

Guide to Judiciary Policy

Vol. 14: Procurement

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§ 110 Overview

§ 110.10 Purpose

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

§ 110.20 Scope

- (a) Information contained in this volume covers only procurement policies and procedures.
- (b) This volume does **not** apply to the following:
 - (1) Procurement of printing services. **See:** Guide, Vol. 23, Ch. 2 (Printing).
 - (2) Leasing of vehicles, which generally must be accomplished through GSA's Fleet Management Program.
 - (3) Placement and administration of Reimbursable Work Authorizations (RWAs) with GSA. **See:** Guide, Vol. 16 (Space and Facilities).
 - (4) Purchases made using non-appropriated funds (i.e., Attorney-Admission Funds, sometimes called "library funds" or "bench-and-bar" funds). **See:** Guide, Vol. 4, § 660 (Attorney Admissions).
- (c) Questions related to programmatic policies and procedures not specifically provided in this volume should be directed to the respective AO program office. For example, questions about cost ceilings for furniture procurements should be directed to the AO's Space and Facilities Division, which is responsible for Guide, Vol. 16 (Space and Facilities), where those policies are published.
- (d) Questions related to budget and funding policies and procedures, such as whether appropriated funds may be used for a specific purchase, or the appropriate use of specific budget object codes, should be directed to the AO's Budget Division.

Exception: Federal public defender organizations should direct such queries to AO's Defender Program Operations Division.

§ 110.30 Authority

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

- "purchase, exchange, transfer, distribute, and assign the custody of law books, equipment, supplies, and other personal property for the judicial branch of Government (except the Supreme Court. . .).[.];

- provide or make available readily to each court appropriate equipment for the interpretation of proceedings in accordance with [28 U.S.C. § 1828]; and
- enter into and perform contracts and other transactions upon such terms as the Director may deem appropriate as may be necessary to the conduct of the work of the judicial branch of Government (except the Supreme Court. . .).”

§ 110.40 Applicability

- (a) This volume applies to the following judiciary organizations:
- all United States courts and their subordinate organizations except as noted in § 110.40(b);
 - the Federal Judicial Center, except for research projects and other services, including the procurement of personal services;
 - the Judicial Panel on Multidistrict Litigation (JPML);
 - the Foreign Intelligence Surveillance Court;
 - the Federal Public Defender Organizations (FPDOs);
 - the Administrative Office of the United States Courts (AO); and
 - all other judiciary organizations and programs within the scope of the authority of the Director of the AO, except as noted in § 110.40(b).
- (b) This volume does not apply to the:
- United States Supreme Court,
 - United States Sentencing Commission, or
 - community defender organizations (unless specified by the terms of the individual grant agreement).

§ 110.50 Definitions

See: Glossary of Procurement Terms.

§ 110.55 Application of Dollar Thresholds

- (a) Various dollar thresholds appear throughout Volume 14 and determine applicability of requirements such as which clauses and provisions must

be included, whether competition is required, advertising requirements, and whether formal contracting procedures must be followed. These dollar thresholds always apply to the original contract award, but apply to modifications only to the extent that the modification is not within the scope of the original contract.

- (b) For purposes of determining whether a specific procurement is or is not in excess of any specified dollar threshold, the dollar value used must represent the full amount of the procurement award, including shipping and installation costs, if applicable, as well as the estimated value of all contract options that might apply to that procurement. For additional information about contract options, **see:** Guide, Vol. 14, § 220.40 (Options).

§ 110.60 Uniform Contract Format

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

§ 110.70 Solicitation Provisions and Contract Clauses

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

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

§ 110.80 Previous Guidance

All previous editions of the *Guide* are superseded by information in this volume.

§ 120 Delegation of Procurement Authority

§ 120.10 Overview

§ 120.10.10 Authority to Contract and Delegate

The Director of the AO has been granted procurement authority under 28 U.S.C. § 604(a)(10)(c), with the power to delegate and to authorize successive redelegation as the Director may deem desirable. **See:** § 130.20.25 (Authorization for Contracting and Delegating).

§ 120.10.20 Conditions of Delegations

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

§ 120.20 Authorized Delegations

§ 120.20.10 Director Delegations

(a) Delegation to the Procurement Executive

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

(b) Delegation to Chief Judges and Certain Judiciary Officials

(1) The Director has delegated procurement authority within the limits described in Levels 1, 2 and 3 of the Contracting Officers Certification Program (COCP) to the following judiciary officials:

- chief judges,
- federal public defenders (FPDs),
- the Chair of the JPML, and
- the Director of the FJC.

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

(2) This general delegation does **not** include any of the following actions, which must be forwarded to PMD for coordination and response:

- responses to protests at any level;
- decisions on disputes arising out of, or pertaining to, procurement actions; or

- ratifications of unauthorized procurement actions above delegated limits. **See also:** § 160 (Ratification).

(c) **See also:**

- Authority to Contract and Delegate (§ 120.10.10)
- Chief Judges and Other Judiciary Officials (§ 120.20.40)
- Procurement Executive (§ 120.20.30)
- Procurement Oversight (§ 130.30)
- Procurement Liaison Officers (§ 130.40)
- Contracting Officers (§ 130.50)
- Contracting Officers Certification Program (§ 140)

§ 120.20.30 Procurement Executive

- (a) The PE is authorized to redelegate any level of COCP procurement authority to AO personnel who possess the applicable qualifications.
- (b) The PE, or the PE delegate within PMD, may also provide one-time delegations of procurement authority to judiciary organization contracting officers when required for a specific situation not otherwise in their authority, and may take other actions as provided in this chapter of the *Guide*, Procurement Manuals, and Procurement Bulletins. **See also:** § 140 (Contracting Officers Certification Program).

§ 120.20.40 Chief Judges and Other Judiciary Officials

Chief judges and other certain judiciary officials identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials) are authorized to redelegate oversight and procurement authority to a Procurement Liaison Officer (PLO), in compliance with the limitations specified in the COCP, with the PLO having authority to redelegate procurement authority to contracting officers (COs).

§ 120.20.45 Contracting Officers

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

§ 120.20.50 Procurement Authority under Exceptional Circumstances

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

- (a) If the procurement is outside the delegated authority a one-time delegation of authority may be requested from PMD to conduct and complete the procurement. A one-time delegation may contain conditions relating to the review of the procurement, or other aspects of the procurement.
- (b) The judiciary organization may request that another CO with the proper certification conduct the procurement.
- (c) The PLO may conditionally appoint a contracting officer for a restricted term (not to exceed one year) until all certification training requirements for appointment as a CO can be completed.
- (d) The PLO may request assistance from PMD for the procurement.

See also: § 140.15 (Certification Level Overview).

§ 120.20.60 Cancellations, Suspensions, and Limitations on Procurement Authority

- (a) General

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

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

Delegations of procurement authority may be canceled, suspended, or further limited by the person making the delegation. No cancellation or suspension of procurement authority may operate retroactively so as to invalidate contracts that were otherwise valid at the time of award.

