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  - (i) name, address, and fax and telephone numbers of the protester or its representative;
  - (ii) solicitation or contract number;
  - (iii) detailed statement of the legal and factual grounds for the protest, to include a description of resulting alleged prejudice to the protester;
  - (iv) copies of relevant documents;
  - (v) request for a ruling by the judiciary;
  - (vi) statement as to the form of relief requested;
  - (vii) all information establishing that the protester is an interested party for the purpose of filing a protest; and
  - (viii) all information establishing the timeliness of the protest.
- (c) Unless stated otherwise elsewhere in this solicitation, protests that are filed directly with the judiciary, and copies of any protests that are filed with an external forum, shall be served on the contracting officer at the Issuing Office address on the standard form, if any, or as provided elsewhere in this solicitation. Written and dated acknowledgment of receipt must be obtained from the Contracting Officer issuing this solicitation, or authorized designee.
- (d) The copy of any protest shall be received in the office designated above within one day of filing a protest with an external forum.

(end)

**Clause 3-215, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Requirements**

*Include the following clause as prescribed in § 325.25.80(f) (Required Clauses and Provisions).*

**Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Requirements (APR 2011)**

- (a) The items of equipment to be serviced under this contract are used regularly for other than government purposes, and are sold or traded by the contractor in substantial quantities to the general public in the course of normal business operations.
- (b) The services shall be furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, or repair of equipment.
  - (1) An “established catalog price” is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the contractor, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public.
  - (2) An “established market price” is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or contractor.
- (c) The contractor shall use the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as is used for these employees and for equivalent employees servicing the same equipment of commercial customers.
- (d) The contractor is responsible for compliance with all the conditions of this exemption by its subcontractors. The contractor shall determine the applicability of this exemption to any subcontract on or before subcontract award. In making a judgment that the exemption applies, the contractor shall consider all factors and make an affirmative determination that all of the conditions in paragraphs (a) through (c) of this clause will be met.
- (e) If the Department of Labor determines that any conditions for exemption in paragraphs (a) through (c) of this clause have not been met, the exemption shall be deemed inapplicable, and the contract shall become subject to the Service Contract Act. In such case, the procedures at 29 CFR 4.123(e)(1)(iv) and 29 CFR 4.5(c) will be followed.
- (f) The contractor shall include the substance of this clause, including this paragraph (f), in subcontracts for exempt services under this contract.

(end)

**Provision 3-220, Exemption from Application of the Service Contract Act to Contracts for Certain Services – Certification**

*Include the following provision as prescribed in § 325.25.80(g) (Required Clauses and Provisions).*

**Exemption from Application of the Service Contract Act to Contracts for Certain Services – Certification (APR 2011)**

- (a) The offeror shall check following certification:

CERTIFICATION

The offeror [ ] does [ ] does not certify that –

- (1) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the offeror (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations;
  - (2) The contract services are furnished at prices that are, or are based on, established catalog or market prices. An “established catalog price” is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the offeror, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public. An “established market price” is a current price, established in the usual course of ordinary and usual trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or offeror;
  - (3) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract; and
  - (4) The offeror uses the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the offeror uses for these employees and for equivalent employees servicing commercial customers.
- (b) Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts

out the exempt services. If the offeror certifies to the conditions in paragraph (a) of this provision then Clause 3-160, Service Contract Act of 1965, as amended, will not be included in any resultant contract to this offeror.

- (c) If the offeror does not certify to the conditions in paragraph (a) of this provision—
  - (1) Clause 3-225, Exemption from Application of the Service Contract Act to Contracts for Certain Services – Requirements, will not be included in any resultant contract to this offeror; and
  - (2) The offeror shall notify the contracting officer as soon as possible if the contracting officer did not attach a Service Contract Act wage determination to the solicitation.
- (d) The contracting officer may not make an award to the offeror, if the offeror fails to execute the certification in paragraph (a) of this provision or to contact the Contracting Officer as required in paragraph (c) of this provision.

(end)

**Clause 3-225, Exemption from Application of the Service Contract Act to Contracts for Certain Services – Requirements**

*Include the following clause as prescribed in § 325.25.80(h) (Required Clauses and Provisions).*

**Exemption from Application of the Service Contract Act to Contracts for Certain Services – Requirements (APR 2011)**

- (a) The services under this contract are offered and sold regularly to non-Governmental customers, and are provided by the contractor to the general public in substantial quantities in the course of normal business operations.
- (b) The contract services are furnished at prices that are, or are based on, established catalog or market prices. An “established catalog price” is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the contractor, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public. An “established market price” is a current price, established in the usual course of ordinary and usual trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or contractor.

- (c) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the judiciary contract.
- (d) The contractor shall use the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as is used for these employees and for equivalent employees servicing commercial customers.
- (e)
  - (1) The subcontractor, if any, for exempt services shall be selected for award based on other factors in addition to price or cost with the combination of other factors at least as important as price or cost; or
  - (2) A subcontract for exempt services shall be awarded on a sole source basis.
- (f) The contractor is responsible for compliance with all the conditions of this exemption by its subcontractors. The contractor shall determine in advance, based on the nature of the subcontract requirements and knowledge of the practices of likely subcontractors, that all or nearly all likely subcontractors will meet the conditions in paragraphs (a) through (d) of this clause. If the services are currently being performed under a subcontract, the contractor shall consider the practices of the existing subcontractor in making a determination regarding the conditions in paragraphs (a) through (d) of this clause. If the contractor has reason to doubt the validity of the certification, the requirements of the Service Contract Act shall be included in the subcontract.
- (g) If the Department of Labor determines that any conditions for exemption at paragraphs (a) through (e) of this clause have not been met, the exemption shall be deemed inapplicable, and the contract shall become subject to the Service Contract Act. In such case, the procedures in at 29 CFR 4.123(e)(2)(iii) and 29 CFR 4.5(c) will be followed.
- (h) The contractor shall include the substance of this clause, including this paragraph (h), in subcontracts for exempt services under this contract.

(end)

**Clause 3-300, Registration in the System for Award Management (SAM)**

*Include the following clause as prescribed in § 330.10.30(nn)(1) (Provisions and Clauses).*

### **Registration in the System for Award Management (SAM) (APR 2013)**

(a) Definitions. As used in this clause –

"System for Award Management (SAM)" means the federal government owned and operated free website that replaced the Central Contractor Registration (CCR) and is the primary government repository for contractor information required for the conduct of business with the government.

"Data Universal Numbering System (DUNS) number" means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

"Data Universal Numbering System +4 (DUNS+4) number" means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional SAM records for identifying alternative Electronic Funds Transfer (EFT) accounts for the same concern.

"Registered in the SAM database" means that –

- (1) The contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the SAM database; and
  - (2) The government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS), and has marked the record "Active". The contractor will be required to provide consent for TIN validation to the government as a part of the SAM registration process.
- (b)
- (1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the SAM database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.
  - (2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS +4" followed by the DUNS or DUNS +4 number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number will be used by the contracting officer to verify that the offeror is registered in the SAM database.

- (c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.
  - (1) An offeror may obtain a DUNS number –
    - (i) via the internet at <http://fedgov.dnb.com/webform> or if the offeror does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or
    - (ii) if located outside the United States, by contacting the local Dun and Bradstreet office. The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office.
  - (2) The offeror should be prepared to provide the following information:
    - (i) company legal business name;
    - (ii) tradestyle, doing business, or other name by which your entity is commonly recognized;
    - (iii) company physical street address, city, state and ZIP code;
    - (iv) company mailing address, city, state and ZIP code (if different from physical);
    - (v) company telephone number;
    - (vi) date the company was started;
    - (vii) number of employees at your location;
    - (viii) chief executive officer/key manager;
    - (ix) line of business (industry);
    - (x) company headquarters name and address (reporting relationship within your entity).
- (d) If the offeror does not become registered in the SAM database within the time prescribed by the contracting officer, the contracting officer will proceed to award to the next otherwise successful registered offeror.

- (e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.
- (f) The contractor is responsible for the accuracy and completeness of the data within the SAM database, and for any liability resulting from the government's reliance on inaccurate or incomplete data. To remain registered in the SAM database after the initial registration, the contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the SAM database to ensure it is current, accurate and complete. Updating information in the SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.
- (g) Change of Name and Novation Agreements:
  - (1) If a contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements, the contractor shall provide the responsible contracting officer a minimum of one business day's written notification of its intention to (i) change the name in the SAM database; (ii) comply with the requirements of the Guide to Judiciary Policy, Vol 14, § 745.55; and (iii) agree in writing to the timeline and procedures specified by the responsible contracting officer. The contractor must provide with the notification sufficient documentation to support the legally changed name.
  - (2) If the contractor fails to comply with the requirements of paragraph (g)(1) of this clause, or fails to perform the agreement at paragraph (g)(1)(iii) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the SAM information showing the contractor to be other than the contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.
- (h) Assignment of Claims

The contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the SAM record to reflect an assignee for the purpose of assignment of claims. Assignees shall be separately registered in the SAM database. Information provided to the contractor's SAM record that indicates payments, including those made by EFT, to an ultimate recipient other

than the contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

- (i) Offerors and contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.SAM.gov> or by calling 1-866-606-8220 or at <http://www.FSD.gov>.

(end)

**Clause 3-305, Payment by Electronic Funds Transfer – System for Award Management (SAM) Registration**

*Include the following clause as prescribed in § 330.10.30(nn)(2) (Provisions and Clauses).*

**Payment by Electronic Funds Transfer – System for Award Management (SAM) Registration (APR 2013)**

(a) Method of Payment

- (1) All payments by the judiciary under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause.
- (2) In the event the judiciary is unable to release one or more payments by EFT, the contractor agrees to either:
  - (i) Accept payment by check or some other mutually agreeable method of payment; or
  - (ii) Request the judiciary to extend the payment due date until such time as the judiciary can make payment by EFT (*but see paragraph (d) of this clause*).

(b) Contractor's EFT Information

The judiciary shall make payment to the contractor using the EFT information contained in the System for Award Management (SAM) database. In the event that the EFT information changes, the contractor shall be responsible for providing the updated information to the SAM database.

(c) Mechanisms for EFT Payment

The judiciary will make payment by EFT through the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) Suspension of Payment

If the contractor's EFT information in the SAM database is incorrect, then the judiciary need not make payment to the contractor under this contract until correct EFT information is entered into the SAM database; and any invoice shall be deemed not to be a proper invoice.

(e) Liability for Uncompleted or Erroneous Transfers

(1) If an uncompleted or erroneous transfer occurs because the judiciary used the contractor's EFT information incorrectly, the judiciary remains responsible for –

- (i) Making a correct payment; and
- (ii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the contractor's EFT information was incorrect, or was revised within 30 days of judiciary release of the EFT payment transaction instruction to the Federal Reserve System, and:

- (i) If the funds are no longer under the control of the payment office, the judiciary is deemed to have made payment and the contractor is responsible for recovery of any erroneously directed funds; or
- (ii) If the funds remain under the control of the payment office, the judiciary shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(f) EFT and Assignment of Claims

If the contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the contractor shall require as a condition of any such assignment, that the assignee shall register separately in the SAM database and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an

ultimate recipient other than the contractor, or a financial institution properly recognized under a proper assignment of claims, is not permitted. In all respects, the requirements of this clause shall apply to the assignee as if it were the contractor. EFT information that shows the ultimate recipient of the transfer to be other than the contractor, in the absence of a proper assignment of claims acceptable to the judiciary, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(g) Liability for Change of EFT Information by Financial Agent

The judiciary is not liable for errors resulting from changes to EFT information made by the contractor's financial agent.

(h) Payment Information

The judiciary will not provide EFT payment information. Payment information may be obtained by registering as a payee vendor with the United States Department of the Treasury at <https://www.ipp.gov/>. Registered vendors may retrieve and/or review check stub advice each time an EFT payment is received.

If the judiciary makes payment by check in accordance with paragraph (a) of this clause, the judiciary shall mail the check and any other payment information to the remittance address contained in the SAM database.

(end)

**Clause 3-310, Payment by Electronic Funds Transfer – Other Than System for Award Management (SAM) Registration**

*Include the following clause as prescribed in § 330.10.30(nn)(3) (Provisions and Clauses).*

**Payment by Electronic Funds Transfer – Other Than System for Award Management (SAM) Registration (APR 2013)**

(a) Method of Payment

- (1) All payments by the judiciary under this contract shall be made by electronic funds transfer (EFT) except as provided in paragraph (a)(2) of this clause.
- (2) In the event the judiciary is unable to release one or more payments by EFT, the contractor agrees to either:

- (i) Accept payment by check or some other mutually agreeable method of payment; or
- (ii) Request the judiciary to extend payment due dates until such time as the judiciary makes payment by EFT (*but see* paragraph (d) of this clause).

(b) Mandatory Submission of Contractor's EFT Information

- (1) The contractor is required to provide the judiciary with the information required to make payment by EFT (see paragraph (i) of this clause). The contractor shall provide this information directly to the office designated in paragraph (j) of this clause by no later than 15 days prior to submission of the first request for payment. In the event that the EFT information changes, the contractor shall be responsible for providing the updated information to the same office.
- (2) If the contractor provides EFT information applicable to multiple contracts, the contractor shall specifically state the applicability of this EFT information in terms acceptable to the office designated in paragraph (j).

(c) Mechanisms for EFT Payment

The judiciary will make payment by EFT through the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) Suspension of Payment

- (1) The judiciary is not required to make any payment under this contract until after receipt, by the office designated in paragraph (j), of the correct EFT payment information from the contractor. Until receipt of the correct EFT information, any invoice or contract financing request shall be deemed not to be a proper invoice.
- (2) If the EFT information changes after submission of correct EFT information, the judiciary shall begin using the changed EFT information no later than 30 days after its receipt by the office designated in paragraph (j) to the extent payment is made by EFT. However, the contractor may request that no further payments be made until the updated EFT information is implemented by the payment office.

(e) Liability for Uncompleted or Erroneous Transfers

- (1) If an uncompleted or erroneous transfer occurs because the judiciary used the contractor's EFT information incorrectly, the judiciary remains responsible for:
  - (i) Making a correct payment; and
  - (ii) Recovering any erroneously directed funds.
- (2) If an uncompleted or erroneous transfer occurs because the contractor's EFT information was incorrect, or was revised within 30 days of judiciary release of the EFT payment transaction instruction to the Federal Reserve System, and:
  - (i) If the funds are no longer under the control of the payment office, the judiciary is deemed to have made payment and the contractor is responsible for recovery of any erroneously directed funds; or
  - (ii) If the funds remain under the control of the payment office, the judiciary shall not make payment and the provisions of paragraph (d) shall apply.

(f) EFT and Assignment of Claims

If the contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the contractor shall require as a condition of any such assignment, that the assignee shall provide the EFT information required by paragraph (i) of this clause to the office designated in paragraph (j), and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the contractor. EFT information that shows the ultimate recipient of the transfer to be other than the contractor, in the absence of a proper assignment of claims acceptable to the judiciary, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(g) Liability for Change of EFT Information by Financial Agent

The judiciary is not liable for errors resulting from changes to EFT information provided by the contractor's financial agent.

(h) Payment Information

The judiciary will not provide EFT payment information. EFT payment information may be obtained by registering as a payee vendor with the United States Department of the Treasury at <https://www.ipp.gov/>. Registered vendors may retrieve and/or review check stub advice each time an EFT payment is received.

If the judiciary makes payment by check in accordance with paragraph (a) of this clause, the judiciary shall mail the check and any other payment information to the remittance address provided in accordance with paragraph (i) of this clause.

(i) EFT Information

The contractor shall provide the following information to the office designated in paragraph (j) of this clause. The contractor may supply this data for this or multiple contracts (see paragraph (b) of this clause). The contractor shall designate a single financial agent per contract capable of receiving and processing the EFT information using the EFT methods described in paragraph (c) of this clause.

- (1) The contract number (or other procurement identification number).
- (2) The contractor's name and remittance address, as stated in the contract(s).
- (3) The signature (manual or electronic, as appropriate), title, and telephone number of the contract official authorized to provide this information.
- (4) The name, address, and 9-digit Routing Transit Number of the contractor's financial agent.
- (5) The contractor's bank account number and the type of account (checking, saving, or lockbox).

(j) Designated Office:

*[insert name, address, phone, and fax for court's paying office]*  
(end)

**Provision 3-315, Submission of Electronic Funds Information with Offer**

*Include the following provision as prescribed in § 330.10.30(nn)(4) (Provisions and Clauses).*

### **Submission of Electronic Funds Information with Offer (APR 2013)**

The offeror shall provide, with its offer, the following information that is required to make payment by electronic funds transfer (EFT) under any contract that results from this solicitation. This submission satisfies the requirement to provide EFT information under paragraphs (b)(1) and (i) of Clause 3-310, Payment by Electronic Funds Transfer – Other Than System for Award Management (SAM) Registration.

- (1) The solicitation number (or other procurement identification number).
- (2) The offeror's name and remittance address, as stated in the offer.
- (3) The signature (manual or electronic, as appropriate), title, and telephone number of the offeror's official authorized to provide this information.
- (4) The name, address, and 9-digit Routing Transit Number of the offeror's financial agent.
- (5) The offeror's account number and the type of account (checking, savings, or lockbox).

(end)

## **Provisions and Clauses (Chapter 4)**

### **Provision 4-1, Type of Contract**

*Include the following provision as prescribed in § 410.15.20 (Solicitation Requirements).*

#### **Type of Contract (JAN 2003)**

The judiciary plans to award a \_\_\_\_\_ (*Contracting officer inserts specific type of contract*) type of contract under this solicitation, and all offers shall be submitted on this basis. Alternate offers based on other contract types will not be considered.

(end)

### **Clause 4-5, Ordering**

*Include the following clause as prescribed in § 410.30.75(a) (Clauses).*

#### **Ordering (APR 2013)**

- (a) Any products and services to be furnished under this contract will be ordered by issuance of written delivery orders or task orders by the individuals or activities designated in the contract. Such orders may be issued from the effective date of the contract through the last day of the contract.
- (b) All delivery orders or task orders are subject to the terms and conditions of this contract and will specify the date, time and place for the products to be delivered or the services to be performed. If the contracting officer so requires, the contractor shall provide a written or oral acknowledgment. In the event of a conflict between a delivery order or a task order and this contract, this contract will control.
- (c) If mailed, a delivery order or a task order is considered "issued" when the judiciary deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the contract.

(end)

### **Clause 4-10, Order Limitations**

*Include the following clause as prescribed in § 410.30.75(b) (Clauses).*

**Order Limitations (JUN 2014)**

## (a) Minimum Order

When the judiciary requires products or services covered by this contract in an amount less than \_\_\_\_\_ (*contracting officer insert minimum dollar amount or quantity*), the judiciary is not obligated to purchase, nor is the contractor obligated to furnish, those products or services under this contract.

## (b) Maximum Order

The contractor is not obligated to honor:

- (1) any order for a single item in excess of \_\_\_\_\_ (*contracting officer insert maximum dollar amount or quantity*);
  - (2) any order for a combination of items in excess of \_\_\_\_\_ (*contracting officer insert maximum dollar amount or quantity*); or
  - (3) a series of orders from the same ordering office in the course of \_\_\_\_\_ days (*contracting officer specify*) that together call for quantities exceeding the limitations stated in subparagraph (b)(1) or (b )(2) above.
- (c) If this is a requirements contract, (i.e. includes Clause 4-20, Requirements) the judiciary is not required to order a part of any one requirement from the contractor if that requirement exceeds the maximum-order limitations stated in paragraph (b) above.
- (d) Notwithstanding paragraphs (b) and (c) of this clause, the contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within \_\_\_\_\_ days (*contracting officer specify*) after issuance, with written notice stating the contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the judiciary may acquire the products or services from another source.

(end)

**Clause 4-15, RESERVED****Clause 4-20, Requirements**

*Include the following clause as prescribed in § 410.30.75(c) (Clauses).*

### **Requirements (APR 2013)**

- (a) This is an indefinite-delivery requirements contract for the products or services specified, and effective for the period stated in the contract. The quantities of products or services specified in the contract are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the judiciary's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the contract, that fact will not constitute the basis for an equitable price adjustment.
- (b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the contractor shall furnish to the judiciary all products or services specified in the contract and called for by orders issued in accordance with the Ordering clause.
- (c) Except as this contract otherwise provides, the judiciary will order from the contractor all the products or services specified in the contract that are required to be purchased by the activity or activities specified in the contract.
- (d) The judiciary is not required to purchase from the contractor requirements in excess of any limit on total orders under this contract.
- (e) If the judiciary urgently requires delivery or performance of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the contractor will not accept an order providing for the accelerated delivery, the judiciary may acquire the urgently required products or services from another source. In the event that the contractor accepts such an order for accelerated delivery, such accelerated delivery shall not constitute the basis for an equitable price adjustment.
- (f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the contractor within the time specified in the order. The contract will govern the contractor's and judiciary's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period.

(end)

### **Clause 4-25, Indefinite Quantity**

*Include the following clause as prescribed in § 410.30.75(d) (Clauses).*

#### **Indefinite Quantity (APR 2013)**

- (a) This is an indefinite-delivery indefinite-quantity contract for the products or services specified, and effective for the period stated, in the contract. The quantities of products and services specified in the contract are estimates only and are not purchased by this contract.
- (b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The contractor shall furnish to the judiciary, when and if ordered, the products or services specified in the contract up to and including the quantity designated as the “maximum.” The judiciary will order at least the quantity of products or services designated as the “minimum.”
- (c) Except for any limitations on quantities in the Order Limitations clause or elsewhere in the contract, there is no limit on the number of orders that may be issued.
- (d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the contractor within the time specified in the order. The contract will govern the contractor’s and judiciary’s rights and obligations with respect to that order to the same extent as if the order were completed during contract’s effective period.

(end)

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

*Include the following provision as prescribed in § 410.45.50(a) (Provisions and Clauses - Labor-Hour and Time-and-Materials Contracts).*

#### **Time-and-Materials/Labor-Hour Proposal Requirement – Competitive Pricing (APR 2011)**

- (a) The judiciary contemplates award of a time-and-materials or labor-hour type of contract resulting from this solicitation.
- (b) The offeror must specify fixed hourly rates in its offer that include wages, general and administrative expenses, and profit. The offeror must specify whether the fixed hourly rate for each labor category applies to labor performed by –

- (1) The offeror;
  - (2) Subcontractors; and/or
  - (3) Divisions, subsidiaries, or affiliates of the offeror under a common control;
- (c) The offeror must establish fixed hourly rates using –
- (1) Separate rates for each category of labor to be performed by each subcontractor and for each category of labor to be performed by the offeror, and for each category of labor to be transferred between divisions, subsidiaries, or affiliates of the offeror under a common control;
  - (2) Blended rates for each category of labor to be performed by the offeror, including labor transferred between divisions, subsidiaries, or affiliates of the offeror under a common control, and all subcontractors; or
  - (3) Any combination of separate and blended rates for each category of labor to be performed by the offeror, affiliates of the offeror under a common control, and subcontractors.

