

# Guide to Judiciary Policy

Vol. 14: Procurement

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## § 310 Procurement Sources

### § 310.10 Sources of Supply

#### § 310.10.10 In General

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

(a) Mandatory Sources

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

(b) Non-Mandatory Sources

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

- Open market.

### **§ 310.10.20 Market Research and Mandatory Sources**

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

### **§ 310.10.30 Non-Mandatory Sources**

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

### **§ 310.10.40 Cost Factors to Consider**

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

### **§ 310.10.50 Using Other Federal Agency Contracts**

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

## **§ 310.20 Workshop for People Who are Blind or Severely Disabled**

### **§ 310.20.10 Statutory Requirement**

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

### § 310.20.20 Available Products or Services

The Committee maintains a procurement list of all products and services required to be purchased from participating nonprofit agencies. The procurement list is published and updated in the Federal Register. For the procurement list and further information on AbilityOne, **see:** AbilityOne website.

Refer all questions on whether a product or service is on the procurement list to the Committee at [info@abilityone.gov](mailto:info@abilityone.gov).

### § 310.20.30 Procedures

- (a) The statute requires the judiciary to purchase products and services on the procurement list, at prices established by the Committee. Contracting Officers (COs) must obtain products and services from a participating nonprofit agency approved by a central nonprofit agency. The National Industries for the Blind (NIB) has been designated to represent nonprofit agencies for the blind. The National Institute for the Severely Handicapped (NISH) has been designated to represent participating nonprofit agencies employing persons with other severe disabilities.
- (b) Central nonprofit agencies may authorize a CO to transmit orders for specific products or services, directly to a participating nonprofit agency. The written authorization remains valid until it is revoked by the central nonprofit agency or the Committee. The central nonprofit agency will specify the normal delivery or performance lead time required by the nonprofit agency. The purchasing office must reflect this lead time in its orders (**but see:** § 310.20.40(a)(1) (Purchase Exceptions)). COs should check GSA federal supply schedules and other commercial vendors' catalogs for AbilityOne participating nonprofit agencies. A designation of AbilityOne for their products and services allows COs to order directly from these authorized distributors for those products and services.

### § 310.20.40 Purchase Exceptions

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

- (a) A central nonprofit agency (NIB or NISH) will normally grant a purchase exception for products or services on the Procurement List when **both** of the following conditions are met:
  - (1) the central nonprofit agency or one of its nonprofit agencies cannot furnish a product or service within the period specified, and

- (2) the product or service is available from commercial sources in the quantities needed and much sooner than it will be available from the nonprofit agency.
- (b) The central nonprofit agency may also grant a purchase exception when the quantity involved is not sufficient to be furnished economically by the nonprofit agency.
- (c) The Committee may also grant a purchase exception for the reasons provided in paragraphs (a) and (b) of this section.
- (d) The central nonprofit agency is required to obtain the approval of the Committee before granting a purchase exception when the value of the procurement exceeds their authority.
- (e) When the central nonprofit agency grants a purchase exception under the above conditions, it is required to do so promptly, and the exception should specify the quantities and delivery period covered by the exception.
- (f) When a purchase exception is granted under paragraph (a) of this section:
  - (1) the CO must initiate commercial purchase actions within 15 days following the date of the purchase exception. The deadline may be extended by the central nonprofit agency (with the concurrence of the Committee, in cases of a procurement exceeding the central nonprofit agency's authority).
  - (2) the CO must furnish a copy of the solicitation to the appropriate central nonprofit agency at the time it is issued, and a copy of the annotated offer abstract upon award of the commercial contract.
- (g) Any decision by a central nonprofit agency regarding a purchase exception may be appealed to the Committee by the CO.

#### **§ 310.20.50 Quality Requirements**

Under AbilityOne regulations (41 CFR 51-6.10 (Quality of Merchandise)), the following applies:

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

- (b) Services furnished by nonprofit agencies employing persons who are blind or have other severe disabilities are required to be performed according to government specifications and standards. Where no government specifications and standards exist, the services are required to be performed according to commercial practices.

#### **§ 310.20.60 Quality and Other Noncompliance Complaints**

Under AbilityOne regulations (41 CFR 51-6.11 (Quality Complaints)), the following applies:

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

### **§ 310.20.70 Clauses**

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

## **§ 310.30 Randolph-Sheppard Act**

### **§ 310.30.10 Statutory Requirement**

Under the Vending Facility program authorized by the *Randolph-Sheppard Act* (20 U.S.C. §§ 107, et seq) and the implementing regulations (34 CFR part 395), federal government agencies, including the judiciary, must give priority for the operation of vending facilities on federal property to blind persons licensed by a state agency.

### **§ 310.30.20 Procedures**

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

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

### **§ 310.30.30 Records Maintenance**

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

### **§ 310.30.40 Sample Offering Letter**

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

## **§ 310.40 Judiciary-Wide Contracts and Blanket Purchase Agreements (BPAs)**

### **§ 310.40.10 In General**

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

- reduced administrative effort,



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

#### **§ 310.40.20 National Contract and BPA Management**

The Administrative Office of the U.S. Courts' (AO) Acquisition Management Office (AMO), is responsible for establishing national contracts and designating the activities authorized to place orders. For a list of the products and services available under national contracts, **see:** JNet's Judiciary-Wide Contracts and Blanket Purchase Agreements (BPAs) page. Flexibility in purchasing arrangements is needed to meet judiciary customer service requirements through rapidly changing technologies. Therefore, use of national contracts is not mandatory.

#### **§ 310.40.30 Contract and BPA Requirements**

- (a) When using national contracts, the delivery/task order must cite the applicable judiciary-wide contract for which the order is placed. The CO must follow the contract's ordering procedures. The contract's terms and conditions are applicable to the order. If conflicting terms or conditions are incorporated in an individual order, the terms of the contract will control.
- (b) If the CO is required to solicit competitive quotes from more than one contractor before placing an order, the CO may use either technically acceptable/lowest price or best value as the basis of award.

### **§ 310.50 GSA Federal Supply Schedules**

#### **§ 310.50.10 In General**

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

#### **§ 310.50.13 Schedule Pricelists**

- (a) GSA schedule contracts require all schedule contractors to publish an "Authorized Federal Supply Schedule Pricelist" (pricelist). The pricelist contains all the products and services offered by a schedule contractor. In addition, each pricelist contains the pricing and the terms and conditions pertaining to each Special Item Number (SIN) that is on schedule.
- (b) The GSA schedule contractor is required to provide one copy of its pricelist to any ordering activity (judiciary contracting officer) upon request. Also, a copy of the pricelist may be obtained from FSS via email, from

GSAeLibrary.gov, or by telephone at 1-800-488-3111. This subsection and the pricelists contain necessary information for placing delivery orders (for products) or task orders (for services) with schedule contractors.

#### **§ 310.50.20 GSA Advantage!**

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

#### **§ 310.50.23 eBuy**

eBuy is GSA's electronic Request for Quotation (RFQ) system and is a part of a suite of online tools that complement GSA Advantage! eBuy allows judiciary COs to post requirements and obtain quotes electronically. 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 GSA's simplified acquisition threshold (\$250,000)) and § 310.50.46(c) (Orders using "best value" evaluation method); and
- (b) is required when an order contains brand name specifications (**see:** § 310.50.66(b) (Limiting Sources Based on Items Particular to One Manufacturer (Brand Name))).

#### **§ 310.50.26 Further Guidance**

For more information or assistance on either GSA Advantage! or eBuy, contact GSA at [gsa.advantage@gsa.gov](mailto:gsa.advantage@gsa.gov).

#### **§ 310.50.30 Inclusion of Items Not on Schedule**

For administrative convenience, judiciary COs may add items not on the FSS (also called "open market items") to an FSS BPA, or an individual task or delivery order only if:

- (a) All applicable acquisition regulations related to the purchase of the items not on the FSS have been followed, such as publicizing (**see:** § 315 (Publicizing Open Market Procurement Actions)) and competition requirements (**see:** § 325 (Small Purchase Procedures));
- (b) The judiciary CO has determined the price for the item(s) not on the FSS is fair and reasonable;
- (c) The items are clearly labeled on the order as items not on the FSS; and

- (d) All clauses applicable to items not on the FSS are included in the order. This includes the use of Clause 3-3, Provisions, Clauses, Terms and Conditions – Small Purchases and any other judiciary clauses that may be required.

### **§ 310.50.33 Use of GSA Schedules**

Judiciary COs will issue delivery orders or task orders directly to the schedule contractors for the required products and services. The delivery or task order must cite the applicable GSA contract number from which the order is placed. When placing orders or establishing a BPA under FSS contracts (**see:** § 310.50.53 (Blanket Purchase Agreements Under GSA Schedules)), judiciary COs must not seek competition outside of the schedules or synopsise the requirement on sam.gov.

- (a) Requirements
  - (1) The judiciary is required to follow the GSA schedule ordering procedures as stated in this subsection when placing an order or establishing a BPA for products or services. The procedures in this section apply to all schedules.
  - (2) For orders that exceed \$550,000, the requiring/ordering agency must make a determination that the use of the schedule is the best procurement approach, using Guide, Vol. 14, Appx. 3B (Determination of Best Procurement Approach).
  - (3) Orders that are not fixed price, i.e. time and materials or labor hour, require a determination and finding (D&F) detailing why a fixed-price order is not suitable, using Guide, Vol. 14, Appx. 3C (Determination and Findings for Time and Materials and Labor Hour GSA FSS Orders).
- (b) Orders against GSA FSS cannot be competed with open market, judiciary-wide contracts, or OFACs. Orders placed under GSA schedules must be consistent with the judiciary's policies and procedures, and within the contracting officer's delegation authority. **See:** Guide, Vol. 14, § 140 (Contracting Officers Certification Program).

### **§ 310.50.36 Clauses/Provisions Applicable to FSS Order**

- (a) Orders placed by a judiciary CO under FSS contracts must be consistent with the judiciary's procurement program requirements applicable to the procurement of the product or service.
- (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 threshold (**see**: § 310.50.43(a) (Orders at or Below the GSA's Competition Threshold)).

- (c) The CO may determine that judiciary specific clauses also apply. The CO may then add those to the order. **See**: Guide, Vol. 14, Appx. 1B (Solicitation Provisions and Contract Clauses). However, the CO should not include provisions or clauses that:
  - (1) are already part of the GSA contract (except as directed in judiciary procurement guidance);
  - (2) conflict with the GSA contract provisions or clauses; or
  - (3) create ambiguities when added to GSA contract provisions or clauses.

#### **§ 310.50.40 Determination of Fair and Reasonable Price**

- (a) Products offered on the schedule are listed at fixed prices. Services offered on the schedule are priced either at hourly rates, or at a fixed price for performance of a specific task (e.g., installation, maintenance, and repair).
- (b) GSA has already determined the prices of products and fixed-price services, and rates for services offered at hourly rates, under schedule contracts to be fair and reasonable. Therefore, judiciary COs are not required to make a separate determination of fair and reasonable pricing, except for a price evaluation as required by services requiring a statement of work. **See**: § 310.50.46 (Ordering Procedures for Services Requiring a Statement of Work).
- (c) Judiciary COs should seek additional discounts. However, COs must seek a price reduction when the order or BPA exceeds the GSA's simplified acquisition threshold. Schedule contractors are not required to give price reductions that they extended to another ordering activity for a specific BPA or order. **See**: § 310.50.56 (Price Reductions).

#### **§ 310.50.43 Ordering Procedures for Supplies and Services Not Requiring a Statement of Work**

Judiciary COs must use the ordering procedures of this subsection when placing an order for supplies or services not requiring a statement of work (SOW). The procedures outlined in the following table apply to all schedules. Whenever a written Request for Quotation (RFQ) is used, the judiciary CO must provide the RFQ to any schedule contractor who requests a copy of it. Written RFQs may also be posted to GSA's electronic RFQ system, eBuy. **See**: § 310.50.23 (eBuy).

<b>§ 310.50.43 Ordering Procedures for Supplies and Services Not Requiring a Statement of Work</b>	
<b>Procedure</b>	<b>Details</b>
<p>(a) Orders at or below the GSA's competition threshold, which is \$10,000, <b>except</b> for:</p> <p>(1) procurement of construction subject to Wage Rate Requirements (Construction) (i.e., \$2,000); and</p> <p>(2) procurement of services subject to the Service Contract Labor Standards (SCLS) (i.e., \$2,500).</p>	<p>Judiciary COs may place orders at, or below, GSA's competition threshold with any Federal Supply Schedule contractor that can meet the agency's needs. Although not required to solicit a specific number of schedule contractors, judiciary COs should attempt to distribute orders among contractors.</p>

<b>§ 310.50.43 Ordering Procedures for Supplies and Services Not Requiring a Statement of Work</b>	
<b>Procedure</b>	<b>Details</b>
(b) Orders exceeding GSA's competition threshold, but not exceeding GSA's simplified acquisition threshold (\$250,000).	<p>(1) Judiciary COs must place orders with the contractor that can provide the technically acceptable lowest priced (or best value, when applicable) supply or service. Before placing an order, the judiciary CO must:</p> <p>(A) Consider reasonably available information about the supply or service offered under Federal Supply Schedule contracts by surveying at least three schedule contractors through the GSA Advantage! online shopping service, by reviewing the catalogs or pricelists of at least three schedule contractors, or by requesting quotations from at least three schedule contractors; or</p> <p>(B) Document the circumstances for restricting consideration to fewer than three schedule contractors based on one of the reasons listed in § 310.50.63 (Limiting Sources on Orders Placed Under Federal Supply Schedules).</p> <p>(2) When the CO solicits pricing by sending an RFQ to at least three sources, receipt of at least one of the completed RFQs is considered adequate competition, since the pricing was prepared in a competitive environment.</p>
(c) Orders exceeding GSA's simplified acquisition threshold (\$250,000).	<p>(1) Each order must be placed on a competitive basis unless this requirement is waived based on a justification that is prepared and approved according to § 310.50.63 (Limiting Sources on Orders Placed Under Federal Supply Schedules). The judiciary CO must:</p> <p>(A) Provide an RFQ that includes a description of the supplies to be delivered or the services to be performed and the basis on which the selection will be made. <b>See:</b> § 330.40 (Selection for Award); and</p> <p>(B) Post the RFQ on eBuy to afford all schedule contractors offering the required supplies or services under the appropriate schedule(s) an opportunity to submit a quote;</p> <p><b>or</b></p> <p>(2) Provide the RFQ to as many schedule contractors as practicable, consistent with market research appropriate to the circumstances, to reasonably ensure that quotes will be received from at least three contractors that can fulfill the requirements. When fewer than three quotes are received from schedule contractors that can fulfill the requirement, the</p>

<b>§ 310.50.43 Ordering Procedures for Supplies and Services Not Requiring a Statement of Work</b>	
<b>Procedure</b>	<b>Details</b>
	<p>judiciary CO must prepare a written determination explaining that no additional contractors capable of fulfilling the requirement could be identified, despite reasonable efforts to do so. The determination must clearly explain efforts made to obtain quotes from at least three schedule contractors;</p> <p><b>as well as</b></p> <p>(3) Ensure that all quotes received are fairly considered and award is made according to the selection basis stated in the RFQ; and</p> <p>(4) When an order contains brand name specifications, the judiciary CO must post the RFQ on eBuy along with the justification or documentation, as required by § 310.50.66 (Limiting Sources Based on Items Particular to One Manufacturer (Brand Name)). An RFQ is required when a purchase description specifies a brand name.</p>
(d) Orders using “best value” evaluation method.	Orders using the best value methodology for evaluation must have a written RFQ and follow the procedures in § 310.50.46 (Ordering Procedures for Services Requiring a Statement of Work) for the corresponding dollar threshold.

### **§ 310.50.46 Ordering Procedures for Services Requiring a Statement of Work**

The following additional requirements apply when ordering services priced at hourly rates as established by the schedule contracts for services requiring an SOW. The applicable services will be identified in the FSS publications and the contractor’s pricelists. For services priced at hourly rates, the specific services required by the judiciary CO must be fully described in an SOW. All SOWs must include:

- the work to be performed,
- location of work,
- period of performance,
- deliverable schedule,
- applicable performance standards, and
- any special requirements (e.g., security clearances, travel, special knowledge, analysis of requirements, or system maintenance support).

