judiciary CO must include the following documentation for each award:

[. . .]

(h) when an order exceeds the simplified acquisition threshold, evidence of compliance with the ordering procedures at § 310.50.43(c) (Orders Exceedingexecceeding executive branch's simplified acquisition threshold (previously GSA's Simplified Acquisition Threshold (\$250simplified acquisition threshold) (\$350,000)) or § 310.50.46(c) (Orders Using "Best Value" Evaluation Methodusing "best value" evaluation method), whichever is applicable.

§ 310.50.53(g) Ordering from BPAs under GSA Schedules [table]

BPA Situation

Procedures

(2) Multiple Award BPAs

(A) Orders at or below the executive branch's micro-purchase threshold (GSA competition threshold) (generally \$~~4015~~,000). The judiciary CO may place orders at or below the executive branch's micro-purchase threshold (previously GSA competition threshold) with any BPA holder that can meet the agency's needs. [. . .]

(B) Orders exceeding the executive branch's micro-purchase threshold (previously GSA's competition threshold) but not exceeding the executive branch's simplified acquisition threshold (previously GSA's simplified acquisition threshold) (\$~~2350~~,000).

(i) The judiciary CO must provide each multiple award BPA holder an opportunity to be considered for each order exceeding the executive branch's micro-purchase threshold (previously GSA competition threshold,) but not exceeding executive branch's simplified acquisition threshold (previously GSA's simplified acquisition threshold) unless one of the exceptions in § 310.50.63 (Limiting Sources on Orders Placed Under Federal Supply Schedules).

[. . .]

(C) Orders exceeding executive branch's simplified acquisition threshold (previously GSA's simplified acquisition threshold) (\$~~2350~~,000) unless one of the exceptions in § 310.50.63 (Limiting Sources on Orders Placed Under Federal Supply Schedules).

[. . .]

(3) BPAs for Hourly Rate Services

[. . .]

(B) For time-and-materials and labor-hour orders, the contracting officer must follow the procedures in § 310.50.46(b) (Orders Exceedingexecceeding executive branch's simplified acquisition threshold (previously GSA's Simplified Acquisition Threshold (\$250simplified acquisition threshold) (\$350,000)) and § 310.50.46(c) (Orders Using "Best Value" Evaluation Methodusing "best value" evaluation method). [. . .]

REDLINE COMPARISON REFLECTING CHANGES

§ 310.50.56 Price Reductions

Judiciary COs may request a price reduction at any time before placing an order, establishing a BPA, or in conjunction with the annual BPA review. However, the judiciary CO must seek a price reduction when the order or BPA exceeds the executive branch's simplified acquisition threshold (previously GSA's simplified acquisition threshold). [. . .]
[. . .]

§ 310.50.63 Limiting Sources on Orders Placed under Federal Supply Schedules

Judiciary COs must justify an order or BPA that exceeds executive branch's micro-purchase threshold (previously GSA's competition threshold) where the competition requirements outlined in [§ 310.50.43 \(Ordering Procedures for Supplies and Services Not Requiring a Statement of Work\)](#) and [§ 310.50.46 \(Ordering Procedures for Services Requiring a Statement of Work\)](#) are not met.

- (a) For a proposed order or BPA with an estimated value exceeding the executive branch's micro-purchase threshold (previously GSA's competition threshold) (generally \$~~40~~15,000) not placed or established according to [§ 310.50.43 \(Ordering Procedures for Supplies and Services Not Requiring a Statement of Work\)](#), [§ 310.50.46 \(Ordering Procedures for Services Requiring a Statement of Work\)](#), or [§ 310.50.53\(g\) \(Ordering From BPAs Under GSA Schedules\)](#), the only circumstances that may justify the action are:
[. . .]
- (b) For proposed orders or BPAs with an estimated value exceeding executive branch's micro-purchase threshold (previously GSA's micro-purchase threshold) (generally \$~~40~~15,000), the judiciary CO must document the basis for limiting sources using [Form AO 370C \(Limited Sources Justification \(LSJ\)\)](#).
- (c) Posting Requirement
 - (1) Within 14 days after placing an order or establishing a BPA exceeding the executive branch's simplified acquisition threshold (previously GSA's simplified acquisition threshold) (\$~~2~~350,000) that is supported by a limited-sources justification permitted under any of the circumstances under paragraph (a) of this section, the judiciary CO must post the justification at [samSAM.gov](#), as well as post a link to the justification on the public web site of the judiciary organization or AO. [. . .]
[. . .]