(end)

**Provision 4-28, Time-and-Materials/Labor-Hour Proposal Requirements – Non-Competitive Pricing**

*Include the following provision as prescribed in § 410.45.50(b) (Provisions and Clauses - Labor-Hour and Time-and-Materials Contracts)*

**Time-and-Materials/Labor-Hour Proposal Requirement – Non-Competitive Pricing (APR 2011)**

- (a) The judiciary contemplates award of a time-and-materials or labor-hour type of contract resulting from this solicitation.
- (b) The offeror must specify fixed hourly rates in its offer that include wages, general and administrative expenses, and profit for each category of labor to be performed by –
  - (1) The offeror;
  - (2) Each subcontractor; and
  - (3) Each division, subsidiary, or affiliate of the offeror under a common control;

- (c) The fixed hourly rates for services transferred between divisions, subsidiaries, or affiliates of the offeror under a common control shall not include profit for the transferring organization, but may include profit for the prime contractor.

(end)

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

*Include the following clause as prescribed in § 410.45.50(c) (Provisions and Clauses - Labor-Hour and Time-and-Materials Contracts).*

#### **Payment (Time-and-Materials and Labor-Hour Contracts) (APR 2011)**

- (a) The judiciary will pay the contractor as follows upon submission of invoices or vouchers approved in writing by the contracting officer or the contracting officer's authorized representative:
- (1) Hourly Rate
    - (i) Hourly rate means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are –
      - Performed by the contractor;
      - Performed by subcontractors; or
      - Transferred between divisions, subsidiaries, or affiliates of the contractor under a common control.
    - (ii) The amounts will be computed by multiplying the appropriate hourly rates prescribed in the contract by the number of direct labor hours performed.
    - (iii) The hourly rates shall be paid for all labor performed on the contract that meets the labor qualifications specified in the contract. Labor hours incurred to perform tasks for which labor qualifications were specified in the contract will not be paid to the extent the work is performed by employees that do not meet the qualifications specified in the contract, unless specifically authorized by the contracting officer.
    - (iv) The hourly rates will include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour will be payable on a prorated basis.

- (v) Vouchers may be submitted once each month (or at more frequent intervals if approved in writing by the contracting officer). The contractor will substantiate vouchers (including any subcontractor hours reimbursed at the hourly rate in the contract) by evidence of actual payment and by –
    - (A) individual daily job timekeeping records;
    - (B) records that verify the employees meet the qualifications for the labor categories specified in the contract; or
    - (C) other substantiation approved in writing by the contracting officer.
  - (vi) Promptly after receipt of each substantiated voucher, the judiciary will, except as otherwise provided in this contract, and subject to the terms of paragraph (e) of this section, pay the voucher as approved by the contracting officer or authorized representative.
  - (vii) Unless otherwise prescribed in the contract, the contracting officer may unilaterally issue a contract modification requiring the contractor to withhold amounts from its billings until a reserve is set aside in an amount that the contracting officer considers necessary to protect the judiciary's interests. The contracting officer may require a withhold of five percent of the amounts due under paragraph (a) of this clause, but the total amount withheld for the contract may not exceed \$50,000. The amounts withheld will be retained until the contractor executes and delivers the release required by paragraph (g) of this clause.
  - (viii) Unless the contract prescribes otherwise, the hourly rates in the contract will not be varied by virtue of the contractor having performed work on an overtime basis. If no overtime rates are provided in the contract and overtime work is approved in writing in advance by the contracting officer, overtime rates may be negotiated. Failure to agree upon these overtime rates will be treated as a dispute under the Disputes clause of this contract. If the contract provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime has been approved in writing in advance by the contracting officer.
- (b) Materials
- (1) For the purposes of this clause –

- (i) Direct materials means those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.
- (ii) Materials means –
  - (A) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the contractor under a common control;
  - (B) Subcontracts for supplies and incidental services for which there is not a labor category specified in the contract;
  - (C) Other direct costs (e.g., incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.); and
  - (D) Applicable indirect costs.
- (2) If the contractor furnishes its own materials that meet the definition of commercial item in the *Guide to Judiciary Policy's* Glossary of Procurement Terms, the price to be paid for such materials must not exceed the contractor's established catalog or market price, adjusted to reflect the quantities being acquired; and actual cost of any modifications necessary because of contract requirements.
- (3) Except as provided for in paragraph (b)(2) of this clause, the judiciary will reimburse the contractor for allowable cost of materials provided the contractor –
  - (i) has made payments for materials in accordance with the terms and conditions of the agreement or invoice; or
  - (ii) ordinarily makes these payments within 30 days of the submission of the contractor's payment request to the judiciary and such payment is in accordance with the terms and conditions of the agreement or invoice.
- (4) Payment for materials is subject to Clause 4-60, Allowable Cost and Payment.
- (5) The contractor may include allocable indirect costs and other direct costs to the extent they are –

- (i) comprised only of costs that are clearly excluded from the hourly rate;
  - (ii) allocated in accordance with the contractor's written or established accounting practices; and
  - (iii) indirect costs are not applied to subcontract that are paid at the hourly rates.
- (6) To the extent practicable, the contractor shall –
  - (i) obtain materials at the most advantageous prices available, with due regard to securing prompt delivery of satisfactory materials; and
  - (ii) take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the contractor shall promptly notify the contracting officer and give the reasons. The contractor shall give credit to the judiciary for cash and trade discounts, rebates, scrap, commissions, and other amounts that have accrued to the benefit of the contractor, or would have accrued except for the fault or neglect of the contractor. The contractor shall not deduct from gross costs the benefits lost without fault or neglect on the part of the contractor or lost through fault of the judiciary.
- (7) The judiciary will not pay profit or fee to the prime contractor on materials, except when reimbursing for commercial items under paragraph (b)(2) above.
- (c) If the contractor enters into any subcontract that requires consent under Clause 7-75, Subcontracts, without obtaining such consent, the judiciary is not required to reimburse the contractor for any costs incurred under the subcontract prior to the date the contractor obtains the required consent. Any reimbursement of subcontract costs incurred prior to the date the consent was obtained shall be at the sole discretion of the judiciary.
- (d) Total Cost

It is estimated that the total cost to the judiciary for the performance of this contract shall not exceed the ceiling price set forth in the contract, and the contractor agrees to use its best efforts to perform the work specified in the contract and all obligations under this contract within such ceiling price. If at any time the contractor has reason to believe that the hourly rate payments and

material costs that will accrue in performing the contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the contract, the contractor shall notify the contracting officer, giving a revised estimate of the total price to the judiciary for performing this contract with supporting reasons and documentation. If at any time during the performance of this contract, the contractor has reason to believe that the total price to the judiciary for the performance of this contract will be substantially greater or less than the then stated ceiling price, the contractor shall so notify the contracting officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during the performance of this contract, the judiciary has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the contracting officer will advise the contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(e) Ceiling Price

The judiciary will not be obligated to pay the contractor any amount in excess of the ceiling price in the contract, and the contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the contract, unless and until the contracting officer notifies the contractor in writing that the ceiling price has been increased and specifies in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the contract has been increased, any hours expended and material costs incurred by the contractor in excess of the ceiling price before the increase will be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(f) Audit

At any time before final payment under this contract, the contracting officer may request audit of the invoices or vouchers and supporting documentation. Each payment previously made will be subject to reduction to the extent of amounts, on preceding invoices or vouchers, that are found by the contracting officer or authorized representative not to have been properly payable and will also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and written approval of the voucher or invoice designated by the contractor as the "completion voucher" or "completion invoice" and supporting documentation, and upon compliance by the contractor with all terms of this contract (including, without limitation, terms related to patents and the terms of paragraph (g) of this clause), the judiciary will promptly pay any balance due the contractor. The completion invoice or voucher, and supporting documentation,

shall be submitted by the contractor as promptly as practicable following completion of the work under this contract, but in no event later than one year (or such longer period as the contracting officer may approve in writing) from the date of completion.

(g) Assignment and Release of Claims

The contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the judiciary, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

- (1) specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the contractor;
- (2) claims, together with reasonable incidental expenses, based upon the liabilities of the contractor to third parties arising out of performing this contract, that are not known to the contractor on the date of the execution of the release, and of which the contractor gives notice in writing to the contracting officer not more than 6 years after the date of the release or the date of any notice to the contractor that the judiciary is prepared to make final payment, whichever is earlier; or
- (3) claims for reimbursement of costs (other than expenses of the contractor by reason of its indemnification of the judiciary against patent liability), including reasonable incidental expenses, incurred by the contractor under the terms of this contract relating to patents.

(end)

**Alternate I (APR 2011):** *In accordance with § 410.45.50(c) (Provisions and Clauses - Labor-Hour and Time-and-Materials Contracts), add the following paragraph (h) to the basic clause.*

- (h) The terms of this clause that govern reimbursement for materials furnished are considered to be deleted.

**Clause 4-35, Execution and Commencement of Work (Letter Contract)**

*Include the following clause as prescribed in § 410.50.80(a) (Clauses).*

**Execution and Commencement of Work (Letter Contract) (JAN 2003)**

The contractor shall indicate acceptance of this letter contract by signing three copies of the contract and returning them to the contracting officer not later than \_\_\_\_\_ (*contracting officer inserts date*). Upon acceptance by both parties, the contractor shall proceed with performance of the work, including purchase of necessary materials.

(end)

**Clause 4-40, Limitation of Judiciary Liability (Letter Contract)**

*Include the following clause as prescribed in § 410.50.80(b) (Clauses).*

**Limitation of Judiciary Liability (Letter Contract) (JAN 2003)**

- (a) In performing this contract, the contractor is not authorized to make expenditures or to incur obligations exceeding \$ \_\_\_\_\_ (*contracting officer inserts limit*).
- (b) The maximum amount for which the judiciary will be liable if this contract is terminated is \$ \_\_\_\_\_ (*contracting officer inserts maximum liability*).

(end)

**Clause 4-45, Contract Definitization**

*Include the following clause as prescribed in § 410.50.80(c) (Clauses).*

**Contract Definitization (JAN 2003)**

- (a) A \_\_\_\_\_ (*contracting officer inserts type of contract*) definitive contract is contemplated. The contractor agrees to begin promptly negotiating with the contracting officer the terms of a definitive contract that will include:
  - (1) all judiciary clauses required on the date of execution of the letter contract;
  - (2) all clauses required by law on the date of execution of the definitive contract; and
  - (3) any other mutually agreeable clauses, terms, and conditions. The contractor agrees to submit a \_\_\_\_\_ (*insert specific type of offer*);

*e.g., fixed-price or cost-and-fee*) offer and detailed cost information supporting its offer.

- (b) The schedule for definitizing this contract is *(insert target date for definitization of the contract and dates for submission of offer, beginning of negotiations, and, if appropriate, submission of make-or-buy and subcontracting plans and detailed cost information)*:

- (1) Definitization target date: \_\_\_\_\_
- (2) Offer submission date: \_\_\_\_\_
- (3) Beginning of negotiations date: \_\_\_\_\_
- (4) Other appropriate dates: \_\_\_\_\_

- (c) If agreement on a definitive contract to supersede this letter contract is not reached by the target date in paragraph (b) of this section, or within any extension of it granted by the contracting officer, the contracting officer may, with the prior written approval of the judiciary Procurement Executive, determine a reasonable price or fee, subject to contractor appeal as provided in the Disputes clause. In any event, the contractor shall proceed with completion of the contract, subject only to the Limitation of Judiciary Liability clause.

- (1) After the contracting officer's determination of price or fee, the contract will be governed by:
  - (i) all judiciary required clauses on the date of execution of this letter contract for either fixed-price or cost-reimbursement contracts as determined by the contracting officer under this paragraph (c);
  - (ii) all clauses required by law as of the date of the contracting officer's determination; and
  - (iii) any other clauses, terms, and conditions mutually agreed upon.
- (2) To the extent consistent with paragraph (c)(1) of this section, all clauses, terms, and conditions included in this letter contract will continue in effect, except those that by their nature apply only to a letter contract.

- (d) The definitive contract resulting from this letter contract will include a negotiated \_\_\_\_\_ *(contracting officer inserts "firm fixed price" or "total estimated*

*reimbursable cost") in no event to exceed \$\_\_\_\_\_ (contracting officer inserts the proposed amount upon which the award was based).*

(end)

### **Clause 4-50, Payment of Allowable Costs before Definitization**

*Include the following clause as prescribed in § 410.50.80(d) (Clauses).*

#### **Payment of Allowable Costs before Definitization (JAN 2003)**

(a) Reimbursement Rate

Pending the placing of the definitized contract referred to in this letter contract, the judiciary will promptly reimburse the contractor for all allowable costs under the contract at the following rates:

- (1) 100 percent of written approved costs representing financing payments to subcontractors under fixed-price subcontracts, provided that the judiciary's payments to the contractor will not exceed 80 percent of the allowable costs of those subcontracts;
- (2) 100 percent of written approved costs representing cost-reimbursement subcontracts, provided, that the judiciary's payments to the contractor will not exceed 85 percent of the allowable costs of those subcontracts;
- (3) 85 percent of all other written approved costs.

(b) Limitation of Reimbursement

To determine the amounts payable to the contractor under this letter contract, the contracting officer will determine allowable costs. The total reimbursement made under this paragraph will not exceed 85 percent of the maximum amount of the judiciary's liability, as stated in this contract.

(c) Invoicing

Payments will be made promptly to the contractor when requested as work progresses, but not more often than once each month (or more often if approved in writing by the contracting officer). The contractor may submit to an authorized representative of the contracting officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable costs incurred by the contractor in performance of this contract.

(d) Allowable Costs

For the purpose of determining allowable costs, the term “costs” includes:

- (1) those recorded costs that result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for products or services purchased directly for the contract;
- (2) when the contractor is not delinquent in payment of costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid for:
  - (i) products and services purchased directly for the contract, provided payments will be made:
    - (A) in accordance with the terms and conditions of a subcontract or invoice; and
    - (B) ordinarily prior to the submission of the contractor’s next payment request to the judiciary;
  - (ii) materials issued from the contractor's stores inventory and placed in the production process for use on the contract;
  - (iii) direct labor;
  - (iv) direct travel;
  - (v) other direct in-house costs; and
  - (vi) properly allocable and allowable indirect costs, as shown on the records maintained by the contractor for purposes of obtaining reimbursement under judiciary contracts; and
- (3) the amount of financing payments that the contractor has paid by cash, check, or other forms of payment to subcontractors.

(e) Audit

At any time before final payment, the contracting officer may have the contractor's invoices or vouchers and statements of cost audited. Any payment may be:

- (1) reduced by any amounts found by the contracting officer not to constitute allowable costs; or
- (2) adjusted for prior overpayments or under payments made on preceding invoices or vouchers.

(end)

### **Clause 4-55, Economic Price Adjustment – Standard Products**

*Include the following clause as prescribed in § 410.65.50 (Clauses) and § 410.75.65(b) (Contract Clauses and Provisions). The clause may be modified to increase the 10 percent limit on aggregate increases in paragraph (c)(1), upon written approval by the Procurement Executive, PMD.*

#### **Economic Price Adjustment – Standard Products (APR 2013)**

- (a) The contractor warrants that the unit price stated in the contract for \_\_\_\_\_ [offeror inserts contract line item number (CLIN)] is not in excess of the contractor's applicable established price in effect on the contract date for like quantities of the same item. The term "unit price" excludes any part of the price directly resulting from requirements for preservation, packaging, or packing beyond standard commercial practice. The term "established price" means a price that:
  - (1) is an established catalog or market price for a commercial item sold in substantial quantities to the general public; and
  - (2) is the net price after applying any standard trade discounts offered by the contractor.
- (b) The contractor shall promptly notify the contracting officer of the amount and effective date of each decrease in any applicable established price. Each corresponding contract unit price will be decreased by the same percentage that the established price is decreased. The decrease will apply to those items delivered on and after the effective date of the decrease in the contractor's established price, and this contract will be modified accordingly.
- (c) If the contractor's applicable established price is increased after the contract date, the corresponding contract unit price will be increased, upon the contractor's written request to the contracting officer, by the same percentage that the established price is increased, and the contract will be modified accordingly, subject to the following limitations:

- (1) the aggregate of the increases in any contract unit price under this clause will not exceed 10 percent of the original contract unit price;
  - (2) the increased contract unit price will be effective:
    - (i) on the effective date of the increase in the applicable established price if the contracting officer receives the contractor's written request within 10 days thereafter; or
    - (ii) if the written request is received later, on the date the contracting officer receives the request;
  - (3) the increased contract unit price will not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price, unless failure to deliver before that date results from causes beyond the control and without the fault or negligence of the contractor, within the meaning of the Default clause.
  - (4) no modification increasing a contract unit price will be executed under this paragraph (c) until the contracting officer verifies the increase in the applicable established price;
  - (5) within 30 days after receipt of the contractor's written request, the contracting officer may cancel, without liability to either party, any undelivered portion of the contract items affected by the requested increase.
- (d) During the time allowed for the cancellation provided for in paragraph (c)(5) of this clause, and thereafter if there is no cancellation, the contractor shall continue deliveries according to the contract delivery schedule, and the judiciary will pay for such deliveries at the contract unit price, increased to the extent provided by paragraph (c) of this clause.

(end)

#### **Clause 4-60, Allowable Cost and Payment**

*Include the following clause as prescribed in § 410.70.80(a) (Cost Contract Clauses).*

##### **Allowable Cost and Payment (APR 2013)**

- (a) Invoicing

The judiciary will make payments to the contractor when requested as work progresses, but not more than monthly, in amounts determined to be allowable by the contracting officer. The contractor shall submit an invoice or voucher to the address specified in the contract, supported by a statement of claimed allowable costs of performing this contract, in such form and detail as the contracting officer may require.

(b) Reimbursing Costs

- (1) For the purpose of reimbursing allowable costs, the term "costs" includes only:
  - (i) those recorded costs that, at the time of the request for reimbursement, the contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;
  - (ii) when the contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for:
    - (A) products and services purchased directly for the contract and associated financing payments to subcontractors, provided payments will be made:
      - (1) in accordance with the terms and conditions of a subcontract or invoice; and
      - (2) ordinarily prior to the submission of the contractor's next payment request to the judiciary;
    - (B) materials issued from the contractor's inventory and placed in the production process for use on the contract;
    - (C) direct labor;
    - (D) direct travel;
    - (E) other direct in-house costs; and
    - (F) Properly allocable and allowable indirect costs, as shown in the records maintained by the contractor for purposes of obtaining reimbursement under judiciary contracts; and

- (iii) The amount of progress payments that have been paid by cash, check, or other forms of payment to subcontractors.
  - (2) Accrued costs of contractor contributions under employee pension plans will be excluded until actually paid unless:
    - (i) the contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and
    - (ii) the contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid will be excluded from the contractor's indirect costs for payment purposes).
  - (3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (e) of this clause, allowable indirect costs under this contract will be obtained by applying indirect cost rates established in accordance with paragraph (c) of this clause.
  - (4) Any statements in specifications or other documents incorporated by reference in this contract designating performance of services or furnishing of materials at the contractor's expense or at no cost to the judiciary will be disregarded for purposes of cost reimbursement under this clause.
- (c) Final Indirect Cost Rates
  - (1) Final annual indirect cost rates and the appropriate bases will be established in accordance with the Guide to Judiciary Policy, Vol 14, Ch 4 in effect for the period covered by the indirect cost rate offer.
  - (2)
    - (i) The contractor shall submit an adequate final indirect cost rate offer to the contracting officer and auditor within 90 days after the end of each of its fiscal years, or by a later date approved in writing by the contracting officer. The contractor shall support the cost data and specify the contract and/or subcontract to which the rates apply.
    - (ii) The proposed rates shall be based on the contractor's actual cost experience for that period. The contracting officer or contracting officer's representative and the contractor will establish the final indirect cost rates as promptly as practical after receipt of the contractor's offer.

- (3) The contractor and the contracting officer will execute a written understanding setting forth the final indirect cost rates. The understanding will specify:
  - (i) the agreed-upon final annual indirect cost rates;
  - (ii) the bases to which the rates apply;
  - (iii) the periods for which the rates apply;
  - (iv) any specific indirect cost items treated as direct costs in the settlement; and
  - (v) the affected contract an/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding will not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.
- (4) Failure by the parties to agree on a final annual indirect cost rate will be a dispute within the meaning of the Disputes clause.
- (5) Within 120 days (or a period approved in writing by the contracting officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.
- (6)
  - (i) If the contractor fails to submit a completion invoice or voucher within the time specified in paragraph (c)(5) of this clause, the contracting officer may:
    - (A) determine the amounts due to the contractor under the contract; and
    - (B) record this determination in a unilateral modification to the contract.
  - (ii) The determination constitutes the final decision of the contracting officer in accordance with the Disputes clause.

(d) Billing Rates

Until final annual indirect cost rates are established for any period, the judiciary will reimburse the contractor at billing rates established by the contracting officer subject to adjustment when the final rates are established. These billing rates:

- (1) will be the anticipated final rates; and
- (2) may be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(e) Audit

At any time or times before final payment, the contracting officer may have the contractor's invoices or vouchers and statements of cost audited. Any payment may be:

- (1) reduced by amounts found by the contracting officer not to constitute allowable costs; or
- (2) adjusted for prior overpayments or under-payments.

(f) Final Payment

- (1) Upon written approval of a completion invoice or voucher, submitted by the contractor in accordance with paragraph (c)(5) of this clause, and upon the contractor's compliance with all terms of this contract, the judiciary will promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
- (2) The contractor shall pay to the judiciary any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the contractor has been reimbursed by the judiciary. Reasonable expenses incurred by the contractor for securing refunds, rebates, credits, or other amounts are allowable costs if approved in writing by the contracting officer. Before final payment under this contract, the contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver:
  - (i) an assignment to the judiciary, in form and substance satisfactory to the contracting officer, of refunds, rebates, credits, or other

amounts (including interest, if any) properly allocable to costs for which the contractor has been reimbursed by the judiciary under this contract; and

- (ii) a release discharging the judiciary, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except:
  - (A) specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;
  - (B) claims (including reasonable incidental expenses) based upon liabilities of the contractor to third parties arising out of the performance of this contract; provided that the claims are not known to the contractor on the date of the execution of the release, and that the contractor gives notice of the claims in writing to the contracting officer within six years following the release date or notice of final payment date, whichever is earlier; and
  - (C) claims for reimbursement of costs, including reasonable incidental expenses, incurred by the contractor under the patent clauses of this contract, excluding, however, any expenses arising from the contractor's indemnification of the judiciary against patent liability.

