

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

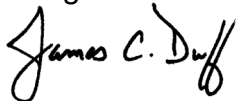
WASHINGTON, D.C. 20544

Date: 03/18/2019

GUIDE TO JUDICIARY POLICY

TRANSMITTAL 14-013 VOLUME/PART 14 CHAPTER(S) 1, 3, 4

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

FROM: James C. Duff 

RE: **PROCUREMENT**

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

[Appendix 1B – Solicitation Provisions and Contract Clauses](#)
[Appendix 1C – Matrix of Solicitation Provisions and Clauses \(Including Key\)](#)
[Chapter 3 – Purchasing Methods](#)
[Appendix 3B – Determination of Best Procurement Approach](#)
[Appendix 3C – Determination and Findings for Time and Materials and Labor Hour GSA FSS Orders](#)
[Chapter 4 – Types of Contracts and Analysis of Offers](#)

Appendices 1B and 1C were updated to reflect revised Service Contract Act-related clauses.

Changes in Chapter 3 include the following:

- Updated § 310 to align with GSA Federal Supply Schedule (FSS) regulations in Federal Acquisition Regulation (FAR) subpart 8.4. When requirements exceed \$150,000, the contracting officer (CO) must either ensure receipt of at least three offers or document why three offers were not received. To maximize the chances of receiving three offers, COs must solicit on or post to eBuy or provide the solicitation to as many contractors as possible. Orders limiting competition must be posted to eBuy with the justification.

Guide Transmittal 14-013 – Procurement

- Updated § 325 to improve guidance on Blanket Purchase Agreements. Use of the term “proposal” was removed, and a detailed discussion of best value was moved to § 330.
- Moved guidance from § 325.25.10 into its own section, § 332.
- Updated § 335 to align with FAR subparts 8.4 and 16.5. Form AO 370 (Justification for Full and Open Competition (JOFOC)) was replaced by three new forms for limiting competition: Form 370A (Justification for Limiting Open Market Competition); Form 370B (Justification for an Exception to Fair Opportunity (JEFO)), for multiple-award indefinite-delivery contracts, consistent with FAR subpart 16.5; and Form 370C (Limited-Sources Justification (LSJ)), for GSA FSS contracts, consistent with FAR subpart 8.4.
- Added two new appendices to align with the FAR: Appendix 3B (Best Procurement Approach Direct Acquisition Template) and Appendix 3C (Determination and Findings Non FFP Template).

In Chapter 4, the BPA section was relocated to Chapter 3, where other BPA information resides, and information on fair opportunity and related exceptions was added for multiple award contracts.

The significant changes are detailed in the Redline Comparison below.

Questions regarding this transmittal may be directed to the Procurement Management Division of the AO’s Finance and Procurement Office, at 202-502-1330.

REDLINE COMPARISON REFLECTING CHANGES

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

Clause 2-135, ~~IEEE Standard for the Environmental Assessment~~Acquisition of EPEAT®-Registered Personal Computer Products

Include the following clause as prescribed in [§ 220.60.70\(b\) \(Clauses\)](#).

~~IEEE Standard for the Environmental Assessment~~Acquisition of EPEAT®-Registered Personal Computer Products (APR-2013JAN 2019)

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

“Computer ~~monitor~~” means a ~~vide~~device that performs logical operations and processes data. Computers are composed of, at a minimum:

- (1) ~~---~~ A central processing unit (CPU) to perform operations;
- (2) ~~---~~ User input devices such as a keyboard, mouse, digitizer, or game controller; and
- (3) ~~---~~ A computer display ~~unit used~~screen to output information.

Computers include both stationary and portable units, including desktop computers, integrated desktop computers, notebook computers, thin clients, and workstations. Although computers must be capable of using input devices and computer displays, as noted in (2) and (3) above, computer systems do not need to include these devices on shipment to meet this definition. This definition does not include server computers, gaming consoles, mobile

REDLINE COMPARISON REFLECTING CHANGES

Clause 2-135 [cont'd]

telephones, portable hand-held calculators, portable digital assistants (PDAs), MP3 players, or any other mobile computing device with a computer displays less than 4 inches, measured diagonally.

“Computer display” means a display screen and its associated electronics encased in a single housing or within the computer housing (e.g., notebook or integrated desktop computer) that is capable of displaying output information from a computer via one or more inputs such as a VGA, DVI, USB, DisplayPort, and/or IEEE 1394-2008™, Standard for High Performance Serial Bus. Examples of computer display technologies are the cathode-ray tube (CRT) and liquid crystal display (LCD).

“Desktop computer” means a computer designed for use where the main unit is intended to be located in a permanent location, often on a desk or table on the floor. Desktops are not designed for portability and utilize an external computer display, keyboard, and mouse. Desktops are designed for a broad range of home and office applications.

~~“IEEE” means Institute of Electrical and Electronics Engineers~~

~~“Notebook computer” means a portable style or laptop style computer system.~~

~~“Personal computer product” means a notebook computer, a desktop computer, or a computer monitor, and any peripheral equipment that is integral to the operation of such items. For example, the desktop computer together with the keyboard, the mouse, and the power cord would be a personal computer product. Printers, copiers, and fax machines are not included in peripheral equipment, as used in this definition.~~

“Integrated desktop computer” means a desktop system in which the computer and computer display function as a single unit that receives its AC power through a single cable. Integrated desktop computers come in one of two possible forms:

- (1) A system where the computer display and computer are physically combined into a single unit; or
- (2) A system packaged as a single system where the computer display is separate but is connected to the main chassis by a DC power cord and both the computer and computer display are powered from a single power supply. As a subset of desktop computers, integrated desktop computers are typically designed to provide similar functionality as desktop systems.

“Notebook computer” means a computer designed specifically for portability and to be operated for extended periods of time either with or without a direct connection to an AC power source. Notebooks must utilize an integrated computer display and be capable of operation off of an integrated battery or other portable power source. In addition, most notebooks use an external power supply and have an integrated keyboard and pointing device. Notebook computers are typically designed to provide similar functionality to desktops, including operation of software similar in functionality to that used in desktops. Docking stations are considered accessories for notebook computers, not notebook computers. Tablet PCs, which may use touch-sensitive screens along with, or instead of, other input devices, are considered notebook computers.

REDLINE COMPARISON REFLECTING CHANGES

Clause 2-135 [cont'd]

"Personal computer product" means a computer, computer display, desktop computer, integrated desktop computer, or notebook computer.

- (b) Under this contract, the ~~e~~Contractor shall deliver, furnish for ~~judiciary~~government use, or furnish for contractor use within judiciary facilities, only personal computer products that, at the time of submission of proposals and at the time of award, were Electronic Product Environmental Assessment Tool (EPEAT)[®] ~~B~~bronze-registered or higher. ~~Bronze is the first level discussed in clause 1.4 of the IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.~~
- (c) For information on ~~IEEE~~EPEAT[®] standard ~~1680~~, see: www.epa.gov/PEAT.

(end)

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

[. . .]

Provisions, Clauses, Terms and Conditions – Small Purchases (JUN 2014)

[. . .]

- (c) [. . .]
(7) [. . .]
(c) [Clause 3-160, Service Contract Act of 1965 Labor Standards \(JUN 2012 \(JAN 2019\)\)](#) (Applies to any purchase order over \$2,500, the principal purpose of which is to furnish services through the use of service employees for work to be performed in the United States, Puerto Rico, Guam, or the U.S. Virgin Islands, **except** where [Clause 3-215, Exemption from Application of the Service Contract Act Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Requirements](#), or [Clause 3-225, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services – Requirements](#) apply. See ~~(e)(7)~~(g) and ~~(e)(7)~~(h) below.)
- [. . .]
(g) [Clause 3-215, Exemption from Application of the Service Contract Act Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Requirements \(APR 2014 \(JAN 2019\)\)](#) (Applies if the request for quotation included [Provision 3-195](#) and the contractor certified its compliance with the conditions stated in the provision.)
- (h) [Clause 3-225, Exemption from Application of the Service Contract Act Labor Standards to Contracts for Certain Services – Requirements \(APR 2014 \(JAN 2019\)\)](#) (Applies if the request for quotation included [Provision 3-220](#) and the contractor certified its compliance with the conditions stated in the provision.)

[. . .]

Provision 3-10, RESERVED

Provision 3-15, Place of Performance

Include the following provision as prescribed in [§ 330.10.30\(eb\) \(Provisions and Clauses\)](#).

[. . .]

REDLINE COMPARISON REFLECTING CHANGES

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

Include the following provision as prescribed in [§ 330.10.30\(dc\)](#) (Provisions and Clauses).

Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters (~~APR 2014~~JAN 2019)

- (a) (1) [. . .]
(i) [. . .]
(D) have ____, have not ____, within a three-year period preceding this offer, been notified of any delinquent federal taxes in an amount that exceeds \$3,~~500~~ for which the liability remains unsatisfied.
[. . .]

Clause 3-25, Protecting the Judiciary's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment

Include the following clause as prescribed in [§ 330.10.30\(ed\)](#) (Provisions and Clauses).

Protecting the Judiciary's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (~~JUN 2014~~JAN 2019)

- (a) The government (including the judiciary) suspends or debar contractors to protect the government's interests. The contractor shall not enter into any subcontract in excess of \$~~2535~~,000 with a contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.
- (b) The contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$~~2535~~,000, to disclose to the contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the federal government.
[. . .]
- (d) *Subcontracts.* Unless this is a contract for commercial items, the contractor shall include the requirements of this clause, including this paragraph (d) (appropriately modified for the identification of the parties), in each subcontract that exceeds \$~~2535~~,000 in value, and is not a subcontract for commercially available off-the-shelf items.
[. . .]

Provision 3-30, Certificate of Independent Price Determination

Include the following provision as prescribed in [§ 330.10.30\(fe\)](#) (Provisions and Clauses).

[. . .]

Clause 3-35, Covenant Against Contingent Fees

Include the following clause as prescribed in [§ 330.10.30\(gf\)](#) (Provisions and Clauses).

[. . .]

Clause 3-40, Restrictions on Subcontractor Sales to the Judiciary

Include the following clause as prescribed in [§ 330.10.30\(hg\)](#) (Provisions and Clauses).

[. . .]

REDLINE COMPARISON REFLECTING CHANGES

Clause 3-45, Anti-Kickback Procedures

Include the following clause as prescribed in [§ 330.10.30\(ih\)](#) (Provisions and Clauses).
[. . .]

Clause 3-50, Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity

Include the following clause as prescribed in [§ 330.10.30\(ii\)](#) (Provisions and Clauses).
[. . .]

Clause 3-55, Price or Fee Adjustment for Illegal or Improper Activity

Include the following clause as prescribed in [§ 330.10.30\(ki\)](#) (Provisions and Clauses).
[. . .]

~~Provision 3-60, RESERVED~~

~~Clause 3-65, RESERVED~~

Provision 3-70, Determination of Responsibility

Include the following provision as prescribed in [§ 330.10.30\(nk\)](#) (Provisions and Clauses).
[. . .]

~~Provision 3-75, RESERVED~~

~~Provision 3-80, RESERVED~~

Provision 3-85, Explanation to Prospective Offerors

Include the following provision as prescribed in [§ 330.10.30\(om\)](#) (Provisions and Clauses).
[. . .]

~~Provision 3-90, RESERVED~~

Provision 3-95, Preparation of Offers

Include the following provision as prescribed in [§ 330.10.30\(sn\)](#) (Provisions and Clauses).
[. . .]

Provision 3-100, Instructions to Offerors

Include the following provision as prescribed in [§ 330.10.30\(to\)](#) (Provisions and Clauses).
[. . .]

Clause 3-105, Audit and Records

Include the following clause as prescribed in [§ 330.10.30\(up\)](#) (Provisions and Clauses).
[. . .]

~~Provision 3-110, RESERVED~~

REDLINE COMPARISON REFLECTING CHANGES

Provision 3-115, Facsimile Offers

Include the following provision as prescribed in [§ 330.10.30\(vq\)](#) (Provisions and Clauses).
[. . .]

Clause 3-120, Order of Precedence

Include the following clause as prescribed in [§ 330.10.30\(wr\)](#) (Provisions and Clauses).
[. . .]

~~Provision 3-125, RESERVED~~

Provision 3-130, Authorized Negotiators

Include the following provision as prescribed in [§ 330.10.30\(ys\)](#) (Provisions and Clauses).
[. . .]

Provision 3-135, Single or Multiple Awards

Include the following provision as prescribed in [§ 330.10.30\(zt\)](#) (Provisions and Clauses).
[. . .]

Clause 3-140, Notice to the Judiciary of Labor Disputes

Include the following clause as prescribed in Section [§ 330.10.30\(aau\)](#) (Provisions and Clauses).
[. . .]

Clause 3-145, Payment for Overtime Premiums

Include the following clause as prescribed in [§ 330.10.30\(bbv\)](#) (Provisions and Clauses).
[. . .]

Clause 3-150, Contract Work Hours and Safety Standards Act – Overtime Compensation

Include the following clause as prescribed in [§ 330.10.30\(eev\)](#) (Provisions and Clauses).
[. . .]

Clause 3-155, Walsh-Healey Public Contracts Act

Include the following clause as prescribed in [§ 330.10.30\(edx\)](#) (Provisions and Clauses).
[. . .]

Clause 3-160, Service Contract ~~Act of 1965~~Labor Standards

Include the following clause as prescribed in ~~§ 325.25.80(a)~~[§ 332.50\(a\)](#) (Required Clauses and Provisions), ~~§ 332.30(b)~~ (Exemptions), and [§ 332.40.20\(b\)](#) (Incorporation of Wage Determinations).

~~Service Contract Act of 1965~~ Service Contract Labor Standards (JAN 2019)

(a) Definitions

~~“Act”~~, as used in this clause, means the ~~Service Contract Act of 1965~~ (41 U.S.C. § 6701 et seq.).
[. . .]

REDLINE COMPARISON REFLECTING CHANGES

Clause 3-160 *[cont'd]*

(s) [. . .]

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

[. . .]

Clause 3-165, RESERVED

Clause 3-170, RESERVED

Clause 3-175, Fair Labor Standards Act and Service Contract ActLabor Standards – Price Adjustment (Multi-Year and Option Contracts)

Include the following clause as prescribed in [§ 332.25.8050\(b\) \(Required Clauses and Provisions\)](#) and [§ 410.75.6560\(c\) \(Contract Clauses and Provisions\)](#).

Fair Labor Standards Act and Service Contract ActLabor Standards – Price Adjustment (Multi-Year and Option Contracts) (~~JUN-2012~~JAN 2019)

[. . .]

(c) The wage determination, issued under the Service Contract Act of 1965-Labor Standards statute ([41 U.S.C. § 6701](#), *et seq.*), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current on the anniversary date of a multi-year contract or the beginning of each renewal option period, will apply to this contract. [. . .]

[. . .]

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

[. . .]

Fair Labor Standards Act and Service Contract ActLabor Standards – Price Adjustment (~~APR-2014~~JAN 2019)

[. . .]

Provision 3-185, Evaluation of Compensation for Professional Employees

Include the following provision as prescribed in [§ 330.10.30\(~~hhz\)~~](#) (Provisions and Clauses).

[. . .]