<b>§ 310.50.46 Ordering Procedures for Services Requiring a Statement of Work</b>	
<b>Type of Order</b>	<b>Details</b>
(a) Orders exceeding GSA's competition threshold (generally \$10,000) but not exceeding GSA's simplified acquisition threshold (\$250,000).	<p>The judiciary CO must place orders with the contractor that can provide the technically acceptable lowest priced supply or service. Before placing an order, the judiciary CO must:</p> <ol style="list-style-type: none"> <li>(1) Develop an SOW according to information above.</li> <li>(2) Provide the RFQ (including the SOW and evaluation criteria) to at least three schedule contractors that offer services that will meet the judiciary's needs or document the circumstances for restricting consideration to fewer than three schedule contractors, based on one of the reasons in § 310.50.63 (Limiting Sources on Orders Placed Under Federal Supply Schedules).</li> <li>(3) Specify the type of order (i.e., firm-fixed-price, labor-hour) for the services identified in the SOW. Orders should be awarded on a fixed price basis. Use of other contract types requires a delegation of procurement authority for some COCP Level contracting officers (<b>see:</b> Guide, Vol. 14, § 140 (Contracting Officers Certification Program)).</li> </ol>
(b) Orders exceeding GSA's simplified acquisition threshold (\$250,000).	<p>Each order must be placed on a competitive basis unless this requirement is waived on the basis of a justification that is prepared and approved according to § 310.50.63 (Limiting Sources on Orders Placed Under Federal Supply Schedules). The judiciary CO must prepare an RFQ that includes an SOW and evaluation criteria. The CO must:</p> <ol style="list-style-type: none"> <li>(1) Post the RFQ on eBay to afford all schedule contractors offering the required services under the appropriate multiple-award schedule(s) an opportunity to submit a quote;</li> </ol> <p><b>or</b></p> <ol style="list-style-type: none"> <li>(2) Provide the RFQ to as many schedule contractors as practicable, consistent with market research appropriate to the circumstances, to reasonably ensure that quotes will be received from at least three contractors that can fulfill the requirements. When fewer than three quotes are received from schedule contractors that can fulfill the requirements, the contracting officer must prepare a written determination to explain that no additional contractors capable of fulfilling the requirements could be identified despite reasonable efforts to do so. The determination must clearly explain efforts made to obtain quotes from at least three schedule contractors;</li> </ol> <p><b>as well as</b></p> <ol style="list-style-type: none"> <li>(3) Ensure that all quotes received are fairly considered and award is</li> </ol>



<b>§ 310.50.46 Ordering Procedures for Services Requiring a Statement of Work</b>	
<b>Type of Order</b>	<b>Details</b>
	<p>made according to the evaluation criteria in the RFQ; and</p> <p>(4) Provide the RFQ (including the SOW and evaluation criteria) to any schedule contractor who requests a copy.</p>
(c) Orders using “best value” evaluation method.	<p>(1) Requests for quotations that use “best value” evaluation method (price and other factors) must include a full description of the evaluation criteria. <b>See:</b> § 330.40.30 (Best Value Awards). This information must be disclosed with the solicitation to each potential offeror. <b>See:</b> Guide, Vol. 14, § 210.70.30(b)(5) (Source Selection Processes).</p> <p>(2) In addition to price, when determining best value, the judiciary CO may consider, among other factors, the following:</p> <ul style="list-style-type: none"> <li>• past performance;</li> <li>• special features of the product or service required for effective program performance;</li> <li>• trade-in considerations;</li> <li>• probable life of the item selected as compared with that of a comparable item;</li> <li>• warranty considerations;</li> <li>• maintenance availability;</li> <li>• environmental and energy efficiency considerations; and</li> <li>• delivery terms.</li> </ul> <p><b>Note:</b> Under the Contracting Officers’ Certification Program (COCP) (<b>see:</b> Guide, Vol. 14, § 140 (Contracting Officers Certification Program)), not all certification levels are authorized for “best value” procurements. The “best value” method of evaluation is more complex; therefore, only appropriately trained and certified COs may solicit for best value offers. For COs holding COCP certification levels not delegated this authority, the solicitation package using “best value” must be submitted to AMO for written approval before soliciting quotes.</p>
(d) Services Priced at Hourly Rates	The judiciary CO is responsible for considering the level of effort and the mix of labor proposed to perform a specific task being ordered and for determining that the total price is reasonable.

### § 310.50.50 Evaluation and Award

- (a) The judiciary CO must evaluate all responses received using the evaluation criteria provided to the schedule contractors in the RFQ.
- (b) After the CO places an order, or establishes a BPA, with the schedule contractor, the CO must provide timely notification to unsuccessful

offerors. If an unsuccessful offeror requests information on an award that was based on factors other than price alone, a brief explanation of the basis for the award decision must be provided.

#### **§ 310.50.52 File Documentation**

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

- (a) the schedule contracts considered, noting the contractor from which the service was purchased;
- (b) a description of the service purchased;
- (c) the amount paid;
- (d) the evaluation methodology used in selecting the contractor to receive the order;
- (e) the rationale for any trade-offs, if trade-off methodology is used, in making the selection (required only when a best value evaluation methodology is used) (**see**: § 330.40.30 (Best Value Awards) and § 330.40.40 (Selection Documentation));
- (f) the price reasonableness determination, which includes an assessment of the level of effort and labor mix, § 310.50.46(d) (Services Priced at Hourly Rates) (required only when an SOW is involved);
- (g) the rationale for using other than a firm-fixed price order; and
- (h) when an order exceeds the simplified acquisition threshold, evidence of compliance with the ordering procedures at § 310.50.43(c) (Orders Exceeding GSA's Simplified Acquisition Threshold (\$250,000)) or § 310.50.46(c) (Orders Using "Best Value" Evaluation Method), whichever is applicable.

#### **§ 310.50.53 Blanket Purchase Agreements Under GSA Schedules**

- (a) Use this subsection only for BPAs established under a GSA schedule. Single or multiple award BPAs established under the GSA schedules must use the same procedures 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). For guidance on how to establish an open market BPA, **see**: § 325.50 (Blanket Purchase Agreement).

- (b) A BPA is an ordering agreement, not a contract. A BPA does not constitute a legally binding contract and may be established without an obligation of funds. Therefore, there is never an obligation of funds recorded based on a BPA award. Funds must be obligated at the time an order is placed under a BPA, unless the order is subject to the availability of funds and properly supported by Clause 7-115, Availability of Funds.
  - (1) BPAs against GSA Schedules are written agreements negotiated between a purchasing office and a GSA Schedule contractor that contain agreed upon terms and conditions that will apply if and when an order is placed against the BPA for products or services.
  - (2) BPAs permit individuals that are designated in writing by name or title in the BPA, to place orders by telephone, over-the-counter, by email, or in writing. Regardless of how the order is placed, an obligation of funds must be recorded in the financial system at the time the order is placed, unless the order is subject to the availability of funds and properly supported by Clause 7-115, Availability of Funds.

(c) Use of GSA BPAs

Judiciary COs may establish BPAs under any schedule contract to fill repetitive needs for products or services.

- (1) BPAs may be established under one or more schedule contractors' GSA contract. The number of BPAs to be established is within the discretion of the judiciary CO establishing the BPAs and should be based on a strategy that is expected to maximize the effectiveness of the BPAs.
- (2) BPAs must address the frequency of ordering, invoicing, discounts, requirements (e.g., estimated quantities, work to be performed), delivery locations, and time.

(d) Single Award BPA Under GSA

Judiciary COs should, to the maximum extent practicable, give preference to establishing multiple award BPAs, rather than establishing a single source BPA.

- (1) No single award BPA with an estimated value exceeding \$100 million (including any options), may be awarded unless the Procurement Executive (PE) has determined in writing that:

- (A) Orders under the BPA are so integrally related that only a single source can reasonably perform the work;
    - (B) The BPA provides for only firm-fixed priced orders for products with unit prices established in the BPA, or services with prices established in the BPA for specific tasks to be performed;
    - (C) Only one source is qualified and capable of performing the work at a reasonable price to the judiciary; or
    - (D) It is necessary in the public interest to award the BPA to a single source for exceptional circumstances.
  - (2) The requirement for determination for a single-award BPA greater than \$100 million is in addition to any applicable requirement for a limited-sources justification at § 310.50.46 (Ordering Procedures for Services Requiring a Statement of Work). However, the two documents may be combined into one document.
- (e) Multiple Award BPA Under GSA
- A multiple award BPA involves awarding BPAs for the same class of products or services to more than one vendor.
- (1) When establishing a multiple-award BPA, the judiciary CO must specify the procedures for placing orders under the BPAs according to § 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), whichever is applicable.
  - (2) In determining to award a multiple award BPA or a single award BPA, the judiciary CO should consider the following factors and document the decision in the BPA file:
    - (A) the scope and complexity of the requirement(s);
    - (B) the need to periodically compare multiple technical approaches or prices;
    - (C) the administrative costs of BPAs; and
    - (D) the technical qualifications of the schedule contractor(s).
- (f) Minimum Documentation

The judiciary CO must include, at a minimum, the following documentation in the BPA file:

- (1) Schedule contracts considered, noting the contractor to which the BPA was awarded.
- (2) Description of the supply or service purchased.
- (3) Price.
- (4) Required justification for a limited source BPA, if applicable. **See:** § 310.50.63 (Limiting Sources on Orders Placed Under Federal Supply Schedules).
- (5) Determination for a single-award BPA exceeding \$100 million, if applicable. **See:** § 310.50.53(d) (Single Award BPA Under GSA).
- (6) Documentation supporting the decision to establish multiple award BPAs or a single-award BPA. **See:** § 310.50.53(d) (Single Award BPA Under GSA) and § 310.50.53(e) (Multiple Award BPA Under GSA).
- (7) Basis for the award decision. This should include the evaluation methodology used in selecting the contractor, the rationale for any trade-offs in making the selection (if “best value”), and a price reasonableness determination for services requiring an SOW.

<b>§ 310.50.53(g) Ordering from BPAs under GSA Schedules</b>	
<b>BPA Situation</b>	<b>Procedures</b>
(1) Single Award BPA	If the judiciary CO establishes one BPA, authorized users may place the order directly under the established BPA when the need for the product or service arises.
(2) Multiple Award BPAs	<p>(A) Orders at or below the GSA competition threshold (generally \$10,000). The judiciary CO may place orders at or below the GSA competition threshold with any BPA holder that can meet the agency’s needs. The ordering activity should attempt to distribute any such orders among the BPA holders.</p> <p>(B) Orders exceeding the GSA’s competition threshold but not exceeding the GSA’s simplified acquisition threshold (\$250,000).</p> <p>(i) The judiciary CO must provide each multiple award BPA holder an opportunity to be considered for each order exceeding the GSA competition threshold, but not exceeding GSA’s simplified acquisition threshold unless one of the exceptions in § 310.50.63</p>

<b>§ 310.50.53(g) Ordering from BPAs under GSA Schedules</b>	
<b>BPA Situation</b>	<b>Procedures</b>
	<p>(Limiting Sources on Orders Placed Under Federal Supply Schedules).</p> <p>(ii) The judiciary CO need not contact each of the multiple award BPA holders before placing an order if information is available to ensure that each BPA holder is provided an opportunity to be considered for each order.</p> <p>(iii) The judiciary CO must document the circumstances when restricting consideration to less than all multiple award BPA holders offering the required supplies and services.</p> <p>(C) Orders exceeding GSA's simplified acquisition threshold (\$250,000) unless one of the exceptions in § 310.50.63 (Limiting Sources on Orders Placed Under Federal Supply Schedules).</p> <p>(i) Provide an RFQ to all BPA holders offering the required supplies or services under the multiple award BPA, to include, a description of the supplies to be delivered or the services to be performed and the basis on which the selection will be made;</p> <p>(ii) Afford all BPA holders responding to the RFQ an opportunity to submit a quote; and</p> <p>(iii) Fairly consider all responses received and make award according to the selection procedures.</p> <p>(D) The judiciary CO must document evidence of compliance with these procedures and the basis for the award decision.</p>
(3) BPAs for Hourly Rate Services	<p>(A) If the BPA is for hourly rate services, the judiciary CO must develop an SOW for each order covered by the BPA. Ordering activities should place these orders on a firm-fixed price basis to the maximum extent practicable.</p> <p>(B) For time-and-materials and labor-hour orders, the contracting officer must follow the procedures in § 310.50.46(b) (Orders Exceeding GSA's Simplified Acquisition Threshold (\$250,000)) and § 310.50.46(c) (Orders Using "Best Value" Evaluation Method). All orders under the BPA must specify a price for the performance of the tasks identified in the SOW.</p> <p>(C) The ordering activity, specifically the CO, is responsible for considering the level of effort and the mix of labor proposed to perform a specific task being ordered, determining that the total price</p>

<b>§ 310.50.53(g) Ordering from BPAs under GSA Schedules</b>	
<b>BPA Situation</b>	<b>Procedures</b>
	is reasonable through appropriate analysis techniques, and documenting this in the file.

(h) Duration of BPAs

- (1) Multiple award BPAs generally should not exceed five years but may do so to meet program requirements.
- (2) A single-award BPA must not exceed one year. It may have up to four one-year options.
- (3) Contractors may be awarded BPAs that extend beyond the current term of their GSA Schedule contract, so long as there are option periods in their GSA Schedule contract that, if exercised, will cover the BPA's period of performance.

(i) Review of BPAs

- (1) The judiciary CO must review the BPA at least once a year (e.g., at option exercise) and determine in writing whether:
  - (A) the schedule contract on which the BPA was established is still in effect;
  - (B) the BPA is still needed to fulfill the judiciary's needs; and
  - (C) estimated quantities/amounts have been exceeded and additional price reductions can be obtained.
- (2) The determination must be included in the BPA file documentation.

### **§ 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 GSA's simplified acquisition threshold. Schedule contractors are not required to give price reductions that they extended to another ordering activity for a specific BPA or order.

### **§ 310.50.60 Authorized Resellers**

If provided by the schedule, quotes may be solicited from and later awards may be made to any FSS contract holders or the schedule holder's designated agents or

authorized resellers. The designated agents or authorized resellers must be identified in the FSS contract. It is the CO's responsibility to review the FSS schedule.

### **§ 310.50.63 Limiting Sources on Orders Placed under Federal Supply Schedules**

Judiciary COs must justify an order or BPA that exceeds 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 GSA's competition threshold (generally \$10,000) 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:
  - (1) An urgent and compelling need exists, and following the procedures would result in unacceptable delays;
  - (2) Only one source is capable of providing the supplies or services required at the level of quality required because the supplies or services are unique or highly specialized; or
  - (3) In the interest of economy and efficiency, the new work is a logical follow-on to an original FSS order provided that the original order was placed according to the applicable FSS ordering procedures. The original order or BPA must not have been previously issued under sole-source or limited-sources procedures.
- (b) For proposed orders or BPAs with an estimated value exceeding GSA's micro-purchase threshold (generally \$10,000), 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 GSA's simplified acquisition threshold (\$250,000) 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 [sam.gov](http://sam.gov), as well as post a link to the justification on the public web site of the judiciary organization or AO. For justifications citing subparagraph (a)(1) of



this section, the justification must be posted within 30 days after award.

- (2) Justifications must be posted for a minimum 30 calendar days.
- (3) Contracting officers must carefully screen all justifications for contractor proprietary data and remove all such data, and such references and citations as are necessary to protect the proprietary data, before making the justifications available for public inspection. Judiciary COs should contact AMO for assistance with determining what information might be considered proprietary.

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

An item that is particular to one manufacturer can be a particular brand name, product, or feature of a product that is particular to one manufacturer. A brand name item, whether available on one or more schedule contracts, is an item peculiar to one manufacturer.

- (a) Brand name specifications must not be used unless the particular brand name, product, or feature is essential to the Government's requirements, and market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the judiciary's needs.
- (b) For proposed orders or BPAs with an estimated value between GSA's competition threshold and simplified acquisition threshold, \$10,000 and \$250,000, 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 \$25,000 and \$250,000, the documentation and the RFQ must be posted to eBuy.
- (c) For proposed orders or BPAs with an estimated value exceeding GSA's simplified acquisition threshold, \$250,000, the judiciary CO must document the basis for restricting consideration to an item peculiar to one manufacturer using Form AO 370C. The justification must be completed and approved at the time the requirement for a brand name item is determined and must be posted with the RFQ to eBuy for the duration of the RFQ. Additionally, a justification for a brand name item is required at the order level for orders placed against previously awarded BPA's when a justification for the brand name item was not completed for the BPA or does not adequately cover the requirements in the order.

### **§ 310.50.73 Payment**

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

### **§ 310.50.76 Order Placement**

- (a) To order products or services from schedule contractors, judiciary COs may place orders orally (except for services requiring an SOW or orders containing brand name specifications over \$25,000), or use GSA Form OF 347 (Order for Supplies and Services) to order supplies or services from schedule contracts.
- (b) The judiciary CO must place an order directly with the contractor according to the terms and conditions of the pricelists.
- (c) Before placing the order, the judiciary CO must ensure that the judiciary procurement program requirements have been complied with.
- (d) Orders must include the following information in addition to any information required by the schedule contract:
  - (1) complete shipping and billing addresses;
  - (2) GSA contract number;
  - (3) judiciary order number and date;
  - (4) F.O.B. delivery point (i.e., origin or destination);
  - (5) discount terms;
  - (6) delivery time or period of performance;
  - (7) special item number (SIN) or national stock number (NSN);
  - (8) line item or subline item;
  - (9) an SOW for services, when required, or a brief, complete description of each item (when ordering by model number, features, and options, such as color, finish, and electrical characteristics, if available, must be specified);
  - (10) quantity and any variation in quantity;
  - (11) unit price;
  - (12) total price of order;

- (13) where inspection and acceptance will take place;
- (14) other relevant data (e.g., delivery instructions or receiving hours and size-or-truck limitations);
- (15) marking requirements; and
- (16) level of preservation, packaging, and packing.