(end)

#### **Clause 4-65, Fixed Fee**

*Include the following clause as prescribed in § 410.70.80(b) (Cost Contract Clauses).*

##### **Fixed Fee (APR 2013)**

- (a) The judiciary will pay the contractor for performing this contract the fixed fee specified in the contract.
- (b) Payment of the fixed fee will be made as specified in the contract; provided that after payment of 85 percent of the fixed fee, the contracting officer may withhold further payment of fee until a reserve is set aside in an amount that the contracting officer considers necessary to protect the judiciary's interest. This reserve will not exceed 15 percent of the total fixed fee or the judiciary's small purchase threshold, whichever is less. The contracting officer will release 75 percent of all fee withholds under this contract after receipt of the certified final

indirect cost rate offer covering the year of physical completion of this contract, provided the contractor has satisfied all other contract terms and conditions, and is not delinquent in submitting final vouchers on prior years' settlements. The contracting officer may release up to 90 percent of the fee withheld under this contract based on the contractor's past performance related to the submission and settlement of final indirect cost rate offers.

(end)

### **Clause 4-70, Incentive Fee**

*Include the following clause as prescribed in § 410.70.80(c) (Cost Contract Clauses).*

#### **Incentive Fee (APR 2013)**

(a) General

The judiciary will pay the contractor for performing this contract a fee determined as provided in the contract.

(b) Target Cost and Target Fee

The target cost and target fee specified in the contract are subject to adjustment if the contract is modified in accordance with paragraph (d) of this clause.

(1) "Target cost" as used in this contract, means the estimated cost of this contract as initially negotiated, adjusted in accordance with paragraph (d) of this clause.

(2) "Target fee" as used in this contract, means the fee initially negotiated on the assumption that this contract would be performed for a cost equal to the estimated cost initially negotiated, adjusted in accordance with paragraph (d) of this clause.

(c) Withholding of Payment

Normally, the judiciary will pay the fee to the contractor as specified in the contract. However, when the contracting officer considers that performance or cost indicates that the contractor will not achieve target, the judiciary will pay on the basis of an appropriate lesser fee. When the contractor demonstrates that performance or cost clearly indicates that the contractor will earn a fee significantly above the target fee, the judiciary may, at the sole discretion of the contracting officer, pay on the basis of an appropriate higher fee. After payment of 85 percent of the applicable fee, the contracting officer may withhold further

payment of fee until a reserve is set aside in an amount that the contracting officer considers necessary to protect the judiciary's interest. This reserve will not exceed 15 percent of the applicable fee or the judiciary's small purchase threshold, whichever is less. The contracting officer will release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate offer covering the year of physical completion of this contract, provided the contractor has satisfied all other contract terms and conditions, and is not delinquent in submitting final vouchers on prior years' settlements. The contracting officer may release up to 90 percent of the fee withholds under this contract based on the contractor's past performance related to the submission and settlement of final indirect cost rate offers.

(d) Equitable Adjustments

When the work under this contract is increased or decreased by a contract modification or when any equitable adjustment in the target cost is authorized under any other clause, equitable adjustments in the target cost, target fee, minimum fee, and maximum fee, as appropriate, will be stated in a supplemental agreement to this contract.

(e) Fee Payable

- (1) The fee payable under this contract will be the target fee increased by \_\_\_\_\_ cents (*contracting officer inserts contractor's participation*) for every dollar that the total allowable cost is less than the target cost or decreased by \_\_\_\_\_ cents (*contracting officer inserts contractor's participation*) for every dollar that the total allowable cost exceeds the target cost. In no event will the fee be greater than \_\_\_\_\_ percent or less than \_\_\_\_\_ percent (*contracting officer inserts percentages*) of the target cost.
- (2) The fee will be subject to adjustment, to the extent provided in paragraph (d) of this clause, and within the minimum and maximum fee limitations in paragraph (e)(1) of this clause, when the total allowable cost is increased or decreased as a consequence of:
  - (i) payments made under assignments; or
  - (ii) claims excepted from the release required by paragraph (f)(2) of the Allowable Cost and Payment clause.
- (3) If this contract is terminated in its entirety, the portion of the target fee payable will not be subject to an increase or decrease as provided in this paragraph. The termination will be accomplished in accordance with other applicable clauses of this contract.

- (4) For the purpose of fee adjustment, “total allowable cost” does not include allowable costs arising out of:
  - (i) any of the causes covered by the Excusable Delays clause, to the extent that they are beyond the control and without the fault or negligence of the contractor or any subcontractor;
  - (ii) the taking effect, after negotiating the target cost, of a statute, court decision, written ruling, or regulation that results in the contractor's being required to pay or bear the burden of any tax or duty or rate increase in a tax or duty;
  - (iii) any direct cost attributed to the contractor's involvement in litigation as required by the contracting officer pursuant to a clause of this contract, including furnishing evidence and information requested pursuant to the Notice and Assistance Regarding Patent and Copyright Infringement clause;
  - (iv) the purchase and maintenance of additional insurance not in the target cost and required by the contracting officer, or claims for reimbursement for liabilities to third persons pursuant to the Insurance Liability to third Persons clause;
  - (v) any claim, loss, or damage resulting from a risk for which the contractor has been relieved of liability by the Judicial Property clause; or
  - (vi) any claim, loss, or damage resulting from a risk defined in the contract as unusually hazardous or as a nuclear risk and against which the judiciary has expressly agreed to indemnify the contractor.
- (5) All other allowable costs are included in “total allowable cost” for fee adjustment in accordance with this paragraph (e), unless otherwise specifically provided in this contract.
- (f) Contract Modification

The total allowable cost and the adjusted fee determined as provided in this clause will be evidenced by a modification to this contract signed by the contractor and contracting officer.

(g) Inconsistencies

In the event of any language inconsistencies between this clause and provisioning documents or judiciary options under this contract, compensation for spare parts or other products and services ordered under such documents will be determined in accordance with this clause.

(end)

**Clause 4-75, Cost Contract – No Fee**

*Include the following clause as prescribed in § 410.70.80(d) (Cost Contract Clauses).*

**Cost Contract – No Fee (APR 2013)**

- (a) The judiciary will not pay the contractor a fee for performing this contract.
- (b) After payment of 80 percent of the total estimated cost of the contract, the contracting officer may withhold further payment of allowable cost until a reserve is set aside in an amount that the contracting officer considers necessary to protect the judiciary's interest. This reserve will not exceed whichever is less — one percent of the total estimated cost of the contract, or:
  - (1) \$10,000 for nonprofit organizations, or
  - (2) \$100,000 for all other organizations.

(end)

**Clause 4-80, Cost-Sharing Contract – No Fee**

*Include the following clause as prescribed in § 410.70.80(e) (Cost Contract Clauses).*

**Cost-Sharing Contract – No Fee (APR 2013)**

- (a) The judiciary will not pay the contractor a fee for performing this contract.
- (b) After paying the contractor 80 percent of the judiciary's share of the total estimated cost of performance of the contract, the contracting officer may withhold further payment of allowable cost until a reserve is set aside in an amount that the contracting officer considers necessary to protect the judiciary's interest. This reserve will not exceed whichever is less:

- (1) one percent of the judiciary's share of the total estimated cost as stated in the contract, or
- (2) \$10,000 for nonprofit organizations, or
- (3) \$100,000 for all other organizations.

(end)

### **Clause 4-85, Limitation of Cost**

*Include the following clause as prescribed in § 410.70.80(f) (Cost Contract Clauses).*

#### **Limitation of Cost (APR 2013)**

- (a) The parties estimate that performance of this contract, exclusive of any fee, will not cost the judiciary more than (1) the estimated cost specified in the contract, or, (2) if this is a cost-sharing contract, the judiciary's share of the estimated cost specified in the contract. The contractor agrees to use its best efforts to perform the work specified in the contract and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract includes both the judiciary's and the contractor's share of the cost.
- (b) The contractor shall notify the contracting officer in writing whenever it has reason to believe that:
  - (1) the costs the contractor expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost stated in the contract; or
  - (2) the total cost for the performance of this contract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.
- (c) As part of the notification, the contractor shall provide the contracting officer a revised estimate of the total cost of performing this contract.
- (d) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause:
  - (1) the judiciary is not obligated to reimburse the contractor for costs incurred in excess of (i) the estimated cost stated in the contract, or (ii) if this is a cost-sharing contract, the estimated cost to the judiciary stated in the contract; and

- (2) the contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of the estimated cost or otherwise incur costs in excess of the estimated cost stated in the contract, until the contracting officer (i) notifies the contractor in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this contract. If this is a cost-sharing contract, the increase will be allocated in accordance with the formula stated in the contract.
- (e) No notice, communication, or representation in any other form other than that specified in paragraph (d)(2) of this clause, or from any person other than the contracting officer, will affect this contract's estimated cost to the judiciary. In the absence of the specified notice, the judiciary is not obligated to reimburse the contractor for any costs in excess of the estimated cost or, if this is a cost-sharing contract, for any costs in excess of the estimated cost to the judiciary stated in the contract, whether those excess costs were incurred during the course of the contract or as a result of termination.
- (f) If the estimated cost stated in the contract is increased, any costs the contractor incurs before the increase that are in excess of the previously estimated cost will be allowable to the same extent as if incurred afterwards, unless the contracting officer issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.
- (g) Change orders will not be considered an authorization to exceed the estimated cost to the judiciary stated in the contract, unless they contain a statement increasing the estimated cost.
- (h) If this contract is terminated or the estimated cost is not increased, the judiciary and the contractor will negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

(end)

#### **Clause 4-90, Limitation of Funds**

*Include the following clause as prescribed in § 410.70.80(g) (Cost Contract Clauses).*

##### **Limitation of Funds (APR 2013)**

- (a) The parties estimate that performance of this contract will not cost the judiciary more than (1) the estimated cost stated in the contract, or (2) if this is a cost-sharing contract, the judiciary's share of the estimated cost stated in the contract.

The contractor agrees to use its best efforts to perform the work specified in the contract and all obligations under this contract within this estimated cost, which if this is a cost-sharing contract, includes both the judiciary's and the contractor's share of the cost.

- (b) The contract specifies the amount presently available for payment by the judiciary and allotted to this contract, the items covered, the judiciary's share of the cost if this is a cost-sharing contract, and the period of performance it is estimated that allotted amount will cover. The parties contemplate that the judiciary will allot additional funds incrementally to the contract up to the full estimated cost to the judiciary stated in the contract, exclusive of any fee. The contractor agrees to perform, or have performed, work on the contract up to the point at which the total amount paid and payable by the judiciary under the contract approximates but does not exceed the total amount actually allotted by the judiciary to the contract.
- (c) The contractor shall notify the contracting officer in writing whenever it has reason to believe that the costs it expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of (1) the total amount so far allotted to the contract by the judiciary or, (2) if this is a cost-sharing contract, the amount then allotted to the contract by the judiciary plus the contractor's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the contract.
- (d) Sixty days before the end of the period specified in the contract, the contractor shall notify the contracting officer in writing of the estimated amount of additional funds, if any, required to continue timely performance under the contract or for any further period specified in the contract or otherwise agreed upon, and when the funds will be required.
- (e) If, after notification, additional funds are not allotted by the end of the period specified in the contract or another agreed-upon date, upon the contractor's written request, the contracting officer will terminate this contract on that date in accordance with the provisions of the Termination clause of this contract. If the contractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the contracting officer may terminate this contract on that later date.
- (f) Except as required by other provisions of this contract specifically citing and stated to be an exception to this clause,:
  - (1) the judiciary is not obligated to reimburse the contractor for costs incurred in excess of the total amount allotted by the judiciary to this contract; and

- (2) the contractor is not obligated to continue performance under this contract (including actions under the contract's Termination clause of this contract) or otherwise incur costs in excess of:
  - (i) the amount then allotted to the contract by the judiciary or;
  - (ii) if this is a cost-sharing contract, the amount then allotted by the judiciary to the contract plus the contractor's corresponding share, until the contracting officer notifies the contractor in writing that the amount allotted by the judiciary has been increased and specifies an increased amount, which will then constitute the total amount allotted by the judiciary to this contract.
- (g) The estimated cost will be increased to the extent (1) the amount allotted by the judiciary or, (2) if this is a cost-sharing contract, the amount then allotted by the judiciary to the contract plus the contractor's corresponding share, exceeds the estimated cost stated in the contract. If this is a cost-sharing contract, the increase will be allocated in accordance with the formula specified in the contract.
- (h) No notice, communication, or representation in any other form other than that specified in paragraph (f)(2) of this clause, or from any person other than the contracting officer, will affect the amount allotted by the judiciary to this contract. In the absence of the specified notice, the judiciary is not obligated to reimburse the contractor for any costs in excess of the total amount allotted by the judiciary to this contract, whether incurred during the course of the contract or as a result of termination.
- (i) When and to the extent that the amount allotted by the judiciary to the contract is increased, any costs the contractor incurs before the increase that are in excess of:
  - (1) the amount previously allotted by the judiciary or;
  - (2) if this is a cost-sharing contract, the amount previously allotted by the judiciary to the contract plus the contractor's corresponding share, will be allowable to the same extent as if incurred afterward, unless the contracting officer issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.
- (j) Change orders will not be considered an authorization to exceed the amount allotted by the judiciary stated in the contract, unless they contain a statement increasing the amount allotted.

- (k) Nothing in this clause will affect the right of the judiciary to terminate this contract. If this contract is terminated, the judiciary and the contractor will negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.
- (l) If the judiciary does not allot sufficient funds to allow completion of the work, the contractor is entitled to a percentage of the fee stated in the contract equaling the percentage of completion of the work contemplated by this contract.

(end)

**Clause 4-95, RESERVED**

**Clause 4-100, RESERVED**

**Clause 4-105, RESERVED**

**Provision 4-110, RESERVED**

**Clause 4-115, RESERVED**

**Provision 4-120, RESERVED**

**Clause 4-125, RESERVED**

**Clause 4-130, RESERVED**

**Clause 4-135, RESERVED**

**Clause 4-140, RESERVED**

**Clause 4-145, RESERVED**

**Clause 4-150, Cancellation Under Multi-Year Contracts**

*Include the following clause as prescribed in § 410.75.60(a) (Contract Clauses and Provisions).*

**Cancellation Under Multi-Year Contracts (JUN 2014)**

- (a) “Cancellation,” as used in this clause, means that the judiciary is canceling all line items for all products or services in the contract year(s) subsequent to that in which notice of cancellation is provided.

- (b) Except for cancellation under this clause or termination under the Default clause, any reduction by the contracting officer in the requirements of this contract shall be considered a termination under the Termination for Convenience of the Judiciary clause.
- (c) If cancellation under this clause occurs, the contractor will be paid a cancellation charge not exceeding the cancellation ceiling specified in the contract as applicable at the time of cancellation.
- (d) The cancellation charge will cover only:
  - (1) Costs:
    - (i) Incurred by the contractor and/or subcontractor;
    - (ii) Reasonably necessary for performance of the contract; and
    - (iii) That would have been equitably amortized over the entire multi-year contract period but, because of the cancellation, are not so amortized; and
  - (2) A reasonable profit or fee on the costs.
- (e) The cancellation charge shall be computed and the claim made for it as if the claim were being made under the Termination for Convenience of the Judiciary clause of this contract. The contractor shall submit the claim promptly but no later than 1 year from the date of notification that funds will not be made available for continued performance.
- (f) The contractor's claim may include:
  - (1) Reasonable fixed costs which are applicable to and normally would have been amortized in all products or services which are multi-year requirements;
  - (2) Allocable portions of the costs of facilities acquired or established for the conduct of the work, to the extent that it is impracticable for the contractor to use the facilities in its commercial work, and if the costs are not charged to the contract through overhead or otherwise depreciated;
  - (3) Costs incurred for the assembly, training, and transportation to and from the job site of a specialized work force; and

- (4) Costs not amortized solely because the cancellation had precluded anticipated benefits of contractor or subcontractor learning.
- (g) The claim shall not include:
  - (1) Labor, material, or other expenses incurred by the contractor or subcontractors for performance of the canceled work;
  - (2) Any cost already paid to the contractor;
  - (3) Anticipated profit or unearned fee on the canceled work; or
  - (4) For service contracts, the remaining useful commercial life of facilities. "Useful commercial life" means the commercial utility of the facilities rather than their physical life with due consideration given to such factors as location of facilities, their specialized nature, and obsolescence.
- (h) This contract may include an option clause with the period for exercising the option limited to the date in the contract for notification that funds are available for the next succeeding contract year. If so, the contractor agrees not to include in option quantities any costs of a startup or fixed nature that have been fully set forth in the contract. The contractor further agrees that the option quantities will reflect only those variable costs and a reasonable profit or fee necessary to furnish the additional option quantities.
- (i) Quantities added to the original contract through the option clause of this contract shall be included in the quantity canceled for the purpose of computing allowable cancellation charges.

(end)

#### **Provision 4-155, Alternate Awards**

*Include the following clause as prescribed in § 410.75.60(d) (Contract Clauses and Provisions).*

#### **Alternate Awards (JUN 2014)**

If the solicitation has requested pricing for both a multi-year award and an award of a base year and option years, the judiciary reserves the right to award only the initial year's requirement, without options.

(end)

**Clause 4-160, Cancellation Ceilings**

*Include the following clause as prescribed in § 410.75.60(e) (Contract Clauses and Provisions).*

**Cancellation Ceilings (JUN 2014)**

The cancellation ceilings applicable to each contract period are set forth below:

<b>If Cancellation Takes Place Before ...</b>	<b>The Cancellation Ceiling is ...</b>
Contract Year 2	
Contract Year 3	
Contract Year 4	
Contract Year 5	

(end)

**Provision 4-165, Price Proposal Instruction – Multi-Year Contract**

*Include the following provision as prescribed in § 410.75.60(f) (Contract Clauses and Provisions).*

**Price Proposal Instruction – Multi-Year Contract (JUN 2014)**

Offerors must include in their price proposal a separate cancellation ceiling (on either a percentage or dollar basis) for each contract year subject to cancellation. Price proposals must include the rationale and supporting data for each proposed cancellation ceiling. Upon award, the applicable cancellation ceilings will be inserted in Clause 4-160. These ceiling amounts apply to any claim submitted under Clause 4-150 in the event of actual cancellation of the awarded contract, and will not be part of any price evaluation for award.

(end)

**Clause 4-170, Limitation of Judiciary’s Obligation**

*Include the following clause as prescribed in § 410.25.10(b) (Description).*

**Limitation of Judiciary’s Obligation (JUN 2014)**

- (a) Contract line item(s) \_\_\_\_\_ is/are incrementally funded. The sum of \$ \* is presently available for payment and allotted to this contract. An allotment schedule is contained in paragraph (j) of this clause.
- (b) For item(s) identified in paragraph (a) of this clause, the contractor agrees to perform up to the point at which the total amount payable by the judiciary, including reimbursement in the event of termination of those item(s) for the judiciary's convenience, approximates the total amount currently allotted to the contract. The contractor is not authorized to continue work on those item(s) beyond that point. The judiciary will not be obligated in any event to reimburse the contractor in excess of the amount allotted to the contract for those item(s) regardless of anything to the contrary in the clause entitled "Termination for Convenience of the Judiciary." As used in this clause, the total amount payable by the judiciary in the event of termination of applicable contract line item(s) for convenience includes costs, profit, and estimated termination settlement costs for those item(s).
- (c) Notwithstanding the dates specified in the allotment schedule in paragraph (j) of this clause, the contractor will notify the contracting officer in writing at least ninety days prior to the date when, in the contractor's best judgment, the work will reach the point at which the total amount payable by the judiciary, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the applicable item(s). The notification will state: (1) the estimated date when that point will be reached; and (2) an estimate of additional funding, if any, needed to continue performance of applicable line items up to the next scheduled date for allotment of funds identified in paragraph (j) of this clause, or to a mutually agreed upon substitute date. The notification will also advise the contracting officer of the estimated amount of additional funds that will be required for the timely performance of the item(s) funded pursuant to this clause, for a subsequent period as may be specified in the allotment schedule in paragraph (j) of this clause or otherwise agreed to by the parties. If after such notification additional funds are not allotted by the date identified in the contractor's notification, or by an agreed substitute date, the contracting officer will terminate any item(s) for which additional funds have not been allotted, pursuant to the clause of this contract entitled "Termination for Convenience of the Judiciary."
- (d) When additional funds are allotted for continued performance of the contract line item(s) identified in paragraph (a) of this clause, the parties will agree as to the period of contract performance which will be covered by the funds. The provisions of paragraphs (b) through (d) of this clause will apply in like manner to the additional allotted funds and agreed substitute date, and the contract will be modified accordingly.

- (e) If, solely by reason of failure of the judiciary to allot additional funds, by the dates indicated below, in amounts sufficient for timely performance of the contract line item(s) identified in paragraph (a) of this clause, the contractor incurs additional costs or is delayed in the performance of the work under this contract and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the item(s), or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the clause entitled "Disputes."
- (f) The judiciary may at any time prior to termination allot additional funds for the performance of the contract line item(s) identified in paragraph (a) of this clause.
- (g) The termination provisions of this clause do not limit the rights of the judiciary under the clause entitled "Termination for Default." The provisions of this clause are limited to the work and allotment of funds for the contract line item(s) set forth in paragraph (a) of this clause. This clause no longer applies once the contract is fully funded except with regard to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraphs (d) and (e) of this clause.
- (h) Nothing in this clause affects the right of the judiciary to terminate this contract pursuant to the clause of this contract entitled "Termination for Convenience of the Judiciary."
- (i) Nothing in this clause shall be construed as authorization of voluntary services whose acceptance is otherwise prohibited under 31 U.S.C. § 1342.
- (j) The parties contemplate that the judiciary will allot funds to this contract in accordance with the following schedule:

On execution of contract	\$ _____
(month) (day), (year)	\$ _____
(month) (day), (year)	\$ _____
(month) (day), (year)	\$ _____

(end)

## **Provisions and Clauses (Chapter 5)**

### **Clause 5-1, Payments under Personal and Professional Services Contracts**

*Include the following clause as prescribed in § 510.50 (Clause) and § 520.75(c) (Provisions and Clauses).*

#### **Payments under Personal and Professional Services Contracts (APR 2013)**

- (a) The judiciary will pay the contractor:
  - (1) for the services performed by the contractor;
  - (2) as set forth in the contract;
  - (3) at the rates prescribed;
  - (4) upon the submission by the contractor of proper invoices or time statements to the office or officer designated and at the time provided for in this contract.
  
- (b) The judiciary will also pay the contractor:
  - (1) a per diem rate in lieu of subsistence for each day the contractor is in a travel status away from home or regular place of employment in accordance with Judiciary Travel Regulations as authorized in appropriate Travel Orders; and
  - (2) any other transportation expenses if provided for in the contract.