Clause 3-190, RESERVED

Provision 3-195, Exemption from Application of the Service Contract ActLabor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Certification

Include the following provision as prescribed in [§ 332.50\(d\) \(Required Clauses and Provisions\)](#).

REDLINE COMPARISON REFLECTING CHANGES

Provision 3-195 [cont'd]

Exemption from Application of the Service Contract AetLabor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Certification (APR 2014JAN 2019)

[. . .]

(c) [. . .]

- (2) the offeror shall notify the contracting officer as soon as possible, if the contracting officer did not attach a Service Contract AetLabor Standards wage determination to the solicitation.

[. . .]

Clause 3-200, Service Contract AetLabor Standards – Place of Performance Unknown

Include the following clause as prescribed in [§ 332.50\(e\) \(Required Clauses and Provisions\)](#).

Service Contract AetLabor Standards – Place of Performance Unknown (JAN 200319)

- (a) This contract is subject to the Service Contract AetLabor Standards, and the place of performance was unknown when the solicitation was issued. [. . .]

[. . .]

Clause 3-205, Protest after Award

Include the following clause as prescribed in [§ 330.10.30\(~~k~~kaa\) \(Provisions and Clauses\)](#).

[. . .]

Provision 3-210, Protests

Include the following provision as prescribed in [§ 330.10.30\(#bb\) \(Provisions and Clauses\)](#).

[. . .]

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

Include the following clause as prescribed in [§ 332.50\(f\) \(Required Clauses and Provisions\)](#).

Exemption from Application of the Service Contract AetLabor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Requirements (APR 2014JAN 2019)

[. . .]

- (e) If the Department of Labor determines that any conditions for exemption in paragraphs (a) through (c) of this clause have not been met, the exemption shall be deemed inapplicable, and the contract shall become subject to the Service Contract AetLabor Standards statute. In such case, the procedures at [29 CFR 4.123\(e\)\(1\)\(iv\)](#) and [29 CFR 4.5\(c\)](#) will be followed.

[. . .]

REDLINE COMPARISON REFLECTING CHANGES

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

Include the following provision as prescribed in [§ 332.50\(g\)](#) (Required Clauses and Provisions).

Exemption from Application of the Service Contract AetLabor Standards to Contracts for Certain Services – Certification (~~APR 2014~~JAN 2019)

[. . .]

(c) If the offeror does not certify to the conditions in paragraph (a) of this provision—

[. . .]

(2) The offeror shall notify the contracting officer as soon as possible if the contracting officer did not attach a Service Contract AetLabor Standards wage determination to the solicitation.

[. . .]

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

Include the following clause as prescribed in [§ 325.25.80\(h\)](#) (Required Clauses and Provisions).

Exemption from Application of the Service Contract AetLabor Standards to Contracts for Certain Services – Requirements (~~APR 2014~~JAN 2019)

[. . .]

(f) [. . .] If the contractor has reason to doubt the validity of the certification, the requirements of the Service Contract AetLabor Standards statute shall be included in the subcontract.

(g) If the Department of Labor determines that any conditions for exemption at paragraphs (a) through (e) of this clause have not been met, the exemption shall be deemed inapplicable, and the contract shall become subject to the Service Contract AetLabor Standards statute. In such case, the procedures in at [29 CFR 4.123\(e\)\(2\)\(iii\)](#) and [29 CFR 4.5\(c\)](#) will be followed.

[. . .]

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

Include the following clause as prescribed in [§ 330.10.30\(~~add~~\)\(1\)](#) (Provisions and Clauses).

[. . .]

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

Include the following clause as prescribed in [§ 330.10.30\(~~add~~\)\(2\)](#) (Provisions and Clauses).

[. . .]

Clause 4-15, RESERVED

REDLINE COMPARISON REFLECTING CHANGES

Clause 4-55, Economic Price Adjustment – Standard Products

Include the following clause as prescribed in [§ 410.65.50 \(Clauses\)](#) and [§ 410.75.65\(b\)60\(b\) \(Contract Clauses and Provisions\)](#). The clause may be modified to increase the 10 percent limit on aggregate increases in paragraph (c)(1), upon written approval by the Procurement Executive, PMD.

Economic Price Adjustment – Standard Products (~~APR 2013~~JAN 2019)

[. . .]

(b) [. . .] The decrease will apply to those items delivered on and after the effective date of the decrease in the contractor's established price, and this contract will be modified accordingly.

[. . .]

~~Clause 4-95, RESERVED~~

~~Clause 4-100, RESERVED~~

~~Clause 4-105, RESERVED~~

~~Provision 4-110, RESERVED~~

~~Clause 4-115, RESERVED~~

~~Provision 4-120, RESERVED~~

~~Clause 4-125, RESERVED~~

~~Clause 4-130, RESERVED~~

~~Clause 4-135, RESERVED~~

~~Clause 4-140, RESERVED~~

~~Clause 4-145, RESERVED~~

Clause 7-225, Termination (Cost-Reimbursement)

Include the following clause as prescribed in [§ 755.20.60\(c\) \(Clauses\)](#).

Termination (Cost-Reimbursement) (~~APR 2013~~JAN 2019)

[. . .]

(m) [. . .]

(2) If the total payments exceed the amount finally determined to be due, the contractor shall repay the excess to the judiciary upon demand, together with interest computed at the rate established by the Secretary of the Treasury under the criteria established by the Renegotiation Act of 1971 ([P.L. 92-41, 85 Stat. 97](#)), and published at [http://www.treasurydirect.gov/govt/rates/tc/r/tc-~~opdprmt2.htm~~](http://www.treasurydirect.gov/govt/rates/tc/r/tc-opdprmt2.htm)<http://www.fms.treas.gov/prompt/rates.html>. [. . .]

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

REDLINE COMPARISON REFLECTING CHANGES

Clause or Provision #	Title	Presc. (all references are to Volume 14)
B-20	Computer Generated Forms	Appx. B, § B.2.1-(c)
3-3	Provisions, Clauses, Terms and Conditions – Small Purchases	§ 310.50.30(d) , § 325.30.20(b) , and § 325.45.10(e) § 325.45.15(b)
3-10	RESERVED	
3-15	Place of Performance	§ 330.10.30(b) § 330.10.30(e)
3-20	Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters	§ 330.10.30(c) § 330.10.30(d)
3-25	Protecting the Judiciary's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment	§ 330.10.30(d) § 330.10.30(e)
3-30	Certificate of Independent Price Determination	§ 330.10.30(e) § 330.10.30(f)
3-35	Covenant Against Contingent Fees	§ 330.10.30(f) § 330.10.30(g)
3-40	Restrictions on Subcontractor Sales to the Government	§ 330.10.30(g) § 330.10.30(h)
3-45	Anti-Kickback Procedures	§ 330.10.30(h) § 330.10.30(i)
3-50	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	§ 330.10.30(i) § 330.10.30(j)
3-55	Price or Fee Adjustment for Illegal or Improper Activity	§ 330.10.30(j) § 330.10.30(k)
3-60	RESERVED	
3-65	RESERVED	
3-70	Determination of Responsibility	§ 330.10.30(k) § 330.10.30(n)
3-75	RESERVED	
3-80	RESERVED	
3-85	Explanation to Prospective Offerors	§ 330.10.30(m) § 330.10.30(q)
3-90	RESERVED	
3-95	Preparation of Offers	§ 330.10.30(n) § 330.10.30(e)
3-100	Instructions to Offerors	§ 330.10.30(o) § 330.10.30(t)
3-100, Alt I		§ 330.10.30(t)(1) § 330.10.30(o)(1)
3-100, Alt II		§ 330.10.30(t)(2) § 330.10.30(o)(2)
3-100, Alt III		§ 330.10.30(t)(3) § 330.10.30(o)(3)
3-105	Audit and Records	§ 330.10.30(p) § 330.10.30(u)
3-110	RESERVED	

REDLINE COMPARISON REFLECTING CHANGES

3-115	Facsimile Offers	§ 330.10.30(g) § 330.10.30(v)
3-120	Order of Precedence	§ 330.10.30(r) § 330.10.30(w)
3-125	RESERVED	
3-130	Authorized Negotiators	§ 330.10.30(s) § 330.10.30(y)
3-135	Single or Multiple Awards	§ 330.10.30(t) § 330.10.30(z)
3-140	Notice to the Judiciary of Labor Disputes	§ 330.10.30(u) § 330.10.30(aa)
3-145	Payment for Overtime Premiums	§ 330.10.30(v) § 330.10.30(bb)
3-150	Contract Work Hours and Safety Standards Act – Overtime Compensation	§ 330.10.30(w) § 330.10.30(cc)
3-155	Walsh-Healey Public Contracts Act	§ 330.10.30(dd) § 330.10.30(x)
3-160	Service Contract Act of 1965 <u>Labor Standards</u>	§ 325.25.80(a) § 332.50(a) and § 332.30(b) and § 332.40.20(b)
3-165	RESERVED	
3-170	RESERVED	
3-175	Fair Labor Standards Act and Service Contract Act <u>Labor Standards</u> – Price Adjustment (Multiple-Year and Option Contracts)	§ 325.25.80(b) and § 410.75.65(e) § 332.50(b) and § 410.75.60(c)
3-180	Fair Labor Standards Act and Service Contract Act <u>Labor Standards</u> – Price Adjustment	§ 325.25.80(e) § 332.50(c)
3-185	Evaluation of Compensation for Professional Employees	§ 330.10.30(z) § 330.10.30(hh)
3-190	RESERVED	
3-195	Exemption from Application of the Service Contract Act <u>Labor Standards</u> to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Certification	§ 325.25.80(d) § 332.50(d)
3-200	Service Contract Act <u>Labor Standards</u> – Place of Performance Unknown	§ 325.25.80(e) § 332.50(e)
3-205	Protest after Award	§ 330.10.30(aa) § 330.10.30(kk)
3-210	Protests	§ 330.10.30(bb) § 330.10.30(ll)
3-215	Exemption from Application of the Service Contract Act <u>Labor Standards</u> to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Requirements	§ 325.25.80(f) § 332.50(f)
3-220	Exemption from Application of the Service Contract Act <u>Labor Standards</u> to Contracts for Certain Services – Certification	§ 325.25.80(g) § 332.50(g)
3-225	Exemption from Application of the Service Contract Act <u>Labor Standards</u> to Contracts for Certain Services – Requirements	§ 325.25.80(h) § 332.50(h)
3-300	Registration in the System for Award Management (SAM)	§ 330.10.30(nn)(1) § 330.10.30(dd)(1)

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3-305	Payment by Electronic Funds Transfer – System for Award Management (SAM) Registration	§ 330.10.30(nn)(2) § 330.10.30(dd)(2)
3-310	Payment by Electronic Funds Transfer – Other Than System for Award Management (SAM) Registration	§ 330.10.30(nn)(3) § 330.10.30(dd)(3)
3-315	Submission of Electronic Funds Information with Offer	§ 330.10.30(nn)(4) § 330.10.30(dd)(4)
4-1	Type of Contract	§ 410.15.20(a)
4-5	Ordering	§ 410.30.75(a) § 410.30.64(a)
4-10	Order Limitations	§ 410.30.75(b) § 410.30.64(b)
4-15	RESERVED	
4-20	Requirements	§ 410.30.75(c) § 410.30.64(c)
4-25	Indefinite Quantity	§ 410.30.75(d) § 410.30.64(d)
4-55	Economic Price Adjustment – Standard Products	§ 410.65.50 and § 410.75.65(b) § 410.75.60(b)
4-95	RESERVED	
4-100	RESERVED	
4-105	RESERVED	
4-110	RESERVED	
4-115	RESERVED	
4-120	RESERVED	
4-125	RESERVED	
4-130	RESERVED	
4-135	RESERVED	
4-140	RESERVED	
4-145	RESERVED	
4-150	Cancellation under Multi-Year Contracts	§ 410.75.65(a) § 410.75.60(a)
4-155	Alternate Awards	§ 410.75.65(d) § 410.75.60(d)
4-160	Cancellation Ceilings	§ 410.75.65(e) § 410.75.60(e)
4-165	Price Proposal Instruction – Multi-Year Contract	§ 410.75.65(f) § 410.75.60(f)
5-30	Authorization and Consent	§ 330.10.30(mm) § 330.10.30(cc), § 530.70.60(a) and § 660.10(a)
5-30, Alt I		§ 330.10.30(mm) § 330.10.30(cc)
7-20	Security Requirements	§ 330.10.30(l) § 330.10.30(e) and § 715.55(e)

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

§ 310 Procurement Sources

§ 310.10 Sources of Supply

[. . .]

§ 310.10.50 Using Other Federal Agency Contracts

Other federal agency contracts, (OFAC), which include government-wide agency contracts (GWACs), often impose a service charge on agencies to use the contract. [. . .]

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

[. . .]

§ 310.50 GSA Federal Supply Schedules

[. . .]

§ 310.50.16 Types of Supply Schedules [table] [deleted]

§ 310.50.23 E-BuyBuy

E-BuyBuy is GSA's electronic Request for Quotation (RFQ) system, and is a part of a suite of en-lineonline tools that complement GSA Advantage! E-BuyBuy allows judiciary COs to post requirements and obtain quotes electronically. Posting an RFQ on eBuy:

- (a) is one medium for providing fair notice to all schedule contractors offering such supplies and services, as required by § 310.50.43(c) (Orders exceeding GSA's simplified acquisition threshold (\$150,000)) and § 310.50.46(c) (Orders using "best value" evaluation method); and
- (b) is required when an order contains brand name specifications (see: § 310.50.66(b) (Limiting Sources Based on Items Particular to One Manufacturer (Brand Name))).

§ 310.50.30 IncidentalInclusion of Items Not on Schedule

~~Quotations obtained from FSS vendors, when using schedules, may include incidental items not contained in the schedule.~~ For administrative convenience, judiciary COs may add items not on the FSS (also referred to as-called "open market items") to a FSS blanket purchase agreement (BPA), or an individual task or delivery order only if:

- (a) the total price of the incidental items on the order or agreement is less than GSA's competition threshold (for definition, see: § 310.50.43(a)); All applicable acquisition regulations related to the purchase of the items not on the FSS have been followed, such as publicizing (see: § 315 (Publicizing Open Market Procurement Actions)) and competition requirements (see: § 325 (Small Purchase Procedures));
- [. . .]
- (c) the item(s)The items are clearly labeled on the order as incidental item(s) which are items not on the FSS; and

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§ 310.50.30 [cont'd]

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

§ 310.50.33 Use of GSA Schedules

Judiciary COs will issue delivery orders or task orders directly to the schedule contractors for the required products and services. The delivery or task order must cite the applicable GSA contract number from which the order is placed. When placing orders or establishing a BPA (~~see: § 310.50.53~~) under FSS contracts, (see: § 310.50.53 (Blanket Purchase Agreements Under GSA Schedules)), judiciary COs must not seek competition outside of the schedules or synopsize the requirement on FedBizOpps. ~~Orders against GSA FSS cannot be competed with open market, judiciary-wide contracts, or other federal agency contracts. Orders placed under GSA schedules must be consistent with the judiciary's policies, procedures, and within the contracting officer's delegation authority.~~

(a) Requirements

[. . .]