§ 310.50.66 Limiting Sources Based on Items Particular to One Manufacturer (Brand Name)

- [. . .]
- (b) For proposed orders or BPAs with an estimated value between executive branch's micro-purchase threshold (previously GSA's competition threshold) and simplified acquisition threshold, \$~~40~~15,000 and \$~~2~~350,000, respectively, the judiciary CO must document the basis for restricting consideration to an item peculiar to one manufacturer. The judiciary CO must document the basis for limiting sources using [Form AO 370C \(Limited Sources Justification \(LSJ\)\)](#). If the estimated value is between \$~~25~~15,000 and \$~~2~~350,000, the documentation and the RFQ must be posted to eBuy.
- (c) For proposed orders or BPAs with an estimated value exceeding executive branch's simplified acquisition threshold (previously GSA's simplified acquisition threshold), \$~~2~~350,000, the judiciary CO must document the basis for restricting consideration to an item peculiar to one manufacturer using Form AO 370C. [. . .]

REDLINE COMPARISON REFLECTING CHANGES

§ 310.60 Other Federal Agency Contracts

[. . .]

§ 310.60.20 Ordering Scenarios

[. . .]

- (c) When ordering from OFACs under any of the above scenarios, the judiciary is required to follow the contract's ordering procedures, ~~competition~~executive branch's micro-purchase threshold and the other federal agency contract's terms and conditions. For example, NASA SEWP's procedures for providing for fair opportunity requires that all contractors be given an opportunity to provide a quote for all requirements that exceed \$~~10~~15,000.

[. . .]

§ 315 Publicizing (Advertising) Open Market Procurement Actions

§ 315.10 Policy

Open market procurements for products or services above the Judiciary Micro-Purchase Threshold may be made or entered into only after advertising for a sufficient time ~~previously for proposals~~, except when an exception applies. **See:** [Guide, Vol. 14, § 130.20.15 \(Advertising Requirements\)](#) and ~~§ 315.10.30 (Exceptions)~~. Other exceptions may apply to special delegated programs based on appropriation law or other laws applicable to the procurement. **See:** [Guide, Vol. 14, § 315.10.30 \(Exceptions\)](#).

315.10.15 Solicitation Response Time

Solicitations using small purchase procedures ~~should~~must be publicized (advertised) for ~~at least 10 days, but if more efficient, may be publicized for shorter periods if doing so provides sufficient time to afford~~ potential offerors ~~with sufficient a reasonable opportunity to respond to a proposed contract action (for example, 10 days before receipt of offers)~~. The COs should consider the circumstances of the procurement such as complexity, availability, and urgency when establishing the solicitation response time.

§ 320 Contractor Qualifications

§ 320.10 Responsible Prospective Contractors

[. . .]

§ 320.10.20 General Standards

[. . .] To be determined responsible, a contractor must:

- (a) ~~not have a history or record of negative performance;~~
- (a) have a satisfactory performance record. (The Contracting Officer must not determine a prospective contractor responsible or nonresponsible based solely on a lack of relevant performance history. A prospective contractor that is or recently has been seriously deficient in contract performance shall be presumed to be nonresponsible, unless the Contracting Officer determines that the circumstances were properly beyond the contractor's control, or that the contractor has taken appropriate corrective action.);
- (b) have ~~the~~ financial ~~wherewithal~~adequate resources to perform the contract, or ability to obtain them;

REDLINE COMPARISON REFLECTING CHANGES

§ 320.10.20 [cont'd]

- (c) be able comply with delivery or performance schedule, taking into consideration all existing commercial commitments (including ~~award~~-pending awards);
[. . .]

§ 322 Judiciary Micro-Purchase Procedures

§ 322.10 Judiciary Micro-Purchase Threshold

[. . .]