(end)

### **Clause 5-5, Non-disclosure (Professional Services)**

*Include the following clause as prescribed in § 520.75(d) (Provisions and Clauses).*

#### **Non-disclosure (Professional Services) (JAN 2003)**

The contractor acknowledges that confidential information might be generated or made available during the course of performance of this agreement. In addition to the restrictions on disclosure established under the contractor's code of ethics, the contractor specifically agrees not to disclose any information received or generated under this contract, unless its release is approved in writing by the

contracting officer. The contractor further agrees to assert any privilege allowed by law and to defend vigorously judiciary rights to confidentiality.

(end)

### **Clause 5-10, Inspection of Professional Services**

*Include the following clause as prescribed in § 520.75(e) (Provisions and Clauses).*

#### **Inspection of Professional Services (SEP 2010)**

- (a) The contracting officer may, at any time or place, inspect the services performed and the products delivered, including documents and reports. The contracting officer may reject any products or services that do not meet the highest standards of professionalism, no matter what type of contract is employed, and in addition to any specific standards of quality set out in this agreement. No payment will be due for any products or services rejected under this clause.
- (b) Acceptance of any product or service does not relieve the contractor of the duties imposed by contractor's code of professional ethics. The contractor remains liable for the period allowed under federal law for claims by the United States, for any errors or omissions occurring during performance. All partners or principals agree that they will be jointly and severably liable for such errors and omissions.

(end)

### **Clause 5-15, RESERVED**

### **Clause 5-20, Records Ownership**

*Include the following clause as prescribed in § 520.75(g) (Provisions and Clauses).*

#### **Records Ownership (JAN 2003)**

Notwithstanding any state law providing for retention of rights in the records, the contractor agrees that the judiciary may, at its option, demand and take without additional compensation all records relating to the services provided under this agreement. The contractor shall turn over all such records upon request but may retain copies of documents produced by the contractor.

(end)

### **Provision 5-25, Identification of Uncompensated Overtime**

*Include the following provision as prescribed in § 520.75(h) (Provisions and Clauses).*

#### **Identification of Uncompensated Overtime (JAN 2003)**

- (a) Definitions. As used in this provision:

"Uncompensated overtime" means the hours worked without additional compensation in excess of an average of 40 hours per week by direct charge employees who are exempt from the Fair Labor Standards Act. Compensated personal absences such as holidays, vacations, and sick leave shall be included in the normal work week for purposes of computing uncompensated overtime hours.

"Uncompensated overtime rate" is the rate that results from multiplying the hourly rate for a 40-hour work week by 40, and then dividing by the proposed hours per week. For example, 45 hours proposed on a 40-hour work week basis at \$20 per hour would be converted to an uncompensated overtime rate of \$17.78 per hour ( $\$20.00 \times 40$  divided by 45 = \$17.78).

- (b) For any proposed hours against which an uncompensated overtime rate is applied, the offeror shall identify in its offer the hours in excess of an average of 40 hours per week, by labor category at the same level of detail as compensated hours, and the uncompensated overtime rate per hour, whether at the prime or subcontract level. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct.
- (c) The offeror's accounting practices used to estimate uncompensated overtime shall be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.
- (d) Offers that include unrealistically low labor rates, or that do not otherwise demonstrate cost realism, will be considered in a risk assessment and will be evaluated for award in accordance with that assessment.
- (e) The offeror shall include a copy of its policy addressing uncompensated overtime with its offer.

(end)

### **Clause 5-30, Authorization and Consent**

*Include the following clause as prescribed in § 330.10.30(mm) (Provisions and Clauses), § 530.70.60(a) (Clauses), and § 660.10(a) (In General).*

#### **Authorization and Consent (JAN 2003)**

- (a) The judiciary authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the judiciary under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the contracting officer directing the manner of performance. The entire liability to the judiciary for infringement of a patent of the United States will be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the judiciary assumes liability for all other infringement to the extent of the authorization and consent herein above granted.
  
- (b) The contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for products or services (including construction, architect-engineer services, and materials, products, models, samples, and design or testing services expected to exceed the judiciary's small purchase threshold); however, omission of this clause from any subcontract, including those at or below the judiciary's small purchase threshold, does not affect this authorization and consent.

(end)

**Alternate I:** (JAN 2003) *As prescribed in § 330.10.30(mm) (Provisions and Clauses), substitute the following for paragraph (a) of the clause:*

- (a) The judiciary authorizes and consents to all use and manufacture in the performance of any order at any tier or subcontract at any tier placed under this contract for communication services and facilities for which rates, charges, and tariffs are **not** established by a judiciary regulatory body, of any invention described in and covered by a United States patent:
  - (1) embodied in the structure or composition of any article the delivery of which is accepted by the judiciary under this contract; or

- (2) used in machinery, tools, or methods whose use necessarily results from compliance by the contractor or a subcontractor with specifications or written provisions forming a part of this contract or with specific written instructions given by the contracting officer directing the manner of performance.

### **Clause 5-35, Payments Under Fixed-Price Architect-Engineer Contracts**

*Include the following clause as prescribed in § 530.70.60(b) (Clauses).*

#### **Payments under Fixed-Price Architect-Engineer Contracts (JAN 2003)**

- (a) Estimates shall be made monthly of the amount and value of the work and services performed by the contractor under this contract which meet the standards of quality established under this contract. The estimates shall be prepared by the contractor and accompanied by any supporting data required by the contracting officer.
- (b) Upon written approval of the estimate by the contracting officer, payment upon properly executed vouchers will be made to the contractor, as soon as practicable, of 90 percent of the written approved amount, less all previous payments; *provided*, that payment may be made in full during any months in which the contracting officer determines that performance has been satisfactory. Also, whenever the contracting officer determines that the work is substantially complete and that the amount retained is in excess of the amount adequate for the protection of the judiciary, the contracting officer may release the excess amount to the contractor.
- (c) Upon satisfactory completion by the contractor and acceptance by the contracting officer of the work done by the contractor under the "Statement of Architect-Engineer Services," the contractor will be paid the unpaid balance of any money due for work under the statement, including retained percentages relating to this portion of the work. Upon satisfactory completion and final acceptance of the construction work, the contractor shall be paid any unpaid balance of money due under this contract.
- (d) Before final payment under the contract, or before settlement upon termination of the contract, and as a condition precedent thereto, the contractor shall execute and deliver to the contracting officer a release of all claims against the judiciary arising under or by virtue of this contract, other than any claims that are specifically excepted by the contractor from the operation of the release in amounts stated in the release.

- (e) Notwithstanding any other provision in this contract, and specifically paragraph (b) of this clause, progress payments will not exceed 80 percent on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract including contract modifications for additional products or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(end)

### **Clause 5-40, RESERVED**

### **Clause 5-45, Design Within Funding Limitations**

*Include the following clause as prescribed in § 530.70.60(c) (Clauses), filling in the dollar amount in (c).*

#### **Design Within Funding Limitations (JAN 2003)**

- (a) The contractor shall accomplish the design services required under this contract so as to permit the award of a contract, using standard judiciary procedures, for the construction of the facilities designed at a price that does not exceed the estimated construction contract price as set forth in paragraph (c) of this clause. When offers for the construction contract are received that exceed the estimated price, the contractor shall perform such redesign and other services as are necessary to permit contract award within the funding limitation. These additional services shall be performed at no increase in the price of this contract. However, the contractor shall not be required to perform such additional services at no cost to the judiciary if the unfavorable offers are the result of conditions beyond its reasonable control.
- (b) The contractor will promptly advise the contracting officer if it finds that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within these limitations. Upon receipt of such information, the contracting officer will review the contractor's revised estimate of construction cost. The judiciary may, if it determines that the estimated construction contract price set forth in this contract is so low that award of a construction contract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth in paragraph (c) of this clause, or the judiciary may adjust such estimated construction contract price. When offers are not solicited or are unreasonably delayed, the judiciary will prepare an estimate of constructing the design

submitted and such estimate will be used in lieu of offers to determine compliance with the funding limitation.

- (c) The estimated construction contract price for the project described in this contract is \$\_\_\_\_\_.

(end)

### **Clause 5-50, Responsibility of the Architect-Engineer Contractor**

*Include the following clause as prescribed in § 530.70.60(d) (Clauses).*

#### **Responsibility of the Architect-Engineer Contractor (JAN 2003)**

- (a) The contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the contractor under this contract. The contractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.
- (b) Neither the judiciary's review, approval or acceptance of, nor payment for, the services required under this contract will be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the contractor shall be and remain liable to the judiciary in accordance with applicable law for all damages to the judiciary caused by the contractor's negligent performance of any of the services furnished under this contract.
- (c) The rights and remedies of the judiciary provided for under this contract are in addition to any other rights and remedies provided by law.
- (d) If the contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

(end)

### **Clause 5-55, Work Oversight in Architect-Engineer Contracts**

*Include the following clause as prescribed in § 530.70.60(e) (Clauses).*

**Work Oversight in Architect-Engineer Contracts (JAN 2003)**

The extent and character of the work to be done by the contractor shall be subject to the general oversight, supervision, direction, control, and written approval of the contracting officer.

(end)

**Clause 5-60, Requirements for Registration of Designers**

*Include the following clause as prescribed in § 530.70.60(f) (Clauses).*

**Requirements for Registration of Designers (AUG 2004)**

Architects or engineers registered to practice in the particular professional field involved in a state, the District of Columbia, or an outlying area of the United States shall prepare or review and approve the design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work.

(end)

**Clause 5-65, Subcontractors and Outside Associates and Consultants (Architect-Engineer Services)**

*Include the following clause as prescribed in § 530.70.60(g) (Clauses).*

**Subcontractors and Outside Associates and Consultants (Architect-Engineer Services) (JAN 2003)**

Any subcontractors and outside associates or consultants required by the contractor in connection with the services covered by the contract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The contractor shall obtain the contracting officer's written consent before making any substitution for these subcontractors, associates, or consultants.

(end)

**Clause 5-70, Termination (Fixed-Price Architect-Engineer)**

*Include the following clause as prescribed in § 530.70.60(h) (Clauses).*

**Termination (Fixed-Price Architect-Engineer) (JAN 2003)**

- (a) The judiciary may terminate this contract in whole or, from time to time, in part, for the judiciary's convenience or because of the failure of the contractor to fulfill the contract obligations. The contracting officer will terminate by delivering to the contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the contractor shall:
  - (1) immediately discontinue all services affected (unless the notice directs otherwise); and
  - (2) deliver to the contracting officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.
- (b) If the termination is for the convenience of the judiciary, the contracting officer will make an equitable adjustment in the contract price but will allow no anticipated profit on unperformed services.
- (c) If the termination is for failure of the contractor to fulfill the contract obligations, the judiciary may complete the work by contract or otherwise and the contractor shall be liable for any additional cost incurred by the judiciary.
- (d) If, after termination for failure to fulfill contract obligations, it is determined that the contractor had not failed, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the judiciary.
- (e) The rights and remedies of the judiciary provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(end)

**Clause 5-75, Suspensions and Delays**

*Include the following clause as prescribed in § 530.70.60(i) (Clauses).*

**Suspensions and Delays (JAN 2003)**

- (a) If the performance of all or any part of the work of this contract is suspended, delayed, or interrupted by:
  - (1) an order or act of the contracting officer in administering this contract; or

- (2) by a failure of the contracting officer to act within the time specified in this contract, or within a reasonable time if not specified, an adjustment will be made for any increase in the cost of performance of this contract caused by the delay or interruption (including the costs incurred during any suspension or interruption). An adjustment will also be made in the delivery or performance dates and any other contractual term or condition affected by the suspension, delay, or interruption. However, no adjustment may be made under this clause for any delay or interruption to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the contractor, or for which an adjustment is provided or excluded under any other term or condition of this contract.
- (b) A claim under this clause will not be allowed:
- (1) for any costs incurred more than 20 days before the contractor has notified the contracting officer in writing of the act or failure to act involved; and
  - (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the delay or interruption, but not later than the day of final payment under the contract.

(end)

## Provisions and Clauses (Chapter 6)

### Clause 6-1, Performance Bond Requirements

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

#### **Performance Bond Requirements (APR 2011)**

- (a) Definitions. As used in this clause, "original contract price" means the award price of the contract; or for requirements contracts, the price payable for the estimated quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.
- (b) The contractor shall furnish a Form SF 1418, Performance Bond for the protection of the judiciary in an amount equal to \_\_\_ percent of the original contract price and a Form SF 1416, Payment Bond in an amount equal to \_\_\_ percent of the original contract price.
- (c) The contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the contracting officer within \_\_\_ days, but in any event, before starting work.
- (d) The judiciary may require additional performance and payment bond protection if the contract price is increased. The judiciary may secure the additional protection by directing the contractor to increase the penal amount of the existing bonds or to obtain additional bonds.
- (e) The bonds shall be in the form of a firm commitment, supported by corporate sureties whose names are listed in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the *Federal Register*, or may be obtained from the:

U.S. Department of Treasury  
Financial Management Service  
Surety Bond Branch  
401 14th Street, NW, 2nd Floor, West Wing  
Washington, DC 20227  
[www.treas.gov](http://www.treas.gov)

(end)

**Alternate I** (JAN 2003): *As prescribed in § 610.20.30(b) (Clauses), substitute the following paragraphs (b) and (d) for paragraphs (b) and (d) of the basic clause. If the penal amount is less than 100 percent of the contract price, the clause will be modified accordingly.*

- (b) The contractor shall furnish a performance bond (Standard Form 1418) for the protection of the judiciary in an amount equal to \_\_\_ percent of the original contract price.
- (d) The judiciary may require additional performance bond protection if the contract price is increased. The judiciary may secure the additional protection by directing the contractor to increase the penal amount of the existing bond or to obtain an additional bond.

### **Provision 6-5, Fidelity Bond Requirements**

*Include the following provision as prescribed in § 610.40 (Fidelity Bonds).*

#### **Fidelity Bond Requirements (APR 2013)**

Any offeror awarded a contract as a result of this solicitation will be required to submit a fidelity bond in the penal amount of \_\_\_\_\_, in a form acceptable to and within the time specified by the contracting officer. Corporate sureties must appear on the list in Treasury Circular 570 and the amount of the bond may not exceed the underwriting limit stated for the surety on that list. Failure to submit an acceptable bond may be cause for termination of the contract for default.

(end)

### **Provision 6-10, Deposit of Assets Requirements**

*Include the following provision as prescribed in § 620.20.50(a) (Clauses/Provisions).*

#### **Deposit of Assets Requirements (APR 2013)**

- (a) Any offeror required to submit a surety bond as a result of this solicitation may instead deposit assets in a form acceptable to the judiciary in the amount of \$\_\_\_\_\_ (*contracting officer to fill-in amount*).
- (b) When assets are deposited, the offeror shall execute a bond in a form as specified in this solicitation. Failure to deposit assets acceptable to the judiciary may be cause for termination of the contract for default.

(end)

**Clause 6-15, Deposit of Assets Instead of Surety Bonds**

*Include the following clause as prescribed in § 620.20.50(b) (Clauses/Provisions).*

**Deposit of Assets Instead of Surety Bonds (JAN 2003)**

- (a) If the contractor has deposited assets instead of furnishing sureties for any bond required under this contract and the assets are in the form of checks, currency, or drafts, the contracting officer will hold the assets in an account for the contractor's benefit.
- (b) Upon contract completion, the contractor's funds will be returned as soon as possible, unless the contracting officer determines that part or all of the account is required to compensate the judiciary for costs it incurs as a result of the contractor's delay, default, or failure to perform. In such a case, the entire account will be available to compensate the judiciary.

(end)

**Clause 6-20, Insurance – Work On or Within a Judiciary Facility**

*Include the following clause as prescribed in § 630.20.40(a) (Clauses).*

**Insurance – Work On or Within a Judiciary Facility (APR 2011)**

- (a) The contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the following kinds and minimum amounts of insurance:
  - (1) Workman's Compensation and Employee's Liability Insurance  

The contractor shall comply with applicable federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy. Employer's liability coverage of at least \$100,000 per incident is required.
  - (2) Automobile Liability Insurance  

The contractor shall have coverage at a minimum of \$200,000 per person; \$500,000 per occurrence for bodily injury; and \$20,000 per occurrence for property damage.

(3) General Liability Insurance

The contractor shall have coverage at a minimum of \$200,000 per person and \$500,000 per occurrence for death or bodily injury and \$20,000 per occurrence for property damage.

(4) Self-Insurance

If the contractor has been approved to provide a qualified program of self insurance, the contractor must submit any proposed changes to the program to the contracting officer for approval.

- (b) Prior to beginning performance under this contract, the contractor shall provide the insurance carrier certification of the above minimum amounts.
- (c) The maintenance of insurance coverage as required by this clause is a continuing obligation, and the lapse or termination of insurance coverage without replacement coverage being obtained will be grounds for termination for default.
- (d) The certification evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the judiciary's interest shall not be effective:
  - (1) for such period as the laws of the state in which this contract is to be performed prescribe; or
  - (2) until 30 days after the insurer or the contractor gives written notice to the contracting officer, whichever period is longer.
- (e) The contractor shall insert the substance of this clause, including this paragraph (e), in subcontracts under this contract that require work in a judiciary facility and shall require subcontractors to provide and maintain the required insurance. The contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the contracting officer upon request.

(end)

**Clause 6-25, Insurance – Liability to Third Persons**

*Include the following clause as prescribed in § 630.20.40(b) (Clauses).*

**Insurance – Liability to Third Persons (APR 2013)**

- (a)
  - (1) Except as provided in paragraph (a)(2) of this clause, the contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the contracting officer may require under this contract.
  - (2) The contractor may, with the written approval of the contracting officer, maintain a self-insurance program, provided that, with respect to workers' compensation, the contractor is qualified pursuant to statutory authority.
  - (3) All insurance required by this paragraph shall be in a form and amount and for those periods as the contracting officer may require or approve and with insurers approved in writing by the contracting officer.
- (b) The contractor agrees to submit for the contracting officer's written approval, to the extent and in the manner required by the contracting officer, any other insurance that is maintained by the contractor in connection with the performance of this contract and for which the contractor seeks reimbursement.
- (c) The contractor shall be reimbursed:
  - (1) for that portion:
    - (i) of the reasonable cost of insurance allocable to this contract; and
    - (ii) required or approved in writing under this clause; and
  - (2) for certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or the limitation of funds clause of this contract. These liabilities shall arise out of the performance of this contract, whether or not caused by the negligence of the contractor or of the contractor's agents, servants, or employees, and shall be represented by final judgments or settlements approved in writing by the judiciary. These liabilities are for:
    - (i) loss of or damage to property (other than property owned, occupied, or used by the contractor, rented to the contractor, or in the care, custody, or control of the contractor); or
    - (ii) death or bodily injury.

- (d) The judiciary's liability under paragraph (c) of this clause is subject to the availability of appropriated funds at the time a contingency occurs. Nothing in this contract will be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.
- (e) The contractor will not be reimbursed for liabilities (and expenses incidental to such liabilities):
  - (1) for which the contractor is otherwise responsible under the express terms of any clause incorporated in the contract, whether incorporated by reference or in full text;
  - (2) for which the contractor has failed to insure or to maintain insurance as required by the contracting officer; or
  - (3) that result from willful misconduct or lack of good faith on the part of any of the contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of:
    - (i) all or substantially all of the contractor's business;
    - (ii) all or substantially all of the contractor's operations at any one plant or separate location in which this contract is being performed; or
    - (iii) a separate and complete major industrial operation in connection with the performance of this contract.
- (f) The provisions of paragraph (e) of this clause will not restrict the right of the contractor to be reimbursed for the cost of insurance maintained by the contractor in connection with the performance of this contract, other than insurance required in accordance with this clause; *provided*, that such cost is allowable under Clause 4-60, Allowable Cost and Payment.
- (g) If any suit or action is filed or any claim is made against the contractor, the cost and expense of which may be reimbursable to the contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the contractor shall:
  - (1) immediately notify the contracting officer and promptly furnish copies of all pertinent papers received;
  - (2) authorize judiciary representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and

- (3) authorize judiciary representatives to settle or defend the claim and to represent the contractor in or to take charge of any litigation, if required by the judiciary, when the liability is not insured or covered by bond. The contractor may, at its own expense, be associated with the judiciary representatives in any such claim or litigation.

(end)

### **Clause 6-30, RESERVED**

### **Clause 6-35, Errors and Omissions**

*Include the following clause as prescribed in § 630.40.50 (Clauses) and § 520.75(j) (Provisions and Clauses).*

#### **Errors and Omissions (APR 2013)**

- (a) The contractor warrants that it is insured for \_\_\_\_\_ (\$200,000, unless a greater amount is entered by the contracting officer) for errors and omissions per claim in an amount in excess of the minimum set forth in the schedule in the performance of this contract.
- (b) Unless the contractor's policy is prepaid, noncancellable, and issued for a period at least equal to the term of this contract on an occurrence basis, the contractor shall have the policy amended to include substantially the following provision:

"It is a condition of this policy that the company furnish written notice to the \_\_\_\_\_ (fill in the name of the finance office for the individual court unit, federal public defender organization, or the Administrative Office, whichever required the insurance) 30 days in advance of the effective date of any reduction in or cancellation of this policy."
- (c) The contractor shall furnish a certificate of insurance or, if required by the contracting officer, true copies of liability policies and manually countersigned endorsements of any changes. Insurance shall be effective, and evidence of acceptable insurance furnished, before beginning performance under this contract. Evidence of renewal shall be furnished not later than five days before a policy expires.

(end)

## **Clause 6-40, Federal, State, and Local Taxes**

*Include the following clause as prescribed in § 640.30.70(a) (Clauses).*

### **Federal, State, and Local Taxes (JAN 2003)**

(a) Definitions.

"Contract Date" means the effective date of this contract or modification.

"All applicable federal, state, and local taxes and duties," as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

"After-Imposed Federal Tax," as used in this clause, means any new or increased federal excise tax or duty, or tax that was exempted on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

"After-Relieved Federal Tax," as used in this clause, means any amount of federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the contractor is not required to pay or bear, or for which the contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

"Local Taxes," as used in this clause, means any taxes that a local governing organization (i.e. city or county) taxing authority is imposing and collecting on the transactions or property covered by this contract.

- (b) The contract price includes all applicable federal, state, and local taxes and duties.
- (c) The contract price shall be increased by the amount of any after-imposed federal tax, provided the contractor warrants in writing that no amount for such newly imposed federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.
- (d) The contract price shall be decreased by the amount of any after-relieved federal tax.

- (e) The contract price shall be decreased by the amount of any federal excise tax or duty, except social security or other employment taxes, that the contractor is required to pay or bear, or does not obtain a refund of, through the contractor's fault, negligence, or failure to follow instructions of the contracting officer.
- (f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.
- (g) The contractor shall promptly notify the contracting officer of all matters relating to any federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the contracting officer directs.
- (h) The judiciary shall, without liability, furnish evidence appropriate to establish exemption from any federal, state, or local tax when the contractor requests such evidence and a reasonable basis exists to sustain the exemption.