- (c) When Delegations Must be Re-Issued

- (1) The general delegation of authority from the Director to chief judges and other judiciary officials identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials) is delegated to the position and is not required to be re-issued by the Director upon appointment of a new person to any of the named positions.

- (2) A delegation of PLO authority is not required to be re-issued upon appointment of a new chief judge, FPD, JPML Chair, or FJC Director, unless a different person is being appointed as PLO.
- (3) The appointment of a new PE or PLO automatically voids the CO delegation(s) made by the prior PE or PLO. The new PE or PLO must issue new CO delegation(s). Where a PLO has also been appointed as a COCP contracting officer at any level, although the PLO delegation is not required to be re-issued, the contracting officer delegation is automatically voided by appointment of a new chief judge, FPD, JPML Chair or FJC Director, and must be re-issued for the individual to continue to act as a contracting officer.

§ 120.30 Types of Delegation

§ 120.30.10 General Delegation

The Director has made a broad general delegation of procurement authority to chief judges and other judiciary officials. **See:** § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials).

§ 120.30.20 Specific Delegation

The Director has made specific delegations for certain special programs, which include conditions and limitations for each of the programs. Specific delegations may exceed the dollar limitations of the general delegation and have specific procedures that must be followed. **See also:** § 120.40 (Special Program Delegation).

§ 120.30.30 One-Time Delegation

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

§ 120.30.40 Documentation of Authorized Delegations and Redelegations

All delegations and redelegations of procurement authority must be documented in the central administrative file that would contain copies of all procurement delegations for the PLO and COCP Level 1, Level 2, and Level 3 delegations, and must:

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

- (b) Specify any restrictions to the types of products or services the individual may purchase that are in addition to the limits of the COCP level for which the individual is appointed;
- (c) Specify the dollar limitation of those purchases, if less than the applicable COCP level to which the individual is appointed;
- (d) Be entered into the Procurement Delegation System established in InfoWeb; and
- (e) Be provided to the delegate.

§ 120.40 Special Program Delegation

§ 120.40.10 Purpose

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

§ 120.40.15 AO Office with Primary Program Responsibility

The table below defines the special program delegations and the AO office with primary programmatic responsibility for each one.

§ 120.40.15 AO Office with Primary Program Responsibility	
Program	Responsibility
Copy Center Services	Chief, Court Services Office, Department of Program Services
Court Interpreter Services	Chief, Court Services Office, Department of Program Services
Court Reporting Services	Chief, Court Services Office, Department of Program Services
Law Books	Chief, Court Services Office, Department of Program Services
Residential Halfway House Services	Chief, Probation & Pretrial Services Office, Department of Program Services
Second Chance Act Products and Services	Chief, Probation & Pretrial Services Office, Department of Program Services
Treatment Services	Chief, Probation & Pretrial Services Office, Department of Program Services
GSA Building Delegations	Chief, Facilities and Security Office, Department of Administrative Services

§ 120.40.15 AO Office with Primary Program Responsibility	
Program	Responsibility
FPDO Case-Related Expert or Consultant Services	Chief, Defender Services Office

§ 120.40.20 Level 2 Certification Requirement and Duties

After completion of COCP Level 2 training, the PLO will issue a written COCP Level 2 certification to individuals with procurement responsibilities for any of the programs listed at § 120.40.15 (AO Office with Primary Program Responsibility). The certification will identify which specific program(s) have been delegated to the individual. **See also:** § 140.25 (Level 2 Certification: Special Program Delegation).

§ 120.40.25 Copy Center Services

(a) Delegation of Authority

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

(b) Limitations of Delegation

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

(c) Training Requirements

This COCP Level 2 authority may be exercised only after completing Small Purchase Procedures, Standard Competitive Contracting Procedures, Special Categories of Procurements, and Appropriations Law for the U.S. Courts (all are available online), and any specialized training programs offered by the responsible AO program office.

See also: § 140.25 (Level 2 Certification: Special Program Delegation).

§ 120.40.30 Court Interpreter Services

(a) Authority

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

(b) Delegation of Authority

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

(c) Limitations of Delegation

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

(d) Training Requirements

This COCP Level 2 authority may be exercised only after completing Small Purchase Procedures, Standard Competitive Contracting Procedures, Special Categories of Procurements, and Appropriations Law for the U.S. Courts (all are available online), and any specialized training programs offered by the responsible AO program office.

See also: § 140.25 (Level 2 Certification: Special Program Delegation).

§ 120.40.35 Court Reporting Services

(a) Authority

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

(Note: For these purposes, bankruptcy courts are part of the district courts.)

(b) Delegation of Authority

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

(c) Limitations of Delegation

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

(d) Training Requirements

This COCP Level 2 authority may be exercised only after completing Small Purchase Procedures, Standard Competitive Contracting Procedures, Special Categories of Procurements, and Appropriations Law for the U.S. Courts (all are available online), and any specialized training programs offered by the responsible AO program office.

See also: § 140.25 (Level 2 Certification: Special Program Delegation).

§ 120.40.40 Law Books

(a) Authority

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

(b) Delegation of Authority

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

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

Note: A one-time delegation of procurement authority is required for any open market or sole source purchase exceeding \$100,000. **See:** § 120.30.30 (One-Time Delegation).

(c) Required Programmatic Approvals

Approval by the Chief of the Court Programs Division, Court Services Office, AO’s Department of Program Services, is required for:

- the purchase of online resources in excess of \$25,000, and
- the purchase of printed materials in excess of \$100,000.

See also: Guide, Vol. 21 (Legal Research Resources).

(d) Training Requirements

This COCP Level 2 authority may be exercised only after completing Small Purchase Procedures, Standard Competitive Contracting Procedures, Special Categories of Procurements, and Appropriations Law for the U.S. Courts (all are available online), and any specialized training programs offered by the responsible AO program office.

See also: § 140.25 (Level 2 Certification: Special Program Delegation).

§ 120.40.45 Residential Halfway House Services

(a) Authority

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

(b) Delegation of Authority

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

(c) Limitations of Delegation

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

(d) Training Requirements

This COCP Level 2 authority may be exercised only after completing Small Purchase Procedures, Standard Competitive Contracting Procedures, Special Categories of Procurements, and Appropriations Law for the U.S. Courts (all are available online), and any specialized training programs offered by the responsible AO program office.

See also: § 140.25 (Level 2 Certification: Special Program Delegation).