- (b) The GSA Federal Supply Schedule Program (also known as the Multiple Award Schedule Program) and other federal agency contracts (OFACs) use a different micro-purchase threshold (\$15,000) that applies to BPAs and orders issued under those programs and contracts. Judiciary contracting officers must observe that threshold used by the executive branch (\$15,000) when establishing BPAs or placing orders under those programs and contracts.

§ 322.20 Actions at or Below the Judiciary Micro-Purchase Threshold

§ 322.20.10 General

[. . .]

- ~~(f) — When using the Judiciary Government Purchase Card as a method of payment, purchases at or below the judiciary micro-purchase Threshold are exempt from verification in the System for Award Management (SAM) as to whether the contractor has a delinquent debt subject to collection under the Treasury Offset Program (TOP).~~

§ 322.20.20 Guidelines for Judiciary Micro-Purchases

- (a) For solicitation, evaluation of quotations, and award:

[. . .]

- (3) The administrative cost of verifying the reasonableness of prices for purchases may more than offset potential savings derived from efforts to detect instances of overpricing. Therefore, action to verify price reasonableness need only be taken if- there is:

~~(A) The contracting officer~~ A lack of understanding of competitive pricing; or ~~purchase cardholder suspects or has information~~

~~(B) Reason to indicatesuspect~~ Reason to indicatesuspect that the price ~~may is~~ is not ~~be~~ reasonable (e.g., comparison to the previous price paid or personal knowledge of the supply or service); or,

~~(ii) — Purchasing a supply or service for which no comparable pricing information is readily available (e.g., a supply or service that is not the same as, or is not similar to, other supplies or services that have recently been purchased on a competitive basis).~~

REDLINE COMPARISON REFLECTING CHANGES

§ 322.20.20 [cont'd]

(b) Documentation

If the contracting officer solicited competitive quotations ~~are solicited~~ and made award ~~made~~ to ~~either than the low quoter~~ a supplier that did not provide the lowest quote, documentation ~~to support the purchase may be limited to~~ of the award must include identification of the suppliers solicited ~~concerns~~ and and a brief explanation ~~for~~ of the award decision.

§ 322.30 Unauthorized Obligations and Other Prohibited Terms

[. . .]

~~(c) — When a judiciary micro-purchase, including those made with the Judiciary Government Purchase Card, involves a CSA, then paragraphs B, C, and D of Judiciary clause 3-120, Order of Precedence will be deemed to have been incorporated automatically into the CSA and will take precedence over any conflicting terms in CSA.~~

~~(d) — The incorporation of paragraphs B, C, and D of clause 3-120 into the CSA prevents violations of the Antideficiency Act (31 U.S.C. § 1341) by ensuring that judiciary contracting officers do not inadvertently agree to commercial terms and conditions that are prohibited and unenforceable against the judiciary.~~

§ 325 Small Purchase Procedures

[. . .]

§ 325.10 Applicability

[. . .]

(b) Contracting officers may use any small purchase procedure in this section, subject to any specific dollar limitation applicable to the particular procedure, for the acquisition of supplies and services above the judiciary's small purchase threshold up to ~~\$109~~ million, if the contracting officer reasonably expects, based on the nature of the supplies or services sought and on market research, that offers will include only commercial items, such as commercial products or commercial services, and the CO determines that using small purchase procedures is more advantageous and in the judiciary's best interest.

(c) Limitations

(1) A procurement estimated to total more than the judiciary's small purchase threshold — or more than ~~\$109~~ million when using the authority at ~~§ 325.10(b)~~ § 325.10(b) — may not be split into two or more purchases to use small purchase procedures.

[. . .]

§ 325.15 Open Market Competition (Advertising) Requirements

§ 325.15.10 Competition Threshold

Open market purchases above the Judiciary Micro-Purchases Threshold (\$25,000) require soliciting competitive quotations or offers (advertising).

REDLINE COMPARISON REFLECTING CHANGES

§ 325.30 Soliciting Using Small Purchase Procedure

[. . .]