(end)

**Clause 6-45, Federal, State, and Local Taxes (Noncompetitive Contract)**

*Include the following clause as prescribed in § 640.30.70(b) (Clauses).*

**Federal, State, and Local Taxes (Noncompetitive Contract) (JAN 2003)**

- (a) Definitions.

"Contract Date," as used in this clause, means the effective date of this contract and, for any modification to this contract, the effective date of the modification.

"All Applicable Federal, State, and Local Taxes and Duties," as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

"After-Imposed Tax," as used in this clause, means any new or increased federal, state, or local tax or duty, or tax that was excluded on the contract date but whose exclusion was later revoked or amount of exemption reduced during the contract period, other than an excepted tax, on the transactions or property covered by this contract that the contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date.

"After-Relieved Tax," as used in this clause, means any amount of federal, state, or local tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this contract, but which the contractor is not required to pay or bear, or for which the contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

"Excepted Tax," as used in this clause, means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. "Excepted tax" does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed products covered by this contract, or any tax assessed on the contractor's possession of, interest in, or use of property, title to which is in the judiciary.

"Local Taxes," as used in this clause, means any taxes that a local governing organization (i.e. city or county) taxing authority is imposing and collecting on the transactions or property covered by this contract.

- (b) Unless otherwise provided in this contract, the contract price includes all applicable federal, state, and local taxes and duties.
- (c) The contract price shall be increased by the amount of any after-imposed tax, or of any tax or duty specifically excluded from the contract price by a term or condition of this contract that the contractor is required to pay or bear, including any interest or penalty, if the contractor states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the contractor's fault, negligence, or failure to follow instructions of the contracting officer.
- (d) The contract price shall be decreased by the amount of any after-relieved tax. The judiciary shall be entitled to interest received by the contractor incident to a refund of taxes to the extent that such interest was earned after the contractor was paid by the judiciary for such taxes. The judiciary is entitled to repayment of any penalty refunded to the contractor to the extent that the penalty was paid by the judiciary.
- (e) The contract price shall be decreased by the amount of any federal, state, or local tax, other than an excepted tax, that was included in the contract price and that the contractor is required to pay or bear, or does not obtain a refund of, through the contractor's fault, negligence, or failure to follow instructions of the contracting officer.

- (f) No adjustment will be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.
- (g) The contractor shall promptly notify the contracting officer of all matters relating to federal, state, and local taxes and duties that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the contracting officer directs. The contract price will be equitably adjusted to cover the costs of action taken by the contractor at the direction of the contracting officer, including any interest, penalty, and reasonable attorneys' fees.
- (h) The judiciary will furnish evidence appropriate to establish exemption from any federal, state, or local tax when:
  - (1) the contractor requests such exemption and states in writing that it applies to a tax excluded from the contract price; and
  - (2) a reasonable basis exists to sustain the exemption.

(end)

### **Provision 6-50, Representation of Rights in Data**

*Include the following provision as prescribed in § 650.65(a) (Clauses).*

#### **Representation of Rights in Data (APR 2013)**

- (a) This solicitation sets forth the judiciary's known delivery requirements for data (as defined in Clause 6-60, Rights in Data – General). Any data delivered under the resulting contract will be subject to Clause 6-60, Rights in Data – General included in this contract. Under Clause 6-60, a contractor may withhold from delivery data that qualify as limited rights data or restricted computer software, and deliver form, fit, and function data instead. Clause 6-60 also may be used with its Alternates I and/or II to obtain delivery of limited rights data or restricted computer software, marked with limited rights or restricted rights notices, as appropriate.
- (b) By completing the remainder of this paragraph, the offeror represents that it has reviewed the requirements for the delivery of technical data or computer software and states (*offeror check appropriate block*):
  - [ ] None of the data proposed for fulfilling the data delivery requirements qualifies as limited rights data or restricted computer software; or

- [ ] Data proposed for fulfilling the data delivery requirements qualify as limited rights data or restricted computer software and are identified as follows:

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- (c) Any identification of limited rights data or restricted computer software in the offeror's response is not determinative of the status of the data should a contract be awarded to the offeror.

(end)

**Clause 6-55, RESERVED**

**Clause 6-60, Rights in Data – General**

*Include the following clause as prescribed in § 650.65(b) (Clauses).*

**Rights in Data – General (JUN 2012)**

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

“Computer Database” or “Database” means a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

“Computer software”:

- (1) Means:
  - (i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and
  - (ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.
- (2) Does not include computer databases or computer software documentation.

“Computer Software Documentation” means owner’s manuals, user’s manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

“Data” means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

“Form, Fit, and Function Data” means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

“Limited Rights” means the rights of the judiciary in limited rights data as set forth in the Limited Rights Notice of paragraph (g)(3) if included in this clause.

“Limited Rights Data” means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications.

“Restricted Computer Software” means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

“Restricted Rights,” as used in this clause, means the rights of the judiciary in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g)(4) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

“Technical Data” means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases (see 41 U.S.C. § 116).

“Unlimited Rights” means the rights of the judiciary to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of Rights

- (1) Except as provided in paragraph (c) of this clause, the judiciary shall have unlimited rights in:
  - (i) Data first produced in the performance of this contract;
  - (ii) Form, fit, and function data delivered under this contract;
  - (iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and
  - (iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.
- (2) The contractor shall have the right to:
  - (i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause;
  - (ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;
  - (iii) Substantiate the use of, add, or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and
  - (iv) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause.

(c) Copyright:

(1) Data First Produced in the Performance of this Contract

- (i) Unless provided otherwise in paragraph (d) of this clause, the contractor may, without prior approval of the contracting officer, assert copyright in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings, or similar works. The prior, express written permission of the contracting officer is required to assert copyright in all other data first produced in the performance of this contract.
- (ii) When authorized to assert copyright to the data, the contractor shall affix the applicable copyright notices of 17 U.S.C. § 401 or § 402, and an acknowledgment of judiciary sponsorship (including contract number).
- (iii) For data other than computer software, the contractor grants to the judiciary, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the judiciary. For computer software, the contractor grants to the judiciary, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of the judiciary.

(2) Data Not First Produced in the Performance of this Contract

The contractor shall not, without the prior written permission of the contracting officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract unless the contractor:

- (i) Identifies the data; and
- (ii) Grants to the judiciary, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause or, if such data are restricted computer software, the judiciary shall acquire a copyright license as set forth in paragraph (g)(4) of this clause (if

included in this contract) or as otherwise provided in a collateral agreement incorporated in or made part of this contract.

(3) Removal of Copyright Notices

The judiciary will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) Release, Publication, and Use of Data

The contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the contractor in the performance of this contract, except:

- (1) As prohibited by federal law or regulation (e.g., export control or national security laws or regulations);
- (2) As expressly set forth in this contract; or
- (3) If the contractor receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the contractor shall treat the data in accordance with such markings unless specifically authorized otherwise in writing by the contracting officer.

(e) Unauthorized Marking of Data

(1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (g)(3) or (g) (4) if included in this clause, and use of the notices is not authorized by this clause, or if the data bears any other restrictive or limiting markings not authorized by this contract, the contracting officer may at any time either return the data to the contractor, or cancel or ignore the markings. The following procedures shall apply prior to canceling or ignoring the markings:

- (i) The contracting officer will make written inquiry to the contractor affording the contractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;
- (ii) If the contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-day period (or a longer time approved in writing by the

contracting officer for good cause shown), the judiciary shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

- (iii) If the contractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the contracting officer will consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the contracting officer determines that the markings are authorized, the contractor will be so notified in writing. If the contracting officer determines, with concurrence of the judiciary Procurement Executive, that the markings are not authorized, the contracting officer will furnish the contractor a written determination, which determination will become the final agency decision regarding the appropriateness of the markings unless the contractor files suit in a court of competent jurisdiction within 90 days of receipt of the contracting officer's decision. The judiciary will continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by the contracting officer's determination becoming final (in which instance the judiciary will thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

- (2) Except to the extent the judiciary's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the contractor is not precluded by paragraph (e) of the clause from bringing a claim, in accordance with the Disputes clause of this contract, that may arise as the result of the judiciary removing or ignoring authorized markings on data delivered under this contract.

(f) Omitted or Incorrect Markings

- (1) Data delivered to the judiciary without any restrictive markings shall be deemed to have been furnished with unlimited rights. The judiciary is not liable for the disclosure, use, or reproduction of such data.
- (2) If the unmarked data has not been disclosed without restriction outside the judiciary, the contractor may request, within 6 months (or a longer time approved by the contracting officer in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the

data at the contractor's expense. The contracting officer may agree to do so if the contractor:

- (i) Identifies the data to which the omitted notice is to be applied;
- (ii) Demonstrates that the omission of the notice was inadvertent;
- (iii) Establishes that the proposed notice is authorized; and
- (iv) Acknowledges that the judiciary has no liability for the disclosure, use, or reproduction of any data made prior to the addition of the notice or resulting from the omission of the notice.

(3) If data has been marked with an incorrect notice, the contracting officer may:

- (i) Permit correction of the notice at the contractor's expense if the contractor identifies the data and demonstrates that the correct notice is authorized; or
- (ii) Correct any incorrect notices.

(g) Protection of Limited Rights Data and Restricted Computer Software

(1) The contractor may withhold from delivery qualifying limited rights data or restricted computer software that are not data identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the contractor shall:

- (i) Identify the data being withheld; and
- (ii) Furnish form, fit, and function data instead.

(2) Limited rights data that are formatted as a computer database for delivery to the judiciary shall be treated as limited rights data and not restricted computer software.

(h) Subcontracting

The contractor shall obtain from its subcontractors all data and rights therein necessary to fulfill the contractor's obligations to the judiciary under this contract. If a subcontractor refuses to accept terms affording the judiciary those rights, the contractor shall promptly notify the contracting officer of the refusal and shall not

proceed with the subcontract award without authorization in writing from the contracting officer.

(i) Relationship to Patents or Other Rights

Nothing contained in this clause shall imply a license to the judiciary under any patent or be construed as affecting the scope of any license or other right otherwise granted to the judiciary.

(end)

**Alternate I** (JAN 2010): *As prescribed in § 650.65(c) (Clauses), insert the following paragraph (g)(3) in the basic clause:*

- (g) (3) Notwithstanding paragraph (g)(1) of this clause, the contract may identify and specify the delivery of limited rights data, or the contracting officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be entitled to be withheld. If delivery of that data is required, the contractor shall affix the following “Limited Rights Notice” to the data and the judiciary will treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with the notice:

Limited Rights Notice (JAN 2010)

- (a) These data are submitted with limited rights under judiciary Contract No. \_\_\_\_\_ (and subcontract \_\_\_\_\_, if appropriate). These data may be reproduced and used by the judiciary with the express limitation that they will not, without written permission of the contractor, be used for purposes of manufacture nor disclosed outside the judiciary; except that the judiciary may disclose these data outside the judiciary for the following purposes, if any; provided that the judiciary makes such disclosure subject to prohibition against further use and disclosure: *[COs may list additional purposes as set forth in § 650.65(c) or state there are no additional purposes.]*
- (b) This notice shall be marked on any reproduction of these data, in whole or in part.

(End of notice)

**Alternate II** (APR 2013): *As prescribed in § 650.65(d) (Clauses), insert the following paragraph (g)(4) in the basic clause:*

- (g) (4) (i) Notwithstanding paragraph (g)(1) of this clause, the contract may identify and specify the delivery of restricted computer software, or the contracting officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be entitled to be withheld. If delivery of that computer software is required, the contractor shall affix the following “Restricted Rights Notice” to the computer software and the judiciary will treat the computer software, subject to paragraphs (e) and (f) of this clause, in accordance with the notice:

Restricted Rights Notice (JAN 2010)

- (a) This computer software is submitted with restricted rights under judiciary Contract No. \_\_\_\_\_ (and subcontract \_\_\_\_\_, if appropriate). It may not be used, reproduced, or disclosed by the judiciary except as provided in paragraph (b) of this notice or as otherwise expressly stated in the contract.
- (b) This computer software may be:
- (1) Used or copied for use with the computer(s) for which it was acquired, including use at any judiciary facility to which the computer(s) may be transferred;
  - (2) Used or copied for use with a backup computer if any computer for which it was acquired is inoperative;
  - (3) Reproduced for safekeeping (archives) or backup purposes;
  - (4) Modified, adapted, or combined with other computer software, *provided* that the modified, adapted, or combined portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restricted rights;
  - (5) Disclosed to and reproduced for use by support service contractors or their subcontractors in accordance with paragraphs (b)(1) through (4) of this notice; and
  - (6) Used or copied for use with a replacement computer.

- (c) Notwithstanding the foregoing, if this computer software is copyrighted computer software, it is licensed to the judiciary with the minimum rights set forth in paragraph (b) of this notice.
  - (d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the contract.
  - (e) This notice shall be marked on any reproduction of this computer software, in whole or in part.  
(End of notice)
- (ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form notice may be used instead:

**Restricted Rights Notice Short Form (JAN 2010)**

Use, reproduction, or disclosure is subject to restrictions set forth in Contract No. \_\_\_\_\_ (and subcontract, if appropriate) with \_\_\_\_\_ (name of contractor and subcontractor).

(End of notice)

- (iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. § 401, it will be presumed to be licensed to the judiciary without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

**Clause 6-65, Rights in Data – Special Works**

*Include the following clause as prescribed in § 650.65(e) (Clauses).*

**Rights in Data – Special Works (JAN 2010)**

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

“Data” means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

“Unlimited Rights” means the rights of the judiciary to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of Rights

(1) The judiciary shall have:

- (i) Unlimited rights in all data delivered under this contract, and in all data first produced in the performance of this contract, except as provided in paragraph (c) of this clause;
- (ii) The right to limit assertion of copyright in data first produced in the performance of this contract, and to obtain assignment of copyright in that data, in accordance with paragraph (c)(1) of this clause;
- (iii) The right to limit the release and use of certain data in accordance with paragraph (d) of this clause.

(2) The contractor shall have, to the extent permission is granted in accordance with paragraph (c)(1) of this clause, the right to assert claim to copyright subsisting in data first produced in the performance of this contract.

(c) Copyright:

(1) Data first produced in the performance of this contract.

- (i) The contractor shall not assert or authorize others to assert any claim to copyright subsisting in any data first produced in the performance of this contract without prior written permission of the contracting officer. When copyright is asserted, the contractor shall affix the appropriate copyright notice of 17 U.S.C. § 401 or § 402 and acknowledgment of judiciary sponsorship (including contract number) to the data when delivered to the judiciary, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The contractor grants to the judiciary, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all delivered data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the judiciary.

(ii) If the judiciary desires to obtain copyright in data first produced in the performance of this contract and permission has not been granted as set forth in paragraph (c)(1)(i) of this clause, the contracting officer shall direct the contractor to assign (with or without registration), or obtain the assignment of, the copyright to the judiciary or its designated assignee.

(2) Data not first produced in the performance of this contract. The contractor shall not, without prior written permission of the contracting officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and that contain the copyright notice of 17 U.S.C. § 401 or § 402, unless the contractor identifies such data and grants to the judiciary, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause.

(d) Release and Use Restrictions

Except as otherwise specifically provided for in this contract, the contractor shall not use, release, reproduce, distribute, or publish any data first produced in the performance of this contract, nor authorize others to do so, without written permission of the contracting officer.

(e) Indemnity

The contractor shall indemnify the judiciary and its officers, agents, and employees acting for the judiciary against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of any data furnished under this contract; or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the judiciary provides notice to the contractor as soon as practicable of any claim or suit, affords the contractor an opportunity under applicable laws, rules, or regulations to participate in the defense of the claim or suit, and obtains the contractor's consent to the settlement of any claim or suit other than as required by final decree of a court of competent jurisdiction; and these provisions do not apply to material furnished to the contractor by the judiciary and incorporated in data to which this clause applies.

(end)

### **Clause 6-70, Work for Hire**

*Include the following clause as prescribed in § 520.75(i) (Provisions and Clauses) and § 650.65(f) (Clauses).*

#### **Work for Hire (JAN 2003)**

The contractor agrees that the work performed under this contract is a work made for hire. The contractor further understands that as such, the work provided under the contract, including all materials, data, and other information developed, delivered, furnished, or otherwise called for under the contract, are works of the United States and are therefore in the public domain. If, for some reason, it is later determined that this is not a work made for hire, the contractor agrees to assign all rights, title, and interest in this program/project/material (whichever is applicable) to the federal judiciary.

(end)

### **Clause 6-75, Rights to Data in an Offer**

*Include the following clause as prescribed in § 650.65(g) (Clauses).*

#### **Rights to Data in an Offer (APR 2013)**

Except for data contained on pages\_\_\_\_\_, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the judiciary will have unlimited rights (as defined in Clause 6-60, Rights in Data – General) in and to the technical data contained in the offer dated \_\_\_\_\_, upon which this contract is based.

(end)

### **Clause 6-80, Rights in Data – Existing Works**

*Include the following clause as prescribed in § 650.65(h) (Clauses).*

#### **Rights in Data – Existing Works (JAN 2010)**

- (a) Except as otherwise provided in this contract, the contractor grants to the judiciary, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the judiciary, for all the material or subject matter called for under this contract, or for which this clause is specifically made applicable.

- (b) The contractor shall indemnify the judiciary and its officers, agents, and employees acting for the judiciary against any liability, including costs and expenses, incurred as the result of (1) the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication or use of any data furnished under this contract; or (2) any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the judiciary provides notice to the contractor as soon as practicable of any claim or suit, affords the contractor an opportunity under applicable laws, rules, or regulations to participate in the defense of the claim or suit, and obtains the contractor's consent to the settlement of any claim or suit other than as required by final decree of a court of competent jurisdiction; and do not apply to material furnished to the contractor by the judiciary and incorporated in data to which this clause applies.

(end)

### **Clause 6-85, Commercial Computer Software License**

*Include the following clause as prescribed in § 650.65(i) (Clauses).*

#### **Commercial Computer Software License (APR 2013)**

- (a) Notwithstanding any contrary provisions contained in the contractor's standard commercial license or lease agreement, the contractor agrees that the judiciary will have the rights that are set forth in paragraph (b) of this clause to use, duplicate or disclose any commercial computer software delivered under this contract. The terms and provisions of this contract shall comply with federal laws and Volume 14 of the *Guide to Judiciary Policy*.
- (b) (1) The commercial computer software delivered under this contract may not be used, reproduced, or disclosed by the judiciary except as provided in paragraph (b)(2) of this clause or as expressly stated otherwise in this contract.
- (2) The commercial computer software may be:
- (i) Used or copied for use with the computer(s) for which it was acquired, including use at any judiciary facility to which the computer(s) may be transferred;
  - (ii) Used or copied for use with a backup computer if any computer for which it was acquired is inoperative;
  - (iii) Reproduced for safekeeping (archives) or backup purposes;

- (iv) Modified, adapted, or combined with other computer software, provided that the modified, adapted, or combined portions of the derivative software incorporating any of the delivered, commercial computer software shall be subject to same restrictions set forth in this contract;
  - (v) Disclosed to and reproduced for use by support service contractors or their subcontractors, subject to the same restrictions set forth in this contract; and
  - (vi) Used or copied for use with a replacement computer.
- (3) If the commercial computer software is otherwise available without disclosure restrictions, the contractor licenses it to the judiciary without disclosure restrictions.
- (c) The contractor shall affix a notice substantially as follows to any commercial computer software delivered under this contract:

**Notice:** Notwithstanding any other lease or license agreement that may pertain to, or accompany the delivery of, this computer software, the rights of the judiciary regarding its use, reproduction and disclosure are as set forth in judiciary Contract No. \_\_\_\_\_.

(end)

### **Clause 6-90, Notice and Assistance Regarding Patent and Copyright Infringement**

*Include the following clause as prescribed in § 660.20(a) (Clauses).*

#### **Notice and Assistance Regarding Patent and Copyright Infringement (APR 2010)**

- (a) The contractor shall report to the contracting officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the contractor has knowledge.
- (b) In the event of any claim or suit against the judiciary on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the contractor shall furnish to the judiciary, when requested by the contracting officer, all evidence and information in the contractor's possession pertaining to such claim or suit. Such evidence and information shall be

furnished at the expense of the judiciary except where the contractor has agreed to indemnify the judiciary.

- (c) The contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that are expected to exceed the judiciary small purchase threshold.

(end)

### **Clause 6-95, Patent Indemnity**

*Include the following clause as prescribed in § 660.20(b) (Clauses).*

#### **Patent Indemnity (JAN 2010)**

- (a) The contractor shall indemnify the judiciary and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. § 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as “construction work”) under this contract, or out of the use or disposal by or for the account of the judiciary of such supplies or construction work.
- (b) This indemnity shall not apply unless the contractor shall have been informed as soon as practicable by the judiciary of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to:
  - (1) An infringement resulting from compliance with specific written instructions of the contracting officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the contractor;
  - (2) An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or

- (3) A claimed infringement that is unreasonably settled without the consent of the contractor, unless required by final decree of a court of competent jurisdiction.

(end)

**Alternate I** (JAN 2010): *As prescribed in § 660.20(c) (Clauses), add the following paragraph (c) to the basic clause:*

- (c) This patent indemnification shall not apply to the following items:

---

[Contracting Officer list and/or identify the items to be excluded from this indemnity.]

**Alternate II** (JAN 2010): *As prescribed in § 660.20(d) (Clauses), add the following paragraph (c) to the basic clause:*

- (c) This patent indemnification shall cover the following items:

---

[List and/or identify the items to be included under this indemnity.]

**Alternate III** (JAN 2010): *As prescribed in § 660.20(e) (Clauses), add the following paragraph (c) to the basic clause:*

- (c) As to subcontracts at any tier for communication service, this clause shall apply only to individual communication service authorizations over the simplified acquisition threshold issued under this contract and covering those communications services and facilities:
  - (1) That are or have been sold or offered for sale by the contractor to the public,
  - (2) That can be provided over commercially available equipment, or
  - (3) That involve relatively minor modifications.

### **Clause 6-100, Waiver of Indemnity**

*Include the following clause as prescribed in § 660.20(f) (Clauses).*

#### **Waiver of Indemnity (JAN 2010)**

Any provision or clause of this contract to the contrary notwithstanding, the judiciary hereby authorizes and consents to the use and manufacture, solely in

performing this contract, of any invention covered by the United States patents identified below and waives indemnification by the contractor with respect to such patents:

---

[Contracting Officer identify the patents by number or by other means if more appropriate.]