§ 120.40.50 Treatment Services

(a) Authority

Under 18 U.S.C. § 3672, the Director has “the authority to contract with any appropriate public or private agency or person for the detection of and care in the community of an offender who is an alcohol-dependent person, an addict or a drug-dependent person, or a person suffering from a psychiatric disorder within the meaning of § 2 of the Public Health Service Act. This authority shall include the authority to provide equipment and supplies; testing; medical, educational, social, psychological and vocational services; corrective and preventative guidance and training; and other rehabilitative services designed to protect the public and benefit the alcohol-dependent person, addict or drug-dependent person, or a person suffering from a psychiatric disorder by eliminating his dependence on alcohol or addicting drugs, by controlling his dependence and his susceptibility to addiction, or by treating his psychiatric disorder. He may negotiate and award [such] contracts. . .without regard to § 3709 of the Revised Statutes of the United States.” **See:** 41 U.S.C. § 6101.

(b) Delegation of Authority

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

(c) Limitations of Delegation

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

(d) Training Requirements

This COCP Level 2 authority may be exercised only after completing Small Purchase Procedures, Standard Competitive Contracting Procedures, Special Categories of Procurements, and Appropriations Law for the U.S. Courts (all are available online), and any specialized training programs offered by the responsible AO program office.

See also: § 140.25 (Level 2 Certification: Special Program Delegation).

§ 120.40.55 GSA Building Delegations

(a) Delegation of Authority

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

(b) Limitations of Delegation

- (1) The CO must follow GSA’s guidance, the Federal Acquisition Regulation (FAR), and the GSA Regulations (GSAR).
- (2) Contracts may be awarded only after obtaining the building delegation from GSA. Procurement authority is limited to the types of work and dollar levels identified in the GSA building delegation agreement.

(c) Training Requirements

This COCP Level 2 authority may be exercised only after completing Small Purchase Procedures, Standard Competitive Contracting Procedures, Special Categories of Procurements, and Appropriations Law for the U.S. Courts (all are available online), and any specialized training programs offered by the responsible AO program office.

See also: § 140.25 (Level 2 Certification: Special Program Delegation).

§ 120.40.60 FPDO Case-Related Expert or Consultant Services

(a) Delegation of Authority

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

(b) Limitations of Delegation

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

(c) Training Requirements

This COCP Level 2 authority may be exercised only after completing Small Purchase Procedures, Standard Competitive Contracting Procedures, Special Categories of Procurements, and Appropriations Law for the U.S. Courts (all are available online), and any specialized training programs offered by the responsible AO program office.

See also: § 140.30.50 (Training Requirements) and § 140.30 (Level 3 Certification: General Delegation).

§ 120.40.65 Second Chance Act Products and Services

(a) Authority

- (1) Under 18 U.S.C. §§ 3672 and 3154, the Director has authority to contract for “treatment, equipment and emergency housing, corrective and preventative guidance and training, and other rehabilitative services designed to protect the public and promote the successful reentry of the offender into the community” as well as for the defendant.
- (2) The statutes authorize “providing necessary services to offenders. . .in a manner that does not confer luxuries or privileges upon such offenders” (42 U.S.C. § 17501(a)(4)). Additionally, the statutes may not “be construed as creating a right or entitlement to assistance or services for any individual, program, or grant recipient” (42 U.S.C. § 17504).
- (3) Congress intended the authority to be exercised judiciously. Courts must be careful stewards of resources used under this authority. The Judicial Administration and Technical Amendments Act of 2008, Pub. L. No. 110-406 (October 13, 2008) (JATAA), significantly enhanced courts’ ability to provide interventions for defendants under 18 U.S.C. § 3154(4). The Act amended 18 U.S.C. § 3154(4) to include among pretrial services functions contracting or expending funds for services “necessary to protect the public and ensure that such persons appear in court as required.”

(b) Delegation of Authority

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

- (1) Procurement of products and services noncompetitively up to \$25,000. **See:** 41 U.S.C. § 6101.
- (2) Authority to procure products and services between \$25,000 and \$100,000 using open market procedures, in the same manner as would be conducted under COCP Level 3. **See:** Guide, Vol. 14, § 325.20 (Competitive Small Purchase Procedures).
- (3) Commercial advance payment authority for emergency and transitional housing, child care, and job training related to Second Chance Act up to 15% of the total contract. **See:** 28 U.S.C. § 604(g)(4)(C).
- (4) Authority to award a contract, purchase order, or blanket purchase agreement (BPA) order with administrative fees as a contract line item, only for the applicable project codes as specified in the Second Chance Act Procurement Manual.
- (5) Authority to procure products and services over \$100,000, only with use of the Second Chance Act Template for Products and Services above \$100,000; proper procedures must be followed consistent with Guide, Vol. 14 (Procurement) and the Second Chance Act Procurement Manual.

(c) Limitations of Delegations

COs must follow the Second Chance Act Procurement Manual when awarding contracts, BPAs, and purchase card orders for Second Chance Act products and services. Contracts in excess of \$100,000 must be awarded using PMD contract templates.

(d) Training Requirements

This COCP Level 2 authority may be exercised only after completing Small Purchase Procedures, Standard Competitive Contracting Procedures, Special Categories of Procurements, and Appropriations Law for the U.S. Courts (all are available online), and any specialized training programs offered by the responsible AO program office.

See also: § 140.25 (Level 2 Certification: Special Program Delegation).

§ 130 Procurement

§ 130.10 Overview

§ 130.10.10 Policy and Procedure Documentation

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

(a) Procurement Manuals

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

(b) Procurement Bulletins

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

§ 130.20 Procurement Statutes

§ 130.20.10 General

Statutes related to the special program delegations are provided with each program’s description. **See:** § 120.40 (Special Program Delegation). This section describes additional statutes that are applicable to judiciary procurement. In addition to the statutes described below, PLOs and COs should be aware of applicable appropriations law principles. **See also:** Guide, Vol. 13, § 220 (Appropriations Law Principles).

§ 130.20.15 Advertising Requirements

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

- (a) the amount involved in any one case does not exceed \$25,000;
- (b) the public exigencies require the immediate delivery of the articles or performance of the service;
- (c) only one source of supply is available as certified by the government purchasing or CO; or

- (d) the services are required to be performed by the contractor in person and are:
- of a technical and professional nature, or
 - under government supervision and paid for on a time basis.

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

§ 130.20.20 Appropriations

- (a) Adequate Appropriations Required

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

- (b) Advance Payments

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

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

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

- involving the government in contracts or obligations for the payment of money before an appropriation is made, and
- making or authorizing expenditures or obligations exceeding an amount available in an appropriation or fund for the expenditures or obligations.

Violations may result in civil or criminal penalties.

§ 130.20.25 Authorization for Contracting and Delegating

- (a) Authority to Contract

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

(b) Authority to Delegate

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

§ 130.20.30 Economy Act Procurements

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

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

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

§ 130.20.35 Procurement Integrity Act

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

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

§ 130.20.40 Priorities in Obtaining Vending Services

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

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

§ 130.20.45 Purchases From Workshops That Employ Blind or Disabled People

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

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

§ 130.20.50 Procurement of Certain Professional Services**(a) Procurement of Architect-Engineer Services**

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

(b) Procurement of Experts and Consultants

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

§ 130.20.55 Labor Statutes Governing Contractor Wages and Benefits**(a) Service Contract Employee Wages and Benefits**

Under the Service Contract Labor Standards, 41 U.S.C. § 6701, *et seq.*, federal contracts in excess of \$2,500, which are principally for services furnished by service employees, must include a clause specifying minimum monetary wages and fringe benefits, as determined by the

Secretary of Labor based on prevailing wages in the specific locality, required to be paid to service employees performing the contract.