#### **§ 310.50.80 Administration of GSA Schedule Orders**

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

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

#### **§ 310.50.83 Inspection and Acceptance**

- (a) Supplies
  - (1) Receiving offices must inspect supplies at destination except when:
    - (A) the schedule contract indicates that mandatory source inspection is required to be performed by GSA; or
    - (B) a schedule item is covered by a product description, and the judiciary CO determines that GSA's inspection assistance is needed (based on the ordering volume, the complexity of the supplies, or the past performance of the supplier).
  - (2) When GSA performs the inspection, the judiciary CO will provide two copies of the order specifying source inspection to the GSA contracting officer for that specific schedule contract. The GSA contracting officer will notify the judiciary CO of acceptance or rejection of the products.

- (3) Material inspected at source by GSA and determined to conform with the product description of the schedule, must not be reinspected for the same purpose. The judiciary receiving office must limit inspection to kind, count, and condition on receipt.
  - (4) Unless otherwise provided in the schedule contract, acceptance is conclusive, except as regards latent defects, fraud, or such gross mistakes as amount to fraud.
- (b) Services

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

#### **§ 310.50.86 Remedies for Nonconformance**

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

#### **§ 310.50.90 Termination for Cause**

- (a) A judiciary CO may terminate individual orders for cause. Termination for cause must comply with the GSA regulations for commercial items and may include charging the contractor with excess costs resulting from repurchase. The PE must review and approve, in writing, all proposed terminations of GSA schedule orders whether for cause or convenience.
- (b) The GSA schedule contracting officer must be notified of all instances where a judiciary CO has terminated for cause an individual order to an FSS contractor, or if fraud is suspected.
- (c) If the contractor asserts that the failure to perform was excusable, the judiciary CO must follow the procedures at § 310.50.96 (Disputes with GSA Schedule Contractors).
- (d) If the contractor is charged excess costs, the following apply:

- (1) Any repurchase must be made at as low a price as reasonable, considering the quality required by the government, delivery requirements, and administrative expenses. Copies of all repurchase orders, except the copy furnished to the repurchase contractor or any other commercial concern must include the notation:

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

- (2) When excess costs are anticipated, the judiciary CO may withhold funds due the terminated contractor as offset security. Judiciary COs must minimize excess costs to be charged against the terminated contractor and collect or set-off any excess costs owed.
- (3) If a judiciary CO is unable to collect excess repurchase costs, it must notify the GSA schedule contracting office after final payment to the repurchase contractor.

- (A) The notice must include the following information about the terminated order:

- name and address of the contractor;
- schedule, contract, and order number;
- national stock number (NSN) or special item number(s) (SIN), and a brief description of the item(s);
- cost of schedule items involved;
- excess costs to be collected; and
- other relevant data.

- (B) The notice must also include the following information about the repurchase contract:

- name and address of the contractor;
- item repurchase cost;
- repurchase order number and date of payment;
- contract number, if any; and
- other relevant data.

- (e) Only the GSA schedule contracting officer may modify the schedule contract to terminate for cause any, or all, products or services covered by the schedule contract. If the GSA schedule contracting officer has terminated any products or services covered by the schedule contract, no further orders may be placed for those items. Orders placed before

termination for cause must be fulfilled by the contractor, unless terminated for the convenience of the government by the judiciary CO.

#### **§ 310.50.93 Termination for the Judiciary's Convenience**

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

#### **§ 310.50.96 Disputes with GSA Schedule Contractors**

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

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

<b>§ 310.50.96 Disputes with GSA Schedule Contractors</b>	
<b>Type of Dispute</b>	<b>Details</b>
(c) Appeals	Contractors may appeal final decisions pertaining to disputes arising under the schedule contract, as well as orders placed thereunder, according to the applicable “Disputes” clause.
(d) Judiciary disputes clause	Judiciary COs should include Clause 7-235 – Disputes in GSA RFQs, BPAs, and Orders.

## **§ 310.60 Other Federal Agency Contracts**

### **§ 310.60.10 In General**

- (a) The judiciary may use OFACs (also referred to as multi-agency contracts or Government-Wide Acquisition Contracts (GWACs)). OFACs are delivery or task order contracts, established by one agency, that authorize use by other government agencies to obtain products and services.
- (b) For guidance on how to use the GSA federal supply schedules, do not use the guidance in this section, but instead **see**: § 310.50 (GSA Federal Supply Schedules).

### **§ 310.60.20 Ordering Scenarios**

- (a) Various federal agencies have awarded contracts that may be used by other agencies. There are three basic ordering methods for these contracts, as follows:
  - (1) In most cases, the judiciary may place orders directly against the other agency’s contract with no other administrative action required.
  - (2) In a minority of cases, the judiciary must enter into a Memorandum of Understanding (MOU) or Interagency Agreement (IA) to be granted ordering authority, but orders may be placed directly with the vendor once the MOU or IA has been signed.
  - (3) In a smaller number of instances, the awarding agency reserves all ordering authority to itself, and the judiciary must transfer funds to that agency via an Interagency Agreement and authorize that agency to place the order on its behalf to use the contract.
- (b) The judiciary CO must ascertain which of these three ordering methods is applicable before issuing any order. For further guidance on interagency agreements (IA) and memoranda of understanding (MOU), which are subject to the Economy Act (31 U.S.C. § 1535), **see**: Guide, Vol. 14, § 550 (Interagency Agreements, MOAs, and MOUs).

- (c) When ordering from OFACs under any of the above scenarios, the judiciary is required to follow the contract's ordering procedures, competition 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 \$10,000.
- (d) If authorized to place orders directly with the vendor, the CO may determine that judiciary-specific provisions or clauses (**see:** Guide, Vol. 14, Appx. 1C (Matrix of Solicitation Provisions and Clauses), OFAC column) are also applicable to the procurement. These may be added, if they do not duplicate or conflict with the other agency's existing terms and conditions. The delivery/task order must cite the other agency's contract number under which the order is placed.

### **§ 310.60.30 Ordering Procedures**

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

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



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

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

- (c) If the other federal agency's ordering procedures require that orders be competed/provide fair opportunity among the multiple contractors (**see:** Guide, Vol. 14, § 410.30.65 (Fair Opportunity Process for Delivery Orders or Task Orders – OFAC)), the CO must provide a fair opportunity to each indefinite-delivery/indefinite-quantity (IDIQ) contract holder according to the other federal agency's procedures.
  - (1) If fair opportunity is not provided, it must be supported by a written determination that one of the circumstances described in Guide, Vol. 14, § 410.30.70 (Exceptions to Fair Opportunity Requirement) applies to the order, and the requirement is waived based on the justification that is prepared according to Guide, Vol. 14, § 410.30.73 (Documenting Exceptions to Fair Opportunity Requirement).
  - (2) The CO may use either technically acceptable/lowest price or best value as the basis for award.

## **§ 310.70 Open Market**

Open market purchases are those made directly from commercial sources using competitive procedures where applicable, without reference to any other existing federal contract. For open market procurement procedures, **see:** § 315 (Publicizing Open Market Procurement Actions) through § 340 (Unsolicited Offers).

## **§ 310.80 Vendors Offering Services for Public Use**

### **§ 310.80.10 In General**

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

### § 310.80.20 Determination Required

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

### § 310.80.30 Competition

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

## § 315 Publicizing Open Market Procurement Actions

### § 315.10 Policy

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

**§ 315.10.20 Publicizing Time Requirements**

The publicizing information must include a clear and concise description of the products or services that is not unnecessarily restrictive of competition and will allow a prospective offeror to make an informed business judgment as to whether to request a copy of the solicitation. Other elements are the point of contact name and phone number, the solicitation number, and due date for offers. Electronic access to the solicitation may be provided to potential offerors. Estimated cost data must not normally be included. However, estimated levels of effort must be furnished when purchasing labor hours.

**§ 315.10.30 Exceptions**

Exceptions to the advertising requirements are as follows:

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

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

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

**(Note:** Written concurrence by the purchasing office's official, as identified in Guide, Vol. 14, § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials), is required within their delegation authority.

Advertising exceptions above the judiciary organization's delegation authority, as well as all exceptions at any dollar level within AMO, require the PE's written concurrence.)

- (d) when the services are required to be performed by the contractor in person and are:
  - (1) of a technical and professional nature (**see:** Guide, Vol. 14, § 520 (Expert and Consultant Nonpersonal Services Contracts)); or
  - (2) under judiciary direct supervision and paid for on a time basis (**see:** Guide, Vol. 14, § 510 (Personal Services Contracts)).

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

## § 315.20 Methods of Publicizing Procurement Notices

Procurement notices are intended to increase meaningful competition by disseminating and explaining the judiciary's requirements.

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

§ 315.20(c) Methods of Publicizing Procurement Notices	
Publication Method	Description
(1) National Posting on sam.gov	Sam.gov is the official U.S. government website for people who make, receive, and manage federal awards. This is a GSA-run website available to all government agencies for publicly advertising federal solicitations and contract awards.
(2) Local Posting	When required or desired to increase competition, local posting of solicitations must be prominently displayed in a public area. Depending on the location, solicitations may be posted in the public area of the purchasing activity, courthouse, or other visible area easily accessible by the public.
(3) Local Announcements and Advertisements	Announcements of proposed purchases may be placed in newspapers, trade journals, and magazines for publication. Paid commercial advertisements may be used when determined by the CO to be in the judiciary's interest.
(4) Electronically	Any appropriate public electronic means may also satisfy the local posting requirement.

## § 320 Contractor Qualifications

### § 320.10 Responsible Prospective Contractors

#### § 320.10.10 Importance of Responsibility

Before award, COs must determine that the prospective contractor is responsible. If a contractor who is not responsible, later defaults, provides late delivery, or other

unsatisfactory performance, the award could eventually cost the judiciary more money or a loss of time. To qualify for award, a prospective contractor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors.

#### **§ 320.10.20 General Standards**

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

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

#### **§ 320.10.30 Subcontractor Responsibility**

Generally, prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors. For information on debarred, suspended, or ineligible contractors, **see:** § 320.30 (Debarment, Suspension, and Ineligibility). Matters of prospective subcontractor responsibility may affect the determination of the prospective prime contractor's responsibility. A prospective contractor may be required to provide written evidence of a proposed subcontractor's responsibility.

#### **§ 320.10.40 Determination of Subcontractor Responsibility**

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

### **§ 320.20 Determining Responsibility or Non-Responsibility**

#### **§ 320.20.10 Determination**

The CO must make an affirmative determination of responsibility according to § 320.10 (Responsible Prospective Contractors) before awarding any contract.

#### **§ 320.20.20 Required Documentation**

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

#### **§ 320.20.30 Obtaining Information**

Before making a determination of responsibility, the CO must possess or obtain information sufficient to be satisfied that the prospective contractor currently meets applicable standards of responsibility.

- (a) At a minimum, for open market and sole source awards, the CO must check GSA's sam.gov exclusions page. **See:** § 320.30 (Debarment, Suspension, and Ineligibility). **Note:** When ordering against another agency's contract, such as GSA schedule orders, orders under the NASA SEWP contracts, etc., the CO may rely on the other agency's determination of responsibility in awarding the contract.
- (b) Other sources of responsibility information include:
  - (1) records and experience data, including verifiable knowledge from judiciary personnel in purchasing offices, audit offices, and from other agency's contracting offices;
  - (2) the prospective contractor, including offer information, questionnaire replies, financial data, information on production equipment, and personnel information; and

- (3) publications, suppliers, subcontractors, and customers of the prospective contractor, financial institutions, government agencies, and business and trade associations.

#### **§ 320.20.40 Discussion**

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

#### **§ 320.20.50 Pre-Award Surveys**

- (a) If available information does not provide an adequate basis for determining the responsibility or non-responsibility of a prospective contractor, the CO must perform a pre-award survey, by obtaining the assistance and participation of specialists as needed. The extent of the survey must be commensurate with the dollar value and complexity of the purchase, and may include any or all of the following:
  - (1) data on hand or from other government agencies or commercial sources;
  - (2) examination of financial statements and records; or
  - (3) on-site inspection of plant and facilities to be used for contract performance.
- (b) Each participant in the survey must make a written report of findings to the CO, which must be retained with the CO’s responsibility determination. The CO may require a consolidated survey report if there would otherwise be numerous individual reports.
- (c) The CO may discuss pre-award survey information with the prospective contractor being surveyed.

### **§ 320.30 Debarment, Suspension, and Ineligibility**

#### **§ 320.30.10 In General**

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

**§ 320.30.15 Exclusions – System for Award Management (SAM)**

- (a) GSA:
  - (1) compiles and maintains a list of all parties debarred, suspended, proposed for debarment, or declared ineligible by federal agencies and the Government Accountability Office (GAO);
  - (2) includes in the list codes indicating the reason the party is excluded and the name and telephone number of the agency official responsible for inquiries regarding each excluded party; and
  - (3) updates the list daily and publishes it online.
- (b) The Exclusions list on the SAM website contains the following information:
  - (1) the names and addresses of all contractors debarred, suspended, proposed for debarment, or declared ineligible, in alphabetical order, with cross-references when more than one name is involved in a single action;
  - (2) name of the federal agency or other authority taking the action;
  - (3) cause for the action or other statutory or regulatory authority;
  - (4) effect of the action;
  - (5) termination date for each listing;
  - (6) Unique Entity Identifier (UEI) number; and
  - (7) name and telephone number of the debarring agency's point of contact for the action.

**§ 320.30.25 Procurement Executive Notification to GSA**

Any judiciary recommendation for debarment must be submitted to the PE for action according to § 320.50 (Procedural Requirements for Debarment) or § 320.60 (Causes for Suspension). After a debarment or suspension determination is made, the PE will furnish GSA notice of the determination made by the judiciary for inclusion on Exclusions – System for Award Management (SAM). The PE will:

- (a) provide GSA with the information required by § 320.30.15 (Exclusions – System for Award Management (SAM)) after the action becomes effective;
- (b) notify GSA after modifying or rescinding an action;



- (c) maintain records relating to each debarment, suspension, or proposed debarment taken by the judiciary; and

**(Note:** For record retention requirements, **see:** Guide, Vol. 10, § 620 (Records Disposition Schedules).)

- (d) respond to inquiries from other federal agencies about contractors debarred or suspended by the judiciary.

### **§ 320.30.30 Effect of Listing**

- (a) Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and COs must not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the PE determines that there is a compelling reason for such action.
- (b) Contractors debarred, suspended, or proposed for debarment are also excluded from conducting business with the government as agents or representatives of other contractors.
- (c) Contractors listed as having been declared ineligible on the basis of statutory or other regulatory procedures are excluded from receiving contracts and, if applicable, subcontracts, under the conditions and for the period provided in the statute or regulation. COs may not solicit offers or quotations from, award contracts to, or consent to subcontracts with such contractors under those conditions and for that period.
- (d) Contractors debarred, suspended, or proposed for debarment are excluded from acting as individual sureties.
- (e) After the opening of offers, the CO must review Exclusions – sam.gov.
  - (1) Offers received from any listed contractor in response to a solicitation must be rejected unless the PE determines in writing that there is a compelling reason to consider the offer.
  - (2) Offers or quotations received from any listed contractor will not be evaluated for award or included in the competitive range, nor will discussions be conducted with a listed offeror during a period of ineligibility, unless the PE determines, in writing, that there is a compelling reason to do so.
  - (3) If the period of ineligibility expires or is terminated before award, the CO may, but is not required to, consider such offers or quotations.

- (f) Immediately before award, the CO must again review the Exclusions – sam.gov to ensure that no award is made to a listed contractor, unless the PE determines, in writing, that there is a compelling reason to do so.

#### **§ 320.30.35 Continuation of Current Contracts**

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

#### **§ 320.30.40 Causes for Debarment**

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

- (a) the PE may debar a contractor for a conviction of or civil judgment for:
  - (1) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract;
  - (2) violation of federal or state antitrust statutes relating to the submission of offers;
  - (3) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;
  - (4) commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a government contractor or subcontractor.

- (b) The PE may debar a contractor, based on a preponderance of the evidence, for violations of a judiciary contract or subcontract so serious as to justify debarment action, such as:
  - (1) willful failure to perform according to the terms of one or more contracts; or
  - (2) a history of failure to perform or of unsatisfactory performance of one or more contracts or subcontracts.
  - (3) any other cause of so serious or compelling a nature that it affects the present responsibility of a government contractor or subcontractor.