(end)

### **Clause 6-105, California E-Waste Fee**

*Include the following clause as prescribed in § 640.30.70(c) (Clauses).*

#### **California E-Waste Fee (APR 2013)**

- (a) The State of California enacted the Electronic Waste Recycling Act of 2003 (as amended) establishing a statewide program to promote and fund the collection and recycling for “covered electronic devices”. The Act, among other provisions, establishes a charge applicable to purchase of such devices that will cover the cost of the ultimate disposal of such devices (e-waste recycling fee).
- (b) The U. S. Government Accountability Office (GAO) has analyzed the California E-Waste Recycling fee and determined it to be a state tax from which the federal government is exempt in *Administrative Office of the U.S. Courts – California E-Waste Recycling Fee*, B-320998, May 4, 2011, and has so informed the State of California. The government, including the judiciary, may not pay this fee.
- (c) The contractor shall not charge or attempt to collect the California E-Waste Recycling Fee under this contract.

(end)

### **Clause 6-110, Deferred Ordering of Technical Data or Computer Software**

*Include the following clause as prescribed in § 650.65(j) (Clauses).*

#### **Deferred Ordering of Technical Data or Computer Software (JUN 2014)**

In addition to technical data or computer software specified elsewhere in this contract to be delivered hereunder, the Government may, at any time during the performance of this contract or within a period of three (3) years after acceptance of all items (other than technical data or computer software) to be delivered under this contract or the termination of this contract, order any technical data or computer software generated in the performance of this contract or any

subcontract hereunder. When the technical data or computer software is ordered, the Contractor shall be compensated for converting the data or computer software into the prescribed form, for reproduction and delivery. The obligation to deliver the technical data of a subcontractor and pertaining to an item obtained from him shall expire three (3) years after the date the Contractor accepts the last delivery of that item from that subcontractor under this contract. The Government's rights to use said data or computer software shall be pursuant to the "Rights in Data" clause of this contract.

(end)

## **Provisions and Clauses (Chapter 7)**

### **Clause 7-1, Contract Administration**

*Include the following clause as prescribed in § 715.55(a) (Clauses/Provisions).*

#### **Contract Administration (JAN 2003)**

- (a) The contracting officer and contracting officer's representative for the contract will be the judiciary's primary points of contact during the performance of the contract. The contracting officer responsible for the administration of this contract will provide a cover letter providing the contracting officer's name, business address, e-mail address, and telephone number. Written communications from the contractor shall make reference to the contract number and shall be mailed to the address provided in the cover letter. Communications pertaining to contract administration matters will be addressed to the contracting officer.
- (b) Notwithstanding the contractor's responsibility for total management during the performance of this contract, the administration of this contract will require the maximum coordination between the judiciary and the contractor. All contract administration will be effected by the contracting officer except as may be re-delegated. In no event will any understanding or agreement, contract modification, change order, or other matter in deviation from the terms of this contract between the contractor and a person other than the contracting officer be effective or binding upon the judiciary. All such actions shall be formalized by a proper contractual document executed by the contracting officer.

(end)

### **Clause 7-5, Contracting Officer's Representative**

*Include the following clause as prescribed in § 715.55(b) (Clauses/Provisions).*

#### **Contracting Officer's Representative (APR 2013)**

- (a) Upon award, a contracting officer's representative (COR) may be appointed by the contracting officer. The COR will be responsible for coordinating the technical aspects of this contract and inspecting products/services furnished hereunder; however, the COR will not be authorized to change any terms and conditions of the resultant contract, including price.

- (b) The COR, if appointed, may be assigned one or more of the following responsibilities:
- (1) monitoring the contractor's performance under the contract to ensure compliance with technical requirements of the contract;
  - (2) notifying the contracting officer immediately if performance is not proceeding satisfactorily;
  - (3) ensuring that changes in work under the contract are not initiated before written authorization or modification is issued by the contracting officer;
  - (4) providing the contracting officer a written request and justification for changes;
  - (5) providing interpretations relative to the meaning of technical specifications and technical advice relative to contracting officer's written approvals, and
  - (6) providing general technical guidance to the contractor within the scope of the contract and without constituting a change to the contract.

(end)

### **Clause 7-10, Contractor Representative**

*Include the following clause as prescribed in § 715.55(c) (Clauses/Provisions).*

#### **Contractor Representative (JAN 2003)**

- (a) The contractor's representative to be contacted for all contract administration matters is as follows (*contractor complete the information*):
- Name:  
Address:  
Telephone:  
E-mail:  
Fax:
- (b) The contractor's representative shall act as the central point of contact with the judiciary, shall be responsible for all contract administration issues relative to this contract, and shall have full authority to act for and legally bind the contractor on all such issues.

(end)

### **Clause 7-15, Observance of Regulations/Standards of Conduct**

*Include the following clause as prescribed in § 715.55(d) (Clauses/Provisions).*

#### **Observance of Regulations/Standards of Conduct (JAN 2003)**

- (a) When contractor personnel are performing contract work at a judiciary facility, they shall comply with all rules and regulations of the facility, including, but not limited to, rules and regulations governing security, controlled access, personnel clearances and conduct with respect to health and safety and to property at the site, regardless of whether or not title to such property is vested in the judiciary. The facilities to which the contractor has access belong to the judiciary and will not at any time be considered "Judiciary Property" furnished to the contractor.
- (b) The contractor and its employees shall only conduct business covered by the contract during periods paid for by the judiciary, and will not conduct any other business on judiciary premises.
- (c) The contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, appearance and integrity. It is the contractor's responsibility to take disciplinary action with respect to its employees as may be necessary. The contractor is also responsible for ensuring that its employees do not disturb papers on desks, open desk drawers or cabinets, or use judiciary property (such as, but not limited to, telephones or copiers) except as authorized.

(end)

### **Clause 7-20, Security Requirements**

*Include the following clause as prescribed in § 330.10.30(o) (Provisions and Clauses) and § 715.55(e) (Clauses/Provisions).*

#### **Security Requirements (APR 2013)**

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

"Access" means physical entry into, and to the extent authorized, mobility within, a judiciary facility.

"Contractor employee" means an employee of the prime contractor or of any subcontractor, affiliate, partner, joint venture, or team members with which the contractor is associated. It also includes consultants engaged by any of those entities.

"Facility" and "judiciary facility" mean buildings, including areas within buildings, owned, leased, shared, occupied, or otherwise controlled by the judiciary.

"Judiciary IT resources" include, but are not limited to, computer equipment, networking equipment, telecommunications equipment, cabling, network drives, computer drives, network software, computer software, software programs, intranet sites, and internet sites.

(b) Requirements.

Contractor employees working on this contract must complete such forms as may be necessary for security purposes or other reasons. Completed forms shall be submitted as directed by the Contracting Officer's Representative (COR). Depending upon the level of access required to judiciary facilities or IT resources for performance of the work, contractor employees may be subject to any of the following types of security checks:

- Fingerprint Check
- Credit Check
- National Agency Check with Inquires (NACI)
- National Agency Check with Inquiries and Credit (NACIC)
- National Agency Check with Law and Credit (NACLC)
- Single Scope Background Investigation (SSBI)
- Single Scope Background Investigation – Periodic Reinvestigation (SSBI-PR)
- Public Trust Special Background Investigation (PTSBI)
- Citizenship and Immigration Services (CIS) Check

Contractor employees visiting court sites to provide support covered under this contract may be subjected to additional FBI screening and U.S. Marshal inspection.

(c) Exemption.

Affected contractor employees who have had a Federal background investigation without a subsequent break in Federal employment or Federal contract service exceeding two (2) years may be exempt from the investigation requirements of this clause subject to verification of the previous investigation. For each such employee, the contractor shall submit the following information: employee's full name, Social Security Number, and place and date of birth.

(d) Facility Access Cards (FAC).

The contractor shall be responsible for all Facility Access Cards or other judiciary identification cards issued to the contractor's employees and shall immediately notify the COR if any Facility Access Card(s) cannot be accounted for. The contractor shall notify the COR immediately whenever any contractor employee no longer has a need for his/her judiciary-issued FAC (e.g., employee terminates employment with the contractor, employee's duties no longer require access to judiciary facilities). The COR will instruct the contractor as to how to return the FAC. Upon expiration of this contract, the COR will instruct the contractor as to how to return all judiciary-issued FACs not previously returned. The contractor shall not return FACs to any person other than the individual(s) named by the COR.

(e) Control of access.

The judiciary shall have and exercise full and complete control over granting, denying, withholding, and terminating access of contractor employees to judiciary facilities and IT resources. The COR will notify the contractor immediately when the judiciary has determined that an employee is unsuitable or unfit to be permitted access to a judiciary facility following the completion of any of the security checks/investigations listed in (b) above, or as a result of new information obtained at any time during the contractor's performance. The contractor shall immediately notify such employee that he/she no longer has access to any judiciary facility and/or judiciary IT resources, remove the employee from any such facility that he/she may be in, and provide a suitable replacement who must comply with the requirements of this and other applicable clauses. In addition, the contracting officer may require the contractor to prohibit individuals from access to judiciary facilities or IT resources if the judiciary deems their initial or continued access contrary to the public interest for any reason, including, but not limited to, carelessness, insubordination, incompetence, or security concerns.

(f) The contractor shall include the substance of this clause in all subcontracts at any tier where the subcontractor may be required to have routine physical access to a judiciary facility or routine access to a judiciary IT resource.

(g) The judiciary reserves the right to refuse to grant facility access for any contractor employee who has been convicted of a felony.

(end)

## **Clause 7-25, Indemnification**

*Include the following clause as prescribed in § 715.55(f) (Clauses/Provisions).*

### **Indemnification (AUG 2004)**

(a) The contractor assumes full responsibility for and shall indemnify the judiciary against any and all losses or damage of whatsoever kind and nature to any and all judiciary property, including any equipment, products, accessories, or parts furnished, while in its custody and care for storage, repairs, or service to be performed under the terms of this contract, resulting in whole or in part from the negligent acts or omissions of the contractor, any subcontractor, or any employee, agent or representative of the contractor or subcontractor.

(b) If due to the fault, negligent acts (whether of commission or omission) and/or dishonesty of the contractor or its employees, any judiciary-owned or controlled property is lost or damaged as a result of the contractor's performance of this contract, the contractor shall be responsible to the judiciary for such loss or damage, and the judiciary, at its option, may, in lieu of requiring reimbursement therefor, require the contractor to replace at its own expense, all property lost or damaged.

(c) Hold Harmless and Indemnification Agreement

The contractor shall save and hold harmless and indemnify the judiciary against any and all liability claims and cost of whatsoever kind and nature for injury to or death of any person or persons and for loss or damage to any contractor property or property owned by a third party occurring in connection with or in any way incident to or arising out of the occupancy, use, service, operation, or performance of work under the terms of this contract, resulting in whole or in part from the acts or omissions of the contractor, any subcontractor, or any employee, agent, or representative of the contractor or subcontractor.

(d) The contractor shall indemnify and hold the judiciary, its employees, and others acting on its behalf harmless against any and all loss, liability, or damage arising out of the negligence, failure to act, fraud, embezzlement, or other misconduct by the contractor, its employees, subcontractors, agents, or representatives of the contractor or subcontractor.

(e) Judiciary's Right of Recovery

Nothing in the above paragraphs will be considered to preclude the judiciary from receiving the benefits of any insurance/bonds the contractor may carry which provides for the indemnification of any loss or destruction of, or damages to,

property in the custody and care of the contractor where such loss, destruction or damage is to judiciary property. The contractor shall do nothing to prejudice the judiciary's right to recover against third parties for any loss, destruction of, or damage to, judiciary property, and upon the request of the contracting officer will, at the judiciary's expense, furnish to the judiciary all reasonable assistance and cooperation (including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the judiciary) in obtaining recovery.

(f) Judiciary Liability

The judiciary will not be liable for any injury to the contractor's personnel or damage to the contractor's property unless such injury or damage is due to negligence on the part of the judiciary and is recoverable under the Federal Torts Claims Act, or pursuant to other statutory authority applicable to the judiciary.

(end)

**Clause 7-30, Public Use of the Name of the Federal Judiciary**

*Include the following clause as prescribed in § 715.55(g) (Clauses/Provisions).*

**Public Use of the Name of the Federal Judiciary (JUN 2014)**

- (a) The contractor shall not refer to the judiciary, or to any court or other organizational entities existing thereunder (hereinafter referred to as "the judiciary"), in advertising, news releases, brochures, catalogs, television and radio advertising, letters of reference, websites, or any other media used generally by the vendor in its commercial marketing initiatives, in such a way that it represents or implies that the judiciary prefers or endorses the products or services offered by the contractor. This provision will not be construed as limiting the contractor's ability to refer to the judiciary as one of its customers when providing past performance information as part of a proposal submission, as opposed to general public marketing.
- (b) No public release of information pertaining to this contract will be made without prior judiciary written approval, as appropriate, and then only with written approval of the contracting officer.

(end)

**Clause 7-35, Disclosure or Use of Information**

*Include the following clause as prescribed in § 715.55(h) (Clauses/Provisions).*

**Disclosure or Use of Information (APR 2013)**

- (a) Judiciary information made available to the contractor for the performance or administration of this contract shall be used only for those purposes and shall not be used in any other way without the written agreement of the contracting officer. This clause takes precedence over and is an explicit limitation to the rights enumerated in section (d)(2) of Clause 6-60, Rights in Data – General.
- (b) To the extent the information is otherwise publicly available, it is public information and is not restricted by operation of this clause. However, if public information is provided to the contractor for use in performance or administration of this contract in a media, format, or otherwise in a manner in which it is not available the public, such information may not be used for any other purpose by the contractor except with the written permission of the contracting officer. If the contractor is uncertain about the availability or proposed use of information provided for the performance or administration of this contract, the contractor shall consult with the contracting officer regarding use of that information for other purposes.
- (c) The contractor agrees to assume responsibility for protecting the confidentiality of judiciary records which are not public information. Such information may include, but is not limited to, all employee data and any written and oral information of a personal nature. Such information is to be safeguarded to ensure that it is not improperly disclosed. Each officer or employee of the contractor to whom information may be made available or disclosed shall be notified in writing by the contractor that such information may be disclosed only for a purpose and to the extent authorized herein, and that further disclosure of any such information for a purpose or to an extent not so authorized may subject the person(s) responsible to criminal sanctions imposed by 18 U.S.C. § 641. That section provides, in pertinent part, that whoever without authority, sells, conveys, or disposes of any record of the United States or whoever receives the same with intent to convert it to their use or gain, knowing it to have been converted, will be guilty of a crime punishable by a fine up to \$10,000, or imprisoned up to ten years, or both. The contractor shall obtain written acknowledgment from each officer and employee to whom information is made available, that they are aware of the above penalties associated with unauthorized disclosure. Such acknowledgments are subject to the review of the contracting officer.
- (d) Performance of this contract may require the contractor to access and use data and information, proprietary to the judiciary or to a judiciary contractor, which is of such a nature that its dissemination or use, other than in performance of this contract, would be adverse to the interests of the judiciary and/or others.

- (e) Contractor and/or contractor personnel shall not divulge or release data or information developed or obtained in performance of this contract until made public by the judiciary, except as authorized by the contracting officer. The contractor shall not use, disclose, or reproduce proprietary data which bears a restrictive legend, other than as required in the performance of this contract. Nothing herein will preclude the use of any data independently acquired by the contractor without such limitations or prohibit an agreement at no cost to the judiciary between the contractor and the data owner which provides for greater rights to the contractor.
- (f) The judiciary and contractor agree that neither expects the performance under this contract to involve reporting or handling of classified information or materials. Either party shall notify the other promptly in writing if the expectation of that party changes, and shall include in the notice reasons therefore. If there are sealed records, in camera proceedings or grand jury matters, the contractor shall consult with the contracting officer as to the proper safeguarding, security, and secrecy of the original notes and transcript orders.
- (g) The contracting officer will advise the contractor whenever the judiciary places a service order which will require classified information or materials. The contractor will have the right to decline to provide services, in which event such services shall be outside the scope of this contract.
- (h) The contractor shall hold inviolate and in strictest confidence any and all information of an official nature not for inclusion in the document, any information which the presiding judicial official designates as "off the record" and all classified information and material.
- (i) The contractor shall classify, safeguard, and otherwise act with respect to all classified information and material in accordance with applicable law and requirements of the contracting officer. The contractor shall not permit any individual to have or gain access to the classified information or material without written permission of the contracting officer, except as access may be necessary for authorized employees of the contractor to perform services under this contract.
- (j) Notwithstanding any other provision of this contract, the contractor may deliver transcript containing classified material or information only to the judiciary. The contractor shall never sell or deliver such document to a private person without the express written permission of the contracting officer. Notwithstanding any other provision of this contract, the contractor shall never keep a copy of a

document containing classified material or information after the delivery of the original to the contracting officer.

(end)

### **Clause 7-40, Judiciary-Contractor Relationships**

*Include the following clause as prescribed in § 715.55(i) (Clauses/Provisions).*

#### **Judiciary-Contractor Relationships (JAN 2003)**

- (a) The judiciary and the contractor understand and agree that the services to be delivered under this contract by the contractor to the judiciary are non-personal services. The parties recognize and agree that no employer-employee or master-servant relationships exist or will exist under the contract between the judiciary and the contractor and/or between the judiciary and the contractor's employees. It is therefore, in the best interest of the judiciary to afford the parties a full and complete understanding of their respective obligations.
- (b) The contractor and/or the contractor's personnel under this contract shall not:
  - (1) be placed in a position where they are appointed or employed by a federal officer, or are under the supervision, direction, or evaluation of a federal officer;
  - (2) be placed in a staff or policy making position;
  - (3) be placed in a position of command, supervision, administration or control over judiciary personnel or the personnel of other contractors, or become a part of the judiciary organization;
  - (4) be used for the purpose of avoiding manpower ceilings or other personnel rules and regulations.
- (c) Employee Relationship
  - (1) The services to be performed under this contract do not require the contractor or its employees to exercise personal judgement and discretion on behalf of the judiciary. The contractor's employees will act and exercise personal judgement and discretion on the behalf of the contractor, as directed by the contractor's supervisory personnel, and in accordance with the contract terms and conditions.

- (2) Rules, regulations, directions, and requirements issued by the judiciary under the judiciary's responsibility for good order, administration, security, and safety are applicable to all personnel physically located on-site, inclusive of contractor personnel who are required under the terms and conditions of this contract to be so located. This is not to be construed or interpreted to establish any degree of judiciary control which is inconsistent with a non-personal services contract.

(end)

### **Clause 7-45, Travel**

*Include the following clause as prescribed in § 715.55(j) (Clauses/Provisions).*

#### **Travel (APR 2013)**

The contractor may propose travel costs if travel is required for performance of the contract and is an authorized reimbursable expense under the contract. The extent of reimbursement for incurred travel costs will be subject to the limitations set forth in the Guide to Judiciary Policy, Vol 19, Ch 4 (Judiciary Staff Travel Regulations).

(end)

### **Clause 7-50, Parking**

*Include the following clause as prescribed in § 715.55(k) (Clauses/Provisions).*

#### **Parking (APR 2013)**

There is no contractor parking available at the Thurgood Marshall Federal Judiciary Building (TMFJB). In the event that this contract requires the delivery of equipment or materials to the TMFJB, the contractor shall park delivery vehicles at designated locations within the TMFJB Complex ONLY WHILE LOADING AND UNLOADING THE VEHICLE. Arrangements for pick-up and delivery at the TMFJB shall be coordinated with the Contracting Officer's Representative (COR) and made in accordance with building management policies.

(end)

### **Clause 7-55, Contractor Use of Judiciary Networks**

*Include the following clause as prescribed in § 715.55(l) (Clauses/Provisions).*

### **Contractor Use of Judiciary Networks (JUN 2014)**

Whenever authorized to use judiciary networks, the contractor, subcontractor, teaming partner, and all employees (hereinafter referred to as “entities”), shall **not** perform or participate, directly or indirectly, in any of the following:

- (a) accessing internet sites which may be inappropriate or reflect poorly on the judiciary: Unless accessing internet sites is case-related, entities shall refrain from creating, downloading, viewing, storing, copying, and transmitting sexually-explicit or sexually-oriented materials which are never appropriate and may be illegal in some cases. Internet sites capture the domain name of all sites accessing them and maintain a record of this information. It could be embarrassing to the judiciary if the judiciary’s domain name were found on the access records of inappropriate sites;
- (b) logging onto video or audio sites, such as broadcast services or radio stations and downloading music files. This consumes significant disk space on local computers and may be a violation of copyright law. Each of the several thousand video clips downloaded daily can be equal to downloading a 400-page memorandum;
- (c) using judiciary systems to send or receive e-mails containing greeting cards, political statements, jokes, pictures, chain letters or other unauthorized mass mailings, regardless of the subject matter, and other items of a personal nature;
- (d) sending large attachments unless required for official business. Video, sound, or other large file attachments consume large amounts of network capacity. E-mail attachments, large files, and executable programs present two problems. First, large attachments consume network capacity and storage space on both national and local e-mail servers and desktops, slowing the network down for everyone. Second, executable programs present a risk for infection by computer viruses;
- (e) participating in chat rooms or using “instant messaging” software;
- (f) checking personal e-mail accounts over the judiciary’s network;
- (g) using the network connection for personal commercial purposes, private gain, or illegal activities. Unless use is required for official judiciary and contract-related business, all entities shall refrain from using the network connection for commercial purposes (including shopping). It is also inappropriate to use the network connection in support of outside employment activities (including consulting for pay, sales or administration of business transactions, and sales of products or services) or for illegal activities (such as gambling or hacking);

- (h) using the e-mail or the network connection for offensive activities. It is inappropriate to use e-mail or the internet to access, send, or receive information on, or in support of, activities that are illegal or offensive. Such activities include, but are not limited to, hate speech or material that ridicules or degrades others on the basis of race, creed, religion, color, sex, disability, national origin, or sexual orientation.

(end)

### **Provision 7-60, Judiciary-Furnished Property or Services**

*Include the following provision as prescribed in § 720.10.40(a) (Clauses).*

#### **Judiciary-Furnished Property or Services (JAN 2003)**

No property or services will be furnished by the judiciary unless specifically provided for in the solicitation.

(end)

### **Clause 7-65, Protection of Judiciary Buildings, Equipment, and Vegetation**

*Include the following clause as prescribed in § 720.10.40(b) (Clauses).*

#### **Protection of Judiciary Buildings, Equipment, and Vegetation (APR 2013)**

The contractor shall use reasonable care to avoid damaging buildings, equipment, and vegetation (such as trees, shrubs, and grass) on the judiciary facility. If the contractor's failure to use reasonable care causes damage to any of this property, the contractor shall replace or repair the damage at no expense to the judiciary, as the contracting officer directs. If the contractor fails or refuses to make such repair or replacement, the contractor shall be liable for the cost, which may be deducted from the contract price.