(2) For orders that exceed \$550,000, the requiring/ordering agency must make a determination that the use of the schedule is the best procurement approach, using Guide, Vol. 14, Appx. 3B (Determination of Best Procurement Approach).

(3) Orders that are not fixed price, i.e. time and materials or labor hour, require a determination and finding (D&F) detailing why a fixed-price order is not suitable, using Guide, Vol. 14, Appx. 3C (Determination and Findings for Time and Materials and Labor Hour GSA FSS Orders).

- (b) Orders against GSA FSS cannot be competed with open market, judiciary-wide contracts, or OFACs. Orders placed under GSA schedules must be consistent with the judiciary's policies and procedures, and within the contracting officer's delegation authority. See: Guide, Vol. 14, § 140 (Contracting Officers Certification Program).

§ 310.50.40 Determination of Fair and Reasonable Price

[. . .]

- (b) [. . .] See: § 310.50.46 (Ordering Procedures for Services Requiring a Statement of Work)- For additional information concerning when judiciary COs should seek additional discounts before placing an order, see: § 310.50.56.

- (c) Judiciary COs should seek additional discounts. However, COs must seek a price reduction when the order or BPA exceeds the GSA's simplified acquisition threshold. Schedule contractors are not required to give price reductions that they extended to another ordering activity for a specific BPA or order. See: § 310.50.56 (Price Reductions).

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§ 310.50.43 ~~Required~~ Ordering Procedures for Supplies and Services Not Requiring a Statement of Work

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

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

Procedure	Details
<p>(a) Orders at or below <u>the</u> GSA's competition threshold (generally, which is \$3,500), <u>except for:</u></p> <p>(1) procurement of construction subject to Davis-Bacon Act (which is \$Wage Rate Requirements (Construction) (i.e., \$2,000)); and</p> <p>(2) procurement of services subject to the Service Contract Act (which is Service Contract Labor Standards (SCLS) (i.e., \$2,500)).</p>	<p>(1) No competition is required. Judiciary COs may place orders at, or below, GSA's competition threshold with any FSS <u>Federal Supply Schedule</u> contractor.</p> <p>(2) that can meet the agency's needs. Although not required to solicit from a specific number of schedule contractors, judiciary COs should attempt to distribute orders among contractors, by rotating similar purchases. Even when not required, competition is desirable and will likely result in reduced prices.</p>
<p>(b) Minimum Competition</p>	<p>(1) Soliciting three sources or reviewing pricing of three sources is a minimum requirement for an order above GSA's competition threshold. See: § 310.50.43(a). Soliciting additional sources is likely to result in higher levels of customer satisfaction and lower cost to the judiciary.</p> <p>(2) Conducting actual competition (i.e., requesting quotations), rather than only consulting prices is always preferable. Oftentimes, GSA contractors will quote prices lower than those on the GSA schedule because of special offers or quantity discounts.</p> <p>(3) When the CO solicits pricing by sending an RFQ to at least three sources, receipt of at least one of the completed RFQs is considered adequate competition, since the pricing was prepared in a competitive environment.</p>

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<p>(c) GSA FSS Competitive Price/Quotation Requirements, Whether a Statement of Work is Required or Not</p> <p><u>(b) Orders exceeding GSA's competition threshold, but not exceeding GSA's simplified acquisition threshold (\$150,000).</u></p>	<p>In requesting pricing or quotations for orders exceeding GSA's competition threshold (for definition, <u>see: § 310.50.43(a)</u>):</p> <p>(1) the pricing/quotation requests must all be to GSA schedule holders, or their authorized resellers (for definition, <u>see: § 310.50.60</u>), and must specify that the procurements were conducted under FSS;</p> <p>(2) open market quotations or quotations from other government contracts may not be mixed with pricing/quotations from GSA FSS for the purpose of meeting the competitive requirement;</p> <p>(3) pricing/quotation requests must be for products and/or services specified in the applicable schedule or within the general scope of the schedule;</p> <p>(4) orders from the GSA FSS may not be split to circumvent the requirement to obtain three competitive prices/quotations; and</p> <p>(5) pricing/quotation requests must provide the same product or service description, whether written or oral, to each of the vendors solicited. (1) Judiciary COs must place orders with the contractor that can provide the technically acceptable lowest priced (or best value, when applicable) supply or service. Before placing an order, the judiciary CO must:</p> <p><u>(A) Consider reasonably available information about the supply or service offered under Federal Supply Schedule contracts by surveying at least three schedule contractors through the GSA Advantage! online shopping service, by reviewing the catalogs or pricelists of at least three schedule contractors, or by requesting quotations from at least three schedule contractors; or</u></p> <p><u>(B) Document the circumstances for restricting consideration to fewer than three schedule contractors based on one of the reasons listed in § 310.50.63 (Limiting Sources on Orders Placed Under Federal Supply Schedules).</u></p> <p><u>(2) When the CO solicits pricing by sending an RFQ to at least three sources, receipt of at least one of the completed RFQs is considered adequate competition, since the pricing was prepared in a competitive environment.</u></p>
<p>(d) Orders exceeding GSA's competition threshold (generally \$3,500), except for (1) procurement of construction subject to Davis-Bacon Act, (which is \$2,000); and (2) procurement of services subject to the Service Contract Act, (which is \$2,500) but not exceeding the maximum order threshold and using "best value" evaluation criteria</p>	<p>(1) Requests for quotations Each order must be placed on a competitive basis unless this requirement is waived based on a justification that use "best value" (price is prepared and other factors) determinations must include a full approved according to § 310.50.63 (Limiting Sources on Orders Placed Under Federal Supply Schedules). The judiciary CO must:</p> <p><u>(A) Provide an RFQ that includes a description of the evaluation/supplies to be delivered or the services to be performed and the basis upon which the selection criteria and the relative importance of each factor will be made. See: § 330.40 (Selection for Award); and</u></p> <p><u>(B) Post the RFQ on eBay to afford all schedule contractors offering the required supplies or services under the appropriate schedule(s) an opportunity to submit a quote;</u></p> <p><u>or</u></p> <p><u>(2) Provide the RFQ to as many schedule contractors as practicable, consistent with market research appropriate to the circumstances, to reasonably ensure that quotes will be received from at least three contractors that can fulfill the</u></p>

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<p>(c) <u>Orders exceeding GSA's simplified acquisition threshold (\$150,000).</u></p>	<p><u>requirements. When fewer than three quotes are received from schedule contractors that can fulfill the requirement, the judiciary CO must prepare a written determination explaining that no additional contractors capable of fulfilling the requirement could be identified, despite reasonable efforts to do so. The determination must clearly explain efforts made to obtain quotes from at least three schedule contractors;</u></p> <p><u>as well as</u></p> <p>(2) The CO must also state how the evaluation criteria will be used to make the award decision.</p> <p>(3) Ensure that all quotes received are fairly considered and award is made according to the selection basis stated in the RFQ; and</p> <p>(4) When an order contains brand name specifications, the judiciary CO must post the RFQ on eBay along with the justification or documentation, as required by § 310.50.66 (Limiting Sources Based on Items Particular to One Manufacturer (Brand Name)). An RFQ is required when a purchase description specifies a brand name. This information must be disclosed with the solicitation to each potential offeror. See: Guide, Vol. 14, § 210.70.30(b)(5) (Source Selection Processes).</p> <p>(3) Before placing an order, a judiciary CO must consider reasonably available information about the product or service offered under multiple award schedule (MAS) contracts by surveying the GSA Advantage! on-line shopping service, or by reviewing the catalogs or pricelists of at least three schedule contractors.</p> <p>(4) Besides price, when determining best value, the judiciary CO may consider, among other factors, any or all of the following:</p> <ul style="list-style-type: none"> • past performance; • special features of the product or service required for effective program performance; • trade-in considerations; • probable life of the item selected as compared with that of a comparable item; • warranty considerations; • maintenance availability; • environmental and energy efficiency considerations; and • delivery terms. <p>Note: Under the Contracting Officers' Certification Program (COCP) (see: Guide, Vol. 14, § 140 (Contracting Officers Certification Program)), not all certification levels are authorized for "best value" procurements. Because the "best value" method is more complex, only appropriately trained and certified COs may solicit for best value offers. For CO's holding COCP certification levels not delegated this authority, the solicitation package using "best value" must be submitted to PMD for written approval before soliciting quotes.</p>
<p>(ed) <u>Orders exceeding the maximum order threshold using "best value" evaluation method.</u></p>	<p>(1) Each schedule contract has maximum order thresholds for each Special Item Number (SIN). Although a price reduction may be sought at any time, this threshold represents the point where, given the dollar value of the potential order, the judiciary CO must seek a price reduction.</p> <p>(2) In addition to following the procedures in § 310.50.43(c) of this table and before placing an order that exceeds the maximum order threshold or establishing a BPA (see: § 310.50.53), judiciary COs must:</p>

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- ~~• review the pricelists of additional schedule contractors (the GSA Advantage! on-line shopping service can be used to facilitate this review); and~~
- ~~• based upon the initial evaluation, seek price reductions from the schedule contractor(s).~~

~~If price reductions are not offered, an order may still be placed. Orders using the best value methodology for evaluation must have a written RFQ and follow the procedures in § 310.50.46 (Ordering Procedures for Services Requiring a Statement of Work) for the corresponding dollar threshold.~~

§ 310.50.46 ~~Additional~~ Ordering Procedures for Services Requiring a Statement of Work

The following additional requirements apply when ordering services priced at hourly rates as established by the schedule contracts: for services requiring an SOW. The applicable services will be identified in the FSS publications and the contractor's pricelists. [. . .] All SOWs must include:

[. . .]

- any special requirements (e.g., security clearances, travel, special knowledge, analysis of requirements, or system maintenance support). ~~The RFQ may be posted to GSA's electronic RFQ system, E-Buy (see: § 310.50.23).~~

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

Type of Order	Details
<p>(a) For orders<u>Orders</u> exceeding GSA's competition threshold (generally \$3,500), except for (1) procurement of construction subject to Davis-Bacon Act (which is \$2,000) and (2) procurement of services subject to the Service Contract Act (which is \$2,500), but not exceeding the maximum order<u>GSA's simplified acquisition threshold (\$150,000).</u></p>	<p>The judiciary CO must:</p> <p><u>The judiciary CO must place orders with the contractor that can provide the technically acceptable lowest priced supply or service. Before placing an order, the judiciary CO must:</u></p> <ol style="list-style-type: none"> (1) Develop a statement of work;<u>an SOW</u> according to information above. (2) Provide the RFQ (including the statement of work<u>SOW</u> and evaluation criteria) to at least three schedule contractors that offer services that will meet the judiciary's needs; and or document the circumstances for restricting consideration to fewer than three schedule contractors, based on one of the reasons in § 310.50.63 (Limiting Sources on Orders Placed Under Federal Supply Schedules). (3) Request that contractors submit firm-fixed prices to perform the services identified in the statement of work, unless the use of a different contract type is permitted under the GSA schedule.(3) <u>Specify the type of order (i.e., firm-fixed-price, labor-hour) for the services identified in the SOW. Orders should be awarded on a fixed price basis. Use of other contract types requires a delegation of procurement authority for some COCP Level contracting officers (see: Guide, Vol. 14, § 140 (Contracting Officers Certification Program)).</u>
<p>(b) For proposed orders<u>Orders</u> exceeding the maximum order<u>GSA's simplified acquisition threshold or when establishing a BPA(\$150,000).</u></p>	<p>In addition to meeting the requirements of § 310.50.46(a), the judiciary CO must:</p> <p><u>(1) Provide the RFQ (including the statement of work and evaluation criteria)Each order must be placed on a competitive basis unless this requirement is waived on the basis of a justification that is prepared and approved according to § 310.50.63 (Limiting Sources on Orders Placed Under Federal Supply Schedules). The judiciary CO must prepare an RFQ that includes an SOW and evaluation criteria. The CO must:</u></p> <ol style="list-style-type: none"> (1) <u>Post the RFQ on eBuy to additional</u>afford all schedule contractors that offer<u>offering</u> the <u>required</u> services that will meet the needs of the judiciary. When

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	<p>determining under the appropriate number of additional multiple-award schedule(s) an opportunity to submit a quote;</p> <p><u>or</u></p> <p>(2) Provide the RFQ to as many schedule contractors, the judiciary CO may consider, among other factors, the following: as practicable, consistent with market research appropriate to the circumstances, to reasonably ensure that quotes will be received from at least three contractors that can fulfill the requirements. When fewer than three quotes are received from schedule contractors that can fulfill the requirements, the contracting officer must prepare a written determination to explain that no additional contractors capable of fulfilling the requirements could be identified despite reasonable efforts to do so. The determination must clearly explain efforts made to obtain quotes from at least three schedule contractors;</p> <ul style="list-style-type: none"> • complexity, scope and estimated value of the requirement; • market research results. <p>(2) Seek price reductions. as well as</p> <p>(3) Ensure that all quotes received are fairly considered and award is made according to the evaluation criteria in the RFQ; and</p> <p>(4) Provide the RFQ (including the SOW and evaluation criteria) to any schedule contractor who requests a copy.</p>
<p><u>(c) Orders using “best value” evaluation method.</u></p>	<p>(1) Requests for quotations that use “best value” evaluation method (price and other factors) must include a full description of the evaluation criteria. See: § 330.40.30 (Best Value Awards). This information must be disclosed with the solicitation to each potential offeror. See: Guide, Vol. 14, § 210.70.30(b)(5) (Source Selection Processes).</p> <p>(2) In addition to price, when determining best value, the judiciary CO may consider, among other factors, the following:</p> <ul style="list-style-type: none"> • <u>past performance;</u> • <u>special features of the product or service required for effective program performance;</u> • <u>trade-in considerations;</u> • <u>probable life of the item selected as compared with that of a comparable item;</u> • <u>warranty considerations;</u> • <u>maintenance availability;</u> • <u>environmental and energy efficiency considerations; and</u> • <u>delivery terms.</u> <p>Note: Under the Contracting Officers’ Certification Program (COCP) (see: Guide, Vol. 14, § 140 (Contracting Officers Certification Program)), not all certification levels are authorized for “best value” procurements. The “best value” method of evaluation is more complex; therefore, only appropriately trained and certified COs may solicit for best value offers. For COs holding COCP certification levels not delegated this authority, the solicitation package using “best value” must be submitted to PMD for written approval before soliciting quotes.</p>
<p><u>(d) Services Priced at Hourly Rates</u></p>	<p>The judiciary CO is responsible for considering the level of effort and the mix of labor proposed to perform a specific task being ordered and for determining that the total price is reasonable.</p>

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§ 310.50.50 Evaluation and Award

- (a) The judiciary CO must evaluate all responses received using the evaluation criteria provided to the schedule contractors. ~~The judiciary CO is responsible for considering in the level of effort and the mix of labor proposed to perform a specific task being ordered, and for determining that the total price is reasonable. RFQ.~~
- (b) After the CO places an order, or establishes a BPA, with the schedule contractor, the CO ~~should~~must provide timely notification to unsuccessful offerors. [. .]