#### **§ 320.30.45 Conditions for Debarment**

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

#### **§ 320.30.50 Removal of Debarment**

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

#### **§ 320.30.55 Evidence Required**

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

#### **§ 320.30.60 Individual Accountability**

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

## **§ 320.40 Period of Debarment**

### **§ 320.40.10 Guidelines**

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

### **§ 320.40.20 Debarment Removal or Reduction of Debarment Period**

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

## **§ 320.50 Procedural Requirements for Debarment**

### **§ 320.50.10 Notice of Proposal to Debar**

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

- (a) that debarment is being considered;
- (b) the reasons for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) on which it is based;

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

#### **§ 320.50.20 Hearing Request**

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

#### **§ 320.50.30 Concurrent Debarment**

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

### **§ 320.60 Causes for Suspension**

#### **§ 320.60.10 Contractor Suspension**

The PE may, when required by the judiciary's interest, and after conferring with OGC, suspend any contractor on adequate evidence of or indictment for:

- (a) commission of fraud or a criminal offense incidental to obtaining, attempting to obtain, or performing a judiciary contract or subcontract;
- (b) violation of federal or state antitrust statutes relating to the submission of offers. Indictment for any of these causes constitutes adequate evidence for suspension;
- (c) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving

stolen property; or any other offense indicating a lack of business integrity or business honesty that seriously and directly affects present responsibility as a contractor or subcontractor; or

- (d) other cause(s) of so serious and compelling a nature, affecting the present responsibility as a contractor or subcontractor, as may be determined by the PE to warrant suspension. A pending hearing for debarment may be such a cause.

#### **§ 320.60.20 Concurrent Suspension**

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

#### **§ 320.60.30 Notice of Suspension**

- (a) The PE must send a notice of the suspension to be served on the contractor and any specifically named affiliates to be suspended.
- (b) The notice must be sent by certified mail, return receipt requested.
- (c) The notice of suspension must be coordinated through OGC before issuance.
- (d) The notice must state:
  - (1) that they have been suspended and that the suspension is based on an indictment or other adequate evidence that the contractor has committed irregularities:
    - (A) of a serious nature in business dealings with the government; or
    - (B) seriously reflecting on the propriety of further judiciary dealings with the contractor. Any such irregularities must be described in terms sufficient to place the contractor on notice without disclosing the judiciary's evidence;
  - (2) that the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue;
  - (3) the cause(s) relied on under § 320.60.10 (Contractor Suspension) for imposing suspension;
  - (4) that, within 30 days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative,

information and argument in opposition to the suspension, including any additional specific information that raises a genuine dispute over the material facts; and

- (5) that additional proceedings to determine disputed material facts will be conducted unless:
  - (A) the action is based on an indictment; or
  - (B) a determination is made that the substantial interests of the judiciary in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

#### **§ 320.60.40 Period of Suspension**

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

A suspension, while in effect, may be extended for an additional period of six months on written determination of the reasons and necessity for the extension.

- (1) Notice of any extension of suspension must be served on the contractor in the manner described in § 320.60.30 (Notice of Suspension).
- (2) A suspension plus its extensions may not exceed, in the aggregate, 18 months, unless legal proceedings have been initiated within that period. In that case, successive additional periods of suspension may be imposed until the proceeding in question has been completed.
- (3) The termination of a suspension, however, may not prejudice a debarment proceeding that was pending or that may be brought for the same reasons that led to the suspension.

## **§ 325 Small Purchase Procedures**

- (a) This section provides policies and procedures for the acquisition of supplies and services, including construction, research and development, commercial products, and commercial services, with an aggregate amount, including options, up to the judiciary's small purchase threshold.
- (b) These small purchase procedures vest contracting officers with additional procedural discretion and flexibility, so that commercial acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the judiciary and industry.
- (c) COs should use these small purchase procedures as much as possible for purchases of supplies or services up to the judiciary's small purchase threshold.

### **§ 325.05 Judiciary's Small Purchase Threshold**

The judiciary's small purchase threshold is \$100,000.

### **§ 325.10 Applicability**

- (a) The small purchase procedures in this section apply when conducting open market procurements whose value do not exceed the judiciary's small purchase threshold, inclusive of options.
- (b) Contracting officers may also 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 in amounts over the judiciary's small purchase threshold up to \$10 million, including options, 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.
- (c) Limitations
  - (1) A procurement estimated to total more than the judiciary's small purchase threshold may not be split into two or more purchases to use small purchase procedures.
  - (2) A known requirement for goods or services may not be split, parceled, divided, or purchased over a time period, solely to avoid the dollar limitations for small purchase procedures.



- (d) The small purchase procedures do not apply if:
  - (1) the CO can meet their requirement (**see:** § 310.10 (Sources of Supply)) using the following sources which have their own procurement procedures:
    - (A) Mandatory sources of supply that take precedence over this section (e.g., AbilityOne program);
    - (B) Certain non-mandatory sources of supply (e.g., other federal agency contracts (OFACs)) (**see:** § 310.60 (Other Federal Agency Contracts));
    - (C) Existing judiciary contracts (e.g., indefinite delivery/indefinite quantity contracts, BPAs); or
    - (D) GSA federal supply schedule contracts (**see:** § 310.50 (GSA Federal Supply Schedules)); or
  - (2) purchases are made under the Judiciary Small Purchase Card Program when the purchase card will be used both as the method of contracting and the method of payment. (**See:** Guide, Vol. 14, § 140 (Contracting Officers Certification Program (COCP)) as it relates to purchase card authorized use. **See also:** Judiciary Purchase Card Program Manual.)

## **§ 325.15 Open Market Competition**

### **§ 325.15.10 Competition Threshold**

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

### **§ 325.15.20 Verifying Price Reasonableness**

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

- (a) the CO suspects or has information to indicate that the price may not be reasonable, such as comparison to the previous price paid or personal knowledge of the product or service involved; or
- (b) purchasing a product or service for which no comparable pricing information is readily available, such as a product or service that is not the

same as, or is not similar to, other products or services that have been recently purchased on a competitive basis.

### **§ 325.15.30 Vendor Rotation**

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

## **§ 325.20 Competitive Small Purchase Procedures**

### **§ 325.20.10 Competition Guidelines**

- (a) Purchases must be made on the basis of adequate competition whenever feasible. Adequate competition means the solicitation of and participation by a sufficient number of capable sources to ensure that the required quality and quantity of products and services is obtained when needed, and that the price is fair and reasonable.
  - (1) COs must determine that adequate competition has been obtained and posting requirements have been met in any instance in which it is required.
  - (2) In making that determination, COs must act with reasoned discretion, considering the business requirements of the particular procurement, as well as the judiciary's general interest in identifying new suppliers and providing opportunities for its supplier base.
- (b) Competition must be sought to the extent practicable for purchases estimated to exceed the judiciary's open market competition threshold (**see:** § 325.15.10 (Competition Threshold)), but not exceed the judiciary's advertising threshold, \$25,000. **See also:** § 335 (Justifications and Approvals for Limiting Competition).
  - (1) For open market purchases in this range, offers or quotations must be solicited from a sufficient number of qualified sources (normally at least three) to ensure that the price is fair and reasonable.
  - (2) Besides the minimum number of qualified sources that must be solicited to ensure adequate competition, the CO is encouraged to solicit as many potential sources as time will permit, commensurate with the scope of the procurement.
- (c) For any open market purchases exceeding \$25,000, the requirement must be advertised. **See:** § 315.20 (Methods for Publicizing Procurement Notices).

**§ 325.20.20 Soliciting Competitive Quotes**

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

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

**§ 325.30 Soliciting Under Small Purchase Procedure****§ 325.30.10 In General**

- (a) For procurements below the judiciary's small purchase threshold (**see:** § 325.05 (Judiciary's Small Purchase Threshold)), soliciting quotations under small purchase procedures may be done either in writing or orally.
- (b) Whether the solicitation is oral or written, the CO must request the vendor's UEI number (or Taxpayer Identification Number).
- (c) When determining responsibility (**see:** § 320.20 (Determining Responsibility or Non-Responsibility)) and checking SAM (**see:** § 320.30 (Debarment, Suspension, and Ineligibility)), the UEI number will assist in obtaining information about the vendor.

**§ 325.30.20 Written Solicitations**

- (a) When using a written solicitation for a procurement using small purchase procedures, COs may use either a Request for Quotation (RFQ) or a Request for Proposal (RFP). Written solicitations provide a clearer understanding of the requirement and must be used in the following circumstances:
  - (1) when a large number of line items is included in a single proposed procurement;
  - (2) when obtaining oral quotations is not considered economical or practical;
  - (3) when a SCLS determination is applicable;

- (4) when extensive specifications are involved; or
  - (5) when purchasing services, unless the services are generally pre-defined and would normally be priced in a catalog.
- (b) In addition to describing the judiciary requirement, a written solicitation must include Clause 3-3, Terms and Conditions – Small Purchases and Provision 3-5, Taxpayer Identification and Other Offeror Information. This provision must be included in full text to enable the vendor to provide the information requested. For additional clauses and provisions related to solicitations for services and when to include them, **see:** § 332.50 (Required Clauses and Provisions).

#### **§ 325.30.25 Oral Solicitations**

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

#### **§ 325.30.30 Amending Written Solicitations**

An amendment to an RFQ must be issued on Form SF-30 (Amendment of Solicitation/Modification of Contract). For issuing amendments to solicitations, **see:** § 330.16 (Amendment of Solicitations).

### **§ 325.35 Basis for Award**

#### **§ 325.35.10 Policy**

- (a) The basis for award must be determined before issuance of the solicitation and must not change once quotes have been received.
- (b) Small purchases may be awarded on the basis of:
  - (1) technically acceptable/lowest price, or
  - (2) best value, which involves an evaluation and comparison of cost or price and other factors.
- (c) For small purchases, technically acceptable/lowest price is the preferred basis for award. **See:** § 325.35.20 (Technically Acceptable/Lowest Price). If appropriate, best value may be used, but the circumstances requiring its use must be documented and maintained in the procurement file. **See:** § 325.35.30 (Best Value).

**§ 325.35.20 Technically Acceptable/Lowest Price**

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

**§ 325.35.30 Best Value**

- (a) Quotes are evaluated based on factors other than price alone. Small purchase open market awards may be based on best value to the responsible quoter who submits the most advantageous quotation considering price and other evaluation factors specifically stated in the solicitation.
- (b) Small purchases do not generally warrant evaluation based on best value; technically acceptable/lowest price is generally used for small purchases. **See:** § 325.35.20 (Technically Acceptable/Lowest Price).

**§ 325.40 Receipt and Evaluation of Quotations or Offers****§ 325.40.10 Recording Quotes**

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

**§ 325.40.20 Late Quotations**

Late quotations 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. This determination must be documented in the procurement file.

**§ 325.40.30 Evaluation of Quotations or Offers**

- (a) The contracting officer must consider all quotations and offers, and evaluate them:
  - (1) impartially;
  - (2) inclusive of transportation charges from the supplier's shipping point to the delivery destination; and
  - (3) on the basis established in the solicitation.

(b) Evaluation procedures

- (1) The contracting officer has broad discretion in fashioning suitable evaluation procedures. Although the standard competitive contracting procedures described in § 330 do not apply to small purchases, the contracting officer may decide to use one or more of the evaluation procedures in § 330.36 (Evaluation of Offers).
- (2) If using price and other factors, the contracting officer should ensure that quotations or offers can be evaluated efficiently and with minimal burden. Developing formal evaluation plans, establishing a competitive range, conducting discussions, and scoring quotations or offers are not required.
- (3) Contracting officers may conduct comparative evaluations of offers. Evaluation of other factors, such as past performance:
  - (A) does not require the creation or existence of a formal data base; and
  - (B) may be based on one or more of the following:
    - (i) the contracting officer's knowledge of, and previous experience with, the supply or service being acquired;
    - (ii) customer surveys and past performance questionnaire replies;
    - (iii) the Contractor Performance Assessment Reporting System (CPARS), when judiciary employees have access to it; or
    - (iv) any other reasonable basis.
- (4) For acquisitions conducted using a method that permits electronic response to the solicitation, the contracting officer may:
  - (A) After preliminary consideration of all quotations or offers,
    - (i) identify, from all quotations or offers received, one that is suitable to the user (e.g., lowest priced brand name product); and
    - (ii) screen all lower priced quotations or offers based on readily apparent value indicators (e.g., past performance, warranty conditions, maintenance availability); or

- (B) Where an evaluation is based only on price and past performance, make an award based on whether the lowest priced of the quotations or offers with the highest past performance rating possible represents the best value, when compared to any lower priced quotation or offer.

## § 325.41 Award and Documentation

### (a) Basis for award

Before making an award, the contracting officer must determine that the proposed price is fair and reasonable.

- (1) Whenever possible, base price reasonableness on competitive quotations or offers.
- (2) If only one response is received, include a statement of price reasonableness in the contract file. The contracting officer may base the statement on:
  - (A) Market research;
  - (B) Comparison of the proposed price with prices found reasonable on previous purchases;
  - (C) Current price lists, catalogs, or advertisements;  
**(Note:** Inclusion of a price in a price list, catalog, or advertisement does not alone establish fairness and reasonableness of the price.)
  - (D) Comparison with similar items in a related industry;
  - (E) The contracting officer's personal knowledge of the item being purchased;
  - (F) Comparison to an independent Government estimate; or
  - (G) Any other reasonable basis.
- (3) Occasionally, an item can be obtained only from a supplier that quotes a minimum order price or quantity that either unreasonably exceeds stated quantity requirements or results in an unreasonable price for the quantity required.

- (A) If this happens, the contracting officer should explain the quotation or offer to the requiring organization and ask the organization to confirm or change its requirement.
- (B) The contracting officer must include documentation in the file to support the final action taken.

(b) File documentation and retention

Purchasing offices should retain quotations or offers and data supporting purchases (paper or electronic) only as long as necessary for management review. The following guidance illustrates the extent to which quotation or offer information should be recorded:

(1) Oral solicitations

- (A) The contracting office should establish and maintain records of oral price quotations to clearly reflect the propriety of placing the order at the price paid with the supplier concerned.
- (B) In most cases, this will reflect the names of the suppliers contacted and the prices and other terms and conditions quoted by each.

(2) Written solicitations

- (A) For acquisitions up to the judiciary's small purchase threshold, limit written records of solicitations or offers to notes or abstracts to show:
  - prices;
  - delivery;
  - references to printed price lists used;
  - supplier or suppliers contacted;
  - other pertinent data; and
  - additional statements to support the award decision — when the selection of a vendor is based on best value, which involves an evaluation and comparison of cost or price and other factors.
- (B) For acquisitions over the judiciary's small purchase threshold and up to \$10 million, when the contracting officer chooses to use the small purchase procedures in this section instead of standard competitive procedures in § 330, the contract file must include the following:



- (i) A brief written description of the procedures used in awarding the contract, including the fact that the procedures in § 325 were used;
  - (ii) The number of offers received;
  - (iii) An explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision, and
  - (iv) Any justification required by this chapter (e.g., justification limiting competition, brand name justification).
- (c) Taxpayer Identification Number (TIN)
  - (1) If an oral solicitation is used, the contracting officer must ensure that the copy of the award document sent to the payment office includes the contractor's TIN and type of organization, unless this information will be obtained from some other source (e.g., sam.gov, existing JIFMS record).
  - (2) The contracting officer must disclose to the contractor that the judiciary may use the TIN to collect and report on any delinquent amounts arising out of the contractor's relationship with the judiciary. **See:** 31 U.S.C. § 7701(c)(3).

### **§ 325.43 Ordering Methods Under Small Purchase Procedures**

Ordering methods under small purchase procedures include use of the purchase card, award of a purchase order or contract, and award of orders placed under BPAs or existing contracts (e.g., IDIQ or GWAC).

### **§ 325.45 Legal Effect of Quotations**

- (a) A quotation is not an offer and, consequently, cannot be accepted by the judiciary to form a binding contract. Therefore, a judiciary order in response to a supplier's quotation does not establish a contract. The order is an offer by the judiciary to the supplier to buy certain supplies or services upon specified terms and conditions. A contract is established when the supplier accepts the offer.
- (b) When appropriate, the contracting officer may ask the supplier to indicate acceptance of an order by notifying the judiciary organization, preferably in writing. In other circumstances, the supplier may indicate acceptance by

furnishing the supplies or services ordered or by proceeding with the work to the point where substantial performance has occurred.

- (c) If the judiciary issues an order resulting from a quotation, the judiciary may — by written notice to the supplier, at any time before acceptance occurs — withdraw, amend, or cancel its offer. **See:** § 325.45.30 (Termination and Cancellation of Purchase Orders and Contracts).