§ 325.30.25 Oral Solicitations

An oral solicitation may be used when a written solicitation would be impracticable, as when processing a written solicitation would cause a delay detrimental to the judiciary. Records of oral solicitations (e.g., vendors contacted and prices quoted or offered) must be maintained in the purchasing file. [. . .]

§ 325.30.30 Amending Written Solicitations

An amendment to an RFQ or RFP must be issued on [Form SF-30 \(Amendment of Solicitation/Modification of Contract\)](#). [. . .]

§ 325.35 Basis for Award

[. . .]

§ 325.35.20 Technically Acceptable/Lowest Price

Quotes or offers are evaluated based on price. Awards are made to the responsible quoter or offeror who submits the lowest priced quotation that meets the judiciary's stated minimum technical requirements. [. . .]

§ 325.35.30 Best Value

Quotes or offers are evaluated based on factors other than price alone. Awards are made to the responsible quoter ~~who submits the quotation~~ or offeror that provides the best overall value to the government, considering price and the other evaluation factors stated in the solicitation.

§ 325.40 Receipt and Evaluation of Quotations or Offers

§ 325.40.10 Recording Quotes

Responses to written and oral quotations or offers must be clearly recorded in a format permitting ready comparison of prices and other details. [. . .]

§ 325.40.20 Late Quotations

Late quotations or offers in response to written or oral RFQ solicitations may be considered when an award has not yet been made, provided that the CO determines that doing so is in the judiciary's best interest. [. . .]

§ 325.41.20 File ~~d~~Documentation and Retention

[. . .]

(b) Written solicitations

(1) For acquisitions up to the judiciary's small purchase threshold, limit written records of ~~solicitations~~ quotes or offers to notes or abstracts to show:

[. . .]

REDLINE COMPARISON REFLECTING CHANGES

§ 325.41.20 [cont'd]

- (2) For acquisitions of commercial products or services over the judiciary's small purchase threshold and up to \$~~100~~ million, when the contracting officer chooses to use the small purchase procedures in this section instead of standard competitive procedures in ~~§ 330~~§ 330, the contract file must include the following:
- [. . .]
- (B) The number of quotes or offers received;
- [. . .]

§ 325.50 Blanket Purchase Agreement

[. . .]

§ 325.50.35 Open Market Multiple Award BPA

A Multiple Award BPA involves awarding BPAs for the same class of products or services to more than one vendor.

- (a) Orders against a multiple award BPA with an estimated price not expected to exceed the judiciary's competition threshold need not be competed or advertised. See: Guide, Vol. 14, § 325.15.10. [. . .]

§ 325.50.40 Ordering Under BPAs

- (a) A CO or an authorized ordering officer that has been identified in the BPA may issue orders for products and services covered by that agreement. [. . .] The orders ~~should~~must be documented in the BPA file.
- [. . .]

§ 325.50.50 Content of BPA ~~Orders~~

A BPA ~~Order~~ must include the ~~same information that is included in a purchase order, (see: § 325.45.10 (Contents of a Purchase Order)), as well as the~~ following:

[. . .]

- (e) The same information that is included in a purchase order (see: § 325.45.10 (Contents of a Purchase Order)).

§ 330 Standard Competitive Contracting Procedures

§ 330.10 Applicability

- (a) The standard competitive contracting procedures in this section are required for use by contracting officers certified at the COCP Professional Level when conducting procurements over the judiciary's small purchase threshold unless using the authority at § 325.10(b), which authorizes the use of small purchase procedures on procurements of commercial products and commercial services valued up to \$~~100~~ million.
- [. . .]

REDLINE COMPARISON REFLECTING CHANGES

§ 335 Justifications and Approvals for Limiting Competition

[. . .]

§ 335.40 Justification Not Required

§ 335.20 (Procedures) does not apply to the following:

[. . .]

- (e) Purchases under GSA schedule contract not expected to exceed the ~~executive branch's micro-purchase threshold (previously GSA competition threshold-)~~. See: [§ 310.50.43\(a\) \(Orders At or Bbelow the executive branch's micro-purchase threshold \(previously GSA's Competition Threshold\)competition threshold\)](#). [. . .]