§ 310.50.52 File Documentation

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

- (a) the schedule contracts considered, noting the contractor from which the service was purchased;
- (b) a description of the service purchased;
- (c) the amount paid;
- (d) the evaluation methodology used in selecting the contractor to receive the order;
- (e) the rationale for any trade-offs, if trade-off methodology is used, in making the selection (required only when a best value evaluation methodology is used) (see: § 330.40.30 (Best Value Awards) and § 330.40.40 (Selection Documentation));
- (f) the price reasonableness determination, which includes an assessment of the level of effort and labor mix, § 310.50.46(d) (Services Priced at Hourly Rates) (required only when an SOW is involved);
- (g) the rationale for using other than a firm-fixed price order; and
- (h) when an order exceeds the simplified acquisition threshold, evidence of compliance with the ordering procedures at § 310.50.43(c) (Orders Exceeding GSA's Simplified Acquisition Threshold (\$150,000)) or § 310.50.46(c) (Orders Using "Best Value" Evaluation Method), whichever is applicable.

§ 310.50.53 Blanket Purchase Agreements Under GSA Schedules

- (a) Use this subsection only for ~~Blanket Purchase Agreements (BPAs)~~ established under a GSA schedule. Establishment of a single BPA or multiple BPAs under GSA schedule must be made using the same procedures outlined in § 310.50.43 (Ordering Procedures for Supplies and Services Not Requiring a Statement of Work) and § 310.50.46 (Ordering Procedures for Services Requiring and Statement of Work). For procedure guidance on how to establish an open market BPA, see: § 325.45.15 and Guide, Vol. 14, § 410.35 (Blanket Purchase Agreements)-§ 325.50 (Blanket Purchase Agreement).

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§ 310.50.53 [cont'd]

~~(a)(b)~~ A BPA is an ordering agreement, not a contract. A BPA does not constitute a legally binding contract and may be established without an obligation of funds. Therefore, there is never an obligation of funds recorded based on a BPA award. Funds must be obligated at the time an order is placed under a BPA, unless the order is subject to the availability of funds and properly supported by Clause 7-115, Availability of Funds.

(1) BPA's against GSA Schedules are written agreements negotiated between a purchasing office and a GSA Schedule contractor that contain agreed upon terms and conditions that will apply if and when an order is placed against the BPA for products or services.

(2) BPA's permit individuals that are designated in writing by name or title in the BPA, to place orders by telephone, over-the-counter, by email, or in writing. Regardless of how the order is placed, an obligation of funds must be recorded in the financial system at the time the order is placed, unless the order is subject to the availability of funds and properly supported by Clause 7-115, Availability of Funds.

(c) Use of GSA BPAs

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

(1) BPA's may be established ~~with~~under one or more schedule ~~contractors~~contractors' GSA contract. The number of BPAs to be established is within the discretion of the judiciary CO establishing the BPAs and should be based on a strategy that is expected to maximize the effectiveness of the ~~BPA(s). In determining how many BPAs to establish, consider:~~BPAs.

~~(1) the scope and complexity of the requirement(s);~~

~~(2) the need to periodically compare multiple technical approaches or prices;~~

~~(3) the administrative costs of BPAs; and~~

~~(4) the technical qualifications of the schedule contractor(s).~~

~~(b) Establishment of a single BPA, or multiple BPAs, must be made using the same procedures outlined in § 310.50.43 and § 310.50.46.~~ (2) BPAs must address the frequency of ordering, invoicing, discounts, requirements (e.g., estimated quantities, work to be performed), delivery locations, and time.

(ed) Single Award BPA Under GSA

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

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§ 310.50.53 [cont'd]

- (1) No single award BPA with an estimated value exceeding \$112 million (including any options), may be awarded unless the Procurement Executive (PE) has determined in writing that:
 - (A) Orders under the BPA are so integrally related that only a single source can reasonably perform the work;
 - (B) The BPA provides for only firm-fixed priced orders for products with unit prices established in the BPA, or services with prices established in the BPA for specific tasks to be performed;
 - (C) Only one source is qualified and capable of performing the work at a reasonable price to the judiciary; or
 - (D) It is necessary in the public interest to award the BPA to a single source for exceptional circumstances.
- (2) The requirement for determination for a single-award BPA greater than \$112 million is in addition to any applicable requirement for a limited-sources justification at § 310.50.46 (Ordering Procedures for Services Requiring and Statement of Work). However, the two documents may be combined into one document.

(e) Multiple Award BPA Under GSA

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

- (1) When establishing ~~a multiple BPAs-award BPA~~, the judiciary CO must specify the procedures for placing orders ~~(also known as "calls" when ordering against a BPA) under the BPAs~~ under the BPAs according to § 310.50.43 (Ordering Procedures for Supplies and Services Not Requiring a Statement of Work) and § 310.50.46 (Ordering Procedures for Services Requiring and Statement of Work), whichever is applicable.
- (2) In determining to award a multiple award BPA or a single award BPA, the judiciary CO should consider the following factors and document the decision in the BPA file:
 - (A) the scope and complexity of the requirement(s);
 - (B) the need to periodically compare multiple technical approaches or prices;
 - (C) the administrative costs of BPAs; and
 - (D) the technical qualifications of the schedule contractor(s).

(f) Minimum Documentation

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

REDLINE COMPARISON REFLECTING CHANGES

§ 310.50.53 [cont'd]

- (1) Schedule contracts considered, noting the contractor to which the BPA was awarded.
- (2) Description of the supply or service purchased.
- (3) Price.
- (4) Required justification for a limited source BPA, if applicable. See: § 310.50.63 (Limiting Sources on Orders Placed Under Federal Supply Schedules).
- (5) Determination for a single-award BPA exceeding \$112 million, if applicable. See: § 310.50.53(d) (Single Award BPA Under GSA).
- (6) Documentation supporting the decision to establish multiple award BPAs or a single-award BPA. See: § 310.50.53(d) (Single Award BPA Under GSA) and § 310.50.53(e) (Multiple Award BPA Under GSA).
- (7) Basis for the award decision. This should include the evaluation methodology used in selecting the contractor, the rationale for any trade-offs in making the selection (if “best value”), and a price reasonableness determination for services requiring an SOW.

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

BPA Situation	Procedures
(1) Single <u>Award</u> BPA	If the judiciary CO establishes one BPA, authorized users may place the order/ call directly under the established BPA when the need for the product or service arises.
(2) Multiple <u>Award</u> BPAs	<p>if(A) <u>Orders at or below the GSA competition threshold (generally \$3,500). The judiciary CO establishesmay place orders at or below the GSA competition threshold with any BPA holder that can meet the agency’s needs. The ordering activity should attempt to distribute any such orders among the BPA holders.</u></p> <p><u>(B) Orders exceeding the GSA’s competition threshold but not exceeding the GSA’s simplified acquisition threshold (\$150,000).</u></p> <p><u>(i) The judiciary CO must provide each multiple BPAs, award BPA holder an opportunity to be considered for each order exceeding the GSA competition threshold, but not exceeding GSA’s simplified acquisition threshold unless one of the exceptions in § 310.50.63 (Limiting Sources on Orders Placed Under Federal Supply Schedules).</u></p> <p><u>(ii) The judiciary CO need not contact each of the multiple award BPA holders before placing an order/call exceeding GSA’s competition threshold (for definition, see: § 310.50.43(a)), the judiciary CO must: <u>if information is available to ensure that each BPA holder is provided an opportunity to be considered for each order.</u></u></p>

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	<p>(A)forward</p> <p>(iii) The judiciary CO must document the requirement, or statement of work and the evaluation criteria, circumstances when restricting consideration to less than all multiple award BPA holders; offering the required supplies and services.</p> <p>(C) Orders exceeding GSA’s simplified acquisition threshold (\$150,000) unless one of the exceptions in § 310.50.63 (Limiting Sources on Orders Placed Under Federal Supply Schedules).</p> <p>(i) Provide an RFQ to all BPA holders offering the required supplies or services under the multiple award BPA, to include, a description of the supplies to be delivered or the services to be performed and the basis upon which the selection will be made;</p> <p>(B) evaluate the</p> <p>(ii) Afford all BPA holders responding to the RFQ an opportunity to submit a quote; and</p> <p>(iii) Fairly consider all responses received, and make the award determination, according to the selection procedures.</p> <p>(D) The judiciary CO must document evidence of compliance with these procedures and place the order/call with basis for the appropriate BPA holder award decision.</p>
<p>(3) BPAs for Hourly Rate Services</p>	<p>(A) If the BPA is for hourly rate services, the judiciary CO must develop a statement of work an SOW for requirements each order covered by the BPA. Ordering activities should place these orders on a firm-fixed price basis to the maximum extent practicable.</p> <p>(B) For time-and-materials and labor-hour orders, the contracting officer must follow the procedures in § 310.50.46(b) (Orders Exceeding GSA's Simplified Acquisition Threshold (\$150,000)) and § 310.50.46(c) (Orders Using "Best Value" Evaluation Method). All orders/calls under the BPA must specify either a fixed price or an estimated ceiling amount price for the performance of the tasks identified in the statement SOW.</p> <p>(C) The ordering activity, specifically the CO, is responsible for considering the level of effort and the mix of work labor proposed to perform a specific task being ordered, determining that the total price is reasonable through appropriate analysis techniques, and documenting this in the file.</p>
<p>(4) Duration of BPAs</p>	<p>BPAs generally should not exceed five years in length, but may do so to meet program requirements. Contractors may be awarded BPAs that extend beyond the current term of their GSA Schedule contract, so long as there are option periods in their GSA Schedule contract that, if exercised, will cover the BPA’s period of performance.</p>
<p>(5) Review of BPAs</p>	<p>(A) The judiciary CO that established the BPA must review it at least once a year to determine whether:</p>

REDLINE COMPARISON REFLECTING CHANGES

- ~~(i) the schedule contract, upon which the BPA was established, is still in effect;~~
- ~~(ii) any updates to the BPA are appropriate, or new BPAs with different suppliers should be awarded, taking into account market conditions, sources of supply, and other pertinent factors; or~~
- ~~(iii) estimated quantities/amounts have been exceeded and additional price reductions should be sought.~~

~~(B) The judiciary CO must document the results of each annual review in the BPA file.~~

§ 310.50.53 [cont'd]

(h) Duration of BPAs

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

(i) Review of BPAs

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

§ 310.50.56 Price Reductions ~~and Other Negotiated Changes~~

~~Besides seeking~~ Judiciary COs may request a price ~~reductions~~ reduction at any time before placing an order ~~exceeding the maximum order threshold, establishing a BPA,~~ or in conjunction with the annual BPA review; ~~there may be other reasons to request a price reduction or other favorable terms and conditions, such as early delivery of an item. For example, judiciary COs should.~~ However, the judiciary CO must seek a price reduction when the product or service is available elsewhere at a lower price, or when establishing a BPA to fill recurring requirements. The potential volume of orders/calls under BPAs, regardless of the size of individual orders/calls, offers the opportunity to secure greater discounts. ~~order or BPA exceeds the GSA's simplified acquisition threshold.~~ Schedule contractors are not required to ~~pass on to all schedule users~~ give price reductions that they extended only to an individual CO ~~another ordering activity~~ for a specific BPA or order.

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§ 310.50.60 Authorized Resellers

If provided by the schedule, offers/quotes may be solicited from and subsequent awards may be made to any FSS contract holders or the schedule holder's designated agents or authorized resellers. [. . .]

§ 310.50.63 ~~Brand Name or Equal~~

~~A "brand name or equal" description may be used, if the CO is prepared to evaluate and accept an item determined to be "equal" to the specified brand name. The CO must document the determination in the procurement file. If the requirement is in excess of the GSA competition threshold (for definition, see: § 310.50.43(a)) and is defined so as to require a particular "brand name," product, or a feature of a product peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company, then this is restricting competition to only those who can provide the specified brand name item.~~

~~**Note:** When a specific brand name, product, or feature is specified and an "or equal" product will not be considered, then the procurement must be justified as other than full and open competition. See: § 335.10.50.~~

§ 310.50.66 ~~Sole Source Justification and Approval~~

~~(a) — Limiting Sources on Orders placed under Federal Supply Schedules schedules are exempt from the requirements to advertise. However, judiciary COs may procure sole source requirements under this subsection only if the need to do so is justified in writing according to § 335.30 and approved at the applicable delegation level. For proposed orders exceeding GSA's competition threshold, the judiciary CO may solicit from one source, if the judiciary CO determines that the circumstances dictate only one source is reasonably available (e.g., exclusive licensing agreement).~~

~~(b) — Generally it is not possible to structure a statement of work services request so as to allow a sole source justification under GSA FSSs. An exception is when the services are proprietary in nature. Then the CO must justify this reason and document the file accordingly. Judiciary COs must use the procedures in this subsection when ordering services priced at hourly rates as established by the schedule contracts. The applicable services will be identified in the FSS publications and the contractor's pricelists.~~

§ 310.50.70 Documentation

~~(a) — Minimum Documentation~~

~~The information in this subsection is in addition to the documentation requirements in Guide, Vol. 14, § 710.10 (Procurement Files (Purchase/Delivery/Task Order or Contract Files)). The judiciary CO must document:~~

~~(1) — the GSA schedule contracts considered, noting for each the GSA contract number, and the contractor name, as well as pricing for each; Judiciary COs must justify an order or BPA that exceeds GSA's competition threshold where the competition requirements outlined in § 310.50.43 (Ordering Procedures for Supplies and Services Not Requiring a Statement of Work) and § 310.50.46 (Ordering Procedures for Services Requiring and Statement of Work) are not met.~~

REDLINE COMPARISON REFLECTING CHANGES

§ 310.50.63 [cont'd]

~~(a) For a proposed order or BPA with an estimated value exceeding GSA's competition threshold (generally \$3,500) not placed or established according to § 310.50.43 (Ordering Procedures for Supplies and Services Not Requiring a Statement of Work)~~

~~(2) a description of the product or service purchased;~~

~~(3) the amount paid and the reason for any difference from the amount of the order; and~~

~~(4) for orders exceeding the GSA competition threshold that are awarded without competition, Justification for Other than Full and Open Competition (Form AO 370) approved at the applicable delegation level. See: § 335.~~

~~(b) Additional Documentation for Services~~

~~In addition to the documentation requirements of § 310.50.70(a), when acquiring services using the procedures at § 310.50.46 (Ordering Procedures for Services Requiring and Statement of Work), the judiciary CO must also document:~~

~~(1) the evaluation methodology used in selecting the contractor to receive the order;~~

~~, or § 310.50.53(g) (Ordering From BPAs Under GSA Schedules), the only circumstances that may justify the action are:~~

~~(1) An urgent and compelling need exists, and following the procedures would result in unacceptable delays;~~

~~(2) Only one source is capable of providing the supplies or services required at the level of quality required because the supplies or services are unique or highly specialized; or~~

~~(3) In the interest of economy and efficiency, the new work is a logical follow-on to an original FSS order provided that the original order was placed according to the applicable FSS ordering procedures. The original order or BPA must not have been previously issued under sole-source or limited-source procedures.~~

~~(b) For proposed orders or BPAs with an estimated value exceeding GSA's micro-purchase threshold (generally \$3,500), the judiciary CO must document the basis for limiting sources using Form AO 370C (Limited-Source Justification (LSJ)).~~

~~(c) Posting Requirement~~

~~(1) Within 14 days after placing an order or establishing a BPA exceeding the GSA's simplified acquisition threshold (\$150,000) that is supported by a Form AO 370C (Limited-Source Justification (LSJ)) permitted under any of the circumstances under paragraph (a) of this section, the judiciary CO must post the justification at FedBizOpps, as well as post a link to the justification on the public web site of the judiciary organization or AO. For justifications citing subparagraph (a)(1) of this section, the justification must be posted within 30 days after award.~~

REDLINE COMPARISON REFLECTING CHANGES

§ 310.50.63 [cont'd]

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

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

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

- (a) Brand name specifications must not be used unless the particular brand name, product, or feature is essential to the Government's requirements, and market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the judiciary's needs.
- (b) For proposed orders or BPAs with an estimated value between GSA's competition threshold and simplified acquisition threshold, \$3,500 and \$150,000, respectively, the judiciary CO must document the basis for restricting consideration to an item peculiar to one manufacturer. The judiciary CO does not have to use Form AO 370C to document this determination. A memorandum to file can be used instead. If the estimated value is between \$25,000 and \$150,000 the documentation and the RFQ must be posted to eBuy.
- (3) ~~the price reasonableness determination required by § 310.50.40.~~
- (c) For proposed orders or BPAs with an estimated value exceeding GSA's simplified acquisition threshold, \$150,000, the judiciary CO must document the basis for restricting consideration to an item peculiar to one manufacturer using Form AO 370C, Limited-Sources Justification (LSJ). The justification must be completed and approved at the time the requirement for a brand name item is determined and must be posted with the RFQ to eBuy for the duration of the RFQ. Additionally, an LSJ for a brand name item is required at the order level for orders placed against previously awarded BPA's when a justification for the brand name item was not completed for the BPA or does not adequately cover the requirements in the order.