#### **§ 325.45.10 Contents of Purchase Orders and Contracts**

At a minimum, the following items must be included on each purchase order and contract awarded under this section:

- (a) purchase order or contract number and date;
- (b) technical point of contact;
- (c) vendor's name, address, UEI or TIN;
- (d) description of product(s)/service(s) — an SOW for services, when required, or a brief, complete description of each item (when ordering by model number, features and options, such as color, finish, and electrical characteristics, if available, must be specified);
- (e) quantity/unit of measure and extended prices/total;
- (f) billing address;
- (g) payment provisions;
- (h) contract number if order is placed against an existing contract (for FSS, GWAC, Judiciary-Wide, etc., **see:** § 310.50 (GSA Federal Supply Schedules) or § 310.60 (Other Federal Agency Contracts));
- (i) delivery requirements:
  - delivery time and/or period of performance,
  - quantity,
  - form,
  - F.O.B. delivery point (i.e., origin or destination), and
  - inspection and acceptance provisions;
- (j) appropriation(s) data; and
- (k) CO's signature.

**§ 325.45.15 Terms and Conditions for Purchase Orders and Contracts**

- (a) To protect the judiciary's rights when acquiring products and/or services, it is important that basic terms and conditions be made a part of any purchase order or contract issued.
- (b) COs must include Clause 3-3, Terms and Conditions – Small Purchases, in open market solicitations, purchase orders, and contracts. It lists the basic terms and conditions required on any open market purchase order or contract estimated to be less than the judiciary's small purchase threshold. The CO must also consult the clause matrix and include any other clauses that may be applicable to the specific purchase order.

**§ 325.45.20 Modification of Purchase Orders and Contracts**

Modification of purchase orders and contracts must be processed on an SF-30 (Amendment of Solicitation/Modification of Contract) (or equivalent form), must identify the order it modifies, and must contain an appropriate modification number. If written acceptance is determined to be necessary to ensure the contractor's compliance, the CO must obtain a contractor's written acceptance of a modification. **See also:** Guide, Vol. 14, § 745 (Contract Modifications).

**§ 325.45.25 Use of Unpriced Purchase Orders and Contracts**

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

- (a) it is impractical to obtain firm pricing in advance of issuing the purchase order;
- (b) the purchase is for:
  - (1) repairs to equipment requiring disassembly to determine the nature and extent of repairs; or
  - (2) 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 a not-to-exceed amount is stated on the purchase order.
- (c) Unpriced purchase orders and contracts must be thoroughly documented to support that the obligated/not-to-exceed amount is reasonable and monitored periodically to ensure that excess funds are deobligated in a timely manner. **See:** Guide, Vol. 14, § 220.50.20(e) (Contract Funding Requirements).

**§ 325.45.30 Termination and Cancellation of Purchase Orders and Contracts**

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

- (a) Termination. If a purchase order or contract has been accepted in writing by the contractor or the contractor has commenced performance, then a termination must be processed. The CO must process the termination according to Guide, Vol. 14, § 755 (Contract Termination).
- (b) Cancellation. If a purchase order or contract has not been accepted in writing by the contractor or the contractor has not commenced performance, then a cancellation must be processed. The CO may cancel by notifying the contractor in writing that the purchase order or contract is being canceled and requesting the contractor's written acceptance of the cancellation.
  - (1) Acceptance of Cancellation. If the contractor accepts the cancellation and does not claim that costs were incurred as a result of beginning performance under the purchase order or contract, the contractual instrument may be canceled. The CO must process a modification to cancel the instrument and deobligate any funds.
  - (2) Rejection of Cancellation. If the contractor does not accept the cancellation or claims that costs were incurred as a result of beginning performance under the purchase order or contract, the CO must treat the action as a termination according to Clause 3-3, Provisions, Clauses, Terms and Conditions – Small Purchases and Guide, Vol. 14, § 755 (Contract Termination).

**§ 325.50 Blanket Purchase Agreement**

- (a) A BPA is an ordering agreement, not a contract. A BPA does not constitute a legally binding contract and may be established without an obligation of funds. Therefore, there is never an obligation of funds recorded based on the award of a BPA. Funds must be obligated at the time an order is placed against a BPA, unless the order is subject to the availability of funds and properly supported by Clause 7-115, Availability of Funds.
- (b) BPAs are written agreements negotiated between a purchasing office and a contractor that contain agreed upon terms and conditions that will apply if and when an order is placed against the BPA for products or services.
- (c) BPAs permit individuals that are designated in writing by name or title in the BPA, to place orders by telephone, over-the-counter, by email, or in

writing. Regardless of how the order is placed, an obligation of funds must be recorded in the financial system at the time the order is placed.

#### **§ 325.50.10 Limitations**

- (a) Mandatory source(s) (**see:** § 310 (Procurement Sources)), must be considered before establishing a BPA for products or services. If one of the mandatory sources offers the products or services that are required, the BPA must be established with the mandatory source(s).
- (b) A BPA may not state or imply any obligation or agreement by the judiciary to place future orders.
- (c) A BPA may be changed only by modifying the BPA itself and not by individual orders issued under it. Modifying a BPA does not retroactively affect orders previously issued under it.
- (d) A BPA extending for more than one year must be reviewed annually to determine:
  - (1) whether there is a continuing need for the products or services covered by the agreement,
  - (2) that the products or services being purchased under the agreement still represent the best price, and
  - (3) whether any revisions to the agreement are necessary.

#### **§ 325.50.15 Use of BPAs**

BPAs may be established with suppliers when numerous individual purchases will likely be made in a given period. It would be advantageous to establish BPAs with dependable suppliers that are consistently lower in price than other suppliers and when numerous small purchases are expected to be made from them. BPAs may be established with GSA FSS schedule holders (**see:** § 310.50.53 (Blanket Purchase Agreements Under GSA Schedules)) or on the open market (**see:** § 325.50.30 (Open Market Single Award BPA) and § 325.50.35 (Open Market Multiple Award BPA)). BPAs are used when:

- (a) a wide variety of items in a broad class of products or services may be available from suppliers, but quantities and delivery requirements are not known in advance and may vary considerably;
- (b) there is a desire to reduce preparation of numerous written orders and processing of invoices through issuance of a blanket delivery order since billing under a blanket delivery order is done collectively over an

established time period (usually monthly) (**see:** Guide, Vol. 14, § 410.30.60(d) (Blanket Delivery Orders)); or

- (c) there is a need to provide commercial sources of supply for ordering by offices that do not have other purchasing authority.

#### **§ 325.50.20 BPA Sources**

There are two sources for BPAs: open market and GSA. (If competing, **see:** § 325.20.10 (Competition Guidelines). The competition must be conducted among the same sources: either all GSA or all open market.)

- (a) An open market BPA is established with commercial vendors using competitive procedures, where applicable, without reference to any other existing federal contract.
- (b) A GSA FSS BPA is a BPA established under any GSA federal supply schedule contract. GSA BPAs must follow the policies detailed in § 310.50.53 (Blanket Purchase Agreements Under GSA Schedules).

#### **§ 325.50.25 BPA Types**

There are two types of BPAs: priced and unpriced.

- (a) A priced BPA has a price list, approved in writing by the CO. The price list establishes prices for the order of products or services during the term of the BPA.
  - (1) A priced BPA is appropriate when prices are available for commercial products, such as office supplies, or for a flat-rate repair service.
  - (2) Pricing changes may be made infrequently with the CO's approval of a new price list. The CO will determine and document that the new pricing is still fair and reasonable and competitive in the current market.
- (b) An unpriced BPA does not contain a price list but may contain labor hour rates. An unpriced BPA is appropriate when the order will require an SOW or when prices cannot otherwise be established before establishing the BPA.
  - (1) Prices are competed and established when an individual order is placed against the BPA.
  - (2) Ordinarily, the CO may not authorize the contractor to begin work on an order under a BPA until prices have been established.

However, if urgency precludes advance pricing and the order establishes a ceiling price limiting the judiciary's obligation, the CO may place an unpriced order after getting a one-time delegation of authority from AMO. Pricing must be established as soon as possible after issuance of an unpriced order.

#### **§ 325.50.30 Open Market Single Award BPA**

- (a) A single award BPA is a BPA with only one vendor. While the Judiciary's preference is to establish multiple award BPAs, rather than single award BPAs, the CO has the discretion to determine which is needed, using the following factors:
  - (1) the scope and complexity of the requirement(s);
  - (2) the technical qualifications of the contractor(s);
  - (3) the administrative costs of BPAs;
  - (4) the need to periodically compare multiple technical approaches or prices; and
  - (5) the need to have backup sources for the products and/or services, since BPA holders are not required to accept all orders.
- (b) The CO must document the file describing the decision for a single award BPA before the solicitation is issued and the BPA is established.
- (c) There are three scenarios that could yield a single award BPA.
  - (1) Need based. A CO has assessed the needs of the court and made a determination that, based on the level of need for the products or services, only one source is needed for the BPA. The CO must document the file describing the anticipated need and the CO's determination to have a single award BPA.
  - (2) Only one quote received. If the CO solicits a sufficient number of qualified contractors (normally at least three) or advertises if the estimated value exceeds \$25,000 and only receives one quote, the CO has fulfilled the competition requirement. The CO should document the file showing the attempt to solicit three or more sources.
  - (3) Only one source. If the contracting officer decides not to compete the requirement for the BPA or that only one source is available to provide the goods and services and therefore a sole source BPA is required, an approved written justification for limiting competition is

required. **See:** § 335.60.30 (Justification for Limiting Open Market Competition).

- (d) Orders against a single award BPA need not be competed or advertised. Single award BPAs must be priced.

#### **§ 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. Authorized users may place the order directly under any of the established BPAs when the need for the product or service arises. The CO may exercise broad discretion in developing appropriate order placement procedures. However, the CO must:
  - (1) keep vendor submission requirements to a minimum and use streamlined procedures whenever possible;
  - (2) develop ordering procedures that will provide each awardee an opportunity to be considered for orders that exceed the judiciary's competition threshold;
  - (3) include the ordering procedures in the solicitation and the BPA; the BPA solicitation must specify that quote requests may be by oral or written solicitation, and is limited to firms holding BPAs for the same products or services;
  - (4) not use any method (such as allocation or designation of any preferred awardee) that would not result in fair consideration being given to all awardees before placing each order;
  - (5) tailor the procedures to each acquisition; and
  - (6) consider price or cost under each order as one of the factors in the selection decision.
- (b) Orders against multiple award BPAs with an estimated price exceeding the judiciary's competition threshold need not be advertised, but the CO must compete each call among all BPA holders unless supported by a written determination that:
  - one of the circumstances described in § 335 (Justifications and Approvals for Limiting Competition) applies to the order, and



- the requirement is waived on the basis of a justification prepared according to § 335.60.30 (Justification for Limiting Open Market Competition).
- (c) When a call is competed among the BPA holders, the CO must, at a minimum:
- (1) provide a fair notice of the intent to make a purchase, including a clear description of the products to be delivered or the services to be performed and the basis on which the selection will be made, to all contractors offering the required supplies or services under the multiple award contract; and
  - (2) afford all contractors responding to the notice an opportunity to submit a quote and have that quote fairly considered.

#### **§ 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. Orders issued under the BPA are subject to the terms and conditions of the associated BPA. The orders should be documented in the BPA file.
- (b) When frequent orders are anticipated against a priced single award BPA, the CO may utilize a blanket delivery order (BDO), obligating funds and tracking the open balance according to Guide, Vol. 14, § 220.50.20(c) (Contract Funding Requirements). BDOs may not cross fiscal years; they may only be used to pay for orders placed within a single fiscal year.

#### **§ 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:

- (a) Pricing for the products or services, or a description of the method for determining prices to be paid to the vendor for the products or services.
- (b) A list of the ordering officers authorized to issue orders under the agreement.
- (c) The point at which each order becomes a binding contract (e.g., issuance of the order, acceptance of the order in a specified manner, or failure to reject the order within a specified number of days).
- (d) The appropriate contract type clauses for the orders to be placed (i.e., fixed-price, labor-hour, or time-and-materials). For clauses prescribed by

dollar amount, the aggregate value of orders expected to be placed under the agreement over its full life must be estimated.

#### **§ 325.50.55 Review of BPAs**

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

#### **§ 325.55 Administration of Small Purchases**

- (a) Purchases must be administered according to the terms and conditions of the order or agreement.
- (b) After the order is placed, the requesting office awaits delivery or performance, inspects the products or services, and accepts or rejects the delivery. If there is a problem in the delivery or performance, the requesting office informs the CO. The CO determines the best course of action, depending on the circumstances and the terms and conditions of the order.
- (c) Modifications are made as necessary to clarify, correct, terminate, cancel the order, or make appropriation data changes or corrections. Modifications can only be issued by a CO. **See:** Guide, Vol. 14, § 745 (Contract Modifications).
- (d) The last administration action is to close out the small purchases, which includes BPAs, purchase orders, and orders against existing contracts that do not exceed the judiciary's small purchase threshold. **See:** Guide, Vol. 14, § 760 (Contract Closeout).

### **§ 330 Standard Competitive Contracting Procedures**

#### **§ 330.10 Applicability**

- (a) The standard competitive contracting procedures in this section apply to procurements over the judiciary's small purchase threshold, including options, unless the contracting officer chooses to use the small purchase procedures (**see:** § 325) on procurements for commercial products and services whose value is not expected to be more than \$10 million, including options.

- (b) These procedures do not apply to orders or contracts placed under GSA FSS (**see:** § 310.50 (GSA Federal Supply Schedules)) or orders against other federal agency contracts (**see:** § 310.60 (Other Federal Agency Contracts)).

#### **§ 330.10.10 Format and Contents of Contracts**

- (a) Format

Solicitations and contracts based on the use of Standard Competitive Contracting Procedures must follow the Uniform Contract Format (UCF). **See:** Guide, Vol. 14, Appx. 1A (Uniform Contract Format).

- (b) Contract Face Page Contents

The face page of each contract must include following items:

- (1) date;
- (2) contract number;
- (3) contractor's and CO's signatures (**Note:** Because an offer is subject to acceptance by the judiciary, a contract issued based on a proposal in response to an RFP is signed by both the contractor and the CO.); and
- (4) contractor's UEI or TIN, included in the name and address block of the award document.

- (c) Contract Terms and Conditions

To protect the judiciary's rights when acquiring products and/or services using standard competitive procedures, basic terms and conditions (i.e., contract clauses) must be part of any contract.

#### **§ 330.10.20 Soliciting under Standard Competitive Contracting Procedures**

- (a) Preparation of Solicitations

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

- (b) Recommended Time Frames for Offers

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

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

(c) Method of Solicitation

- (1) The CO will determine the method by which the solicitation is delivered to potential offerors. This determination will consider such choices as:

- regular US Postal Service mail,
- electronic mail, or
- posting on a website.

- (2) Choices are dependent on:

- the size of the solicitation package,
- the number of vendors being solicited,
- the time required for the responses to be returned, and/or
- other relevant considerations.

(d) Posting and Synopsis

The CO must comply with the publicizing method requirements in § 315.20 (Methods of Publicizing Procurement Notices).

(e) Availability of Solicitations

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

### **§ 330.10.30 Provisions and Clauses**

The CO must include the following clauses and provisions in all solicitations exceeding the judiciary's small purchase threshold (**see:** § 325.05 (Judiciary's Small Purchase Threshold)) unless the prescription indicates otherwise.

- (a) Clause 2-57, Protecting, Reporting, and Responding to Incident Involving Sensitive Information.
- (b) Provision 3-5, Taxpayer Identification and Other Offeror Information.
- (c) Provision 3-15, Place of Performance.
- (d) Provision 3-20, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters. The offeror will appropriately fill in the provision's blank spaces.
- (e) Clause 3-25, Protecting the Judiciary's Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.
- (f) Provision 3-30, Certificate of Independent Price Determination is included in all solicitations for firm-fixed price contracts or fixed-price with economic price adjustment, which are expected to exceed the judiciary's small purchase threshold. **See:** § 325.05 (Judiciary's Small Purchase Threshold). The offeror will appropriately fill in the provision's blank spaces.
- (g) Clause 3-35, Covenant Against Contingent Fees.
- (h) Clause 3-40, Restrictions on Subcontractor Sales to the Judiciary.
- (i) Clause 3-45, Anti-Kickback Procedures.
- (j) Clause 3-50, Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity.
- (k) Clause 3-55, Price or Fee Adjustment for Illegal or Improper Activity.
- (l) Provision 3-70, Determination of Responsibility.
- (m) Clause 7-20, Security Requirements, is included whenever unescorted access to judiciary buildings or access to the judiciary IT network is required. For further information on the types of background checks, procedures for obtaining background checks, and appropriate forms to use, **see:** Guide, Vol. 12, § 570 (Background Checks and Investigations).
- (n) Provision 3-85, Explanation to Prospective Offerors.
- (o) Provision 3-95, Preparation of Offers.
- (p) Provision 3-100, Instructions to Offerors is included in all solicitations.