§ 335.60 Limiting Competition – Open Market Purchases

[. . .]

§ 335.60.30 Justification for Limiting Open Market Competition

[. . .]

- (d) [. . .] Justifications for Limiting Competition for purchases exceeding ~~\$25350~~,000 may only be signed by COCP Level 3 COs and delegated official after obtaining a one-time delegation of procurement authority from AMO.

[. . .]

[Significant changes in Chapter 4 (Types of Contracts and Analysis of Offers) follow:]

§ 410 Contract Types

[. . .]

§ 410.75 Multi-Year Contracts

[. . .]

§ 410.75.30 Limitations on Use of Multi-Year Contracts

[. . .]

- (c) Exception to One-Time Delegation

- (1) A one-time delegation is not required for a multi-year award for services where:

[. . .]

(B) [. . .]

- (ii) the total amount for all years is less than the judiciary's ~~competition~~micro-purchase threshold (see: [Guide, Vol. 14, § 325.15.10 \(Competition Threshold\)](#)).

[. . .]

[Significant changes in Chapter 5 (Special Categories of Procurements) follow:]

§ 520 Expert and Consultant Nonpersonal Services Contracts

[. . .]

§ 520.30 Statutory Qualification

Before contracting for the services of an individual or business entity as an expert or consultant, the CO must determine that the individual or business entity ~~qualifies as an "expert" or "consultant" under 5 U.S.C. § 3109, and meets the definition of an "expert" or "consultant" as defined in Guide, Vol. 14, Appx. 1Z (Glossary of Procurement Terms) and qualifies as an expert or a consultant under 5 U.S.C. § 3109.~~ The CO must document this determination in the file.

[. . .]

REDLINE COMPARISON REFLECTING CHANGES

§ 520.85 Experts or Consultants Supporting Judicial Conference Committees

Any contract with~~The use of~~ reporters, experts, or consultants to directly support committees of the Judicial Conference of the United States (JCUS) requires prior approval. (Note: In this context, a "reporter" or "associate reporter" is a consultant who provides expert or specialized research, analytical, and drafting support directly for ~~a JCUS committee.~~the JCUS Committee on Rules of Practice and Procedure or one of its advisory committees.)

- (a) Any contract for an expert or ~~consulting services for~~consultant to support a JCUS committee ~~for a discrete, short term project or activity must have prior approval from~~be approved by the AO Director ~~and be issued by the Acquisition Management Office (AMO). The COR appointed to oversee the work must be a member of the AO staff.~~
- (b) Any contract ~~with~~for a reporter or ~~other consultant who may be expected~~associate reporter to support ~~a JCUS committee for a longer term or indefinitely~~the Committee on Rules of Practice and Procedure or one of its advisory committees must be approved through the AO Director by the Chief Justice, who makes all appointments to these positions.
- (c) All contracts for reporters, experts, or consultants to support JCUS committees must be issued by the AO's Acquisitions Management Office (AMO), and the COR appointed to oversee the work must be an AO employee.

§ 540 Commercial Supplier Agreements

§ 540.10 In General

- (a) Commercial agreements, license agreements (supplier agreements are terms and conditions customarily offered to the public by vendors of supplies or services intended to create a binding legal obligation on the end user.
- (b) Commercial supplier agreements are particularly common in information technology acquisitions, including acquisitions of commercial computer software licenses), and special use and commercial technical data, but may apply to any product or service, and may appear in any format or style, such as Terms of Service (TOS), End User License Agreement (EULA), or other similar legal instruments or agreements, and may be presented as part of a proposal or quotation responding to a solicitation for a contract or order.
- (c) Commercial supplier agreements may be presented as one or more paper documents or may appear on a computer or other electronic device screen during a purchase, software installation, other product delivery, registration for a service, or another transaction.
- (d) Regardless of the format or style of the agreement or the media or delivery mechanism used, commercial supplier agreements are often requested by contractors as conditions to entering into contracts with the judiciary for the purchase of products, services, and commercial meeting or conference facilities. These agreements are usually written for commercial entities rather than federal agencies and often contain problematic terms and conditions that must be modified or removed may require negotiating, modification, or removal.