§ 310.50.76 Order Placement

- (a) To order products or services from schedule contractors, judiciary COs may place orders orally (except for services requiring an SOW or orders containing brand name specifications over \$25,000), or use GSA-GSA Form OF 347 (Order for Supplies and Services), ~~or a FAS4T form~~ to order supplies or services from schedule contracts.

[. . .]

REDLINE COMPARISON REFLECTING CHANGES

§ 310.50.76 *[cont'd]*

- (d) Orders must include the following information in addition to any information required by the schedule contract:
[. . .]
- (8) ~~item or subline item:~~
- (9) ~~an SOWa statement of work line~~ for services, when required, or a brief, complete description of each item (when ordering by model number, features, and options, such as color, finish, and electrical characteristics, if available, must be specified);
- (910) quantity and any ~~authorized~~ variation in quantity;
[. . .]

§ 310.50.80 Administration of GSA Schedule Orders

GSA is responsible for administering FSS contracts, and the judiciary may not change, terminate, or otherwise undertake administration of an FSS contract. However, judiciary COs are responsible for administration of ~~their own~~ individual orders placed against FSS contracts [. . .]

§ 310.50.83 Inspection and Acceptance

- (a) ~~Products~~Supplies
- (1) Receiving offices must inspect ~~products~~supplies at destination except when:
[. . .]
- (B) a schedule item is covered by a product description, and the judiciary CO determines that GSA's inspection assistance is needed (based on the ordering volume, the complexity of the ~~products~~supplies, or the past performance of the supplier).
[. . .]

§ 310.50.96 Disputes ~~W~~ith GSA Schedule Contractors *[table]*

Type of Dispute	Details
(d) Alternative Dispute Resolution <u>Judiciary disputes clause</u>	Judiciary COs should use alternative dispute resolution (ADR) procedures, to the maximum extent practicable. Judiciary COs should include Clause 7-235 – Disputes in GSA RFQs, BPAs and Orders.

§ 310.60 Other Federal Agency Contracts

§ 310.60.10 In General

- [. . .]
- (b) ~~Note: GSA federal supply schedules are not considered "other federal agency contracts" as defined by this section. Guidance~~For guidance on how to use the GSA federal supply schedules ~~is contained, do not use the guidance~~ in this section, but instead see: § 310.50 (GSA Federal Supply Schedules).

REDLINE COMPARISON REFLECTING CHANGES

§ 310.60.20 Ordering Scenarios

[. . .]

(c) When ordering from ~~other federal agency contracts~~OFACs under any of the above scenarios, the judiciary is required to follow the contract's ordering procedures, competition threshold and the other federal agency contract's terms and conditions. For example, NASA SEWP's procedures for providing for fair opportunity requires that all contractors be given an opportunity to provide a quote for all requirements that exceed \$3,500.

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

§ 310.60.30 Ordering Procedures

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

[. . .]

(c) If the other federal agency's ordering procedures require that orders be competed/provide fair opportunity among the multiple contractors, ~~the~~ (see: Guide, Vol. 14, § 410.30.65 (Fair Opportunity Process for Delivery Orders or Task Orders – OFAC)), the CO must provide a fair opportunity to each indefinite-delivery/indefinite-quantity (IDIQ) contract holder according to the other federal agency's procedures.

(1) If fair opportunity is not provided, it must be supported by a written determination that one of the circumstances described in Guide, Vol. 14, § 410.30.70 (Exceptions to Fair Opportunity Requirement) applies to the order, and the requirement is waived based on the justification that is prepared according to Guide, Vol. 14, § 410.30.73 (Documenting Exceptions to Fair Opportunity Requirement). The CO may use either technically acceptable/lowest price or best value as the basis for award ~~of a request for quotation.~~

[. . .]

§ 320 Contractor Qualifications

[. . .]

§ 320.30 Debarment, Suspension, and Ineligibility

[. . .]

§ 320.30.15 Excluded Parties List System – System for Award Management (SAM)

[. . .]

(b) The Excluded Parties List System (EPLS) list on the SAM website contains the following information:

[. . .]

§ 320.30.60 Individual Accountability

The criminal, fraudulent, or seriously improper conduct of an individual, acting on behalf of or associated with ~~the actiona firm,~~ may be imputed to the firm ~~with which the individual is or has been connected whenif~~ the action was accomplished within the course of the individual's official duty, or was ~~effected~~done by the individual with the knowledge, approval, or acquiescence of the firm. [. . .]

REDLINE COMPARISON REFLECTING CHANGES

§ 325 Small Purchase Procedures

[. . .]

§ 325.10 Applicability

[. . .]

§ 325.10.10 ~~Competition Requirement~~ Limitations

~~Purchases must be made on the basis of adequate competition whenever feasible. Adequate competition means the solicitation of and participation by a sufficient number of capable sources to ensure that the required quality and quantity of products and services is obtained when needed, and that the price is fair and reasonable.~~

§ ~~325.10.20~~ In General

~~COs, supported by such assistance as is necessary, must make a determination that adequate competition has been obtained in any instance in which it is required. In making that determination, COs must act with reasoned discretion, taking into account the business requirements of the particular procurement, the judiciary's general interest in identifying new suppliers, and in providing opportunities for its supplier base.~~

[. . .]

§ 325.15 Open Market ~~With or Without~~ Competition

[. . .]

§ 325.20 Competitive Small Purchase Procedures

§ 325.20.10 Competition Guidelines

~~(a) Purchases must be made on the basis of adequate competition whenever feasible. Adequate competition means the solicitation of and participation by a sufficient number of capable sources to ensure that the required quality and quantity of products and services is obtained when needed, and that the price is fair and reasonable.~~

~~(a)(1) COs must make a determination that adequate competition has been obtained and posting requirements have been met in any instance in which it is required. In making that determination, COs must act with reasoned discretion, taking into account the business requirements of the particular procurement, as well as the judiciary's general interest in identifying new suppliers and providing opportunities for its supplier base.~~

~~(2) Competition must be sought to the extent practicable for purchases estimated to be more than the judiciary's open market competition threshold (see: § 325.15.10 (Competition Threshold)), but less than the judiciary's small purchase advertising threshold, \$25,000. See also: § 335 (Other Than Full and Open Competition); § 335 (Justifications and Approvals for Limiting Competition).~~

[. . .]

~~(d) For any open market purchases over the judiciary's small purchase threshold (see: § 325.10 (Applicability)), ~~for use~~ the standard competitive contracting procedures for formal contracts. ~~(See: § 330 § 330 (Standard Competitive Contracting Procedures)).~~~~

§ 325.25 ~~Purchase of Services~~ [Reserved] [subsection deleted]

REDLINE COMPARISON REFLECTING CHANGES

§ 325.30 Soliciting Under Small Purchase Procedure

§ 325.30.10 In General

[. . .]

- (b) Whether the solicitation is oral or written, the CO must request the vendor's DUNS number: ~~(or Tax ID number).~~
- (c) When determining responsibility (see: [§ 320.20 \(Determining Responsibility or Non-Responsibility\)](#)) and checking ~~the debarred list~~[SAM](#) (see: [§ 320.30 \(Debarment, Suspension, and Ineligibility\)](#)), the DUNS number will assist in obtaining information about the vendor.
- ~~(d) When the award is made, the vendor's DUNS number (or Tax ID number) must be included in the name and address block on the award instrument (purchase/delivery/task order).~~

§ 325.30.30 Amending Written Solicitations

- ~~(a) An amendment to an RFQ must be issued on [GSA Form SF-30](#), ([Amendment of Solicitation/Modification of Contract](#)). ~~The purchase file must be documented to show the reason for any amendment.~~~~
- ~~(b) An amendment may make the following types of changes:~~
- ~~• quantity;~~
 - ~~• specifications;~~
 - ~~• delivery schedule, or~~
 - ~~• other corrections as needed.~~
- ~~(c) See also: [§ 330.16.40](#) regarding issuance of. For issuing amendments to solicitations, see: [§ 330.16 \(Amendment of Solicitations\)](#).~~

§ 325.35 Basis for Award

§ 325.35.10 Policy

- (a) The basis for award must be determined before issuance of the solicitation and must not change once ~~offers~~[quotes](#) have been received.
- (b) Small purchases may be awarded on the basis of:
- (1) technically acceptable/lowest price, ~~which includes items such as transportation and administrative charges; or~~[or](#)
- [. . .]

§ 325.35.20 Technically Acceptable/Lowest Price

~~Offers~~[Quotes](#) are evaluated based on price. Awards are made to the lowest priced ~~offer~~[quotation](#) or ~~the~~ quote ~~which that~~ meets the judiciary's stated minimum technical requirements and is made by a responsible ~~offerer~~[quoter](#). [. . .]

REDLINE COMPARISON REFLECTING CHANGES

§ 325.35.30 Best Value

(a) Small purchase open market awards may be made based on best value to the responsible offeror/quoter who submits the most advantageous quotation taking into account price and other evaluation factors specifically stated in the solicitation. ~~This method must be used when price alone may not provide the best overall basis to make the award. Small purchase procedures must not normally be used when the other evaluation factors are highly complex and will require lengthy or detailed offer submissions by the offerors or quoters. In such situations, standard competitive contracting procedures must be used (see: § 330) no matter the dollar value of the purchase. These procedures are outlined in the following table.~~

(b) Small purchases do not generally warrant evaluation based on best value; technically acceptable/lowest price is generally used for small purchases. See: § 325.35.20 (Technically Acceptable/Lowest Price). Use of best value as an evaluation method is usually highly complex and will require lengthy or detailed submissions by the quoters. See also: § 330.40.30 (Best Value Awards) and § 330.40.40 (Selection Documentation).

Note: Judiciary organizations, excluding the AO, are not delegated authority to conduct best value procurements and must obtain a one-time delegation from PMD before issuance of the solicitation and before award of the subsequent contract.

~~§ 325.35.30 Best Value [table] [deleted]~~

§ 325.45.43 Ordering Methods Under Small Purchase Procedures

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

§ 325.45.10 Purchase Order

[. . .]

§ 325.45.10 Contents of a Purchase Order

The following items must be included on each purchase order:

[. . .]

(4d) description of product(s)/service(s) — an SOW for services, when required; or a brief, complete description of each item (when ordering by model number, features and options, such as color, finish, and electrical characteristics, if available, must be specified);

[. . .]

(9i) delivery requirements:

• date/time;

• delivery time and/or period of performance,

[. . .]

• place;

• appropriation(s) data;

• F.O.B. delivery point (i.e., origin or destination), and

[. . .]

(i) appropriation(s) data; and

[. . .]

REDLINE COMPARISON REFLECTING CHANGES

~~(b)~~ § 325.45.15 Purchase Order Terms and Conditions

(a) To protect the judiciary's rights when acquiring products and/or services, it is important that basic terms and conditions be made a part of any purchase order issued.

~~(c)~~ Open Market Purchases
[. . .]

~~(d)~~ § 325.45.20 Modification of Purchase Orders

Modification of Purchase Orders must be processed on ~~GSA Form SF-30~~ SF-30 (Amendment of Solicitation/Modification of Contract) (or ~~an~~ equivalent form ~~in FAS4T if the SF-30 is not available~~), must identify the order it modifies, and must contain an appropriate modification number. [. . .]

~~(e)~~ § 325.45.25 Use of Unpriced Purchase Orders

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

[. . .]

~~(2b)~~ [. . .]

(B2)

products or services for which there is a repetitive need within a single fiscal year and for which prices are known to be competitive (e.g., overnight delivery services, or office supplies), and ~~the Not a not-to-Exceed amount is~~ is stated on the purchase order ~~is not greater than the competition threshold (see: § 325.15.10).~~

~~As with blanket delivery orders, unpriced~~ (c) Unpriced purchase orders must be thoroughly documented to support that the amount obligated/not-to-exceed amount is reasonable and monitored periodically to ensure that excess funds are ~~de-obligated~~ deobligated in a timely manner. ~~(See: § 220.50.20(c))-Guide, Vol. 14, § 220.50.20(e) (Contract Funding Requirements).~~

~~§ 325.45.15 Blanket Purchase Agreement (BPA)~~ *[subsection deleted]*

~~§ 325.45.25 Use of BPAs~~ *[subsection deleted; most content moved]*

[§§ 325.45.30–325.55 replaced by the following:]

§ 325.45.30 Termination and Cancellation of Purchase Orders

~~§ 325.55.10~~ In General

[. . .]

~~§ 325.55.20~~ (a) Termination. [. . .]

~~§ 325.55.30~~ (b) Cancellation. [. . .]

~~§ 325.55.40~~ (1) Acceptance of Cancellation. [. . .]

~~§ 325.55.50~~ (2) Rejection of Cancellation. [. . .]

REDLINE COMPARISON REFLECTING CHANGES

§ 325.5060 Closing Out Blanket Purchase Orders Agreement

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

§ 325.50.10 Limitations

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

§ 325.50.15 Use of BPAs

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

REDLINE COMPARISON REFLECTING CHANGES

§ 325.50.15 [cont'd]

- (a) a wide variety of items in a broad class of products or services may be available from suppliers, but quantities and delivery requirements are not known in advance and may vary considerably;
- (b) there is a desire to reduce preparation of numerous written orders and processing of invoices through issuance of a blanket delivery order since billing under a blanket delivery order is done collectively over an established time period (usually monthly) (see: Guide, Vol. 14, § 410.30.60(d) (Blanket Delivery Orders)); or
- (c) there is a need to provide commercial sources of supply for ordering by offices that do not have other purchasing authority.