(end)

### **Clause 7-70, Judiciary Property Furnished "As Is"**

*Include the following clause as prescribed in § 720.10.40(c) (Clauses).*

#### **Judiciary Property Furnished "As Is" (APR 2013)**

- (a) The judiciary makes no warranty whatsoever with respect to judiciary property furnished "as is," except that the property is in the same condition when placed at

the F.o.b. point specified in the solicitation as when inspected by the contractor pursuant to the solicitation or, if not inspected by the contractor, as when last available for inspection under the solicitation.

- (b) The contractor may repair any property made available on an "as is" basis. Such repair will be at the contractor's expense except as otherwise provided in this clause. Such property may be modified at the contractor's expense, but only with the written permission of the contracting officer. Any repair or modification of property furnished "as is" shall not affect the title of the judiciary.
- (c) If there is any change in the condition of judiciary property furnished "as is " from the time inspected or last available for inspection under the solicitation to the time placed on board at the location specified in the solicitation, and such change will adversely affect the contractor, the contractor shall, upon receipt of the property, notify the contracting officer detailing the facts and, as directed by the contracting officer, either (1) return such property at the judiciary's expense or otherwise dispose of the property or (2) effect repairs to return the property to its condition when inspected under the solicitation or, if not inspected, last available for inspection under the solicitation. After completing the directed action and upon written request of the contractor, the contracting officer will equitably adjust any contractual provisions affected by the return, disposition, or repair in accordance with the procedures provided for in the Changes clause of this contract. The foregoing provisions for adjustment are the exclusive remedy available to the contractor, and the judiciary shall not be otherwise liable for any delivery of judiciary property furnished "as is" in a condition other than that in which it was originally offered.

(end)

### **Clause 7-75, Subcontracts**

*Include the following clause as prescribed in § 725.10.40(a) (Clauses).*

#### **Subcontracts (JAN 2003)**

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

“Approved Purchasing System” means a contractor’s purchasing system that has been reviewed and approved in writing.

“Consent to Subcontract” means the contracting officer’s written consent for the contractor to enter into a particular subcontract.

“Subcontract” means any contract entered into by a subcontractor to furnish products or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

- (b) This clause does not apply to subcontracts for special test equipment.
- (c) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced purchase/delivery/task orders), and only if required in accordance with paragraph (d) or (e) of this clause.
- (d) If the contractor does not have a written approved purchasing system, consent to subcontract is required for any subcontract that:
  - (1) is of the cost-reimbursement, time-and-materials, or labor-hour type; or
  - (2) is fixed price and exceeds either the judiciary’s small purchase threshold or five percent of the total estimated cost of the contract.
- (e) If the contractor has a written approved purchasing system, the contractor nevertheless shall obtain the contracting officer’s written consent before placing the following contracts:  

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- (f) (1) The contractor shall notify the contracting officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (c), (d), or (e) of this clause, including the following information:
  - (i) a description of the products or services to be subcontracted;
  - (ii) identification of the type of subcontract to be used;
  - (iii) identification of the proposed subcontractor;
  - (iv) the proposed subcontract price;
  - (v) the subcontractor’s detailed cost information, if required by other contract provisions;
  - (vi) a negotiation memorandum reflecting:

- (A) the principal elements of the subcontract price negotiations;
  - (B) the most significant considerations controlling establishment of initial or revised prices;
  - (C) the reason detailed cost information was or was not required;
  - (D) the extent, if any, to which the contractor did not rely on the subcontractor's detailed cost information in determining the price objective and in negotiating the final price;
  - (E) the extent to which it was recognized in the negotiation that the subcontractor's detailed cost information was not accurate, complete, or current; the action taken by the contractor and the subcontractor; and the effect of any such defective cost information on the total price negotiated;
  - (F) the reasons for any significant difference between the contractor's price objective and the price negotiated; and
  - (G) a complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.
- (2) If the contractor has a written approved purchasing system and consent is not required under paragraph (c), (d), or (e) of this clause, the contractor nevertheless shall notify the contracting officer reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds either the small purchases threshold or five percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (f)(1)(i) through (f)(1)(iv) of this clause.
- (g) Unless the consent or approval specifically provides otherwise, neither consent by the contracting officer to any subcontract nor approval of the contractor's purchasing system will constitute a determination:
- (1) of the acceptability of any subcontract terms or conditions;
  - (2) of the allowability of any cost under this contract; or

- (3) to relieve the contractor of any responsibility for performing this contract.
- (h) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, or any fee payable under cost-reimbursement type subcontracts will not exceed the fee limitations.
- (i) The contractor shall give the contracting officer immediate written notice of any action or suit filed and prompt notice of any claim made against the contractor by any subcontractor or vendor that, in the opinion of the contractor, may result in litigation related in any way to this contract, with respect to which the contractor may be entitled to reimbursement from the judiciary.
- (j) The judiciary reserves the right to review the contractor's purchasing system.
- (k) Paragraphs (d) and (f) of this clause do not apply to the following subcontracts, which were evaluated during negotiations.

(end)

#### **Clause 7-80, Competition in Subcontracting**

*Include the following clause as prescribed in § 725.10.40(b) (Clauses).*

##### **Competition in Subcontracting (JAN 2003)**

The contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(end)

#### **Clause 7-85, Examination of Records**

*Include the following clause as prescribed in § 730.20.20 (Contractor Record Retention).*

##### **Examination of Records (JAN 2003)**

- (a) The judiciary will have access to and the right to examine any directly pertinent books, documents, papers, or other records of the contractor involving transactions related to this contract, until three years after final payment under this contract, or for any shorter period specified for particular records.

- (b) The contractor agrees to include in all subcontracts under this contract a provision to the effect that the judiciary will have until three years after final payment under the contract, or for any shorter specified period for particular records, have access to and the right to examine any directly pertinent books, documents, papers, or other records of the subcontractor involving transactions related to the subcontract. The term subcontract as used in this clause excludes:
- (1) purchase orders; and
  - (2) subcontracts for public utility services at rates established for uniform applicability to the general public.

(end)

### **Clause 7-95, Contractor Inspection Requirements**

*Include the following clause as prescribed in § 220.10.70(d) (Clauses for Inclusion in Solicitations or Contracts).*

#### **Contractor Inspection Requirements (JAN 2003)**

The contractor is responsible for performing or having performed all inspections and tests necessary to substantiate that the products or services furnished under this contract conform to contract requirements, including any applicable technical requirements for specified manufacturers' parts. This clause takes precedence over any judiciary inspection and testing required in the contract's specifications, except for specialized inspections or tests specified to be performed solely by the judiciary.

(end)

### **Clause 7-100A, Limitation of Liability (Products)**

*Include the following clause as prescribed in § 220.10.70(e) (Clauses for Inclusion in Solicitations or Contracts).*

#### **Limitation of Liability (Products) (JAN 2003)**

- (a) Except as provided in paragraphs (b) and (c) this clause, and except for remedies expressly provided elsewhere in this contract, the contractor shall not be liable for loss of or damage to property of the judiciary (excluding the products delivered under this contract) that:

- (1) occurs after judiciary acceptance of the products delivered under this contract; and
  - (2) results from any defects or deficiencies in the products.
- (b) The limitation of liability under paragraph (a) of this clause shall not apply when a defect or deficiency in, or the judiciary's acceptance of, the products results from willful misconduct or lack of good faith on the part of any of the contractor's managerial personnel. The term "contractor's managerial personnel," as used in this clause, means the contractor's directors, officers, and any of the contractor's managers, superintendents, or equivalent representatives who have supervision or direction of:
- (1) all or substantially all of the contractor's business;
  - (2) all or substantially all of the contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or
  - (3) a separate and complete major industrial operation connected with the performance of this contract.
- (c) If the contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the judiciary through purchase or use of the products required to be delivered under this contract or the contractor's performance of services or furnishing of materials under this contract, the contractor shall be liable to the judiciary, to the extent of such insurance or reserve, for loss of or damage to property of the judiciary occurring after judiciary acceptance of, and resulting from any defects or deficiencies in, the products delivered under this contract.

(end)

**Clause 7-100B, Limitation of Liability (Services)**

*Include the following clause as prescribed in § 220.10.70(f) (Clauses for Inclusion in Solicitations or Contracts).*

**Limitation of Liability (Services) (JAN 2003)**

- (a) Except as provided in paragraphs (b) and (c) of this clause, and except to the extent that the contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any

materials furnished in conjunction with those services), the contractor shall not be liable for loss of or damage to property of the judiciary that:

- (1) occurs after judiciary acceptance of services performed under this contract; and
  - (2) results from any defects or deficiencies in the services performed or materials furnished.
- (b) The limitation of liability under paragraph (a) of this clause shall not apply when a defect or deficiency in, or the judiciary's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the contractor's managerial personnel. The term "contractor's managerial personnel," as used in this clause, means the contractor's directors, officers, and any of the contractor's managers, superintendents, or equivalent representatives who have supervision or direction of:
- (1) all or substantially all of the contractor's business;
  - (2) all or substantially all of the contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or
  - (3) a separate and complete major industrial operation connected with the performance of this contract.
- (c) If the contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the judiciary through the contractor's performance of services or furnishing of materials under this contract, the contractor shall be liable to the judiciary, to the extent of such insurance or reserve, for loss of or damage to property of the judiciary occurring after judiciary acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

(end)

**Clause 7-105, RESERVED**

**Clause 7-110, Bankruptcy**

*Include the following clause as prescribed in § 735.60.40 (Clause).*

**Bankruptcy (JAN 2003)**

In the event the contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the contracting officer responsible for administering the contract. This notification shall be furnished within five calendar days of the initiation of the bankruptcy proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the petition was filed, and a list of judiciary contract numbers and contracting offices for all judiciary contracts pursuant to which final payment has not been made. This obligation remains in effect until final payment under this contract.

(end)

**Clause 7-115, Availability of Funds**

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

**Availability of Funds (JAN 2003)**

Funds are not presently available for this contract. The judiciary's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the judiciary for any payment may arise until funds are made available to the contracting officer for this contract and until the contractor receives notice of such availability, to be confirmed in writing by the contracting officer.

(end)

**Clause 7-120, Availability of Funds for the Next Fiscal Year**

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

**Availability of Funds for the Next Fiscal Year (JAN 2003)**

Funds are not presently available for performance under this contract beyond \_\_\_\_\_. The judiciary's obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the judiciary for any payment may arise for performance under this contract beyond \_\_\_\_\_,

until funds are made available to the contracting officer for performance and until the contractor receives notice of availability, to be confirmed in writing by the contracting officer.

(end)

### **Clause 7-125, Invoices**

*Include the following clause as prescribed in § 740.20.30 (Clause).*

#### **Invoices (APR 2011)**

- (a) Invoices shall be submitted to the address (physical or e-mail) specified in this contract and in accordance with any schedule for payments set forth elsewhere under this contract.
- (b) The office that will make payments due under this contract will be designated in the contract at the time of contract award.
- (c) To constitute a proper invoice, the billing document shall include the following information and/or attached documentation:
  - (1) name of business concern and such business's Taxpayer Identification Number;
  - (2) period(s) covered by invoice and invoice date;
  - (3) purchase order or contract number or other authorization for delivery of property or services, e.g., delivery/task order number for orders under indefinite delivery contracts ;
  - (4) for each line item — general description of product delivered or services rendered, measured unit, and associated price;
  - (5) any applicable payment discount terms;
  - (6) total amount billed;
  - (7) a subtotal of any and all fees or credits applied to the invoice;
  - (8) an amount due (if any) or credit balance;
  - (9) name (where practicable), title, phone number, fax number, and complete mailing address of the responsible official to whom payment is to be sent.

The “remit to” address shall correspond to the remittance address in the contract;

- (10) other substantiating documentation or information as required by the purchase/delivery/task order or contract;
- (11) all follow-up invoices shall be marked “Duplicate of Original.” Contractor questions regarding payment information or check identification shall be directed to the relevant paying authority specified in the contract.

(end)

**Alternate I (JAN 2010):** *As prescribed in § 520.75(f), and when applicable, the contracting officer must substitute the following paragraph (c)(4) for paragraphs (c)(4) of the basic Clause 7-125.*

- (4) All invoices for services under this agreement shall indicate in detail the following:
  - (i) person performing service each day by hour and part of an hour;
  - (ii) services performed each day by hour and part of an hour;
  - (iii) rates and charges for each service so detailed; and
  - (iv) individual expenses charged, if allowed under this agreement.

Note: Minimum charges for portions of an hour may be allowed, if such a charging practice has been disclosed before award of this agreement.

### **Clause 7-130, Interest (Prompt Payment)**

*Include the following clause as prescribed in § 740.30.30 (Payment of Interest).*

#### **Interest (Prompt Payment) (JAN 2003)**

The provisions of the Prompt Payment Act of 1982 and OMB Budget Circular A-125 concerning interest on overdue payments are not applicable to the judiciary. Therefore, interest is not payable under this contract for overdue payments.

(end)

### **Clause 7-135, Payments**

*Include the following clause as prescribed in § 740.30.50(a) (Clauses).*

#### **Payments (APR 2013)**

The judiciary will pay the contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for products delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment will be made on partial deliveries accepted by the judiciary if:

- (1) the amount due on the deliveries warrants it; or
- (2) the contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

Unless authorized elsewhere in this contract, payments will not be made more often than monthly.

(end)

### **Clause 7-140, Discounts for Prompt Payment**

*Include the following clause as prescribed in § 740.30.50(b) (Clauses).*

#### **Discounts for Prompt Payment (JAN 2003)**

- (a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a discount for prompt payment in conjunction with the offer, offerors awarded contracts may include discounts for prompt payment on individual invoices.
- (b) In connection with any discount offered for prompt payment, time will be computed from the date of the invoice. If the contractor has not placed a date on the invoice, the due date will be calculated from the date the designated billing office receives a proper invoice, provided the judiciary annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment will be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal

holiday when judiciary offices are closed and judiciary business is not expected to be conducted, payment may be made on the following business day.

(end)

### **Clause 7-145, Government Purchase Card**

*Include the following clause as prescribed in § 740.30.50(c) (Clauses).*

#### **Government Purchase Card (JAN 2003)**

- (a) Card holders may use an authorized government purchase card to make payments for orders placed against this contract.
- (b) Purchase Card Terms: In accepting the purchase card as payment, the contractor agrees to abide by the terms of the GSA purchase card contract.
- (c) Backorder: In accordance with the GSA purchase card contract, the contractor may not charge for back-ordered products before shipment,
- (d) Taxes: Government purchases are generally not subject to state or local taxes, with limited exceptions in Arizona, New Mexico and Hawaii.
- (e) Unauthorized card: If the contractor determines that the card bearer is not an authorized cardholder, or that the card is not an authorized government purchase card, then the contractor shall immediately notify the contracting officer.
- (f) Disputes: Any purchase card disputes will be resolved in accordance with the GSA purchase card contract.
- (g) Payments: Purchase card payments will be made in accordance with the GSA purchase card contract.

(end)

### **Clause 7-150, Extras**

*Include the following clause as prescribed in § 740.30.50(d) (Clauses).*

#### **Extras (JAN 2003)**

Except as otherwise provided in this contract, no payment for extras will be made unless such extras, and the price for such extras, have been authorized in writing by the contracting officer.

(end)

**Clause 7-155, Certification of Final Indirect Costs**

*Include the following clause as prescribed in § 740.30.50(e) (Clauses).*

**Certification of Final Indirect Costs (JAN 2003)**

- (a) The contractor shall:
  - (1) certify any offer to establish or modify final indirect cost rates;
  - (2) use the format in paragraph (c) of this clause to certify; and
  - (3) have the certificate signed by an individual of the contractor's organization at a level no lower than a vice president or chief financial officer of the business segment of the contractor that submits the offer.
- (b) Failure by the contractor to submit a signed certificate, as described in this clause, may result in final indirect costs at rates unilaterally established by the contracting officer.
- (c) The certificate of final indirect costs shall read as follows:

**Certificate of Final Indirect Costs**

This is to certify that I have reviewed this offer to establish final indirect cost rates and to the best of my knowledge and belief:

- (1) all costs included in this offer \_\_\_\_\_ (*identify offer and date*) to establish final indirect cost rates for \_\_\_\_\_ (*identify period covered by rate*) are allowable in accordance with the cost principles in the Guide to Judiciary Policy, Vol 14, Ch 4 applicable to the contracts to which the final indirect cost rates will apply; and
- (2) this offer does not include any costs which are expressly unallowable under cost principles of the Guide to Judiciary Policy, Vol 14, Ch 4.

Firm: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Certifying Official: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

(end)

### **Clause 7-160, Limitation on Withholding of Payments**

*Include the following clause as prescribed in § 740.40.50(a) (Clauses).*

#### **Limitation on Withholding of Payments (APR 2013)**

If more than one clause or term of this contract authorizes the temporary withholding of amounts otherwise payable to the contractor for products delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one clause or term at that time; *provided*, that this limitation shall not apply to:

- (1) withholdings pursuant to any clause relating to wages or hours of employees;
- (2) withholdings not specifically provided for by this contract;
- (3) the recovery of overpayments; and
- (4) any other withholding for which the contracting officer determines that this limitation is inappropriate.

(end)

### **Clause 7-165, Penalties for Unallowable Costs**

*Include the following clause as prescribed in § 740.40.50(b) (Clauses).*

#### **Penalties for Unallowable Costs (JUN 2012)**

- (a) Definition. "Offer," as used in this clause, means either:
  - (1) a final indirect cost rate offer submitted by the contractor after the expiration of its fiscal year which:
    - (i) relates to any payment made on the basis of billing rates; or
    - (ii) will be used in negotiating the final contract price; or
  - (2) the final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.

- (b) Contractors which include unallowable indirect costs in an offer may be subject to penalties. The penalties are prescribed in 10 U.S.C. § 2324 or 41 U.S.C. § 4303, as applicable.
- (c) The contractor shall not include in any offer any cost that is unallowable, as defined in the Guide to Judiciary Policy, Vol 14, Ch 4.
- (d) If the contracting officer determines that a cost submitted by the contractor in its offer is expressly unallowable, the contractor shall be assessed a penalty equal to:
  - (1) the amount of the disallowed cost allocated to this contract; plus
  - (2) simple interest, to be computed:
    - (i) on the amount the contractor was paid on a billing payment in excess of the amount to which the contractor was entitled; and
    - (ii) using the applicable rate effective for each six-month interval prescribed by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).
- (e) If the contracting officer determines that a cost submitted by the contractor in its offer includes a cost previously determined to be unallowable for that contractor, then the contractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.
- (f) Determinations under paragraphs (d) and (e) of this clause are final decisions.
- (g) In certain cases, the contracting officer may waive the penalties in paragraph (d) or (e) of this clause. The contracting officer will provide a written determination of the reasons for the waiver in the contract file.
- (h) Payment by the contractor of any penalty assessed under this clause does not constitute repayment to the judiciary of any unallowable cost which has been paid by the judiciary to the contractor.

(end)

### **Clause 7-170, Notice of Intent to Disallow Costs**

*Include the following clause as prescribed in § 740.40.50(c) (Clauses).*

#### **Notice of Intent to Disallow Costs (JAN 2003)**

- (a) Notwithstanding any other clause of this contract:
  - (1) The contracting officer may at any time issue to the contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this contract that have been determined not to be allowable under the contract terms; and
  - (2) The contractor may, after receiving a notice under paragraph (a)(1) of this clause, submit a written response to the contracting officer, with justification for allowance of the costs. If the contractor does respond within 60 days, the contracting officer will, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.
- (b) Failure to issue a notice under this Notice of Intent to Disallow Costs clause will not affect the judiciary's rights to take exception to incurred costs.

(end)

### **Clause 7-175, Assignment of Claims**

*Include the following clause as prescribed in § 740.50.40(a) (Clauses).*

#### **Assignment of Claims (JAN 2003)**

- (a) The contractor may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.
- (b) Any assignment or reassignment authorized under this clause will cover all unpaid amounts payable under this contract, and will not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.
- (c) The contractor shall not furnish or disclose to any assignee under this contract any sensitive or classified document (including this contract) or information related to work under this contract unless the contracting officer authorizes such action in writing.

(end)

### **Clause 7-180, Prohibition of Assignment of Claims**

*Include the following clause as prescribed in § 740.50.40(b) (Clauses).*

#### **Prohibition of Assignment of Claims (JUN 2012)**

The assignment of claims under the Assignment of Claims Act of 1940, as amended, 31 U.S.C. § 3727, 41 U.S.C. § 6305, is prohibited for this contract.

(end)

### **Clause 7-185, Changes**

*Include the following clause as prescribed in § 745.40.40(a) (Clauses).*

#### **Changes (APR 2013)**

- (a) The contracting officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:
  - (1) drawings, designs, or specifications when the products to be furnished are to be specially manufactured for the judiciary in accordance with the drawings, designs, or specifications;
  - (2) statement of work or description of services to be performed;
  - (3) method of shipment or packing of products;
  - (4) place of delivery of products or place of performance;
  - (5) delivery or performance schedule, time (i.e. hours of the day, days of the week, etc.) or place of delivery or performance of services;
  - (6) judiciary-furnished property or facilities.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the contracting officer will make an equitable adjustment in the contract price, the delivery schedule, or both, and will modify the contract.
- (c) The contractor shall assert its right to an adjustment within 30 days from the date of receipt of the written order. However, if the contracting officer decides that the

facts justify it, the contracting officer may receive and act upon an offer submitted before final payment of the contract.

- (d) If the contractor's offer includes the cost of property made obsolete or excess by the change, the contracting officer will have the right to prescribe the manner of the disposition of the property.
- (e) Failure to agree to any adjustment is a dispute under the Disputes clause. However, nothing in this clause will excuse the contractor from proceeding with the contract as changed.

(end)

**Alternate I (APR 2013):** *In accordance with § 745.40.40(b) (Clauses), substitute the following paragraphs (b) and (d) for the same numbered paragraphs of the basic clause in cost-reimbursement contracts.*

- (b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the contracting officer will make an equitable adjustment in the:
  - (1) estimated cost, delivery or completion schedule, or both;
  - (2) amount of any fixed fee; and
  - (3) other affected terms and shall modify the contract accordingly.
- (d) Notwithstanding the terms and conditions of paragraphs (a) and (b) of this clause, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance of this contract, shall not be increased or considered to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until this modification is made, the contractor shall not be obligated to continue performance or incur costs beyond the point established in either Clause 4-85, Limitation of Cost, or Clause 4-90, Limitation of Funds, of this contract, whichever is applicable.

**Alternate II (APR 2013):** *In accordance with § 745.40.40(c) (Clauses), substitute following for paragraph (b) of the basic clause in time-and-materials or labor-hour contracts.*

(b) If any change causes an increase or decrease in the hourly rates, the ceiling price, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the contracting officer will make an equitable adjustment in any one or more of the following and will modify the contract accordingly:

- (1) ceiling price;
- (2) hourly rates;
- (3) delivery schedule or completion date; and
- (4) other affected terms.