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§ 540.20 Problematic Terms in Negotiating Commercial Supplier Agreements Terms and Conditions

In general, COs should not sign commercial agreements. Instead, the CO should issue a judiciary contract containing the appropriate judiciary terms and conditions. If this is not possible, then the following steps must be taken before the CO signs the commercial agreement:

Problematic terms include prohibited terms and conditions, and other terms and conditions that, although not prohibited, require close attention due to the added risk they pose for judiciary if not negotiated out of the agreement.

(a) Prohibited Terms and Conditions

The ~~CO will review~~ table below lists terms and conditions to which judiciary contracting officers must never agree. If the ~~commercial agreement and solicitation and contract do not include Clause 3-120, Order of Precedence, the CO must~~ negotiate with a representative from the ~~company vendor~~ to delete any of the following such terms and conditions if they are proposed as part of the commercial agreement (see: § 540.30 Procedures):

§ 540.20(a) Prohibited Terms and Conditions [table]

Term or Condition	Deletion <u>Mandatory Required Action</u>
(1) Credit Application/Master Account	Credit Delete from agreement, as credit provisions are not applicable to the judiciary.
(2) Attorney Fees	Any clause regarding Delete from agreement any vendor term requiring judiciary's payment of attorney fees.
(3) Automatic Renewals of Agreements	Provisions Delete from agreement any vendor term that automatically renews the commercial agreement from year to year .
(4) Payments in Advance	<p>Delete from agreement any vendor term requiring the judiciary to pay for more than the value of services already provided or articles already delivered U unless the agreement is authorized for advance payment under Guide, Vol. 14, § 220.55 (Contract Financing).</p> <p>Note on Software Licenses: Paying upfront for a software license is not considered an advance payment and is permissible when the vendor provides the license contemporaneously with the Government's payment.</p> <p>Note on publications: Charges for a publication printed or recorded in any way for the auditory or visual use of the agency may be paid in advance. See: 31 U.S.C. § 3324(d)(2); 71 Comp. Gen. 109, 114 (1991).</p>
(5) Insurance	Vendor terms requiring the judiciary to pay for insurance are generally prohibited because t The judiciary is self-insured.
(6) Damage Deposits	Any Delete from agreement any vendor term requiring the judiciary to provide a damage deposit. For li indemnification and/or Hold Harmless hold-harmless terms, see: paragraph (subparagraph (a)(8)) below.
(7) Arbitration Clause	Any clause agreeing Delete from agreement any vendor term requiring the judiciary to agree to arbitration.

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<p>(8) Indemnification or Hold Harmless</p>	<p>Delete from agreement any commercial vendor term or provision stating that requiring the judiciary will to indemnify and/or hold harmless the contractor, and Rreplace the indemnification/hold harmless terms with the following: “Notwithstanding any other term or provision of this agreement, the judiciary’s liability related to any claim for personal injury, death, property loss, or damage under this agreement, is limited by and subject to the procedures and terms of the Federal Tort Claims Act, the Antideficiency Act, and all other applicable federal laws and regulations.”</p> <p><u>Note: The judiciary may agree to the contractor indemnifying the government. The U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with 28 U.S.C. 516.</u></p>
<p>(9) Clause making State Court Jurisdiction or State Law applicable Terms <u>subjecting the judiciary to choice of law or governing law other than federal law (e.g., state court jurisdiction or state law)</u></p>	<p>Replace with “Federal law applies.” See: Boyle v. United Technologies Corp., 487 U.S. 500, 504 (1988)When the vendor’s agreement states any law other than federal law, delete and replace the term(s) with “Federal law applies.” See: Boyle v. United Technologies Corp., 487 U.S. 500, 504 (1988) (noting “obligations to and rights of the United States under its contracts are governed exclusively by federal law.”)</p>

(b) Terms or Conditions Recommended for Deletion or Modification

Table 540.20(b) lists terms and conditions commonly found in commercial vendor agreements. Although not prohibited, agreeing to any of these terms increases the judiciary’s risk in its contractual relationships. COs are strongly encouraged to attempt to delete or modify the following problematic terms and conditions when these appear in a vendor’s agreement (see: § 540.30 Procedures):In addition, it is strongly recommended as being in the best interests of the judiciary that the CO attempt to delete or modify the following commonly used commercial agreement terms or conditions:

§ 540.20(b) Terms and Conditions Recommended for Deletion or Modification [table]

Term or Condition	Recommended Action
<p>(5) <u>Inapplicable Statutory or Regulatory Provisions</u></p>	<p>Judiciary is not subject to all statutory or regulatory provisions that may be applicable to other federal entities. When ordering through GSA FSS or other federal agency GWAC(s), the judiciary is subject to terms and clauses contained in those contracts.</p>

~~(c) — In addition to the above mandatory and recommended changes to proposed commercial terms and conditions, when the contract is being awarded in the current fiscal year to be delivered or performed in a future fiscal year, the CO must incorporate a statement that the agreement is subject to the availability of funds and incorporate Clause 7-115, Availability of Funds by reference.~~

§ 540.30 Procedures

When a vendor presents a commercial supplier agreement as part of a proposal or quotation in response to a solicitation and requires the inclusion or execution of the agreement, the CO should not sign the agreement or the award without ensuring that procurement, program office, and Office of General Counsel personnel have reviewed the vendor’s agreement for problematic terms and conditions.

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§ 540.30 [cont'd]

(a) Prohibited Terms

- (1) If a review of the agreement identifies the existence of prohibited terms listed in § 540.20(a), the CO must proceed in accordance with the following guidelines before signing the vendor's agreement or incorporating it into the resulting award.
- (2) If the solicitation and contract include Clause 3-120, Order of Precedence, the CO need not take action, as the judiciary's clause supersedes or overrides the prohibited problematic terms, rendering them without legal effect. (Note: There may be other reasons negotiation is needed even if Clause 3-120 is included.) However, if the solicitation and contract do not include Clause 3-120, the CO must negotiate with the vendor to delete any prohibited terms if they are proposed as part of the commercial agreement.

(b) Terms or Conditions Recommended for Deletion or Modification

Although not prohibited, agreeing to any of these terms increases the judiciary's risk in its contractual relationships. COs are strongly encouraged to negotiate with the prospective contractor and attempt to delete or modify the problematic terms and conditions listed in § 540.20(b) when these appear in a vendor's agreement.

(c) After negotiating terms, tThe CO must ensure that either:

- (1) a new commercial agreement is generated that incorporates all the negotiated changes; or
- (2) both parties have initialed all modifications made to the original commercial agreement.

[. . .]

~~(1) identify and recommend then consider other options that may be available to the judiciary (Note: Options could include a recommendation that the product or service be procured elsewhere-); or.~~

~~(2) contact AMO for assistance if the provisions at issue are those specified in § 540.20(a) (Prohibited Terms and Conditions).~~

~~(e)~~ If the CO is unable to negotiate the provisions in § 540.20(b) (Terms and Conditions Recommended for Deletion or Modification) ~~as recommended~~ and proceeds with the agreement, ~~then~~ the CO ~~must calculate any~~ will be required to obligate an amount of funds equivalent to the potential costs that may be incurred to obtain or use the products, services, commercial meeting, or conference facility ~~under such terms that may not be favorable. COs in this situation should contact AMO or a fiscal law attorney to determine the judiciary. The cost must be calculated using a "worst case" scenario.~~

~~Note: Sufficient amount of funds must be obligated to cover the costs of the worst case scenario~~ obligate when the contract or purchase order is awarded.

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§ 550 Interagency Agreements, MOAs, and MOUs

§ 550.10 In General

[. . .]

(c) This section does not apply to:

[. . .]

- ~~the purchase of duplication or printing services (see: Guide, Vol. 23, Ch. 2 (Printing)); or~~

[. . .]

§ 550.55 MOAs and MOUs

[. . .]

§ 550.55.60 MOAs or MOUs Versus No-Cost Contracts

If an MOA or MOU with a non-federal entity contains mutual promises and benefits to both parties (i.e., consideration, instead of obligating funds), it may constitute a “no-cost” contract, versus a gift, depending on the facts. See: § 570 (No Cost Contracting).