§ 325.50.20 BPA Sources

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

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

§ 325.50.25 BPA Types

There are two types of BPAs: priced and unpriced.

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

REDLINE COMPARISON REFLECTING CHANGES

§ 325.50.25 [cont'd]

- (2) Ordinarily, the CO may not authorize the contractor to begin work on an order under a BPA until prices have been established. However, if urgency precludes advance pricing and the order establishes a ceiling price limiting the judiciary's obligation, the CO may place an unpriced order after getting a one-time delegation of authority from PMD. Pricing must be established as soon as possible after issuance of an unpriced order.

§ 325.50.30 Open Market Single Award BPA

- (a) A single award BPA is a BPA with only one vendor. While the Judiciary's preference is to establish multiple award BPAs, rather than single award BPAs, the CO has the discretion to determine which is needed, using the following factors:
- (1) the scope and complexity of the requirement(s);
 - (2) the technical qualifications of the contractor(s);
 - (3) the administrative costs of BPAs;
 - (4) the need to periodically compare multiple technical approaches or prices; and
 - (5) the need to have backup sources for the products and/or services, since BPA holders are not required to accept all orders.
- (b) The CO must document the file describing the decision for a single award BPA before the solicitation is issued and the BPA is established.
- (c) There are three scenarios that could yield a single award BPA.
- (1) Need based. A CO has assessed the needs of the court and made a determination that, based on the level of need for the products or services, only one source is needed for the BPA. The CO must document the file describing the anticipated need and the CO's determination to have a single award BPA.
 - (2) Only one quote received. If the CO solicits a sufficient number of qualified contractors (normally at least three) or advertises if the estimated value exceeds \$25,000 and only receives one quote, the CO has fulfilled the competition requirement. The CO should document the file showing the attempt to solicit three or more sources.
 - (3) Only one source. If the contracting officer decides not to compete the requirement for the BPA or that only one source is available to provide the goods and services and therefore a sole source BPA is required, an approved written justification for limiting competition is required. **See:** § 335.60.30 (Justification for Limiting Open Market Competition).
- (d) Orders against a single award BPA need not be competed or advertised. Single award BPAs must be priced.

REDLINE COMPARISON REFLECTING CHANGES

§ 325.50.35 Open Market Multiple Award BPA

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

- (a) Orders against a multiple award BPA with an estimated price not expected to exceed the judiciary's competition threshold need not be competed or advertised. Authorized users may place the order directly under any of the established BPAs when the need for the product or service arises. The CO may exercise broad discretion in developing appropriate order placement procedures. However, the CO must:
- (1) keep vendor submission requirements to a minimum and use streamlined procedures whenever possible;
 - (2) develop ordering procedures that will provide each awardee an opportunity to be considered for orders that exceed the judiciary's competition threshold;
 - (3) include the ordering procedures in the solicitation and the BPA; the BPA solicitation must specify that quote requests may be by oral or written solicitation, and is limited to firms holding BPAs for the same products or services;
 - (4) not use any method (such as allocation or designation of any preferred awardee) that would not result in fair consideration being given to all awardees prior to placing each order;
 - (5) tailor the procedures to each acquisition; and
 - (6) consider price or cost under each order as one of the factors in the selection decision.
- (b) Orders against multiple award BPAs with an estimated price exceeding the judiciary's competition threshold need not be advertised, but the CO must compete each call among all BPA holders unless supported by a written determination that:
- one of the circumstances described in § 335 Justifications and Approvals for Limiting Competition) applies to the order, and
 - the requirement is waived on the basis of a justification prepared according to § 335.60.30 (Justification for Limiting Open Market Competition).
- (c) When a call is competed among the BPA holders, the CO must, at a minimum:
- (1) provide a fair notice of the intent to make a purchase, including a clear description of the products to be delivered or the services to be performed and the basis upon which the selection will be made, to all contractors offering the required supplies or services under the multiple award contract; and
 - (2) afford all contractors responding to the notice an opportunity to submit a quote and have that quote fairly considered.

REDLINE COMPARISON REFLECTING CHANGES

§ 325.50.40 Ordering Under BPAs

- (a) A CO or an authorized ordering officer that has been identified in the BPA may issue orders for products and services covered by that agreement. Orders issued under the BPA are subject to the terms and conditions of the associated BPA. The orders should be documented in the BPA file.
- (b) When frequent orders are anticipated against a priced single award BPA, the CO may utilize a blanket delivery order (BDO), obligating funds and tracking the open balance according to Guide, Vol. 14, § 220.50.20(c) (Contract Funding Requirements). BDOs may not cross fiscal years; they may only be used to pay for orders placed within a single fiscal year.

§ 325.50.50 Content of BPA Orders

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

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

§ 325.50.55 Review of BPAs

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

§ 325.55 Administration of Small Purchases

- (a) Purchases must be administered according to the terms and conditions of the order or agreement.

REDLINE COMPARISON REFLECTING CHANGES

§ 325.55 [cont'd]

- (b) ~~After the order is placed, the requesting office awaits delivery or performance, inspects the products or services, and accepts or rejects the delivery. If there is a problem in the delivery or performance, the requesting office informs the CO. The CO determines the best course of action, depending on the circumstances and the terms and conditions of the order. Once final acceptance and final payment are made, the order is considered closed. Transactions using small purchase procedures must be retained until three years after final payment, or until audited, whichever is later. See: Guide, Vol. 14, § 760.30 (Disposition of Contract Files).~~
- (c) ~~Modifications are made as necessary to clarify, correct, terminate, cancel the order, or make appropriation data changes or corrections. Modifications can only be issued by a CO. See: Guide, Vol. 14, § 745 (Contract Modifications).~~
- (d) ~~The last administration action is to close out the small purchases, which includes BPAs, purchase orders, and orders against existing contracts that do not exceed the judiciary's small purchase threshold. See: Guide, Vol. 14, § 760 (Contract Closeout).~~

§ 330 Standard Competitive Contracting Procedures

§ 330.10 Applicability

[. . .]

§ 330.10.30 Provisions and Clauses *[deleted long-reserved paragraphs, re-lettering the rest]*

[. . .]

~~(b) [Reserved];~~

[. . .]

~~(l) [Reserved];~~

~~(m) [Reserved];~~

[. . .]

~~(p) [Reserved];~~

[. . .]

~~(r) [Reserved];~~

[. . .]

~~(x) [Reserved];~~

~~(ee)~~ For applicable ~~Services Contract Act~~SCLS provisions and clauses ~~(see: § 325.25-80);~~ § 332.50 (Required Clauses and Provisions).

~~(ff) [Reserved];~~

~~(gg) [Reserved];~~

[. . .]

~~(ii) [Reserved];~~

~~(jj) [Reserved];~~

[. . .]

~~(nn)~~add Court organizations that ~~are capable of making~~can make payment by electronic funds transfer (EFT) will incorporate the following clauses as indicated:

- (1) ~~Clause 3-300, Central Contractor Registration~~Registration in the System for Award Management (SAM) is included in solicitations and contracts except when:

[. . .]

REDLINE COMPARISON REFLECTING CHANGES

§ 330.10.30 [cont'd]

- (2) Clause 3-305, Payment by Electronic Funds Transfer – ~~Central Contractor System for Award Management (SAM) Registration~~ is included in solicitations and contracts that include Clause 3-300.
- (3) Clause 3-310, Payment by Electronic Funds Transfer – Other Than ~~Central Contractor System for Award Management (SAM) Registration~~ is included in contracts when a critical sole source provider of goods or services refuses to register in ~~CCRSAM~~, but has provided Electronic Funds Transfer information for payment directly to the judiciary.
- (4) Provision 3-315, Submission of Electronic Funds Transfer Information with Offer is included in solicitations when urgent and compelling circumstances require award to be made without regard to whether or not the awardee is registered in ~~CCRSAM~~. The resulting contract must include ~~either Clause 3-305, Payment by Electronic Funds Transfer – Central Contractor System for Award Management (SAM) Registration,~~ if the awardee is registered in ~~CCRSAM~~, or Clause 3-310, Payment by Electronic Funds Transfer – Other Than ~~Central Contractor System for Award Management (SAM) Registration,~~ if the awardee is not ~~registered in CCR.~~

[. . .]

§ 330.16 Amendment of Solicitations

§ 330.16.10 In General

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

- quantity.
- specifications.
- delivery schedule, or
- other corrections as needed.

§ 330.23.30 After Receipt of Offers

- (a) The content of offers ~~and,~~ the number or identity of offerors, and source selection information must be protected. This information is restricted to those having a legitimate role in the offer evaluation and award processes and is disclosed only to the extent needed to evaluate the offers. See also: Guide, Vol. 14, § 150.20.25(a) (Prohibition on Disclosing Procurement Information).

[. . .]

§ 330.26.30 Modification and Withdrawal

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

REDLINE COMPARISON REFLECTING CHANGES

§ 330.26.40 Late Offers

- (a) Any offer received at the office designated in the solicitation after the exact date and time specified for receipt of offers is late and will not be considered, unless it is received before award is made ~~and, the contracting officer determines that accepting the late offer is in the judiciary's best interest, the contracting officer determines that accepting the late offer would not unduly delay the procurement, and one of the following situations applies:~~
- (a) ~~it was sent by registered mail or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);~~
- (b) ~~it was sent by mail (or telegram or facsimile, if authorized) or hand-carried (including delivery by commercial carrier) if it is determined by the judiciary that the late receipt was due primarily to judiciary mishandling after receipt at the judiciary installation;~~
- (c) ~~it was sent by U.S. Postal Service express mail next day service — post office to addressee, not later than 5:00 p.m. at the place of mailing two working days before the date specified for receipt of offers. The term “working days” excludes weekends and U.S. federal holidays;~~
- (d) ~~it was transmitted through an electronic commerce method authorized by the solicitation and was received at the initial point of entry to the judiciary infrastructure not later than 5:00 p.m. one working day before the date specified for receipt of offers;~~
- (e1) there is acceptable evidence to establish that it was received at the activity judiciary office designated for receipt of offers and was under the judiciary's control before the prior to the time set for receipt of offers, and the CO determines that accepting the late offer would not unduly delay the procurement; or
- (f2) it is the only offer received; ~~or.~~
- (g)b) ~~the CO decides~~ However, a late modification of an otherwise successful offer that acceptance is in the best interest of makes its terms more favorable to the judiciary, provided will be considered at any time it is received and may be accepted.
- (c) Acceptable evidence to establish the time of receipt at the judiciary office includes the time/date stamp of that office on the offer wrapper, other documentary evidence of receipt maintained by the office, or oral testimony or statements of judiciary personnel.
- (d) If an emergency or unanticipated event interrupts normal judiciary processes so that offers have not been opened cannot be received at the office designated for receipt of offers by the exact time specified in the solicitation, and urgent judiciary requirements preclude amendment of the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal judiciary processes resume.

§ 330.30.20 Awards Made ~~a~~After Discussions

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

§ 330.30.30 [Reserved]

REDLINE COMPARISON REFLECTING CHANGES

§ 330.33 Mistakes in Offers

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

§ 330.36 Evaluation of Offers

§ 330.36.10 In General

(a) Offer evaluation is an assessment of both the offer itself and the offeror's ~~ability~~technical capability (as demonstrated by the offer~~;~~) to perform the proposed contract successfully. The judiciary must evaluate competitive offers and then assess their relative qualities solely on the evaluation factors and subfactors specified in the solicitation. Evaluations may be conducted using any rating method or combination of methods, including:

- pass/fail; or
- adjectival ratings (e.g., fair, satisfactory, good, excellent).

(b) The relative strengths, deficiencies, and significant weaknesses, ~~and risks~~ supporting the offer evaluation must be documented in the procurement file.

§ 330.36.30 Evaluation of Other Factors

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

[. . .]

(c) a narrative statement of the major strengths, and weaknesses ~~and risks~~ of the various offers;

[. . .]

§ 330.40 Selection for Award

[. . .]

§ 330.40.20 Technically Acceptable/Lowest Price Awards

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

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§ 330.40.30 Best Value Awards

(a) For awards under solicitations ~~which that~~ specify best value evaluation, the source selection authority (usually the CO) is ultimately responsible for making the selection decision and is responsible for trade-off judgments involving ~~cost price~~ and other evaluation factors. Selection must be made ~~in accordance with~~ according to the solicitation's stated evaluation factors and must be documented. The documentation will include a determination by the source selection authority that the price is fair and reasonable and the basis for determination. **See also:** [§ 325.35.30 \(Best Value\)](#).

(b) Under the Contracting Officers' Certification Program (COCP) (see: Guide, Vol. 14, § 140 (Contracting Officers Certification Program)), not all certification levels are authorized for "best value" procurements. The "best value" method of evaluation is more complex; therefore, only appropriately trained and certified COs may solicit for best value offers. For COs holding COCP certification levels not delegated this authority, the solicitation package using "best value" must be submitted to PMD for written approval before soliciting offers/proposals.

§ 330.40.30(c) Best Value [table]

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

REDLINE COMPARISON REFLECTING CHANGES

§ 330.40.40 Selection Documentation

[. . .]

- (d) The source selection memorandum must show the relative differences among the ~~offeror's scores~~offerors, demonstrating their strengths, and weaknesses, ~~and risks~~ as compared to the solicitation's evaluation factors.

[. . .]

§ 330.40.50 Responsibility Determination

~~Award may be made only after the~~The CO ~~makes~~must make a favorable responsibility determination of the selected ~~offeror's responsibility (see~~offeror before award. See: § 320.20 (Determining Responsibility or Non-Responsibility)), ~~which should.~~ The responsibility determination must be included as part of the source selection memorandum.

§ 330.50 Award Without Discussions

§ 330.50.10 In General

- (a) Verification, withdrawal, or ~~correction~~resolving mistakes (see: § 330.50.40 (Resolving Mistakes in Offers)) under this procedure does not constitute discussion.

[. . .]

- (c) Provision 3-100, Instructions to Offerors, prescribed at § 330.10.30(to) (Provisions and Clauses) for inclusion in all solicitations above the judiciary's small purchase threshold, states that:

- (1) ~~that~~ the CO intends to award without discussions; and
- (2) ~~that~~ the judiciary reserves the right to conduct discussions, if the CO later determines them to be necessary.

- (d) The ~~clause~~provision with Alternate I is used if the judiciary intends to make award after discussions with offerors within the competitive range; or the ~~clause~~provision is used with Alternate II if the judiciary would be willing to accept alternate offers.

REDLINE COMPARISON REFLECTING CHANGES

§ 332 Purchase of Services

§ 332.10 Service Contract Labor Standards

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

- (a) The SCLS does not apply to the following, as defined in 29 CFR part 541:
- (1) employees employed in bona fide executive, administrative, or professional capacities, or
 - (2) computer systems analysts, computer programmers, software engineers, and other similarly skilled computer employees.
- (b) Some examples of service employees include:
- stenographic reporting services;
 - equipment repair services;
 - clerical services;
 - janitorial services;
 - copy center services;
 - mail related services; and
 - data collection, processing and analysis services.
- (c) SCLS applies regardless of:
- (1) the beneficiary of the services (judiciary or public);
 - (2) the source of funding (judiciary or the public); or
 - (3) the place of performance (judiciary or contractor's premises).