**Alternate III (APR 2013):** *In accordance with § 745.40.40(d) (Clauses), substitute following for paragraph (a) of the basic clause in firm-fixed-price architect-engineer contracts and add paragraph (f).*

- (a) The contracting officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed.
- (f) No services for which an additional cost or fee will be charged by the contractor shall be furnished without the prior written authorization of the contracting officer.

### **Clause 7-190, Change Order Accounting**

*Include the following clause as prescribed in § 745.40.40(e) (Clauses).*

#### **Change Order Accounting (JAN 2003)**

The contracting officer may require change order accounting whenever the estimated cost of a change or series of related changes exceeds the judiciary's small purchase threshold. The contractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The contractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by the contracting officer or the matter is conclusively disposed of in accordance with the Disputes clause.

(end)

### **Clause 7-195, Excusable Delays**

*Include the following clause as prescribed in § 745.45.55(a) (Clauses).*

#### **Excusable Delays (JAN 2003)**

- (a) Except for defaults of subcontractors at any tier, the contractor will not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the government in its sovereign capacity or of the judiciary in its contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform shall be beyond the control and without the fault or negligence of the contractor. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) If failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the contractor and subcontractor, and without the fault or negligence of either, the contractor will not be deemed to be in default, unless:
  - (1) the subcontract products or services were obtainable from other sources;
  - (2) the contracting officer ordered the contractor in writing to purchase these products or services from the other source; and
  - (3) the contractor failed to comply reasonably with this order.
- (c) Upon request of the contractor, the contracting officer will ascertain the facts and extent of the failure. If the contracting officer determines that any failure to perform resulted from one or more of the causes above, the delivery schedule will be revised, subject to the rights of the judiciary under the termination clause of this contract.

(end)

### **Clause 7-200, Judiciary Delay of Work**

*Include the following clause as prescribed in § 745.45.55(b) (Clauses).*

#### **Judiciary Delay of Work (JAN 2003)**

- (a) If the performance of all or any part of the work of this contract is delayed or interrupted (1) by an act of the contracting officer in the administration of this contract that is not expressly or impliedly authorized by this contract, or (2) by a failure of the contracting officer to act within the time specified in this contract, or within a reasonable time if not specified, an adjustment (excluding profit) will be made for any increase in the cost of performance of this contract caused by the delay or interruption and the contract will be modified in writing accordingly. Adjustment will also be made in the delivery or performance dates and any other contractual term or condition affected by the delay or interruption. However, no adjustment will be made under this clause for any delay or interruption to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the contractor, or for which an adjustment is provided or excluded under any other term or condition of this contract.
- (b) A claim under this clause will not be allowed:
- (1) for any costs incurred more than 20 days before the contractor shall have notified the contracting officer in writing of the act or failure to act involved; and
  - (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the delay or interruption, but not later than the day of final payment under the contract.

(end)

### **Clause 7-205, Payment for Judiciary Holidays**

*Include the following clause as prescribed in § 745.45.55(c) (Clauses).*

#### **Payment for Judiciary Holidays (APR 2013)**

On judiciary holidays, on-site contractors are not entitled to compensation unless: 1) the contract requires the contractor to be on-site at the judiciary facility during the holiday; 2) the contract specifically provides for compensation to the contractor on judiciary holidays; or 3) the contractor obtains approval from the contracting officer or designated contracting officer's representative (COR) to perform work at an off-site location. The following holidays are observed by the judiciary: New Years Day, Birthday of Martin Luther King, Jr., Presidential Inauguration Day (metropolitan DC area only), Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day.

(end)

### **Clause 7-210, Payment for Emergency Closures**

*Include the following clause as prescribed in § 745.45.55(d) (Clauses).*

#### **Payment for Emergency Closures (APR 2013)**

During an emergency closure of the judiciary, or any individual judiciary office, taken in its sovereign capacity for the public good, the judiciary is not obligated to compensate contractors during the emergency closure, unless: 1) the contract specifically requires the contractor to be on-site at the judiciary facility during an emergency closure; 2) the contract specifically provides for compensation to the contractor even when the government acts in its sovereign capacity; or 3) the contractor obtains approval from the contracting officer or designated contracting officer's representative (COR) to perform work at an off-site location.

(end)

### **Clause 7-215, Notification of Ownership Changes**

*Include the following clause as prescribed in § 745.55.40(i) (Novation Agreements).*

#### **Notification of Ownership Changes (JAN 2003)**

- (a) The contractor shall make the following notifications in writing:
  - (1) when the contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the contractor shall notify the contracting officer within 30 days;
  - (2) the contractor shall also notify the contracting officer within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.
- (b) The contractor shall:
  - (1) maintain current, accurate, and complete inventory records of assets and their costs;
  - (2) provide the contracting officer or designated representative ready access to the records upon request;

- (3) ensure that all-individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the contractor's ownership changes; and
  - (4) retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each contractor ownership change.
- (c) The contractor shall include the substance of this clause in all subcontracts under this contract.

(end)

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

*Include the following clause as prescribed in § 755.20.60(a) (Clauses).*

#### **Termination for Convenience of the Judiciary (Fixed-Price) (JAN 2003)**

- (a) The judiciary may terminate performance of work under this contract in whole or, from time to time, in part if the contracting officer determines that termination is in the judiciary's interest. The contracting officer will terminate by delivering to the contractor a notice of termination specifying the extent of the termination and the effective date.
- (b) After receipt of a notice of termination, and except as directed by the contracting officer, the contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
  - (1) stop work as specified in the notice;
  - (2) place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities except as necessary to complete the continued portion of the contract;
  - (3) terminate all orders and subcontracts to the extent they relate to the work terminated;
  - (4) assign to the judiciary, as directed by the contracting officer, all right, title, and interest of the contractor under the subcontracts terminated, in which case the judiciary shall have the right to settle or to pay any termination settlement offer arising out of those terminations;

- (5) with written approval or ratification to the extent required by the contracting officer, settle all outstanding liabilities and termination settlement offers arising from the termination of subcontracts; the written approval or ratification will be final for purposes of this clause;
  - (6) as directed by the contracting officer, transfer title and deliver to the judiciary:
    - (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
    - (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the judiciary;
  - (7) complete performance of the work not terminated;
  - (8) take any action that may be necessary, or that the contracting officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the contractor and in which the judiciary has or may acquire an interest;
  - (9) use its best efforts to sell, as directed or authorized by the contracting officer, any property of the types referred to in paragraph (b)(6) of this clause, *provided*, however, that the contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved in writing by, the contracting officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the judiciary under this contract, credited to the price or cost of the work, or paid in any other manner directed by the contracting officer.
- (c) The contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the contracting officer upon written request of the contractor within this 120-day period.
  - (d) After expiration of the plant clearance period, the contractor may submit to the contracting officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the contracting officer. The contractor may request the judiciary to remove those items or enter into an agreement for their storage. Within 15 days, the judiciary will accept title to those items and remove them or enter into a storage

agreement. The contracting officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and will correct the list, as necessary, before final settlement.

- (e) After termination, the contractor shall submit a final termination settlement offer to the contracting officer in the form and with the certification prescribed by the contracting officer. The contractor shall submit the offer promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the contracting officer upon written request of the contractor within this 1-year period. However, if the contracting officer determines that the facts justify it, a termination settlement offer may be received and acted on after the 1 year or any extension. If the contractor fails to submit the offer within the time allowed, the contracting officer may determine, on the basis of information available, the amount, if any, due the contractor because of the termination and shall pay the amount determined.
- (f) Subject to paragraph (e) of this clause, the contractor and contracting officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in paragraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract will be modified, and the contractor paid the agreed amount. Paragraph (g) of this clause will not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- (g) If the contractor and the contracting officer fail to agree on the whole amount to be paid because of the termination of work, the contracting officer will pay the contractor amounts determined by the contracting officer as follow, but without duplication of any amounts agreed on under paragraph (f) of this clause:
  - (1) the contract price for completed products or services accepted by the judiciary (or sold or acquired under paragraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges;
  - (2) the total of:
    - (i) the costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to products or services paid or to be paid under paragraph (g)(1) of this clause;

- (ii) the cost of settling and paying termination settlement offers under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(2)(i) of this clause; and
  - (iii) a sum, as profit on subdivision (g)(2)(i) of this clause, determined by the contracting officer; in effect on the date of the contract, to be fair and reasonable; however, if it appears that the contractor would have sustained a loss on the entire contract had it been completed, the contracting officer will allow no profit under this subdivision (g)(2)(iii) and will reduce the settlement to reflect the indicated rate of loss.
- (3) the reasonable costs of settlement of the work terminated, including:
  - (i) accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement offers and supporting data;
  - (ii) the termination and settlement of subcontracts (excluding the amounts of such settlements); and
  - (iii) storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (h) Except for normal spoilage, and except to the extent that the judiciary expressly assumed the risk of loss, the contracting officer will exclude from the amounts payable to the contractor under paragraph (g) of this clause, the fair value, as determined by the contracting officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the judiciary or to a buyer.
- (i) The cost principles and procedures of the Guide to Judiciary Policy, Vol 14, Ch 4, in effect on the date of this contract, will govern all costs claimed, agreed to, or determined under this clause.
- (j) The contractor shall have the right of appeal under the Disputes clause, from any determination made by the contracting officer under paragraph (e), (g), or (l) of this clause, except that if the contractor has failed to submit the termination settlement offer or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request an extension of time, there is no right of appeal.

- (k) In arriving at the amount due the contractor under this clause, there will be deducted:
  - (1) all unliquidated advance or other payments to the contractor under the terminated portion of this contract;
  - (2) any claim which the judiciary has against the contractor under this contract; and
  - (3) the agreed price for, or the proceeds of sale of materials, products, or other things acquired by the contractor or sold under the provisions of this clause and not recovered by or credited to the judiciary.
  
- (l) If the termination is partial, the contractor may file an offer with the contracting officer for an equitable adjustment of the price(s) of the continued portion of the contract. The contracting officer will make any equitable adjustment agreed upon. Any offer by the contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the contracting officer.
  
- (m)
  - (1) The judiciary may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the contractor for the terminated portion of the contract, if the contracting officer believes the total of these payments will not exceed the amount to which the contractor will be entitled.
  - (2) If the total payments exceed the amount finally determined to be due, the contractor shall repay the excess to the judiciary upon demand, together with interest computed at the rate established by the Secretary of the Treasury under P. L. 92-41 (85 Stat. 97). Interest will be computed for the period from the date the excess is repaid. Interest will not be charged on any excess payment due to a reduction in the contractor's termination settlement offer because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the contracting officer because of the circumstances.
  
- (n) Unless otherwise provided in this contract, or by statute, the contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the contractor's costs and expenses under this contract. The contractor shall make these records and documents available to the judiciary, at the contractor's office, at all reasonable times, without any direct charge. If approved in writing by the contracting officer, photographs,

microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(end)

### **Clause 7-223 Termination for Convenience of the Judiciary (Short Form)**

*Include the following clause as prescribed in § 755.20.60(b) (Clauses).*

#### **Termination for Convenience of the Judiciary (Short Form) (AUG 2004)**

The contracting officer, by written notice, may terminate this contract, in whole or in part, when it is in the judiciary's interest. If this contract is terminated, the judiciary shall be liable only for payment under the payment provisions of this contract for products received or services rendered before the effective date of termination.

(end)

### **Clause 7-225, Termination (Cost-Reimbursement)**

*Include the following clause as prescribed in § 755.20.60(c) (Clauses).*

#### **Termination (Cost-Reimbursement) (APR 2013)**

- (a) The judiciary may terminate performance of work under this contract in whole or, from time to time, in part, in part, if:
  - (1) the contracting officer determines that a termination is in the judiciary's interest; or
  - (2) the contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the contracting officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) The contracting officer will terminate by delivering to the contractor a notice of termination specifying whether termination is for default of the contractor or for convenience of the judiciary, the extent of termination, and the effective date. If, after termination for default, it is determined that the contractor was not in default or that the contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the contractor as set forth in the Excusable Delays clause, the rights and obligations

of the parties will be the same as if the termination was for the convenience of the judiciary.

- (c) After receipt of a Notice of Termination, and except as directed by the contracting officer, the contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
- (1) stop work as specified in the notice;
  - (2) place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract;
  - (3) terminate all subcontracts to the extent they relate to the work terminated;
  - (4) assign to the judiciary, as directed by the contracting officer, all right, title, and interest of the contractor under the subcontracts terminated, in which case the judiciary will have the right to settle or to pay any termination settlement offer arising out of those terminations;
  - (5) with written approval or ratification to the extent required by the contracting officer, settle all outstanding liabilities and termination settlement offers arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; written approval or ratification will be final for purposes of this clause;
  - (6) transfer title (if not already transferred) and, as directed by the contracting officer, deliver to the judiciary:
    - (i) the fabricated or unfabricated parts, work in process, completed work, products, and other material produced or acquired for the work terminated;
    - (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the judiciary; and
    - (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the contractor has been or will be reimbursed under this contract;
  - (7) complete performance of the work not terminated;

- (8) take any action that may be necessary, or that the contracting officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the contractor and in which the judiciary has or may acquire an interest; and
  - (9) use its best efforts to sell, as directed or authorized by the contracting officer, any property of the types referred to in paragraph (c)(6) of this clause; *provided, however*, that the contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved in writing by the contracting officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the judiciary under this contract, credited to the price or cost of the work, or paid in any other manner directed by the contracting officer.
- (d) The contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the contracting officer upon written request of the contractor within this 120-day period.
  - (e) After expiration of the plant clearance period, the contractor may submit to the contracting officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the contracting officer. The contractor may request the judiciary to remove those items or enter into an agreement for their storage. Within 15 days, the judiciary will accept the items and remove them or enter into a storage agreement. The contracting officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and will correct the list, as necessary, before final settlement.
  - (f) After termination, the contractor shall submit a final termination settlement offer to the contracting officer in the form and with the certification prescribed by the contracting officer. The contractor shall submit the offer promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the contracting officer upon written request of the contractor within this 1-year period. However, if the contracting officer determines that the facts justify it, a termination settlement offer may be received and acted on after 1 year or any extension. If the contractor fails to submit the offer within the time allowed, the contracting officer may determine, on the basis of information available, the amount, if any, due the contractor because of the termination and will pay the amount determined.
  - (g) Subject to paragraph (f) of this clause, the contractor and the contracting officer may agree on the whole or any part of the amount to be paid (including an

allowance for fee) because of the termination. The contract will be amended, and the contractor paid the agreed amount.

- (h) If the contractor and the contracting officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the contracting officer will determine, on the basis of information available, the amount, if any, due the contractor, and will pay that amount, which will include the following:
- (1) all costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the written approval of or as directed by the contracting officer; however, the contractor shall discontinue those costs as rapidly as practicable;
  - (2) the cost of settling and paying termination settlement offers under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in paragraph (h)(1) of this clause;
  - (3) the reasonable costs of settlement of the work terminated, including:
    - (i) accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement offers and supporting data;
    - (ii) the termination and settlement of subcontracts (excluding the amounts of such settlements); and
    - (iii) storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the contractor's termination settlement offer may be included;
  - (4) a portion of the fee payable under the contract, determined as follows:
    - (i) if the contract is terminated for the convenience of the judiciary, the settlement will include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination offers, less previous payments for fee;
    - (ii) if the contract is terminated for default, the total fee payable will be such proportionate part of the fee as the total number of articles (or

amount of services) delivered to and accepted by the judiciary is to the total number of articles (or amount of services) of a like kind required by the contract.

- (5) If the settlement includes only fee, it will be determined under paragraph (h)(4) of this clause.
- (i) The cost principles and procedures in effect on the date of this contract, will govern all costs claimed, agreed to, or determined under this clause.
- (j) The contractor shall have the right of appeal, under the Disputes clause, from any determination made by the contracting officer under paragraph (f), (h), or (l) of this clause, except that if the contractor failed to submit the termination settlement offer within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the contracting officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the judiciary will pay the contractor:
  - (1) the amount determined by the contracting officer if there is no right of appeal or if no timely appeal has been taken or
  - (2) the amount finally determined on an appeal.
- (k) In arriving at the amount due the contractor under this clause, there will be deducted:
  - (1) all unliquidated advance or other payments to the contractor, under the terminated portion of this contract;
  - (2) any claim which the judiciary has against the contractor under this contract; and
  - (3) the agreed price for, or the proceeds of sale of materials, products, or other things acquired by the contractor or sold under this clause and not recovered by or credited to the judiciary.
- (l) The contractor and contracting officer shall agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The contracting officer will amend the contract to reflect the agreement.
- (m) (1) The judiciary may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the contractor for the terminated portion of the contract, if the contracting officer believes

the total of these payments will not exceed the amount to which the contractor will be entitled.

- (2) If the total payments exceed the amount finally determined to be due, the contractor shall repay the excess to the judiciary upon demand, together with interest computed at the rate established by the Secretary of the Treasury under the criteria established by the Renegotiation Act of 1971 (P.L. 92-41, 85 Stat. 97), and published at [http://www.treasurydirect.gov/govt/rates/tcir/tcir\\_opdprmt2.htm](http://www.treasurydirect.gov/govt/rates/tcir/tcir_opdprmt2.htm). Interest will be computed for the period from the date the excess payment is received by the contractor to the date the excess is repaid. Interest will not be charged on any excess payment due to a reduction in the contractor's termination settlement offer because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the contracting officer because of the circumstances.
- (n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

(end)

**Alternate I** (APR 2013): *As prescribed in § 755.20.60(d) (Clauses), substitute the following paragraphs (h) and (l) for paragraphs (h) and (l) of the basic Clause 7-225.*

- (h) If the contractor and the contracting officer fail to agree in whole or in part on the amount to be paid because of the termination of work, the contracting officer will determine, on the basis of information available, the amount, if any, due the contractor and will pay the amount determined as follows:
- (1) If the termination is for the convenience of the judiciary, include:
- (i) an amount for direct labor hours (as defined in the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the contract, less any hourly rate payments already made to the contractor;
  - (ii) an amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination, not previously paid to the contractor;
  - (iii) an amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination, if

they are reasonably incurred after the effective date, with the approval of or as directed by the contracting officer; however, the contractor shall discontinue these expenses as rapidly as practicable;

- (iv) if not included in subdivision (h)(1)(i), (ii), or (iii) of this clause, the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract; and
  - (v) the reasonable costs of settlement of the work terminated; including:
    - (A) accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
    - (B) the termination and settlement of subcontracts (excluding the amounts of such settlements); and
    - (C) storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the termination inventory.
- (2) If the termination is for default of the contractor, include the amounts computed under paragraph (h)(1) of this clause but omit:
- (i) any amount for preparation of the contractor's termination settlement proposal; and
  - (ii) the portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by the judiciary.
- (l) If the termination is partial, the contractor may file with the contracting officer a proposal for an equitable adjustment of price(s) for the continued portion of the contract. The contracting officer will make any equitable adjustment agreed upon. Any proposal by the contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination, unless extended in writing by the contracting officer.

**Clause 7-230, Termination for Default (Fixed-Price – Products and Services)**

*Include the following clause as prescribed in § 755.25.60(a) (Clauses).*

**Termination for Default (Fixed-Price – Products and Services) (JAN 2003)**

- (a) (1) The judiciary may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the contractor, terminate this contract in whole or in part if the contractor fails to:
- (i) deliver the products or to perform the services within the time specified in this contract or any extension;
  - (ii) make progress, so as to endanger performance of this contract (*but see* paragraph (a)(2) of this clause); or
  - (iii) perform any of the other provisions of this contract (*but see* paragraph (a)(2) of this clause).
- (2) The judiciary's right to terminate this contract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if the contractor does not cure the failure within 10 days (or more if authorized in writing by the contracting officer) after receipt of the notice from the contracting officer specifying the failure.
- (b) If the judiciary terminates this contract in whole or in part, it may acquire, under the terms and in the manner the contracting officer considers appropriate, products or services similar to those terminated, and the contractor will be liable to the judiciary for any excess costs for those products or services. However, the contractor shall continue the work not terminated.
- (c) Except for defaults of subcontractors at any tier, the contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the government in its sovereign capacity or of the judiciary in its contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform shall be beyond the control and without the fault or negligence of the contractor.
- (d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the contractor and subcontractor, and without the fault or negligence of either, the contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted products or services were obtainable from other sources in sufficient time for the contractor to meet the required delivery schedule.

- (e) If this contract is terminated for default, the judiciary may require the contractor to transfer title and deliver to the judiciary, as directed by the contracting officer, any (1) completed products, and (2) partially completed products, and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as “manufacturing materials” in this clause) that the contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the contracting officer, the contractor shall also protect and preserve property in its possession in which the judiciary has an interest.
- (f) The judiciary will pay the contract price for completed products delivered and accepted. The contractor and contracting officer will agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The judiciary may withhold from these amounts any sum the contracting officer determines to be necessary to protect the judiciary against loss because of outstanding liens or claims of former lien holders.
- (g) If, after termination, it is determined that the contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the judiciary.
- (h) The rights and remedies of the judiciary in this clause are in addition to any other rights and remedies provided by law or under this contract.

(end)

### **Clause 7-235, Disputes**

*Include the following clause as prescribed in § 750.20.70 (Clause).*

#### **Disputes (JAN 2003)**

- (a) A contract dispute means a written claim, demand or assertion by a contracting party for the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other specific relief arising under or relating to the contract. A dispute also includes a termination for convenience settlement proposal and any request for an equitable adjustment, which is denied. A voucher, invoice, or other routine payment that is not disputed by the parties is not a dispute under this clause.
- (b) A contract dispute shall be filed within 12 months of its accrual and shall be submitted in writing to the contracting officer. The dispute shall contain a detailed statement of the legal and factual basis of the dispute and shall be

accompanied by any documents that support the claim. The claimant shall seek specific relief, as provided in paragraph (a) above. However, the time periods set forth here shall be superceded if the contract contains specific provisions for the processing of any claim which would otherwise be considered a dispute under this clause.

- (c) Contracting officers are authorized to decide or settle all disputes under this clause. If the contracting officer requires additional information the contracting officer shall promptly request the claimant to provide such information. The contracting officer will issue a written determination within 60 days of the receipt of all the requested information from the claimant. If the contracting officer is unable to render a determination within 60 days, the claimant shall be notified of the date on which a determination will be made. The determination of the contracting officer shall be considered the final determination of the judiciary.
- (d) The contractor shall proceed diligently with performance of this contract pending resolution of the dispute. The contractor shall comply with the final determination of the contracting officer unless such determination is overturned by a court of competent jurisdiction. Failure to diligently continue contract performance during the pendency of the claim or failure to comply with the final determination of the contracting officer may result in termination of the contract for default or imposition of other available remedies.

(end)