§ 560 Printing and Duplication Services

The procurement of printing or duplication services for the judiciary is governed by Guide, Vol. 23, Ch. 2 (Printing).

§ 570 No-Cost Contracting

- (a) This section applies to contracts the judiciary awards to vendors at no-cost to the judiciary (i.e., formal contracts between the judiciary and a vendor under which there is consideration but the judiciary makes no monetary payment for the vendor’s performance and has no financial liability to the vendor). See, e.g.,: GAO B-302811 (July 12, 2004), B-302811 (July 12, 2004), GAO B-308968 (Nov. 27, 2007).
- (b) No-cost contracts might be appropriate in rare instances, but only a CO can bind the judiciary to such contracts. For an example, see: Guide, Vol. 14, § 310.80 (Vendors Offering Services for Public Use); GAO B-410752.3 et seq. (LCPtracker, Inc.; eMars, Inc.).
- (c) Use of no-cost contracts is not a work around to avoid laws, regulations, or requirements including specific policies in other volumes of the *Guide to Judiciary Policy*. COs should review the relevant *Guide* volumes and contact offices responsible for those volumes as applicable.
- (d) For any proposed no-cost contract:
- (1) AO staff are subject to the applicable AO policies and procedures.
 - (2) Other judiciary organizations should consult with the AO’s AMO, as such contracts may involve other potential issues to consider (e.g., conflicts of interest, augmentation of appropriations). See: GAO B308968 (No-Cost Contracts for Event Planning Services).

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§ 570.10 Antideficiency Act Considerations

- (a) The Antideficiency Act prohibits federal agencies from accepting voluntary services without specific statutory authority (31 U.S.C. § 1342). One of the purposes of the prohibition is to preclude situations that might generate claims for compensation that might exceed an agency's available funds. See, e.g.: B-211079.2 (Jan. 2, 1987).
- (b) Services performed according to a formal contract, in which the agency has no financial obligation, and the contractor has no expectation of payment from the government, are not "voluntary" within the meaning of the prohibition, because the vendor receives consideration. See: Guide, Vol. 14, § 570(d), above.
- (c) Therefore, the judiciary does not violate the Antideficiency Act's voluntary services prohibition when it awards a no-cost contract to a vendor if the contract terms stipulates that the vendor has no expectation of payment from the judiciary and that the judiciary has no financial liability to the vendor.

§ 570.20 Procedures

- (a) If a service will be provided by a vendor under a no-cost contract, and providing the service requires the vendor to have access to judiciary property, facilities, records, or data in a way that is not generally available to the public, then the opportunity to provide that service to the public must be subject to a competitive selection process if the value of the service exceeds the judiciary's competition threshold (see: Guide, Vol. 14, § 325.15.10).
- (b) The level of the service should be based on a reasonable estimate of the service's open market value during the period in which the service will be provided (such as one year). Contracting Officers have discretion in deciding the most appropriate valuation method for the services.
- (c) When competition is required for a no-cost contract based on its anticipated value, national advertising in SAM.gov is authorized but is not required regardless of the anticipated value of the service.

Note: The service must be advertised and fully competed if the service's open market value estimate exceeds \$25,000 but does not exceed the small purchase threshold.
- (d) No-cost contracts should be awarded using Small Purchase Procedures. See: Guide, Vol. 14, § 325.

§ 570.30 Written Documentation

To award a no-cost contract, the Contracting Officer must determine in writing that:

- (a) use of a no-cost contract is appropriate under the circumstances by:
 - (1) evaluating the value of the services received from the contractor with that of the concession offered by the contractor,

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§ 570.30 [cont't]

- (2) considering possible conflict of interest.
- (3) ensuring open, transparent selection process before entering a no-cost contract, and
- (4) addressing how the judiciary unit benefits and how services align with judiciary unit objectives.
- (b) competition was or will be provided if required; and
- (c) the terms of the contract clearly stipulate that:
 - (1) the vendor has no expectation of payment from the judiciary, and
 - (2) the judiciary has no financial liability to the vendor.