§ 332.20 Statutory Requirement

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

REDLINE COMPARISON REFLECTING CHANGES

§ 332.30 Exemptions

- (a) DOL's implementing regulations allow contractors for certain types of services to be exempt. The two categories of exemptions include:
- (1) maintenance, calibration, or repair of information technology equipment, office/business machines, and certain scientific or medical equipment for which micro-electronic circuitry or similarly sophisticated technology is essential; and
 - (2) the following additional services:
 - (A) automobile or other types of vehicle maintenance;
 - (B) financial services involving issuance of cards (e.g., purchase cards);
 - (C) hotel/motel services for conferences, including lodging and/or meals, that are part of the contract or subcontract for the conference (but excluding ongoing contracts for lodging on an as-needed or continuing basis);
 - (D) maintenance, calibration, repair and/or installation for all types of equipment where the service is obtained from the manufacturer or supplier of the equipment on a sole source basis;
 - (E) transportation of persons by common carrier on regularly scheduled routes or via standard commercial services (e.g., commuter trains, buses, commercial airlines, shuttle vans) (Note: excludes charter services); and
 - (F) relocation services, including the services of real estate brokers or appraisers to assist judiciary employees in buying and selling homes (excludes actual moving and/or storage of household goods and related services).
- (b) Exemption is not automatic. The offeror must affirmatively certify in either Provision 3-195, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Certification; or Provision 3-220, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services – Certification, that it meets the conditions required by the DOL regulations to qualify for exemption. If the offeror does not certify affirmatively, the CO must include the appropriate wage determination in any resulting contract, as well as Clause 3-160, Service Contract Labor Standards.

§ 332.40 Obtaining Wage Determinations

- (a) Most prevailing wage determinations may be obtained using the DOL's Wage Determinations OnLine (WDOL) website, wdol.gov. The website contains a User Guide and FAQs for its use, and an email link to request assistance. The website asks questions specific to the proposed procurement (e.g., performance location, type of service) to determine the appropriate prevailing wage determination. If a wage determination is available, the website will provide a printer friendly version. The CO must print out the wage determination, include it in the solicitation and in the resulting award, and maintain it as file documentation.

REDLINE COMPARISON REFLECTING CHANGES

§ 332.40 [cont'd]

- (b) If the WDOL database does not contain an applicable prevailing wage determination for a contract action, the contracting officer must use the e98 process, an electronic version of SF-98 (Notice of Intention to Make a Service Contract and Response to Notice), to request a wage determination. To complete e98, the CO may need to review the DOL publication, *Service Contract Act Directory of Occupations*, found on WDOL's Library, to determine the appropriate classes of service employees needed to perform the work.
- (c) In using the e98 process, COs must provide as complete and accurate information on the e98 as possible, ensuring that the email address submitted on an e98 request is accurate.
- (d) The CO must anticipate the amount of time required to gather the information necessary to obtain a wage determination, including sufficient time, if necessary, to contact DOL to request wage determinations that are not available using WDOL.
- (e) Although the WDOL website provides assistance to select the correct wage determination, the CO is responsible for the wage determination selected. If the CO uses the e98 process, DOL will respond to the CO based on the information provided on the e98, and the CO may rely upon that response as the correct wage determination for the contract.
- (f) To obtain the applicable wage determination for each contract action, the CO must determine the following information concerning the service employees expected to be employed in performing the contract:
 - (1) the classes of service employees to be employed in performance of the contract using the *Service Contract Act Directory of Occupations*, found on WDOL's Library;
 - (2) the locality where the services will be performed; and
 - (3) whether there is an existing collective bargaining agreement (CBA) for an incumbent contractor.
- (g) If the CO requests a wage determination using the e98 process and has not received a response within 10 days, the CO should contact the DOL's Wage and Hour Division to determine when the wage determination can be expected. The e98 website provides a telephone number for this purpose.
- (h) If the CO requests a wage determination using the e98 process and the start of work is delayed, for whatever reason, more than 60 days from the date indicated on the submitted e98, the CO must submit a new e98. Any revision to the wage determination received as a result of the new e98 supersedes the earlier response and must be incorporated in the contract.

§ 332.40.10 Impact of a Revised Wage Determination

- (a) DOL's Wage and Hour Division periodically issues revisions to prevailing wage determinations. The requirement to include a revised wage determination in a solicitation or contract is determined by the date of receipt of the revised wage determination by the CO.

REDLINE COMPARISON REFLECTING CHANGES

§ 332.40.10 [cont'd]

- (1) If the original wage determination was obtained using WDOL, the time of receipt is deemed as the first day of publication of the revised determination on the website.
- (2) If the original wage determination was obtained using the e98 process, the time of receipt is deemed to be the date the CO receives actual notice of a new or revised prevailing wage determination from DOL.
- (b) Once a wage determination has been selected from the WDOL website for a solicitation or contract, the CO is responsible for monitoring the website for revisions. Monitoring may be done by using the website's "Alert Service."
- (c) Whether or not the CO must incorporate a revised wage determination depends upon when the revision is published on wdol.gov and when contract performance is required to start.

 - (1) If the revised prevailing wage determination is published after award of a contract that requires performance to start within 30 days after award, the revision need not be incorporated in the contract.
 - (2) If the contract performance period does not start within 30 days after the award, any wage determination revision received by the CO 10 or more days prior to the contract's specified start of performance must be incorporated in the contract.

§ 332.40.20 Incorporation of Wage Determinations

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

- (a) In no case may a service contract be awarded without a wage determination if the SCLS applies. A copy of the wage determination should be provided to offerors when requesting quotes for services that are subject to SCLS to ensure that the pricing provided reflects compliance with the wage determination.
- (b) If DOL determines, whether before or after award of a contract, that a CO made an erroneous determination that the SCLS did not apply to a particular procurement or failed to include an appropriate wage determination in a covered contract, the CO, within 30 days of notification by DOL, must modify the contract to include Clause 3-160, Service Contract Labor Standards, plus any applicable wage determination issued by DOL. In certain cases, DOL may require retroactive application of the wage determination.
- (c) If the contract is funded by fiscal year appropriations and the term of the contract is extended, such as by exercising an option, a new wage determination must be obtained and incorporated in the contract by modification.

REDLINE COMPARISON REFLECTING CHANGES

§ 332.40.20 *[cont'd]*

- (d) If the contract is not subject to annual appropriations, such as the copy center agreements (funded by the public) or contracts funded by the Judiciary Information Technology Fund, a new wage determination must be obtained every two years during the contract and incorporated in the contract by modification.
- (e) The CO must equitably adjust the contract price to reflect any changed cost of performance resulting from incorporating a wage determination or a revised wage determination.

§ 332.50 Required Clauses and Provisions *[table]*

<u>Clause or Provision</u>	<u>Include in ...</u>
(a) <u>Clause 3-160, Service Contract Labor Standards</u>	<u>solicitations and contracts over \$2,500 principally for services covered by SCLS and performed in the United States, Puerto Rico, Guam, or the U.S. Virgin Islands, or any such award modified to exceed \$2,500, including indefinite-delivery contracts and ordering agreements when orders are expected to aggregate more than \$2,500; except if the award includes:</u> <u>(1) Clause 3-215, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements;</u> <u>or</u> <u>(2) Clause 3-225, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services – Requirements</u>
(b) <u>Clause 3-175, Fair Labor Standards Act and Service Contract Labor Standards – Price Adjustment (Multi-Year And Option Contracts)</u>	<u>solicitations and contracts for fixed price services that:</u> <u>(1) include Clause 3-160, Service Contract Labor Standards;</u> <u>(2) exceed the judiciary’s small purchase threshold; and</u> <u>(3) include options to extend the period of performance or solicit a multi-year proposal.</u>
(c) <u>Clause 3-180, Fair Labor Standards Act and Service Contract Labor Standards – Price Adjustment</u>	<u>solicitations and contracts for fixed price services that:</u> <u>(1) include Clause 3-160, Service Contract Labor Standards;</u> <u>(2) exceed the judiciary’s small purchase threshold; and</u> <u>(3) do not include options to extend the period of performance or solicit multi-year proposals.</u>
(d) <u>Provision 3-195, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Certification</u>	<u>solicitations for the types of services listed in § 332.30(a) (Exemptions) when the resultant award may be exempt from Service Contract Labor Standards coverage.</u>

REDLINE COMPARISON REFLECTING CHANGES

<p><u>(e) Clause 3-200, Service Contract Labor Standards – Place of Performance Unknown</u></p>	<p><u>solicitations and contracts when the place of performance is unknown at the time the solicitation is issued. When the procurement is subject to the SCLS statute and publicizing is required (see: § 315.10 (Policy)), the CO will include a statement in the notice to the effect that:</u></p> <p><u>(1) the place of performance is unknown at the time the solicitation was issued;</u></p> <p><u>(2) the CO has requested wage determinations for the possible places or areas of performance; and</u></p> <p><u>(3) the CO will request wage determinations for additional possible places of performance if asked to do so in writing.</u></p>
<p><u>(f) Clause 3-215, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Requirements</u></p>	<p><u>solicitations for the types of services listed in § 332.30(a) (Exemptions) when the resultant award may be exempt from SCLS coverage;</u></p> <p><u>resulting contracts when the successful offeror has affirmatively certified that it qualifies for exemption.</u></p>
<p><u>(g) Provision 3-220, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services – Certification</u></p>	<p><u>solicitations for the types of services listed in § 332.30(b) (Exemptions) when the resultant award may be exempt from SCLS statute coverage.</u></p>
<p><u>(h) Clause 3-225, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services – Requirements</u></p>	<p><u>solicitations for the types of services listed in § 332.30(b) (Exemptions) when the resultant award may be exempt from SCLS statute coverage;</u></p> <p><u>in resulting contracts when the successful offeror has affirmatively certified that it qualifies for exemption.</u></p>

§ 335 ~~Other than Full and Open~~ Justifications and Approvals for Limiting Competition

§ 335.10 In General

COs must take all reasonable steps to avoid contracting without providing for ~~full and open~~ competition. [. . .]

§ 335.10.10 ~~Invalid Reasons to Limit~~ Invalid Reasons to Limit Competition

§ 335.20 Procedures

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

(b) When limiting competition, the CO must:

REDLINE COMPARISON REFLECTING CHANGES

§ 335.20 [cont'd]

- (1) prepare a written justification specifically demonstrating the basis for limiting competition; and
- (2) ensure that any required approval of the justification is obtained before issuance of the solicitation.

§ 335.30 Limitations

Limiting Contracting without providing for full and open competition cannot be justified on the basis of insufficient time to conduct a competitive procurement because of:

[. . .]

~~§ 335.10.20 Procedures~~

~~When not providing for full and open competition, the CO must:~~

- ~~(a) — prepare a written justification, using Form AO 370 (Justification for Other Than Full and Open Competition), specifically demonstrating why the requirement cannot be obtained using full and open procurement procedures; and~~
- ~~(b) — ensure that all the steps under this section for the justification, documentation, and written approval of the procurement are completed before issuance of the solicitation.~~

~~§ 335.10.30 Limitations on Use~~

~~Contracting without providing for full and open competition must be approved in writing as set forth in § 335.30 by the purchasing office's official, as identified in Guide, Vol. 14, § 120.20.10(b), or, for purchases not within the judiciary organization's general delegation (see: Guide, Vol. 14, § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials)), by PMD.~~

~~§ 335.10.40 Written Justification Not Required~~

~~The procedures of this section do~~Section 335.20 (Procedures) does not apply to the following:

- (a) ~~p~~Purchases of products and services from qualified workshops, as determined by the Committee for Purchase from People who are Blind or Severely Disabled. ~~(s~~See: § 310.20 § 310.20 (Workshop for People Who are Blind or Severely Disabled));.
- (b) ~~e~~Orders placed against single-award national judiciary contracts or BPAs. ~~(s~~See: § 310.40 § 310.40 (Judiciary-Wide Contracts and Blanket Purchase Agreements (BPAs)));.
- (c) ~~e~~Orders placed against other agency single-award contracts. ~~(s~~See: § 310.60 (Other Federal Agency Contracts)); **See also:** Guide, Vol. 14, § 410.30.65 (Fair Opportunity Process for Delivery Orders or Task Orders – OFAC).
- (d) ~~p~~Purchases not expected to exceed the applicable ~~open market~~ competition threshold. ~~(s~~See: § 325.15.10 (Competition Threshold));.

REDLINE COMPARISON REFLECTING CHANGES

§ 335.40 [cont'd]

- (e) ~~p~~Purchases under ~~a~~ GSA schedule contract not expected to exceed the GSA competition threshold. ~~(s~~See: § 310.50.43(a) (Orders At or Below the GSA's Competition Threshold)~~);~~. For procedures when limiting consideration of sources when placing orders or establishing BPAs under GSA schedule contracts, see: § 310.50.63 (Limiting Sources on Orders Placed Under Federal Supply Schedules).
- (f) ~~e~~Orders placed under single-award indefinite-delivery contracts. ~~(s~~See: Guide, Vol. 14, § 410.30 (Indefinite- .63 (Competition Process for Delivery Contracts))~~Orders and Task Orders – Open Market)~~~~);~~.
- (g) Purchases made by COCP Level 2 COs according to the policies and procedures applicable to the special program delegation being used. See: Guide Vol. 14, § 140.25 (Level 2 Certification: Special Program Delegation).
- ~~(h) Purchases made with a “brand name or equal” description. (Note: When such descriptions are used, the product’s salient characteristics must also be listed with the “brand name or equal” description in the solicitation.)~~
- ~~(i) Modifications~~modifications within the scope of a contract or the exercise of priced options, ~~such as lease extensions and renewal options; (those priced and evaluated at the time of contract award).~~
- ~~(h) software modifications, enhancements, maintenance, and renewals of licenses or leases for previously purchased commercial computer software within the scope of the contract; and~~
- [. . .]

§ 335.40-50 Use of Brand Name Descriptions

- (a) A procurement that uses a brand name description or other purchase description to specify a particular brand name, product, or feature of a product ~~which~~that is peculiar to one manufacturer ~~does not provide for full and open, limits~~ competition regardless of the number of sources solicited. ~~Use of such a description~~ must be justified and approved according using the AO Form that is applicable to § 335.30-the award. For appropriate forms, see:
- § 335.60.30 (Justification for Limiting Open Market Competition), for open market purchases;
 - § 310.50.66 (Limiting Sources Based on Items Particular to One Manufacturer (Brand Name)), for orders against GSA Schedule contracts/BPAs; and
 - Guide, Vol. 14, § 410.30.73 (Documenting Exceptions to Fair Opportunity Requirement), for orders under another agency’s multi-award IDIQ contract.
- [. . .]
- (c) “Brand ~~-~~name or equal” descriptions, and other purchase descriptions that permit prospective contractors to offer products other than those specifically referenced by brand name, ~~provide for full and open~~do not limit competition and ~~therefore~~ do not require justifications and approvals to support their use. See: § 335.40(h) (Justification Not Required).