See also: Guide, Vol. 14, § 332 (Purchase of Services).

(b) Construction Contract Employee Minimum Wages and Benefits

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

(c) Supply Contract Employee Minimum Wages and Benefits

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

§ 130.20.60 Energy Efficiency

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

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

§ 130.20.65 Funding Severable Services Across Fiscal Years

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

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

§ 130.20.70 Multi-Year Contracts

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

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

§ 130.20.75 Judiciary Information Technology Fund

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

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

§ 130.30 Procurement Oversight

§ 130.30.10 Policy

Oversight involves administering and managing the procurement program.

(a) The Director

The Director delegates procurement oversight responsibility to the chief judges and other judiciary officials identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials) through this chapter of the *Guide*.

(b) Chief Judges and Other Judiciary Officials

The chief judge or other judiciary official may redelegate oversight responsibility for procurements conducted under their authority to a PLO. Appointment of multiple PLOs for the same judiciary unit is not authorized.

(c) Procurement Liaison Officers

A PLO may not redelegate oversight responsibilities.

(d) Required Documentation

The redelegation of oversight responsibility to a PLO is effected using the Form AO 374 (Delegation of Procurement Liaison Officer).

§ 130.30.20 Procurement Liaison Officer Oversight Responsibilities

Individuals appointed as PLOs have oversight responsibility for administering and managing the procurement program throughout their specific judiciary unit. This includes complying with this chapter of the *Guide*, Procurement Manuals, and Procurement Bulletins, as well as establishing an internal control program in compliance with the Guide, Vol. 11, Ch. 3 (Procurement). Appointment as a PLO does not, in itself, constitute authority to act as a contracting officer. **See also:** § 120.20.45 (Contracting

Officers); § 130.40 (Procurement Liaison Officers); § 140.15.30 (Appointment Process for PLOs and COs (Levels 1-3)).

§ 130.30.70 Documentation of Procurement Delegations

- (a) Procurement delegations must be documented consistent with § 120.30.40 (Documentation of Authorized Delegations and Redelegations). **See also:** § 140.15.30 (Appointment Process for PLOs and COs (Levels 1-3)).

- (b) Maintenance of Delegation Records

Copies of procurement authority delegations must be maintained and current at all times and are subject to audit review. Procurement liaison officers should make any additions, deletions, and corrections, and insert delegated procurement level(s) for conditionally appointed procurement officers and COs. Copies of one-time delegations from PMD must be maintained within the relevant contract file. **See:** § 140.15 (Certification Level Overview) and Guide, Vol. 11, § 340.30 (Appropriate Records and Documentation).

§ 130.40 Procurement Liaison Officers

§ 130.40.10 Selection

Chief judges and other judiciary officials identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials) should adopt a process by which individuals are selected as PLOs. Generally, chief judges designate court unit executives as PLOs.

§ 130.40.20 Appointment Documentation

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

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

§ 130.40.30 Responsibilities

PLO responsibilities include, but are not limited to:

- (a) Redelegating procurement authority to contracting officers, subject to limitations provided in the Contracting Officers Certification Program (COCP), as described in this volume of the *Guide*.

- (b) Procurement planning.
 - (c) Ensuring separation of duties between personnel who:
 - authorize and/or fund purchases;
 - award contracts (i.e., purchase orders, delivery orders, task orders, or contracts), receive, inspect and accept deliverables, and authorize payments; and
 - effect payment.
- See also:** Guide, Vol. 11 (Internal Control).
- (d) Ensuring that contract files (i.e., purchase orders, delivery orders, task orders, or contracts) are established and maintained.
 - (e) Limiting access to contract files and related documents to authorized judiciary procurement personnel.
 - (f) Ensuring that procurement actions are signed by personnel with procurement authority at the appropriate COCP level.
 - (g) Ensuring that the contract (i.e., purchase order, delivery order, task order, or contract) is issued before receipt of the products or services and that receipt, inspection, and acceptance of deliverables are evident before payment. The mechanics of this are explained in Guide, Vol. 14, Ch. 7 (Contract Administration).
 - (h) Ensuring that funds are available for the purchase and that financial and budget guidelines are followed.
 - (i) Ensuring that the continuing educational requirements of the COCP are met by procurement personnel.
 - (j) Ensuring that procurement personnel have access to the most current copy of the *Guide*, Procurement Manuals, and Procurement Bulletins, and that all procurement activities are conducted according to them.
 - (k) Ensuring that the Procurement Delegation System in InfoWeb is accurate and current.
 - (l) Overseeing procurements conducted under the delegated COCP levels for each procurement action. PLOs perform the duties described in this chapter. **See also:** § 130.30.20 (Procurement Liaison Officer Oversight Responsibilities).

§ 130.40.40 Training Requirements

(a) Procurement Liaison Officers Appointed as Contracting Officers

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

(b) Procurement Liaison Officers Not Appointed as Contracting Officers

Individuals designated as PLOs must complete the online Judiciary Executive Procurement Oversight Seminar. They are also encouraged to take other training referenced in the COCP.

§ 130.50 Contracting Officers

§ 130.50.10 Applicability

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

§ 130.50.20 Appointment

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

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

§ 130.50.30 Assistants

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

§ 130.50.40 Assistant Responsibilities

Assistant responsibilities can include, but are not limited to:

- preparing the requests for offers;

- conducting market surveys;
- requesting verbal quotes;
- evaluating quotes/offers;
- preparing the purchase orders, delivery orders, task orders, contracts, or modifications;
- checking on deliveries or acceptances; and
- checking on payment of vouchers, etc.

§ 140 Contracting Officers Certification Program

§ 140.10 Overview

§ 140.10.10 Purpose

The Contracting Officers Certification Program:

- (a) provides judiciary procurement employees with autonomy and flexibility in their procurement activities.
- (b) specifies seven levels of contracting officer authority that may be delegated within judiciary organizations as well as within the PMD staff, including authority for special programs. **See:** § 120.40 (Special Program Delegation).
- (c) stipulates procurement authority and/or related programmatic responsibilities at specified dollar levels based on successful completion of training requirements.
- (d) formalizes the process that establishes contracting officer authority.
- (e) requires compliance with specific certification level requirements as a condition to maintain delegated procurement authority.