- (1) Alternate I is included if the judiciary intends to make award after discussions with offerors within the competitive range.
  - (2) Alternate II is included if the judiciary would be willing to accept alternate offers.
  - (3) Alternate III is included if the judiciary would be willing to consider offers which do not include all items solicited and make multiple awards.
- (q) Clause 3-105, Audit and Records.
- (r) Provision 3-115, Facsimile Offers is included in solicitations if facsimile offers are authorized.
- (s) Clause 3-120, Order of Precedence.
- (t) Provision 3-130, Authorized Negotiators. The offeror will appropriately fill in the provision's blank spaces.
- (u) Provision 3-135, Single or Multiple Awards is included in solicitations for indefinite-quantity contracts that may result in multiple contract awards.
- (v) Clause 3-140, Notice to the Judiciary of Labor Disputes is included in solicitations and contracts that involve programs or requirements for which it is necessary that contractors be required to notify the judiciary of actual or potential labor disputes that are delaying or threaten to delay timely performance.
- (w) Clause 3-145, Payment for Overtime Premiums is included in solicitations and contracts when a cost-reimbursement contract is contemplated. The CO will appropriately fill in the clause's blank spaces.
- (x) Clause 3-150, Contract Work Hours and Safety Standards Act – Overtime Compensation is included when the resulting contract may involve the employment of laborers or mechanics. **See:** Glossary.
- (y) Clause 3-155, Walsh-Healy Public Contracts Act is included in solicitations and contracts if the procurement is for the manufacturing or furnishing of products and expected to be in excess of \$15,000.
- (z) For applicable SCLS provisions and clauses, **see:** § 332.50 (Required Clauses and Provisions).
- (aa) 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.

- (bb) Clause 3-205, Protest After Award is included in all solicitations and contracts.
- (cc) Provision 3-210, Protests is included in all solicitations exceeding the judiciary's small purchase threshold. **See:** § 325.05 (Judiciary's Small Purchase Threshold). The CO will appropriately fill in the provision's blank spaces.
- (dd) Clause 5-30, Authorization and Consent is included in all solicitations and contracts. Use the clause with Alternate I if the solicitation or contract is for communication services with a common carrier and the services are unregulated and not priced by a tariff schedule set by a regulatory body.
- (ee) Court organizations that can make payment by electronic funds transfer (EFT) will incorporate the following clauses as indicated:
  - (1) Clause 3-300, Registration in the System for Award Management (SAM) is included in solicitations and contracts except when:
    - (A) the contract is awarded under circumstances of urgent and compelling need;
    - (B) the contractor is a foreign vendor; or
    - (C) awards under \$10,000 (\$25,000 for training products and services) that do not use EFT for payment.
  - (2) Clause 3-305, Payment by Electronic Funds Transfer – System for Award Management (SAM) Registration is included in solicitations and contracts that include Clause 3-300.
  - (3) Clause 3-310, Payment by Electronic Funds Transfer – Other Than System for Award Management (SAM) Registration is included in contracts when a critical sole source provider of goods or services refuses to register in SAM, but has provided Electronic Funds Transfer information for payment directly to the judiciary.
  - (4) Provision 3-315, Submission of Electronic Funds Transfer Information with Offer is included in solicitations when urgent and compelling circumstances require award to be made without regard to whether or not the awardee is registered in SAM. The resulting contract must include Clause 3-305, Payment by Electronic Funds Transfer – System for Award Management (SAM) Registration if

the awardee is registered in SAM, or Clause 3-310, Payment by Electronic Funds Transfer – Other Than System for Award Management (SAM) Registration if the awardee is not.

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

## **§ 330.13 Pre-Offer Conference**

### **§ 330.13.10 In General**

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

### **§ 330.13.20 Notification Requirements**

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

### **§ 330.13.30 Conducting the Conference**

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

### **§ 330.13.40 Records**

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

## **§ 330.16 Amendment of Solicitations**

### **§ 330.16.10 In General**

If it becomes necessary to make changes in a solicitation, a solicitation amendment must be issued. The procurement file must be documented to show the reason for any amendment. An amendment may make the following types of changes:

- quantity,
- specifications,
- delivery schedule, or



- other corrections as needed.

### **§ 330.16.20 Time Frame**

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

### **§ 330.16.30 Notification**

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

### **§ 330.16.40 Amendment Distribution**

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

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

## **§ 330.20 Cancellation of Solicitations**

### **§ 330.20.10 In General**

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

### **§ 330.20.20 Notification**

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

**§ 330.20.30 Time Frame**

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

**§ 330.23 Disclosure and Use of Information****§ 330.23.10 Before Release of the Solicitation**

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

**§ 330.23.20 After Release of the Solicitation**

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

**§ 330.23.30 After Receipt of Offers**

- (a) The content of offers, the number or identity of offerors, and source selection information must be protected. This information is restricted to those having a legitimate role in the offer evaluation and award processes and is disclosed only to the extent needed to evaluate the offers. **See also:** Guide, Vol. 14, § 150.20.25(a) (Prohibition on Disclosing Procurement Information).
- (b) During the preaward period, only the CO, and others specifically authorized by the CO, may transmit technical or other information and conduct discussions with offerors. Information must not be furnished to any offeror that — either by itself or together with other information — would possibly give one offeror an advantage over others. However,

general information that is not prejudicial to others may be furnished upon request.

## **§ 330.26 Receipt of Offers**

### **§ 330.26.10 Handling**

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

### **§ 330.26.20 Opening and Recording**

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

### **§ 330.26.30 Modification and Withdrawal**

Offers may be modified or withdrawn in the same manner they were submitted. Written offers must be modified or withdrawn in writing and oral offers made in response to oral solicitations may be withdrawn orally. An offer modification must be received by the date and time set for receipt of offers. Notice of withdrawal of an offer must be received before award.

### **§ 330.26.40 Late Offers**

- (a) Any offer received at the office designated in the solicitation after the exact date and time specified for receipt of offers is late and will not be considered, unless:
  - (1) it is received before award is made,
  - (2) the contracting officer determines that accepting the late offer is in the judiciary's best interest,
  - (3) the contracting officer determines that accepting the late offer would not unduly delay the procurement, and
  - (4) one of the following situations applies:
    - (A) there is acceptable evidence to establish that it was received at the judiciary office designated for receipt of offers before the time set for receipt; or
    - (B) it is the only offer received.

- (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.
- (c) Acceptable evidence to establish the time of receipt at the judiciary office includes the time/date stamp of that office on the offer wrapper, other documentary evidence of receipt maintained by the office, or oral testimony or statements of judiciary personnel.
- (d) If an emergency or unanticipated event interrupts normal judiciary processes so that offers cannot be received at the office designated for receipt of offers by the exact time specified in the solicitation, and urgent judiciary requirements preclude amendment of the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal judiciary processes resume.

#### **§ 330.26.50 Late Proposal Documentation**

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

#### **§ 330.26.60 Facsimile Offers**

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

### **§ 330.30 Failure to Acknowledge Amendments**

#### **§ 330.30.10 Awards Made Without Discussions**

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

#### **§ 330.30.20 Awards Made After Discussions**

If the CO conducts discussions for an award, uncertainties regarding the contractor's receipt of an amendment may be resolved during discussions.

### **§ 330.33 Mistakes in Offers**

COs must examine all offers for mistakes. Communication with an offeror concerning potential mistakes is clarification, not discussion. **See:** § 330.50.40 (Resolving Mistakes in Offers). However, if the correction of a mistake requires reference to any document (such as worksheets or other data) not included with the offer, the mistake may be corrected only through discussions. **See:** § 330.53 (Award with Discussions).

## **§ 330.36 Evaluation of Offers**

### **§ 330.36.10 In General**

- (a) Offer evaluation is an assessment of both the offer itself and the offeror's technical capability (as demonstrated by the offer) to perform the proposed contract successfully. The judiciary must evaluate competitive offers and then assess their relative qualities solely on the evaluation factors and subfactors specified in the solicitation. Evaluations may be conducted using any rating method or combination of methods, including:
  - pass/fail; or
  - adjectival ratings (e.g., fair, satisfactory, good, excellent).
- (b) The relative strengths, deficiencies, and significant weaknesses supporting the offer evaluation must be documented in the procurement file.

### **§ 330.36.20 Price or Cost Evaluation**

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

### **§ 330.36.30 Evaluation of Other Factors**

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

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

**§ 330.36.40 Only One Offer**

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

- (a) market research;
- (b) previous purchases of the same or similar product or service;
- (c) current price lists, catalogs, or advertisements;
- (d) a comparison with similar items in a related industry;
- (e) the CO's personal knowledge of the item being purchased;
- (f) comparison to an independent government estimate; or
- (g) any other reasonable basis.

**§ 330.40 Selection for Award****§ 330.40.10 In General**

The award will be made to the offeror whose offer receives the highest evaluation and/or lowest price according to the evaluation factors identified in the solicitation. **See:** § 330.36.30 (Evaluation of Other Factors).

**§ 330.40.20 Technically Acceptable/Lowest Price Awards**

Awards under solicitations that specify technically acceptable/lowest price evaluation are made to the responsible offeror submitting the lowest priced offer that meets the technical requirements stated in the solicitation. This method is normally used for small purchases and standard commercial products or services for which there is adequate competition. **See also:** § 325.35.20 (Technically Acceptable/Lowest Price).

**§ 330.40.30 Best Value Awards**

- (a) For awards under solicitations that specify best value evaluation, the source selection authority (usually the CO) is ultimately responsible for making the selection decision and is responsible for trade-off judgments involving price and other evaluation factors. Selection must be made according to the solicitation's stated evaluation factors and must be documented. The documentation will include a determination by the

source selection authority that the price is fair and reasonable and the basis for determination. **See also:** § 325.35.30 (Best Value).

<b>§ 330.40.30(b) Best Value</b>	
<b>Procedure</b>	<b>Details</b>
(1) Evaluation Factors	<p>Evaluation factors that are of value or concern to the requiring organization vary depending on the product or service, and may include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• quality;</li> <li>• experience;</li> <li>• delivery schedule;</li> <li>• maintainability;</li> <li>• ease of operation;</li> <li>• size or weight, etc.;</li> <li>• past performance; or</li> <li>• qualifications of key personnel.</li> </ul>
(2) Evaluation Strategy	<p>The use of evaluation factors other than price requires the development of an evaluation strategy. The evaluation strategy must be developed by the CO with information from the requesting office. The evaluation strategy must identify:</p> <ul style="list-style-type: none"> <li>• the need to use evaluation factors other than price;</li> <li>• the evaluation factors to be used and their relative weight or order of importance;</li> <li>• the overall importance of the other evaluation factors relative to price (i.e., greater than, equal to, less than); and</li> <li>• the individual or individuals who will perform the evaluation (<b>see:</b> Guide, Vol. 14, § 210.70.40 (Evaluation Panels)).</li> </ul>
(3) Award	<p>Award is made after evaluating each offer using the evaluation factors and the relative weight of the factors. The decision is then made by determining the proposal that offers the best value offered for the evaluated price. The CO will prepare a justification, which documents the trade-off of technical value to price.</p>

### **§ 330.40.40 Selection Documentation**

- (a) The source selection authority's selection memorandum must specify any rankings/ratings and recommendations prepared by technical and/or price evaluation teams or pre-award survey teams.
- (b) However, the findings of these teams are only guides for the source selection authority's final selection decision and must be presented in sufficient depth to permit the intelligent weighing of alternatives and the making of trade-off judgments.

- (c) The offers may not be compared to each other; they are compared to the evaluation criteria.
- (d) The source selection memorandum must show the relative differences among the offerors, demonstrating their strengths and weaknesses as compared to the solicitation's evaluation factors.
- (e) The supporting documentation must include the basis and reason for the source selection decision.

#### **§ 330.40.50 Responsibility Determination**

The CO must make a favorable responsibility determination of the selected offeror before award. **See:** § 320.20 (Determining Responsibility or Non-Responsibility). The responsibility determination must be included as part of the source selection memorandum.

#### **§ 330.43 Discussions with Offerors**

##### **§ 330.43.10 In General**

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

##### **§ 330.43.20 Discussions of Price**

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

#### **§ 330.46 Rejection of All Offers**

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

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



## **§ 330.50 Award Without Discussions**

### **§ 330.50.10 In General**

- (a) Verification, withdrawal, or resolving mistakes (**see:** § 330.50.40 (Resolving Mistakes in Offers)) under this procedure does not constitute discussion.
- (b) Award may be made without discussion whenever adequate competition or price analysis make it clear that acceptance of the most favorable initial offer will result in a reasonable price.
- (c) Provision 3-100, Instructions to Offerors, prescribed at § 330.10.30(p) (Provisions and Clauses) for inclusion in all solicitations above the judiciary's small purchase threshold, states that:
  - (1) the CO intends to award without discussions; and
  - (2) the judiciary reserves the right to conduct discussions, if the CO later determines them to be necessary.
- (d) The provision with Alternate I is used if the judiciary intends to make award after discussions with offerors within the competitive range; or the provision is used with Alternate II if the judiciary would be willing to accept alternate offers.

### **§ 330.50.20 Resolving Uncertainties in Offers**

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

### **§ 330.50.30 Equal Low Price**

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

### **§ 330.50.40 Resolving Mistakes in Offers**

The following procedure will be used to resolve mistakes without discussions, if the CO informs the offeror of the suspected mistake, identifies the mistake, and requests

verification. The CO must point out the circumstances giving rise to the suspicion of mistake (such as duplications, omissions or errors in computations, obvious misplacement of a decimal point, obviously incorrect discount). This must be done without disclosing other offers or the judiciary estimate. If a mistake is confirmed, the offeror may withdraw its offer or seek its correction.

- (a) If the offeror verifies its offer, then the offer is evaluated as submitted.
- (b) If the offeror requests correction of a mistake, the CO, with the approval of the PE and concurrence of OGC, may permit the correction without discussion if both the existence of the mistake, and the offer actually intended, are clearly ascertainable from the solicitation and the offer. If there is insufficient evidence to permit the correction without discussions and discussions will not be held, the offeror will be given a final opportunity to withdraw its offer. If not withdrawn, the offer is evaluated as submitted.

### **§ 330.53 Award with Discussions**

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

### **§ 330.56 Conduct of Discussions**

- (a) The CO is responsible for conducting discussions with the offeror's authorized negotiators identified in the offer in Provision 3-130, Authorized Negotiators. The CO will use the assistance or participation of program officials, technical personnel, or others as appropriate.
- (b) The content, form, and extent of the discussions is a matter of the CO's judgment. Discussions are conducted to:

- (1) advise each offeror of deficiencies in its offer in terms of the judiciary's requirements, but not deficiencies relative to other offers, nor deficiencies resulting from the offeror's lack of diligence or competence;
- (2) attempt to resolve uncertainties concerning aspects of the offer;
- (3) resolve any suspected mistakes by calling them to the offeror's attention as specifically as possible without disclosing information concerning other offers or the evaluation process; and
- (4) provide the offeror a reasonable opportunity to submit any cost or price, technical, or other revisions to its offer that may result from the discussions.

## **§ 330.60 Competitive Range**

### **§ 330.60.10 In General**

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

### **§ 330.60.20 Establishment of Competitive Range**

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

### **§ 330.60.30 Elimination of Offers**

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

- (c) In contrast, a complex procurement may anticipate substantial negotiations and offer revisions. Then limiting the competitive range could be desirable.

#### **§ 330.60.40 Notification**

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

### **§ 330.63 Best and Final Offers**

#### **§ 330.63.10 In General**

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

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

#### **§ 330.63.20 Reopening Discussions**

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

### **§ 330.66 Selection and Negotiation**

#### **§ 330.66.10 Selection of an Awardee**

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

#### **§ 330.66.20 Negotiations after Selection**

Any uncertainties or deficiencies remaining in the offer selected must be clarified or corrected through clarifications or discussions with the offeror, as appropriate, leading to a definitive contract. Negotiations must include the disclosure and resolution of all deficiencies and all unsubstantiated areas of cost and price. No changes may be made

in the judiciary's requirements or in the offer that, if made before contractor selection, would have affected the basis for selection.

## **§ 330.70 Award**

### **§ 330.70.10 In General**

- (a) 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 Form SF 33 (Solicitation, Offer, and Award) that was part of the solicitation and was signed and submitted by the offeror with their proposal.
- (b) 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 Form SF 26 (Award/Contract). The entire contract package, including the Form SF 26, should be sent to the selected offeror for signature before the CO signature. This ensures that both parties have the opportunity to review the document to ensure that it reflects all changes agreed on during the course of negotiations.
- (c) Regardless of which form is used, performance may not commence until both parties have executed the contract document.

### **§ 330.70.20 Approval Requirements**

- (a) Single Award

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

- (b) Multiple Awards

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

### **§ 330.70.30 Award Notification**

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

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

## **§ 330.73 Award Debriefing**

### **§ 330.73.10 In General**

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

### **§ 330.73.20 Conducting the Debriefing**

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

### **§ 330.73.30 Debriefing Information**

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

### **§ 330.73.40 Restricted Debriefing Information**

Information must not be disclosed to any offeror as to:

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

### **§ 330.73.50 Records**

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

## § 331 Emergency Contracting Authority

This section provides guidance and expanded procurement authority to judiciary organizations to prepare for and recover from emergencies when the Judiciary Emergency Response Team (JERT) activates upon notice of an imminent or actual incident. **See:** Guide, Vol. 17, § 450.20 (Judiciary Emergency Response Team (JERT)).