REDLINE COMPARISON REFLECTING CHANGES

§ 335.20 Circumstances Permitting Other than Full and Open 60 Limiting Competition – Open Market Purchases

§ 335.60.10 Adequate Competition

- (a) Adequate competition must be sought for any open market purchase expected to exceed the judiciary competition threshold (**see: § 325.15.10 (Competition Threshold)**), except when:
- (a1) public exigency requires the immediate delivery of the products or performance of the services due to unusual and compelling urgency. ~~A PE written concurrence is required in order to use this exception;~~
 - (b2) the CO certifies that only one responsible source of supply is available, and no other products or services will satisfy judiciary requirements; or
- [. . .]
- (b) A one-time delegation of authority from PMD is required for a COCP Level 3 CO to use exception in subparagraph (a)(1) above, regardless of dollar value of the purchase. When using the exceptions in subparagraph (a)(2) or (a)(3), a one-time delegation of procurement authority by PMD is only required when the purchase exceeds the dollar value specified in Guide, Vol. 14, § 140.30.30(g) (Level 3 Delegation).

§ 335.60.20 Establishing Adequate Competition

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

§ 335.60.30 Justification for Limiting Open Market Competition

- (a) Judiciary COs must justify an award that exceeds the judiciary competition threshold where the competition requirements in § 325.20 (Competitive Small Purchase Procedures) are not met. Justification must be completed using Form AO 370A (Justification for Limiting Open Market Competition (JLOC)) (formerly the JOFOC).
- (b) The JLOC is not used when limiting competition under GSA FSS and OFACs, such as NASA SEWP. See: § 310.50.63 (Limiting Sources on Orders Placed Under Federal Supply Schedules) and Guide, Vol. 14, § 410.30.73 (Documenting Exceptions to Fair Opportunity Requirement).

REDLINE COMPARISON REFLECTING CHANGES

§ 335.60.30 [cont'd]

- (c) Each JLOC must be signed by a CO with delegated procurement authority at or exceeding COCP Level 3, and must include the CO's certification that, to the best of his or her knowledge and belief, the justification is accurate and complete. The CO may require that technical or requirements personnel provide signed certification on the Form AO 370A that the technical information provided is, to the best of the personnel's knowledge and belief, accurate and complete.
- (d) Each JLOC signed by a CO holding COCP Level 3 authority must be approved in writing by the judiciary official holding the judiciary organization's delegated procurement authority, as identified in Guide, Vol. 14, § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials), or the PLO, if delegated. Justifications for Limiting Competition for purchases exceeding \$25,000 may only be signed by COCP Level 3 COs and delegated official after obtaining a one-time delegation of procurement authority from PMD.
- (e) Each JLOC signed by a CO holding delegated procurement authority at COCP Level 4 or above must be approved according to internal PMD approval procedures.
- (f) Each justification must contain sufficient facts and rationale to justify the use of the specific authority cited.

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

- (a) Orders against single award BPAs established under § 325.50.30 (Open Market Single Award BPA) or single award IDIQ contracts need not be competed or advertised.
- (b) Orders against judiciary-wide contracts and BPAs are subject to the ordering procedures associated with that contract or BPA.
- (c) Orders against multiple award BPAs or IDIQ contracts with an estimated price not exceeding the judiciary competition threshold (**see:** § 325.15 (Open Market Competition)) need not be competed or advertised. Authorized users may place the order directly under any of the established BPAs or IDIQ contracts when the need for the product or service arises. However, COs are encouraged to rotate such orders among holders of multiple award BPAs or IDIQ contracts.
- (d) Orders against multiple award BPAs or IDIQ contracts with an estimated price exceeding the judiciary competition threshold (**see:** § 325.15 (Open Market Competition)) need not be advertised, but must be competed unless supported by a written justification that one of the circumstances described in § 335.60.10 (Adequate Competition) applies to the call or order. The justification must be prepared and approved according to § 335.60.30 (Justification for Limiting Open Market Competition).
- ~~(d) — an unsolicited offer acceptably meets the criteria in § 340.60.~~

Note: ~~The exceptions of (b), (c) and (d) above are subject to the delegation authority of the purchasing office's official, as identified in Guide, Vol. 14, § 120.20.10(b). Above the delegation authority, PMD's written concurrence is required.~~

REDLINE COMPARISON REFLECTING CHANGES

~~§ 335.30 Justification for Other Than Full and Open Competition [subsection deleted]~~

~~§ 335.40 Award Procedures [subsection deleted]~~

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

§ 410 Contract Types

§ 410.10 In General

[. . .]

§ 410.10.30 Authorized Contract Types and Blanket Purchase Agreement

[. . .] The most commonly used contract types include:

[. . .]

(b) indefinite-delivery (~~see: § 410.30 (Indefinite-Delivery Contracts)~~);

- ~~• indefinite quantity and~~
- ~~• requirements;~~

~~(c) blanket purchase agreement (see: § 410.35 (Blanket Purchase Agreements));~~

[. . .]

~~(e) blanket purchase agreement (see: Guide, Vol 14, § 325.50 (Blanket Purchase Agreements) and § 310.50.53 (Blanket Purchase Agreements Under GSA Schedules)).~~

§ 410.10.35 Prohibited Contract Type

A cost-plus-a-percentage-of-cost contract may never be used. A cost-plus-a-percentage-of-cost contract is a contract that contains some element that obligates the government to pay the contractor an amount (in the form of either profit or cost) undetermined at the time the contract was made and to be incurred in the future, based on a percentage of future costs.

§ 410.15 Selecting Contract Type

[. . .]

§ 410.15.20 Solicitation Requirements

[. . .]

~~(b) For indefinite-delivery/indefinite-quantity and blanket purchase agreement (BPA) solicitations, indicate within this provision the contract types that will be allowed for the associated orders.~~

§ 410.25 Firm-Fixed-Price Contracts

§ 410.25.10 Description

[. . .]

(b) [. . .] Incrementally funded FFP contracts must specifically authorize incremental funding by incorporation of Clause 4-170, Rights and Obligations Under an Incrementally Funded Contract Limitation of Judiciary's Obligation. [. . .]

REDLINE COMPARISON REFLECTING CHANGES

§ 410.30 Indefinite-Delivery Contracts

§ 410.30.10 Description

[. . .]

(b) The judiciary uses two types of open market indefinite-delivery contracts—~~indefinite-delivery/indefinite-quantity (IDIQ) contracts and requirements contracts.~~

- indefinite-delivery/indefinite-quantity (IDIQ) contracts, and
- requirements contracts.

(c) The judiciary also uses other agency's indefinite-delivery contracts:

- General Services Administration Federal Supply Schedule (GSA FSS) and
- Other Federal Agency Contracts (OFAC) (e.g., NASA SEWP).

§ 410.30.25 Limitation

Indefinite-delivery contracts may be used only when approved in writing by the PE. For exceptions, see: § 410.20.30 (Exceptions).

~~§ 410.30.30 Indefinite-Delivery/Indefinite-Quantity Contracts~~

[. . .]

(b) Funding for the guaranteed minimum quantity or amount must be obligated at contract award, and must satisfy a bona fide need at the time of the obligation. [. . .].

[. . .]

§ 410.30.50 Contract Terms

(a) [. . .] Where an indefinite-delivery contract authorizes individual orders to be issued on either ~~aan~~ FFP basis or a labor-hour basis, terms applicable to both contract types must be included and the order must identify which contract type applies to the individual order.

(b) IDIQ solicitations must state whether a single award or multiple awards are anticipated. In the case of multiple awards, the solicitation and resulting contracts must state the basis for competing ~~delivery or task orders under the contract~~task orders for an open market purchase (see: § 410.30.63 Competition Process for Delivery Orders and Task Orders – Open Market) and ensuring fair opportunity when using other federal agency contracts (OFACs), such as NASA SEWP, (see: § 410.30.65 (Fair Opportunity Process for Delivery Orders or Task Orders – OFAC)). For guidance on using instructions on use of Provision 3-135, Single or Multiple Awards, see: Guide, Vol. 14, § 330.10.30(z)(t) (Provisions and Clauses).

REDLINE COMPARISON REFLECTING CHANGES

§ 410.30.60 Delivery Orders or Task Orders

- (a) Orders placed under indefinite-delivery contracts are generally referred to as delivery orders (for products) or task orders (for services). In either case, orders are generally placed using ~~the Official Form (OF) 347 (Order for Supplies and Services)~~ or FAS⁴Tan equivalent form.
- [. . .]
- (c) When necessary, orders may be placed orally if they are promptly confirmed in writing. Orders must contain the following information:
- (1) ~~d~~Date of order, contract number of the indefinite-delivery contract, and order number;;
 - (2) ~~i~~Item number and description, unit price, and total price. Task orders for services may include a Statement of Work, rather than an item number and description. The price may be established either by the contract itself or through competition and negotiation where there are multiple awards, such as the courtroom technology multiple award ~~installation~~design IDIQ contracts.
- [. . .]
- (4) ~~p~~Packaging, packing, and shipping instructions (if these are not already defined in the indefinite-delivery contract);;
- [. . .]
- (d) Blanket Delivery Orders

A blanket delivery order (BDO) may be used when an office anticipates there will be repetitive fixed price requirements within a single fiscal year, with little variation in the orders. BDOs may only be used with judiciary IDIQs. The contract establishes the applicable prices and the BDO obligates funds on a not-to-exceed basis to cover all orders placed ~~over~~within a specified period-~~of time~~. BDOs must include the following information:

- (1) ~~d~~Date of order, contract number of the indefinite-delivery contract, and order number;;
- [. . .]

§ 410.30.63 Competition Process for Delivery Orders and Task Orders – Open Market

- (a) Delivery orders and task orders under a single award IDIQ contract need not be competed or advertised.
- (b) Delivery orders and task orders under a multiple award IDIQ contract must follow the competition procedures in Guide, Vol. 14, § 325.20 (Competitive Small Purchase Procedures).
- (c) Judiciary COs must justify a delivery order or task order in which the competition requirements of Guide, Vol. 14, § 325.20 (Competitive Small Purchase Procedures) are not met. See: Guide, Vol. 14, § 335.60.30 (Justification for Limiting Open Market Competition).
- (d) The judiciary-wide BPA or contract's ordering procedures may differ. The CO should follow the directions detailed in the ordering procedures.

REDLINE COMPARISON REFLECTING CHANGES

§ 410.30.70 Limitation

~~Indefinite delivery contracts may be used only when approved in writing by the PE. For exceptions, see: § 410.20.30 (Exceptions).~~

§ 410.30.7564 Clauses

[. . .]

§ 410.30.65 Fair Opportunity Process for Delivery Orders or Task Orders – OFAC

- ~~(a) Orders under a single award IDIQ contract need not be competed or advertised.~~
- ~~(b) Orders against a multiple award IDIQ contract (e.g. NASA SEWP), with an estimated price not exceeding the fair opportunity threshold of \$3,500, need not provide fair opportunity or be advertised. However, COs are encouraged to rotate such orders among holders of multiple award IDIQ contracts.~~
- ~~(c) Orders against multiple award IDIQ contracts, with an estimated price exceeding the fair opportunity threshold of \$3,500 are subject to fair opportunity as identified in the base contract. The CO must provide each awardee a fair opportunity to be considered for each order that exceeds the threshold.~~
- ~~(d) Orders against multiple award IDIQ contracts with an estimated price exceeding the fair opportunity threshold (in paragraph (b) above) need not be advertised. However, unless supported by a written determination that one of the circumstances described in § 410.30.70 (Exceptions to Fair Opportunity Requirement) applies to the order, the CO must provide a fair opportunity to each IDIQ contract holder to be awarded the order or prepare a justification according to § 410.30.73 (Documenting Exceptions to the Fair Opportunity Requirement).~~
- ~~(e) Sole sourced or limited competition orders against multiple award IDIQ contracts that exceed the fair opportunity threshold (in paragraph (b) above) must be justified and approved using a written determination that one of the circumstances described in § 410.30.70 (Exceptions to Fair Opportunity Requirement) exists. The justification must be prepared according to § 410.30.73 (Documenting Exceptions to the Fair Opportunity Requirement).~~

§ 410.30.70 Exceptions to Fair Opportunity Requirement

~~Every contractor of a multi-award BPA or IDIQ contract must be given a fair opportunity to be considered for each order expected to exceed the fair opportunity threshold (see: § 410.30.65(b)), except when:~~

- ~~(a) the agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays;~~
- ~~(b) only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized;~~

REDLINE COMPARISON REFLECTING CHANGES

§ 410.30.70 *[cont'd]*

- (c) the order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the BPA or contract, provided that all awardees were given a fair opportunity to be considered for the original order; or
- (d) it is necessary to place an order to satisfy a minimum guarantee under an IDIQ contract.

§ 410.30.73 Documenting Exceptions to Fair Opportunity Requirement

The CO must justify when the requirements of § 410.30.65(c) (Fair Opportunity Process for Delivery Orders or Task Orders – OFAC) are not met, using Form AO 370B (Justification for Exception to Fair Opportunity (JEFO)).

- (a) Each JEFO must be prepared in writing using Form AO 370B.
- (b) Each Form AO 370B must include a certification by the CO that, to the best of the CO's knowledge and belief, the justification is accurate and complete. The CO may require a signed certification on Form AO 370B by technical or requirements personnel that the technical information provided is, to the best of that person's knowledge and belief, accurate and complete.
- (c) Each JEFO must be signed by a CO holding COCP Level 3 authority and must be approved in writing by the judiciary official holding the court unit's delegated procurement authority as identified in Guide, Vol. 14, § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials), or the PLO (if delegated). JEFOs for purchases exceeding \$25,000 may only be signed by COCP Level 3 COs after obtaining a one-time delegation of procurement authority from PMD.
- (d) Each JEFO signed by a CO holding delegated procurement authority at COCP Level 4 or above must be approved according to internal PMD approval procedures.
- (e) Each JEFO must contain sufficient facts and rationale to justify the use of the specific authority cited.

§ 410.35 [Reserved]-Blanket Purchase Agreements *[deleted]*

§ 410.60 Fixed-Price Incentive Contracts

§ 410.60.10 Description

[. . .]

- (b) [. . .] The price ceiling is the maximum that may be paid to the contractor, except for adjustments specially provided for under other contract clauses, (e.g., [Clause 3-160, Service Contract Act of 1965 Labor Standards](#)).

[. . .]

REDLINE COMPARISON REFLECTING CHANGES

§ 410.70 Cost-Reimbursement Contracts

§ 410.70.10 Description

- (a) Cost-reimbursement contracts may be incrementally funded, as long as the amount obligated is always in excess of the cumulative cost that it is anticipated the contractor will accrue during the following voucher period. ~~For additional information~~Cost-reimbursement contracts for non-severable services must be fully funded at the time of award. For further guidance on incremental funding, see: [Guide, Vol. 14, § 220.50.20\(b\) \(Contract Funding Requirements\)](#).

[. . .]

§ 410.75 Multi-Year Contracts

[. . .]

§ 410.75.60 Contract Clauses and Provisions *[table]*

Provision or Clause	Include in ...
(c) Clause 3-175, Fair Labor Standards Act and Service Contract Act Labor Standards – Price Adjustment (Multi-Year and Option Contracts)	Multi-year solicitations and contracts when contracting for services on a fixed-price, labor-hour or time-and-materials basis and the contract includes Clause 3-160 (Service Contract Act of 1965 Labor Standards) .