§ 140.10.20 Scope

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

§ 140.15 Certification Level Overview

§ 140.15.10 Certification Levels

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

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

§ 140.15.20 Certification Level Features

Each certification level is distinct with respect to the:

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

§ 140.15.30 Appointment Process for PLOs and COs (Levels 1-3)							
Stage	Description						
1	The chief judge or other judiciary official identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials) selects and appoints a PLO in each judiciary unit to administer and manage the procurement program. See: § 130.40.20 (Appointment Documentation).						
2	<p>If the PLO is also appointed as a contracting officer, then:</p> <p>(1) the PLO must complete all training requirements for the applicable COCP appointment level, and</p> <p>(2) the chief judge or other judiciary official identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials) issues a separate delegation to the PLO using Form AO 375 (Procurement Liaison Officer's Appointment of Contracting Officer). A PLO cannot appoint him/herself as a CO.</p> <p>The PLO enters this information into InfoWeb Procurement Delegation System.</p>						
3	The PLO selects and appoints one or more individuals as a CO at COCP levels 1, 2, or 3. The PLO can appoint a CO to more than one of the aforementioned levels, provided they complete the associated training for those levels. See also: § 130.40.30 (Responsibilities).						
4	<p>The following describes how new or newly assigned employees are appointed to exercise procurement authority at COCP levels 1 through 3.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">IF the new or newly assigned employee is assigned duties at...</th> <th style="text-align: center;">THEN the...</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">COCP Level 1</td> <td> <p>(1) PLO completes and signs the top portion of the Form AO 375 (Procurement Liaison Officer's Appointment of Contracting Officer).</p> <p>(2) Proposed CO completes and signs the bottom portion of the Form AO 375 (Appointed Individual's Acknowledgment) and Form AO 377 (Cardholder Certification), then submits both to the PLO.</p> <p>(3) PLO provides the original Form AO 375 to the CO and places a copy in the oversight files. The PLO updates the InfoWeb Procurement Delegation System.</p> </td> </tr> <tr> <td style="text-align: center;">COCP Level 2 or 3</td> <td> <p>(1) PLO completes and signs the top portion of the Form AO 375 (Procurement Liaison Officer's Appointment of Contracting Officer).</p> </td> </tr> </tbody> </table>	IF the new or newly assigned employee is assigned duties at...	THEN the...	COCP Level 1	<p>(1) PLO completes and signs the top portion of the Form AO 375 (Procurement Liaison Officer's Appointment of Contracting Officer).</p> <p>(2) Proposed CO completes and signs the bottom portion of the Form AO 375 (Appointed Individual's Acknowledgment) and Form AO 377 (Cardholder Certification), then submits both to the PLO.</p> <p>(3) PLO provides the original Form AO 375 to the CO and places a copy in the oversight files. The PLO updates the InfoWeb Procurement Delegation System.</p>	COCP Level 2 or 3	<p>(1) PLO completes and signs the top portion of the Form AO 375 (Procurement Liaison Officer's Appointment of Contracting Officer).</p>
IF the new or newly assigned employee is assigned duties at...	THEN the...						
COCP Level 1	<p>(1) PLO completes and signs the top portion of the Form AO 375 (Procurement Liaison Officer's Appointment of Contracting Officer).</p> <p>(2) Proposed CO completes and signs the bottom portion of the Form AO 375 (Appointed Individual's Acknowledgment) and Form AO 377 (Cardholder Certification), then submits both to the PLO.</p> <p>(3) PLO provides the original Form AO 375 to the CO and places a copy in the oversight files. The PLO updates the InfoWeb Procurement Delegation System.</p>						
COCP Level 2 or 3	<p>(1) PLO completes and signs the top portion of the Form AO 375 (Procurement Liaison Officer's Appointment of Contracting Officer).</p>						

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

§ 140.20 Level 1 Certification: Purchase Card Program

§ 140.20.10 Scope

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

§ 140.20.20 Authority

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

§ 140.20.30 Level 1 Delegation

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

- open market procurements, with or without competition, up to \$10,000 per purchase,
- orders placed under GSA federal supply schedules up to GSA’s defined competition threshold (**see:** Guide, Vol. 14, § 310.50.43 (Ordering

Procedures for Supplies and Services Not Requiring a Statement of Work)), and

- orders placed under judiciary-wide contracts or blanket purchase agreements (BPA) up to the specified maximum order threshold of the contract or BPA when the contract or BPA does not require competition, and explicitly authorizes orders to be placed using the purchase card.

Note: These limits apply only to use of the card as both purchase and payment method when no other written contract exists. They do not apply when the card is used solely for payment of a written contract signed by a higher level COCP contracting officer and awarded under conventional contracting procedures. Such contracts must include Clause 7-145, Government Purchase Card, specifically authorizing payment to be made using the card. **See:** Judiciary Purchase Card Program Manual, Section 1.6 General Guidelines for Use of the Card.

§ 140.20.40 Training Requirements

To be eligible for appointment as a Level 1 CO, individuals must complete the online Judiciary Purchase Card Program Training, and repeat the online course every two years.

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

§ 140.25 Level 2 Certification: Special Program Delegation

§ 140.25.10 Scope

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

§ 140.25.20 Authority

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

§ 140.25.30 Level 2 Delegation

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

§ 140.25.40 Training Requirements

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

- Small Purchase Procedures,
- Standard Competitive Contracting Procedures,
- Special Categories of Procurements,
- Appropriations Law for the U.S. Courts, and
- any specialized training program offered by the responsible program office (**see:** § 120.40.15 (AO Office with Primary Program Responsibility)).

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

§ 140.25.50 Required Contract Documents

Approved contracting document templates, as applicable to each program, must be used. Program policies, procedures, and document templates are available in the JNet Procurement area.

§ 140.30 Level 3 Certification: General Delegation

§ 140.30.10 Scope

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

§ 140.30.20 Authority

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

§ 140.30.30 Level 3 Delegation

A delegation of Level 3 authority includes:

- (a) Open market procurements, with or without competition, up to \$10,000 per purchase. As noted above, this delegation does not include COCP Level 1 purchase card procurement authority, unless the individual has completed the training requirements for Level 1 and the AO-375 specifically delegates both Level 1 and 3. **See also:** § 140.20 (Level 1 Certification: Purchase Card Program).

- (b) Competitive, lowest-price, technically acceptable open market procurements conducted according to the procedures required for small purchases up to \$100,000.
- (c) Competitive, lowest-price, technically acceptable orders placed under GSA federal supply schedules up to the specified maximum order threshold, if any, of the schedule contract.
- (d) Orders placed under pre-competed contracts awarded by other federal agencies up to the specified maximum order threshold, if any, of the contract.
- (e) Orders placed under judiciary-wide contracts up to the specified maximum order threshold, if any, of the contract.