### § 331.10 Applicability

This section applies to chief judges, federal public defenders (FPDs), and judiciary COs responsible for conducting procurements for a judiciary organization:

- (a) that is, or is reasonably expected to be, in imminent danger from an anticipated or current emergency; or
- (b) that requires expanded emergency contracting authority to aid in the recovery of a judiciary organization after an emergency.

### § 331.20 Emergency Flexibilities

- (a) Consistent with Guide, Vol. 14, § 130.20.25 (Authorization for Contracting and Delegating), the AO Director grants chief judges and FPDs additional procurement authority to procure products and services necessary to restore the full operation of judiciary organizations, when conducting “open market” purchases (**see:** § 310.70) before, during, or after an emergency.
- (b) When the JERT activates upon notice of an imminent or actual incident, the authority to use these flexibilities is automatically granted to chief judges and FPDs in threatened and affected judiciary organizations (e.g., organizations in hurricane warning zones, or watch zones that are likely to become warning zones.)

#### § 331.20.10 Revised Requirements

- (a) Chief judges and FPDs covered by this section are delegated authority to conduct limited competition and sole source procurements up to \$50,000 per transaction. This authority may be redelegated as provided in Guide, Vol. 14, § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials).
- (b) By providing these emergency procurement flexibilities, this delegation provides a temporary deviation (i.e., waiver) to the following requirements:
  - (1) Procedures requiring competition for most actions between \$10,000 and \$25,000 (**see:**

- Guide, Vol. 14, § 140.20.30 (Level 1 Delegation),
  - § 140.30.30 (Level 3 Delegation),
  - § 140.30.40 (Delegation Limitations),
  - § 310.80.30 (Competition),
  - § 325.15.10 (Competition Threshold), and
  - Appx 1F (Contracting Officers' Certification Program – Level 3)); and
- (2) Requirement to obtain the PE's written concurrence when using the *public exigency* exception in 41 U.S.C. § 6101(b)(2)(B) to forego advertising above \$25,000. **See:** § 315.10.30(b).
- (c) Instead, the following procedures must still be followed:
- (1) Contracting officers must document in writing the process for the:
- (A) determination of the purchase, and
  - (B) maintenance of the emergency items necessary and appropriate for the judiciary organization.
- (2) All purchase requests must be approved in writing by an individual with delegated authority, and a copy of the approval must be maintained with all other appropriate documentation.
- (3) For non-competitive actions between \$25,000 and \$50,000 (using the *public exigency* exception in 41 U.S.C. § 6101(b)(2)(B)):
- (A) the performance period may not exceed the time reasonably necessary to address the exigency; and
  - (B) the CO must document such actions in the procurement file consistent with § 335.20(a) as soon as practicable.

### § 331.20.20 Limitations

- (a) Generally, the procurement authority and flexibilities in this section will remain in effect for 60 days from when the JERT activates upon notice of an imminent or actual incident.
- (b) If required, the AO Director, Deputy Director, or PE may extend the duration of this authority by any method of communication practicable under the circumstances. The granting authority and the impacted judiciary organizations must document any extension in files used during the emergency period.



- (c) However, the authority may not be extended beyond a reasonable period necessary to bring the judiciary organizations into full operation.

### **§ 331.30 Supplemental Funds**

- (a) Judiciary organizations may request emergency supplemental funds, in addition to their normal fiscal year allotments, to conduct emergency procurements covered by this section.
- (b) Court units should submit their emergency supplemental requests via InfoWeb. However, if the InfoWeb system cannot be accessed, court units should contact their assigned budget analyst.
- (c) Federal defender organizations should contact the Program Budget Branch in the Program Operations Division of the AO's Defender Services Office for emergency supplemental requests.

### **§ 331.40 Support and Assistance**

Judiciary organizations may contact the AO's AMO or the PE for support and assistance on using procurement flexibilities during emergencies.

## **§ 332 Purchase of Services**

### **§ 332.10 Service Contract Labor Standards**

The Service Contract Labor Standards (SCLS), 41 U.S.C. §§ 6701–6707, formerly known as the Service Contract Act, applies to contracts over \$2,500, including purchase orders, the principal purpose of which is to furnish services through the use of service employees for work to be performed in the United States, Puerto Rico, Guam, or the U.S. Virgin Islands. **See:** Guide, Vol. 14, § 130.20.55 (Labor Statutes Governing Contractor Wages and Benefits).

- (a) The SCLS does not apply to the following, as defined in 29 CFR part 541:
  - (1) employees employed in bona fide executive, administrative, or professional capacities, or
  - (2) computer systems analysts, computer programmers, software engineers, and other similarly skilled computer employees.
- (b) Some examples of service employees include:
  - stenographic reporting services;
  - equipment repair services;
  - clerical services;

- janitorial services;
  - copy center services;
  - mail related services; and
  - data collection, processing and analysis services.
- (c) SCLS applies regardless of:
- (1) the beneficiary of the services (judiciary or public);
  - (2) the source of funding (judiciary or the public); or
  - (3) the place of performance (judiciary or contractor's premises).

### **§ 332.20 Statutory Requirement**

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

### **§ 332.30 Exemptions**

- (a) DOL's implementing regulations allow contractors for certain types of services to be exempt. The two categories of exemptions include:
- (1) maintenance, calibration, or repair of information technology equipment, office/business machines, and certain scientific or medical equipment for which micro-electronic circuitry or similarly sophisticated technology is essential; and
  - (2) the following additional services:
    - (A) automobile or other types of vehicle maintenance;
    - (B) financial services involving issuance of cards (e.g., purchase cards);

- (C) 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);
  - (D) 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;
  - (E) transportation of persons by common carrier on regularly scheduled routes or via standard commercial services (e.g., commuter trains, buses, commercial airlines, shuttle vans) (**Note:** excludes charter services); and
  - (F) relocation services, including the services of real estate brokers or appraisers to assist judiciary employees in buying and selling homes (excludes actual moving and/or storage of household goods and related services).
- (b) Exemption is not automatic. The offeror must affirmatively certify in either Provision 3-195, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Certification; or Provision 3-220, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services – Certification, that it meets the conditions required by the DOL regulations to qualify for exemption. If the offeror does not certify affirmatively, the CO must include the appropriate wage determination in any resulting contract, as well as Clause 3-160, Service Contract Labor Standards.

### **§ 332.40 Obtaining Wage Determinations**

- (a) Most prevailing wage determinations may be obtained using the DOL's Wage Determinations OnLine link at [sam.gov](http://sam.gov). The website contains a User Guide and FAQs for its use, and an email link to request assistance. The website asks questions specific to the proposed procurement (e.g., performance location, type of service) to determine the appropriate prevailing wage determination. If a wage determination is available, the website will provide a printer friendly version. The CO must print out the wage determination, include it in the solicitation and in the resulting award, and maintain it as file documentation.
- (b) If the Wage Determination database does not contain an applicable prevailing wage determination for a contract action, the contracting officer must use the e98 process, an electronic version of SF-98 (Notice of

Intention to Make a Service Contract and Response to Notice), to request a wage determination. To complete the e98, the CO may need to review the DOL publication, Service Contract Act Directory of Occupations, found on [sam.gov](http://sam.gov) Wage Determination Learning Center to determine the appropriate classes of service employees needed to perform the work.

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

**§ 332.40.10 Impact of a Revised Wage Determination**

- (a) DOL's Wage and Hour Division periodically issues revisions to prevailing wage determinations. The requirement to include a revised wage determination in a solicitation or contract is determined by the date of receipt of the revised wage determination by the CO.
  - (1) If the original wage determination was obtained using the wage determination at sam.gov, the time of receipt is deemed as the first day of publication of the revised determination on the website.
  - (2) If the original wage determination was obtained using the e98 process, the time of receipt is deemed to be the date the CO receives actual notice of a new or revised prevailing wage determination from DOL.
- (b) Once a wage determination has been selected from the WDOL website for a solicitation or contract, the CO is responsible for monitoring the website for revisions.
- (c) Whether or not the CO must incorporate a revised wage determination depends on when the revision is published on sam.gov and when contract performance is required to start.
  - (1) If the revised prevailing wage determination is published after award of a contract that requires performance to start within 30 days after award, the revision need not be incorporated in the contract.
  - (2) If the contract performance period does not start within 30 days after the award, any wage determination revision received by the CO 10 or more days before the contract's specified start of performance must be incorporated in the contract.

**§ 332.40.20 Incorporation of Wage Determinations**

Upon award of a contract or a modification that incorporates a new wage determination, the CO must provide the contractor with a copy of DOL Publication WH-1313 (Employee Rights on Government Contracts) along with a copy of the executed contract or modification. The WH-1313 SCA Poster may be printed in color or black and white. The contractor is required to post the WH-1313, with the wage determination attached to it, in a prominent and accessible location at the worksite where it may be seen by all employees performing the contract.

- (a) In no case may a service contract be awarded without a wage determination if the SCLS applies. A copy of the wage determination

should be provided to offerors when requesting quotes for services that are subject to SCLS to ensure that the pricing provided reflects compliance with the wage determination.

- (b) If DOL determines, whether before or after award of a contract, that a CO made an erroneous determination that the SCLS did not apply to a particular procurement or failed to include an appropriate wage determination in a covered contract, the CO, within 30 days of notification by DOL, must modify the contract to include Clause 3-160, Service Contract Labor Standards, plus any applicable wage determination issued by DOL. In certain cases, DOL may require retroactive application of the wage determination.
- (c) If the contract is funded by fiscal year appropriations and the term of the contract is extended, such as by exercising an option, a new wage determination must be obtained and incorporated in the contract by modification.
- (d) If the contract is not subject to annual appropriations, such as the copy center agreements (funded by the public) or contracts funded by the Judiciary Information Technology Fund, a new wage determination must be obtained every two years during the contract and incorporated in the contract by modification.
- (e) The CO must equitably adjust the contract price to reflect any changed cost of performance resulting from incorporating a wage determination or a revised wage determination.

<b>§ 332.50 Required Clauses and Provisions</b>	
<b>Clause or Provision</b>	<b>Include in ...</b>
(a) Clause 3-160, Service Contract Labor Standards	<p>solicitations and contracts over \$2,500 principally for services covered by SCLS and performed in the United States, Puerto Rico, Guam, or the U.S. Virgin Islands, or any such award modified to exceed \$2,500, including indefinite-delivery contracts and ordering agreements when orders are expected to aggregate more than \$2,500; <b>except</b> if the award includes:</p> <ul style="list-style-type: none"> <li>(1) Clause 3-215, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements; <b>or</b></li> <li>(2) Clause 3-225, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services – Requirements</li> </ul>

<b>§ 332.50 Required Clauses and Provisions</b>	
<b>Clause or Provision</b>	<b>Include in ...</b>
(b) Clause 3-175, Fair Labor Standards Act and Service Contract Labor Standards – Price Adjustment (Multi-Year And Option Contracts)	<p>solicitations and contracts for fixed price services that:</p> <ol style="list-style-type: none"> <li>(1) include Clause 3-160, Service Contract Labor Standards;</li> <li>(2) exceed the judiciary's small purchase threshold; and</li> <li>(3) include options to extend the period of performance or solicit a multi-year proposal.</li> </ol>
(c) Clause 3-180, Fair Labor Standards Act and Service Contract Labor Standards – Price Adjustment	<p>solicitations and contracts for fixed price services that:</p> <ol style="list-style-type: none"> <li>(1) include Clause 3-160, Service Contract Labor Standards;</li> <li>(2) exceed the judiciary's small purchase threshold; and</li> <li>(3) do not include options to extend the period of performance or solicit multi-year proposals.</li> </ol>
(d) Provision 3-195, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Certification	<p>solicitations for the types of services listed in § 332.30(a) (Exemptions) when the resultant award may be exempt from Service Contract Labor Standards coverage.</p>
(e) Clause 3-200, Service Contract Labor Standards – Place of Performance Unknown	<p>solicitations and contracts when the place of performance is unknown at the time the solicitation is issued. When the procurement is subject to the SCLS statute and publicizing is required (<b>see:</b> § 315.10 (Policy)), the CO will include a statement in the notice to the effect that:</p> <ol style="list-style-type: none"> <li>(1) the place of performance is unknown at the time the solicitation was issued;</li> <li>(2) the CO has requested wage determinations for the possible places or areas of performance; and</li> <li>(3) the CO will request wage determinations for additional possible places of performance if asked to do so in writing.</li> </ol>

<b>§ 332.50 Required Clauses and Provisions</b>	
<b>Clause or Provision</b>	<b>Include in ...</b>
(f) Clause 3-215, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Requirements	solicitations for the types of services listed in § 332.30(a) (Exemptions) when the resultant award may be exempt from SCLS coverage;  resulting contracts when the successful offeror has affirmatively certified that it qualifies for exemption.
(g) Provision 3-220, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services – Certification	solicitations for the types of services listed in § 332.30(b) (Exemptions) when the resultant award may be exempt from SCLS statute coverage.
(h) Clause 3-225, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services – Requirements	solicitations for the types of services listed in § 332.30(b) (Exemptions) when the resultant award may be exempt from SCLS statute coverage;  in resulting contracts when the successful offeror has affirmatively certified that it qualifies for exemption.

## **§ 335 Justifications and Approvals for Limiting Competition**

### **§ 335.10 In General**

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

### **§ 335.20 Procedures**

- (a) A written justification is required when a requirement exceeds the applicable threshold (**see:** § 325.15 (Open Market Competition), § 310.50.53(g)(2)(A) (Ordering from BPAs under GSA Schedules), and § 310.60.20(c) (Ordering Scenarios)), and the CO limits competition by not competing or providing fair opportunity among contractors (**see:** Guide, Vol. 14, § 410.30.65 (Fair Opportunity Process for Delivery Orders or Task Orders – OFAC)).
- (b) When limiting competition, the CO must:
  - (1) prepare a written justification specifically demonstrating the basis for limiting competition; and



- (2) ensure that any required approval of the justification is obtained before issuance of the solicitation.

### § 335.30 Limitations

Limiting competition cannot be justified on the basis of insufficient time to conduct a competitive procurement because of:

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

### § 335.40 Justification Not Required

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

- (a) Purchases of products and services from qualified workshops, as determined by the Committee for Purchase from People who are Blind or Severely Disabled. **See:** § 310.20 (Workshop for People Who are Blind or Severely Disabled).
- (b) Orders placed against single-award national judiciary contracts or BPAs. **See:** § 310.40 (Judiciary-Wide Contracts and Blanket Purchase Agreements (BPAs)).
- (c) Orders placed against other agency single-award contracts. **See:** § 310.60 (Other Federal Agency Contracts). **See also:** Guide, Vol. 14, § 410.30.65 (Fair Opportunity Process for Delivery Orders or Task Orders – OFAC).
- (d) Purchases not expected to exceed the applicable competition threshold. **See:** § 325.15.10 (Competition Threshold).
- (e) Purchases under GSA schedule contract not expected to exceed the GSA competition threshold. **See:** § 310.50.43(a) (Orders At or Below the GSA's Competition Threshold). For procedures when limiting consideration of sources when placing orders or establishing BPAs under GSA schedule contracts. **See:** § 310.50.63 (Limiting Sources on Orders Placed Under Federal Supply Schedules).
- (f) Orders placed under single-award indefinite-delivery contracts. **See:** Guide, Vol. 14, § 410.30.63 (Competition Process for Delivery Orders and Task Orders – Open Market).
- (g) Purchases made by COCP Level 2 COs according to the policies and procedures applicable to the special program delegation being used. **See:**

Guide Vol. 14, § 140.25 (Level 2 Certification: Special Program Delegation).

- (h) Purchases made with a “brand name or equal” description. (**Note:** When such descriptions are used, the product’s salient characteristics must also be listed with the “brand name or equal” description in the solicitation.)
- (i) Modifications within the scope of a contract or the exercise of priced options (those priced and evaluated at the time of contract award).
- (j) Purchases from utilities. (**Note:** “Utilities” does not include local and long-distance voice and data services, but includes services such as water, sewer, gas, and electric.)

### § 335.50 Use of Brand Name Descriptions

- (a) A procurement that uses a brand name description or other purchase description to specify a particular brand name, product, or feature of a product that is peculiar to one manufacturer, limits competition regardless of the number of sources solicited. Use of such a description must be justified and approved using the AO Form that is applicable to the award. For appropriate forms, **see:**
  - § 335.60.30 (Justification for Limiting Open Market Competition), for open market purchases;
  - § 310.50.66 (Limiting Sources Based on Items Particular to One Manufacturer (Brand Name)), for orders against GSA Schedule contracts/BPAs; and
  - Guide, Vol. 14, § 410.30.73 (Documenting Exceptions to Fair Opportunity Requirement), for orders under another agency’s multi-award IDIQ contract.
- (b) The justification should indicate that the use of such descriptions in the procurement is essential to the judiciary’s requirements, thereby precluding consideration of a product manufactured by another company.
- (c) “Brand name or equal” descriptions, and other purchase descriptions that permit prospective contractors to offer products other than those specifically referenced by brand name, do not limit competition and therefore do not require justification and approval to support their use. **See:** § 335.40(h) (Justification Not Required).