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

- (f) Procurements for expert and consultant services up to \$25,000. **See also:** 5 U.S.C. § 3109; Guide, Vol. 14, Ch. 5 (Special Categories of Procurements).
- (g) Procurements using less than full and open competition over \$10,000 and up to \$25,000 with signed approval of the chief judge or other judiciary official identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials) (or PLO, if delegated).
- (h) Interagency agreements (IAs) and memoranda of understanding (MOUs) for procurements up to \$100,000 when the judiciary is the receiving agency. However, all such IAs and MOUs for procurements require review and approval by the chief judge or other judiciary official identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials) (or PLO, if delegated), before CO signature. If the proposed IA or MOU is above this delegation authority or if the judiciary is the providing agency, the IA/MOU must be referred to PMD. Applicability of a statutory authority other than the Economy Act must be validated by the PMD. **See also:** Guide, Vol. 14, Ch. 5 (Special Categories of Procurements).
- (i) Procurement of training products and services up to \$25,000 without competition.
- (j) Commercial agreements, license agreements, and special use agreements as supplements and conditions to purchases conducted

within the authorized delegation at this level. **See also:** Guide, Vol. 14, Ch. 5 (Special Categories of Procurements).

- (k) Unlimited authority for the procurement of transit passes/vouchers using less than full and open competition with signed approval of the chief judge or other judiciary official identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials) (or PLO, if delegated).
- (l) Unlimited authority for the sole source procurement of non-commercial products or services available only from state or local government entities, with signed approval of the chief judge or other judiciary official identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials) (or PLO, if delegated).
- (m) Contract modifications up to \$100,000 within scope of the contract. **See also:** Guide, Vol. 14, § 745.20.20 (Determination of “Within Scope”).

§ 140.30.40 Delegation Limitations

- (a) In addition to the exclusions stated at § 120.20.10(b)(2) (Delegation to Chief Judges and Certain Judiciary Officials), a delegation of Level 3 authority does not include authority for the following procurements:
 - best value competitive procurements of any dollar amount;
 - procurements over \$10,000 (\$25,000 for training products or services) awarded without competition, or without signed approval of the chief judge or other judiciary official identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials) (or PLO, if delegated).
- (b) Judiciary staff who are conditionally appointed as procurement officers with a delegation of Level 3 authority pending completion of required training do not have authority to enter into commercial agreements, license agreements, and special use agreements.

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

§ 140.30.50 Training Requirements

To be eligible for appointment as a Level 3 CO, individuals must complete both online courses Small Purchase Procedures, Standard Competitive Contracting Procedures and the Judiciary Procurement Workshop classroom training, as well as the online Appropriations Law for the U.S. Courts course. In addition, individuals appointed as Level 3 COs must complete 16 hours of continuing education training every two years. The two-year period begins on the date of appointment or upon completion of the Judiciary Procurement Workshop, required to be completed within one year of

appointment, whichever is later. **See also:** § 140.15.30 (Appointment Process for PLOs and COs (Levels 1-3)) and Appx. 1F (Contracting Officers Certification Program (Level 3)).

§ 140.35 Level 4 Certification: [Reserved]

This is reserved for future delegations.

§ 140.40 Level 5 Certification: General Delegation

§ 140.40.10 Scope

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

§ 140.40.20 Authority and Delegation

A delegation of Level 5 authority confers procurement authority up to \$100,000 subject to the policies and procedures as provided in:

- Guide, Vol. 14 (Procurement);
- Judiciary Purchase Card Program Manual;
- applicable Procurement Bulletins;
- AO internal policies and procedures.

§ 140.40.40 Education and Training Requirements

- (a) To be eligible for appointment as a Level 5 CO, an individual must:
 - (1) Hold a Federal Acquisition Certificate for Contracting (FAC-C Professional), or be in the process of obtaining a FAC-C Professional, by:
 - (A) completing the required courses,
 - (B) passing the FAC-C Professional certification exam, and
 - (C) gaining the necessary experience; and
 - (2) Complete the mandatory judiciary training, as indicated in Appx. 1K (Required Training by Certification Level (Contracting Officers Certification Program)).
- (b) Individuals appointed as Level 5 COs also must complete FAC-C Professional continuing education training requirements every two years.

§ 140.45 Level 6 Certification: General Delegation

§ 140.45.10 Scope

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

§ 140.45.20 Authority and Delegation

A delegation of Level 6 authority confers procurement authority up to \$1,000,000 subject to the policies and procedures as provided in:

- Guide, Vol. 14 (Procurement);
- Judiciary Purchase Card Program Manual;
- applicable Procurement Bulletins;
- AO internal policies and procedures.

§ 140.45.40 Education and Training Requirements

- (a) To be eligible for appointment as a Level 6 CO, individuals must:
 - (1) complete the training and have the experience for a FAC-C Professional (**see**: § 140.40.40 (Education and Training Requirements)), and
 - (2) complete the additional mandatory judiciary training, as shown in Appx. 1K (Required Training by Certification Level (Contracting Officers Certification Program)).
- (b) Individuals appointed as Level 6 COs must complete the FAC-C Professional continuing education training requirements every two years.

§ 140.50 Level 7 Certification: General Delegation

§ 140.50.10 Scope

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

§ 140.50.20 Authority and Delegation

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

- Guide, Vol. 14 (Procurement);
- Judiciary Purchase Card Program Manual;
- applicable Procurement Bulletins;

- AO internal policies and procedures.

§ 140.50.40 Education and Training Requirements

- (a) To be eligible for appointment as a Level 7 CO, individuals must:
- (1) complete the training and fulfill the experience requirement for a FAC-C Professional (**see:** § 140.40.40 (Education and Training Requirements)), and
 - (2) complete the additional mandatory judiciary training, as shown in Appx. 1K (Required Training by Certification Level (Contracting Officers Certification Program)).
- (b) Individuals appointed as Level 7 COs must complete the FAC-C Professional continuing education training requirements every two years.

§ 140.55 Training

§ 140.55.10 Importance of Training

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

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

§ 140.55.20 Training Availability

- (a) Levels 1 Through 3

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

- Judiciary Purchase Card Program Training (online training),
- Small Purchase Procedures (online training),
- Standard Competitive Contracting Procedures (online training),

- Judiciary Procurement Workshop (classroom), and
- Appropriations Law for the U.S. Courts (online training).

See also: JNet's Procurement Training page.

(b) Levels 5 Through 7

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

(c) Funding for Mandatory Training

The AO will not provide funding to judiciary organizations for any training required for contracting officer appointment.

(d) Advice Regarding Course Selections

If requested, PMD staff will provide guidance and advice as to the adequacy of specific course selections before the individual attends training.

§ 140.55.30 Training Alternatives

(a) Relevant Previous Experience

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

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

(b) Credit for the Same or Similar Classes

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

- Judiciary Purchase Card Program Training (online training),
- Judiciary Executive Procurement Oversight Seminar (online training),

- Small Purchase Procedures (online training),
- Standard Competitive Contracting Procedures (online training),
- Judiciary Procurement Workshop (classroom), and
- Appropriations Law for the U.S. Courts (online training).