## **§ 335.60 Limiting Competition – Open Market Purchases**

### **§ 335.60.10 Adequate Competition**

- (a) Adequate competition must be sought for any open market purchase expected to exceed the judiciary competition threshold (**see:** § 325.15.10 (Competition Threshold)), except when:
  - (1) public exigency requires the immediate delivery of the products or performance of the services due to unusual and compelling urgency;
  - (2) the CO certifies that only one responsible source of supply is available, and no other products or services will satisfy judiciary requirements; or
  - (3) the services are required to be performed by the contractor in person and are:
    - (A) of a technical and professional nature (**see:** Guide, Vol. 14, § 520 (Experts and Consultants)); or
    - (B) under the judiciary supervision and paid for on a time basis (**see:** Guide, Vol. 14, § 510 (Personal Services Contracts)).
- (b) A one-time delegation of authority from AMO is required for a COCP Level 3 CO to use exception in subparagraph (a)(1) above, regardless of dollar value of the purchase. When using the exceptions in subparagraph (a)(2) or (a)(3), a one-time delegation of procurement authority by AMO is only required when the purchase exceeds the dollar value specified in Guide, Vol. 14, § 140.30.30(g) (Level 3 Delegation).

### **§ 335.60.20 Establishing Adequate Competition**

- (a) The CO must not award any open market contract above the judiciary competition threshold without providing for adequate competition, unless the CO justifies the limitation of competition in writing.
- (b) For open market purchases above the competition threshold but not exceeding the judiciary small purchase threshold, adequate competition is provided by complying with § 325.20.10 (Competition Guidelines).
- (c) For open market purchases above the judiciary small purchase threshold, adequate competition is provided by complying with § 330.10.20 (Soliciting Under Standard Competitive Contracting Procedures).

**§ 335.60.30 Justification for Limiting Open Market Competition**

- (a) Judiciary COs must justify an award that exceeds the judiciary competition threshold where the competition requirements in § 325.20 (Competitive Small Purchase Procedures) are not met. Justification must be completed using Form AO 370A (Justification for Limiting Open Market Competition (JLOC)) (formerly the JOFOC).
- (b) The JLOC is not used when limiting competition under GSA FSS and OFACs, such as NASA SEWP. **See:** § 310.50.63 (Limiting Sources on Orders Placed Under Federal Supply Schedules) and Guide, Vol. 14, § 410.30.73 (Documenting Exceptions to Fair Opportunity Requirement).
- (c) Each JLOC must be signed by a COCP Level 3 or Professional Level certified CO, and must include the CO's certification that, to the best of his or her knowledge and belief, the justification is accurate and complete. The CO may require that technical or requirements personnel provide signed certification on the Form AO 370A that the technical information provided is, to the best of the personnel's knowledge and belief, accurate and complete.
- (d) Each JLOC signed by a CO holding COCP Level 3 authority must be approved in writing by the judiciary official holding the judiciary organization's delegated procurement authority, as identified in Guide, Vol. 14, § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials), or the PLO, if delegated. Justifications for Limiting Competition for purchases exceeding \$25,000 may only be signed by COCP Level 3 COs and delegated official after obtaining a one-time delegation of procurement authority from AMO.
- (e) Each JLOC signed by a Professional Level certified CO must be approved according to internal AMO approval procedures.
- (f) Each justification must contain sufficient facts and rationale to justify the use of the specific authority cited.

**§ 335.70 Process for Orders Against Established Multiple Award Contracts and BPAs – Open Market**

- (a) Orders against single award BPAs established under § 325.50.30 (Open Market Single Award BPA) or single award IDIQ contracts need not be competed or advertised.
- (b) Orders against judiciary-wide contracts and BPAs are subject to the ordering procedures associated with that contract or BPA.

- (c) Orders against multiple award BPAs or IDIQ contracts with an estimated price not exceeding the judiciary competition threshold (**see:** § 325.15 (Open Market Competition)) need not be competed or advertised. Authorized users may place the order directly under any of the established BPAs or IDIQ contracts when the need for the product or service arises. However, COs are encouraged to rotate such orders among holders of multiple award BPAs or IDIQ contracts.
- (d) Orders against multiple award BPAs or IDIQ contracts with an estimated price exceeding the judiciary competition threshold (**see:** § 325.15 (Open Market Competition)) need not be advertised, but must be competed unless supported by a written justification that one of the circumstances described in § 335.60.10 (Adequate Competition) applies to the call or order. The justification must be prepared and approved according to § 335.60.30 (Justification for Limiting Open Market Competition).

## **§ 340 Unsolicited Offers**

### **§ 340.10 Definition**

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

#### **§ 340.10.10 Exclusions**

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

#### **§ 340.10.20 Requirement for Valid Offer**

A valid unsolicited offer must:

- (a) be innovative and unique;
- (b) be independently originated and developed by the offeror;
- (c) be prepared without judiciary supervision, endorsement, direction, or direct judiciary involvement;
- (d) include sufficient detail to permit a determination that judiciary support could be worthwhile, and the proposed work could benefit the judiciary's mission responsibilities; and

- (e) not be an advance offer for a known judiciary requirement that can be acquired by competitive methods.

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

## **§ 340.20 Judiciary Points of Contact**

### **§ 340.20.10 In General**

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

### **§ 340.20.20 Preliminary Contact**

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

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

## **§ 340.30 Content of Unsolicited Offers**

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

<b>§ 340.30 Content of Unsolicited Offers</b>	
<b>Information Type</b>	<b>Contents</b>
(a) Basic	<ol style="list-style-type: none"> <li>(1) offeror's name, address and type of organization (e.g., profit, nonprofit, educational);</li> <li>(2) names and telephone numbers of technical and business personnel to be contacted for evaluation or negotiation purposes;</li> <li>(3) identification of proprietary data to be used only for evaluation purposes;</li> <li>(4) names of other federal, state or local agencies or parties receiving the offer or funding the proposed effort;</li> <li>(5) date of submission; and</li> <li>(6) signature of a person authorized to represent and contractually obligate the offeror.</li> </ol>
(b) Technical	<ol style="list-style-type: none"> <li>(1) concise title and abstract of the proposed effort (approximately 200 words);</li> <li>(2) a reasonably complete discussion stating: <ul style="list-style-type: none"> <li>• the objectives of the effort or activity,</li> <li>• the method or approach,</li> <li>• extent of effort to be employed,</li> <li>• the nature and extent of the anticipated results, and</li> <li>• the manner in which the work will help to support accomplishment of the judiciary's mission;</li> </ul> </li> <li>(3) names and biographical information on the offeror's key personnel who would be involved, including alternates; and</li> <li>(4) type of support needed from the judiciary (e.g., facilities, equipment, materials, or personnel resources).</li> </ol>

<b>§ 340.30 Content of Unsolicited Offers</b>	
<b>Information Type</b>	<b>Contents</b>
(c) Supporting	<ul style="list-style-type: none"> <li>(1) proposed price or total estimated cost for the effort in sufficient detail for meaningful evaluation;</li> <li>(2) period of time for which the offer is valid (a six-month minimum is suggested);</li> <li>(3) type of contract preferred;</li> <li>(4) proposed duration of effort;</li> <li>(5) brief description of the offeror's organization, previous experience, relevant past performance, and facilities to be used;</li> <li>(6) other statements, if applicable, about organizational conflicts of interest, security clearance requirements, and environmental impacts; and</li> <li>(7) the names and telephone numbers of judiciary personnel already contacted regarding the offer.</li> </ul>

## **§ 340.40 Receipt and Initial Review**

### **§ 340.40.10 Initial Review**

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

- (a) is a valid unsolicited offer, meeting the requirements of § 340.10.20 (Requirement for Valid Offer);
- (b) is suitable for submission in response to an existing judiciary requirement;
- (c) is related to the judiciary's mission;
- (d) contains sufficient technical and cost information for evaluation;
- (e) has been approved in writing by a responsible official or other representative, who is authorized to bind the offeror contractually; and
- (f) complies with the marking requirements of § 340.80 (Limited Use of Data).

### **§ 340.40.20 Acknowledgment of Receipt**

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



### **§ 340.40.30 Rejection**

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

### **§ 340.50 Evaluation**

#### **§ 340.50.10 In General**

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

#### **§ 340.50.20 Evaluation Factors**

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

- (a) unique, innovative, and meritorious methods, approaches, or concepts demonstrated by the offer;
- (b) potential contribution of the effort to the judiciary's specific mission;
- (c) the offeror's capabilities, related experience, facilities, techniques, or unique combinations of these that are integral factors for achieving the offer objectives;
- (d) the qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel critical to achieving the offer objectives; and
- (e) the realism of the proposed cost/price.

#### **§ 340.50.30 Notification**

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

### **§ 340.60 Criteria for Acceptance and Negotiation of an Unsolicited Offer**

#### **§ 340.60.10 In General**

A favorable comprehensive evaluation of an unsolicited offer does not justify awarding a contract without providing for full and open competition. The judiciary point of contact

must reject and return an unsolicited offer to the offeror, citing reasons, when its substance:

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

#### **§ 340.60.20 Conditions for Acceptance**

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

- (a) the judiciary requesting office sponsoring the procurement furnishes the necessary funds;
- (b) an unsolicited offer has received a favorable comprehensive evaluation;
- (c) a valid sole source justification has been documented and approved in writing (**see**: § 335.30 (Limitations)); and
  - (1) the source has submitted an unsolicited offer that demonstrates a unique capability to provide the particular products or services proposed;
  - (2) the unsolicited proposal offers a product, concept, or services not otherwise available to the judiciary; and
  - (3) the unsolicited proposal does not resemble the substance of a pending competitive procurement.

#### **§ 340.70 Prohibitions**

##### **§ 340.70.10 In General**

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

**§ 340.70.20 Non-Disclosure of Restricted Information**

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

**§ 340.80 Limited Use of Data****§ 340.80.10 Restrictive Markings**

An unsolicited offer may include data that the offeror does not want disclosed to the public for any purpose or used by the judiciary except for evaluation purposes. An offeror wanting the data restricted must mark the title page with the following legend:

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

**§ 340.80.20 Page Markings**

The offeror must also mark each sheet of data it wants restricted with the following legend:

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

**§ 340.80.30 Use of Different Legend**

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

**§ 340.80.40 Cover Sheet**

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

**Unsolicited Offer – Use of Data Limited**

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

**§ 340.80.50 Cover Sheet and Offeror's Restrictive Markings**

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

**§ 340.80.60 Use of Outside Evaluators**

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

**§ 345 Price Negotiations****§ 345.10 Establishing Negotiation Objectives**

- (a) Negotiations are generally held to reach agreement on price, profit or fee, and contract terms and conditions, whether for an initial award or for a contract modification.
  - (1) Before conducting negotiations, the CO must establish written negotiation objectives commensurate with the dollar value and complexity of the contract action. The process of determining negotiation objectives helps the CO judge the overall reasonableness of the offer and to negotiate a fair and reasonable price or cost.
  - (2) In setting the negotiation objectives, the CO must analyze the offer, and consider any advisory reports received, and other relevant data (such as independent cost estimates and price histories).

- (b) The scope and depth of the analysis needed to support the negotiation objectives is directly related to the dollar value, importance, and complexity of the pricing action. The relevant issues to be negotiated must always be identified and objectives established for each issue. When the negotiation requires cost analysis, the negotiation objectives must also include both the cost objectives and a profit or fee objective.

## **§ 345.20 Negotiation**

### **§ 345.20.10 In General**

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

### **§ 345.20.20 Cost and Contract Type Factors**

- (a) The negotiation of contract type and price are related. They must be considered together with the issues of risks and uncertainty to the contractor and the judiciary. Therefore, the CO must not become preoccupied with any single element.
- (b) The contract type must be balanced with the risks, cost, and profit or fee negotiated. This will achieve a total result of a price fair and reasonable to both the judiciary and the contractor.
- (c) Because profit or fee, is only one of several interrelated variables, the CO must not agree on profit or fee without concurrent agreement on cost and type of contract. **See also:** Guide, Vol. 14, § 410 (Contract Types).

## **§ 345.30 Detailed Pricing Information**

- (a) The CO should use every means available to ascertain whether a fair and reasonable price can be determined before requesting detailed pricing information (i.e., a detailed breakdown of all cost elements included in the proposed price, such as labor, material costs, overhead, G&A, and profit).
- (b) Requiring the submission of detailed pricing information leads to increased proposal preparation costs, can cause extended procurement lead time,

and consumes additional judiciary and contractor resources. The CO should request only sufficient pricing information necessary to make a determination that the negotiated price is fair and reasonable.

## **§ 345.40 Price Analysis**

### **§ 345.40.10 In General**

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

### **§ 345.40.20 Techniques**

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

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

## **§ 345.50 Cost Analysis**

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

## **§ 345.60 Negotiation Memorandum**

- (a) Following any negotiation, the CO must promptly prepare a memorandum summarizing the principal elements of the negotiation. The memo would include the negotiation objectives referenced in § 345.10 (Establishing Negotiation Objectives), and must be approved in writing by the PLO.
- (b) The memorandum must be included in the procurement file and must contain at least the following information:
  - (1) the purpose of the negotiation;
  - (2) a description of the purchase, or modification, with identifying number;
  - (3) a summary of the technical and price negotiation results;
  - (4) the name, position, and organization of each person representing the offeror or the judiciary in the negotiation;
  - (5) if detailed pricing information was obtained, an analysis of the various elements of cost;
  - (6) a summary of the offer, any advisory report recommendations, and the reasons for any significant variances between them and the negotiated amount;
  - (7) the most significant facts or considerations controlling the establishment of the negotiation objectives and the negotiated price, including an explanation of any significant differences between the two positions;
  - (8) the basis for determining the profit or fee negotiation objective and the profit or fee negotiated, if applicable; and
  - (9) documentation of fair and reasonable pricing.

## **§ 350 Judiciary Protest Procedures**

### **§ 350.10 Policy**

- (a) Any judiciary procurement organization receiving a protest must immediately forward it to AMO without taking any other action.
- (b) It is the policy of the judiciary to encourage parties to seek resolution of disputes with the AO.

- (c) A mere disagreement with the decision of the CO does not constitute a protest. A “protest” for purposes of these procedures is a written objection by an interested party to any of the following:
  - (1) a solicitation or other request for offers for the procurement of products or services;
  - (2) an award or proposed award of a contract; and
  - (3) a cancellation of the solicitation or other request.

## **§ 350.20 Procedural Requirements**

### **§ 350.20.10 Interested Parties**

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

### **§ 350.20.15 Election of Forum**

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

### **§ 350.20.20 Filing a Judiciary Protest**

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

### **§ 350.20.25 Protest Decision Authority**

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

### **§ 350.20.30 Time Frame for Filing a Protest**

- (a) A judiciary protest must be filed not later than 10 calendar days after the basis of the protest is known or should have been known.
- (b) Any protest based on alleged improprieties in a solicitation that are apparent before the closing date for receipt of offers, must be filed before the closing date for receipt of offers.



- (c) The judiciary has the discretion to consider the merits of any untimely filed protest.
- (d) The AO office hours are 8:30 a.m. to 5:00 p.m., Eastern time. Time for filing a document expires at 5:00 p.m., Eastern time, on the last day on which such filing may be made.

#### **§ 350.20.35 Form of Protest**

A judiciary protest must include the following information:

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

#### **§ 350.20.40 Processing of Judiciary Protest**

The CO must immediately forward the protest to AMO, including a copy of the contract, any relevant documentation, and the CO's explanation and recommendation. The PE will issue a written decision on the protest within 35 calendar days after the filing of the protest. The written decision will be binding on the cognizant contracting office.

#### **§ 350.20.45 Protest Filed Before and After Award**

- (a) Protest Before Award
  - (1) When a timely protest has been filed with the CO before award, award may not be made until the matter has been resolved, unless the CO, after consulting with the PE, and with the concurrence of

OGC, determines in writing that urgent and compelling circumstances significantly affecting the judiciary's interests will not permit delay of the award until the protest has been resolved.

- (2) When authorized to make an award before a protest is resolved, the CO must inform the protester, in writing, of the judiciary's determination to proceed with the award.

(b) Protest After Award

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

**§ 350.20.50 Resolution**

After conferring with OGC, the PE will prepare a decision that sufficiently explains its reasoning. It must also advise the protester that the decision constitutes the final determination of the judiciary on the protested matter. A copy of the protest decision must be furnished to the protester and to the CO.