§ 140.60 Continuing Education

§ 140.60.10 Required Continuing Education

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

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

§ 140.60.20 Failure to Meet Continuing Education Requirements

If a CO does not complete the biennial continuing education requirement, the PLO must cancel the CO’s appointment. **See also:** § 140.55.30 (Training Alternatives).

§ 140.60.30 Approval for Continuing Education

PLOs approve continuing education training for COs.

§ 140.60.40 Examples of Continuing Education

Some examples of continuing education are:

- refresher courses (e.g., modules of the blended training may be used as refreshers);
- advanced procurement courses (e.g., Advanced Contract Administration);
- courses designed to broaden knowledge (e.g., Source Selection Procedures, Contract Quality Assurance, Evaluating Contractor Performance);

- courses related to procurement ethics/standards of conduct;
- financial management training (e.g., national Judiciary Financial Forum);
- courses that expand COs' knowledge of the products or services they are responsible for acquiring; or
- in-house training sessions, videos, etc., on relevant and current topics taught by experienced procurement officials.

§ 140.60.50 Continuing Education Certification Process

The following table describes the continuing education certification process.

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

§ 150 Procurement Integrity and Ethics

§ 150.10 Overview

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

§ 150.20 Procurement Integrity Act

§ 150.20.10 Purpose

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

§ 150.20.15 Authority

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

§ 150.20.20 Applicability

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

§ 150.20.25 Provisions of the Act**(a) Prohibition on Disclosing Procurement Information**

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

(b) Prohibition on Obtaining Procurement Information

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

(c) Employees' Required Actions When Contacted About Employment

Under 41 U.S.C. § 2103, any judiciary employee, personally and substantially participating in a judiciary procurement in excess of \$250,000 who contacts or is contacted by a bidder or offeror in that procurement regarding possible non-federal employment, must:

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

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

- (2) reject the possibility of non-federal employment; **or**
- (3) disqualify him/herself from further personal and substantial participation in the procurement until such time as the employee has been authorized to resume participation on the grounds that the company and/or individual is no longer a bidder or offeror in the procurement, or all discussions between the employee and the

bidder or offeror regarding possible employment have terminated without an agreement for employment.

(d) Prohibition on Former Employees Accepting Compensation from Contractors

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

- (1) served, at the time of selecting or awarding the contract to that contractor, as the procuring contracting officer, source selection authority, a member of the source selection evaluation board, or chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of \$10,000,000;
- (2) served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10,000,000 awarded to that contractor; or
- (3) personally made a decision for the judiciary to:
 - (A) award a contract, subcontract, modification or a contract or subcontract, or a task order or delivery order in excess of \$10,000,000 to that contractor;
 - (B) establish overhead or other rates applicable to a contract for that contractor that are valued in excess of \$10,000,000;
 - (C) approve the issuance of a contract payment or payments in excess of \$10,000,000 to that contractor; or
 - (D) pay or settle a claim in excess of \$10,000,000 with that contractor.
- (4) These provisions do not prohibit a former employee from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to above in subparagraphs (1), (2), and (3) of this paragraph.
- (5) Former employees who knowingly accept compensation in violation of this prohibition are subject to penalties. **See also:** § 150.20.30 (Penalties).

§ 150.20.30 Penalties

(a) Criminal

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

(b) Civil

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

(c) Administrative Actions

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

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

§ 150.20.40 Questions About Procurement Integrity Policies

The Director has designated the AO's General Counsel as the ethics official for the Act. Anyone with questions concerning procurement integrity policy should be directed to PMD or the AO's OGC. In instances not clearly defined or not covered by the policies in this section, judiciary employees are to seek guidance from the OGC. Judiciary employees or former employees may request a written advisory opinion from the OGC.

§ 150.30 Conflicts of Interest

§ 150.30.10 Organizational and Consultant Conflicts of Interest

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

- is unable, or potentially unable, to provide unbiased impartial assistance or advice to the judiciary because of conflicting roles, or
 - has an unfair competitive advantage for an award.
- (b) Such potential conflicts of interest are not limited to any particular type of procurement, but are more likely to occur when involving the following:
- management support services,
 - consultant services,
 - assistance with technical evaluations, or
 - systems engineering and technical direction.

§ 150.30.20 Identification of Potential Conflicts of Interest

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

§ 150.30.20 Potential Conflicts of Interest	
Type of conflict	Definition
(a) Unequal Access to Information	Access to internal judiciary business information as part of the performance of a contract that could provide the contractor a competitive advantage in a later competition for another judiciary contract. Such an advantage could easily be perceived as unfair by a competing offeror who is not given similar access to the relevant information.
(b) Competitive Advantage	The contractor, under a prior or existing contract, participates in defining or preparing the requirements or documents that are involved in a subsequent procurement where the contractor may be a competitor. This includes any participation by a contractor that would allow them to suggest technology, process or other bias into the solicitation’s requirements reflective of their familiarity or expertise and giving them a competitive advantage. Examples include defining the requirements, preparing an alternatives analysis, drafting the statement of work or specifications, or developing the evaluation criteria.

§ 150.30.20 Potential Conflicts of Interest	
Type of conflict	Definition
(c) Impaired Objectivity	The contractor is required to assess or evaluate products or services produced or performed by the contractor or one of its business divisions, subsidiaries, or affiliates, or any entity with which it has a significant financial relationship. The contractor's ability to render impartial advice could appear to be undermined by the contractor's financial or other business relationship with the entity being evaluated.

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

§ 150.30.30 Disqualified and Rejected Offer

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

§ 150.30.40 Clauses

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

§ 150.40 Standards of Conduct

§ 150.40.10 General

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

§ 150.40.20 Prohibitions on Purchasing from Relatives or Judiciary Employees

- (a) A CO must not knowingly award a procurement to:
 - (1) a relative of a judiciary employee,
 - (2) another judiciary employee, or

- (3) a business concern (or other organization) owned or substantially owned or controlled by a judiciary employee(s) or a relative(s) of judiciary employee(s).
- (b) If a compelling reason exists for such an award, full information and justification must be provided to PMD, for consideration of an approved written exception, before award.

§ 150.40.30 Codes of Conduct

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

§ 150.50 Gratuities or Gifts

See: Guide, Vol. 2C, Ch. 6 (Gifts). AO staff should also refer to the AO Code of Conduct.

§ 150.50.10 Procurement Official Prohibitions

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

§ 150.50.20 Violations

- (a) If there is evidence that an unlawful gratuity or gift was offered or given by a contractor to a judge or judiciary employee, the CO must contact the PE for assistance in determining:
 - what actions are appropriate under an affected procurement; and
 - whether debarment proceedings against the contractor under the Guide, Vol. 14, § 320.30 (Debarment, Suspension, and Ineligibility) are appropriate.
- (b) Disciplinary action may also be taken against the employee, as appropriate.

§ 150.50.50 Clause

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

§ 160 Ratification

§ 160.05 Definitions	
Ratification	The act of approving an unauthorized commitment by an official who has the delegated procurement authority to do so. The approval of an unauthorized commitment or act results in the act being given effect as if originally authorized. It is not a desirable method of procurement, because it is not consistent with the judiciary’s policies and procedures, and may result in punitive action against the person(s) who committed the unauthorized act. The only judiciary employees who may bind the judiciary are contracting officers, including purchase cardholders, acting within the limits of their delegated authority.
Unauthorized Commitment	An agreement that is not binding, solely because the judiciary representative who made it lacked the procurement authority to enter into that agreement on behalf of the judiciary. Note: Employee reimbursements made under the authority of Guide, Vol. 13, § 430.10 (Reimbursement for Authorized Emergency Purchases) are not considered unauthorized commitments and are not subject to the ratification procedures described below.

§ 160.10 Overview

- (a) Contractors who act on unauthorized commitments do so at their own risk. They are not entitled to consideration (payment) unless and until the unauthorized commitment is ratified by an official with the appropriate delegated procurement authority. Payment can be substantially delayed or may not be forthcoming at all, since not all unauthorized commitments can be ratified (e.g., unauthorized commitments that violate appropriations law in some way cannot be ratified).
- (b) Examples of unauthorized commitments include:

- Supplies or services are ordered by someone who is not either a COCP Contracting Officer (including purchase card holders) or identified by name as an authorized ordering official in a contract or blanket purchase agreement.
- Contractor starts work before the contractual document is issued or awarded by a CO.
- An invoice is received from a contractor, but no purchase order or contract exists for the items or work described in the invoice.
- Purchase cardholder exceeds single purchase limitation without proper authorization/delegation of authority.

§ 160.15 Authority to Ratify

An unauthorized commitment may be ratified by the CO only after the appropriate judiciary official (i.e., AO Director, PE, chief judge or other judiciary official identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials), or PLO if delegated) has authorized the ratification. The PLO may not be the authorizing official for any ratification action where the PLO is also the CO on the action.

§ 160.20 Procedures to Request Ratification

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

- (a) The CO must instruct the contractor, orally and in writing, to stop all work immediately.
- (b) The person who committed the unauthorized act or a point of contact from the requesting office (program office/user) and the CO must prepare a memorandum to the file containing the following information (**see also:** Form AO 371 (Justification and Approval for Ratification of an Unauthorized Commitment)):
 - (1) the amount of the unauthorized commitment and the name of the contractor;
 - (2) a statement of facts concerning the unauthorized commitment, including:
 - (A) what procurement procedures were followed and why normal procurement procedures were not followed;

- (B) the identity of the person(s) who made the unauthorized commitment;
 - (C) how the contractor was selected;
 - (D) a list of other sources considered, if any;
 - (E) a detailed description of the products or services ordered;
 - (F) verification that the products or services satisfy a bona fide need of the judiciary;
 - (G) whether price was discussed and the estimated or agreed-upon price, if one resulted from discussions;
 - (H) whether or not the products or services have been received and/or accepted or the current status of delivery or performance;
 - (I) whether funds were available for the unauthorized commitment at the time the purchase was made; and
 - (J) any invoices or requests for payment received from the contractor, and any other pertinent documents relating to the unauthorized commitment.
- (c) A statement indicating corrective action taken to preclude a recurrence of similar unauthorized commitments in the future.

§ 160.25 Criteria for Approving Ratification Requests

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

- (a) The judiciary has obtained or will obtain a benefit resulting from the performance of the unauthorized commitment, and/or the products or services have been provided to and accepted by the judiciary;
- (b) The CO had the appropriate delegated procurement authority to enter into a contractual commitment at the time the unauthorized commitment was made and still has the authority to do so. Or, for unauthorized actions exceeding the CO's delegated procurement authority, PMD could have granted authority to enter into such a contractual commitment. The PLO must contact PMD for assistance in making this determination;
- (c) The resulting procurement would have been proper and would have met all legal requirements, if it had been made by a CO with the appropriate level of delegated procurement authority;

- (d) An individual who possesses the requisite procurement authority determines the price is fair and reasonable; and
- (e) Funds are available and were available at the time the unauthorized commitment was made. Funds used for payment must be from the year in which the unauthorized commitment occurred, irrespective of when the ratification is accomplished.

§ 160.30 Who May Authorize Ratification

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

§ 160.30 Who May Authorize Ratification	
IF the action...	THEN...
(a) is within the authority delegated at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials)	the authorizing official is the chief judge or other judiciary official identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials), or the PLO (if delegated), who will provide a one-time delegation to the CO to ratify the unauthorized action or assign it to a CO with the appropriate authority.
(b) is not within the authority delegated at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials)	the authorizing official is the PE. The CO will submit to the PE the ratification documentation, including a signed approval of the request by the chief judge or other judiciary official identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials), or the PLO (if delegated). The PE will review the documents and, if appropriate, provide a one-time delegation of authority for the CO to ratify the action.

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

§ 160.35 Ratification Actions by CO

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

- (a) prepare and execute contract documents equivalent to those that should have been prepared had the requirement been properly executed initially;
- (b) ensure the date of the action is the current date, but the effective date must be the date of the unauthorized commitment;

- (c) include the following statement on each such contract document: “This contract action ratifies an unauthorized commitment made on [date].”; and
- (d) place all ratification documents in the contracting file.

§ 160.40 Non-Ratifiable Unauthorized Commitments

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

§ 160.45 Reporting Requirement

The chief judge and other judiciary officials identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials) must submit a report to the PE each month listing each request received for ratification of an unauthorized commitment with the final disposition of each request. Reporting is not required if there have been no ratification requests during a month. The report must include the following information:

- (a) name of judiciary unit;
- (b) unauthorized commitment value;
- (c) name of contractor;
- (d) description of products or services;
- (e) date ordered;
- (f) whether or not the unauthorized commitment was ratified; and
- (g) rationale for ratification or non-ratification.

§ 160.50 Employee Consequences

A decision to ratify a specific unauthorized commitment does not preclude disciplinary action against the employee responsible for it, especially if the violation is flagrant or if the employee has one or more prior unauthorized commitments. Employees may be disciplined for making unauthorized commitments, regardless of whether or not the unauthorized commitment is ratified. **See:** Guide, Vol. 12, Ch. 3 (Employee Relations).

§ 170 Release of Information

§ 170.10 Judiciary Policy

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

§ 170.20 Awarded Contracts

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

§ 170.30 Internal Documents

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

§ 170.40 Obtaining Guidance

Since requests for documents, most particularly pricing information, often involve complex issues requiring knowledge of court rulings, statutes, and other issues, COs are cautioned to first seek the guidance of PMD, who will consult with OGC, before disclosing documents that could be considered confidential or trade secret information under FOIA or the Trade Secrets Act, or involve other questions about release of information.

§ 170.50 Unsuccessful Proposals

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

§ 170.60 Debriefing

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

§ 170.70 Clause

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