

JP3 Outline and Main Topics

Volume I

Chapter 1 - Authority, Responsibility, and Conduct - introduces the Judiciary Procurement Program Procedures (*JP3*) and defines its usage in judiciary procurements. It also provides information concerning authority, responsibility and conduct in procurement actions.

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- 1.2. Authority and Responsibility
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- 2.1. Policy
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- 2.3. Descriptions, Specifications, and Statements of Work

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Chapter 3 - Purchasing Methods and Procedures - discusses many aspects of the actual procurement, including the selection of the source of supply and the requirements for advertising the proposed procurement. It also includes a review of various topics concerning contractors' qualifications. It defines various purchasing methods and identifies different factors which must be considered depending on the purchasing method that is selected. Purchases must be made on the basis of adequate competition whenever feasible. Adequate competition means the solicitation and participation of enough capable sources to ensure that the required quality and quantity of products and services are obtained when needed, and the price is fair and reasonable.

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Chapter 4 - Types of Contracts and Analysis of Offers - introduces a number of different contract types. It must be noted that the courts are only authorized to use the firm-fixed-price contract type. Use of any of the other contract types must be approved in writing by the Procurement Executive (PE) in the AO Procurement Management Division (PMD). If a situation develops where the contracting officer determines that one of the other contract types listed would be of greater benefit for a particular procurement, a justification for the use of the specific contract type, along with a statement of work for the proposed procurement must be forwarded to the PE for review and approval. The chapter also discusses analysis of offers.

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- 4.5. Cost Analysis
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Chapter 5 - Special Categories of Procurements - provides information about procuring professional services. Specific information is included about contracting for expert and consultant services. It also discusses the special procurement procedures which must be followed when contracting for architect and engineering services. Information on commercial use agreements are also presented in this chapter, as well as interagency agreements and memoranda of understanding and multi-year contracts.

- 5.1. Personal Services Contracts
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Chapter 6 - Bonds, Insurance, Taxes, and Intellectual Property - provides information about the various types of bonds that are required in specific types of contracting situations. Written approval by the PE must be obtained prior to incorporating any requirement for bonds into a solicitation document. Also included in this chapter is information about types of insurance that the judiciary will sometimes require the contractor to have, as well as a discussion of federal, state and local taxes. Various issues concerning when data rights are required in the proposed contract action are discussed in this chapter.

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- 7.10. Contract Termination
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Exhibit 7-3, Notice of Assignment

JP3 Glossary of Terms - provides definitions for the procurement terminology.

Volume II

Appendix A - Uniform Contract Format - establishes a uniform contract format for solicitation of offers for products and services, except solicitations and awards using small purchase procedures.

Appendix B - Provisions and Clauses - sets forth the provisions and clauses to be included in solicitations and contracts for products and services.

Appendix B Matrix - provides a listing of all the *JP3* Provisions and Clauses and the location of their prescriptions in the *JP3* text. This also provides whether or not the provision or clause may be incorporated by reference (IBR) into the contract. It indicates the appropriate section of the Uniform Contract Format (UCF) where the provision or clause should be incorporated, and which types of contracts are appropriate for each provision or clause.

JP3 Text Index - key words are indexed as to their location in the *JP3* text.

JP3 Index - Provisions and Clauses - provision or clause title indexed by its key words

CHAPTER 1 - AUTHORITY, RESPONSIBILITY, AND CONDUCT

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CHAPTER 1 - AUTHORITY, RESPONSIBILITY, AND CONDUCT

Part 1.1. Purpose and Scope

1.1.1. Purpose Judiciary Procurement Program Procedures (*JP3*) is an operations manual containing a fully integrated set of specific and detailed procedures to be used as a reference document by judiciary procurement personnel. The *JP3* is one of four sources that provide procurement guidance to the judiciary. The other sources are the [Guide to Judiciary Policies and Procedures, Volume I, Chapter 8 \(Guide\)](#), Procurement Manuals, and Procurement Bulletins. See [Volume 1, Chapter 8, Part A](#) of the *Guide* for additional information on the relationship of the *JP3*, the *Guide*, Procurement Manuals, and [Procurement Bulletins](#).

1.1.2. Scope The procedures established herein do not create any right or benefit, substantive or procedural, enforceable by a party against the judiciary or the United States or their officers or employees.

Part 1.2. Authority and Responsibility

1.2.1. Authority This manual is authorized pursuant to Titles 28 U.S.C. § 602(d), 28 U.S.C. § 604(a), and 28 U.S.C. § 604(d)(4), which grant authority to the Director of the Administrative Office to procure or delegate procurement authority, and to prepare and distribute a procurement manual with periodic revisions.

1.2.2. Responsibility for Procurement Policy The Director of the Administrative Office of the U.S. Courts has delegated the responsibility for procurement policy to the Assistant Director for the Office of Internal Services (OIS), who has re-delegated it to the Procurement Executive (PE), Procurement Management Division (PMD).

1.2.3. Waivers/Deviations This manual standardizes the manner in which products and services are procured in the judiciary. Any deviation from the instructions contained herein must first be supported by a waiver signed by the PE.

Part 1.3. Organization of JP3

1.3.1. Publication of JP3 The *JP3* is issued and maintained by the Administrative Office of the U.S. Courts (AO), Procurement Management Division (PMD).

1.3.2. Availability The [JP3](#) may be accessed on the J-Net/Procurement/Policy and Guidance.

1.3.3. Arrangement and Numbering

a. Numbering. The *JP3* is divided into numbered chapters, parts, and sections, with appendices identified alphabetically. References to the *JP3* are by chapter, part, section, and/or subsection or appendix, followed by paragraphs. Subdivisions below the section or subsection level are numbered with a combination of alphanumeric using the following sequence:

(1)(a)1(i)(A)

For example: 2.1.3.(1) is found in Chapter 2, Part 1, Section 3, paragraph (1);
1.5.1.b.(1) is found in Chapter 1, Part 5, Section 1, subsection b, paragraph (1); and
2.1.2. is found in Chapter 2, Part 1, Section 2.

- b. **Uniform Contract Format** The required format for solicitation of offers for products and services and contract awards is located in *JP3* Appendix A (except solicitations and awards using small purchase procedures).
- c. **Solicitation Provisions and Contract Clauses** All provisions and clauses referenced in this manual are located in *JP3* [Appendix B](#).

1.3.4. JP3 Change Request Format

- a. **Proposed JP3 Change** Anyone may propose changes to the *JP3*. Proposed changes may be submitted via email to the Procurement Management Division (OIS/PMD) (email AOHUBPO, Procurement Help Desk). Use format at c. of this section when submitting change requests.
- b. **Disposition of Change Request** Originators of change requests are provided an explanation of the disposition of the recommended change.
- c. **Proposed JP3 Change Format** The following must be included:
 - (1) *JP3* procedure(s) for which the proposed change is sought:
Chapter # Part # Section# Title
 - (2) a statement of the proposed change (new wording);
 - (3) an explanation why the change is necessary or desirable;
 - (4) a discussion of the effect of the change on the judiciary in terms of cost and personnel resources;
 - (5) a list of other documents, if any, that will be affected by the proposed change;
 - (6) a reference, if applicable, to related procedures or experiences of others in the judiciary or others in non-judiciary agencies or organizations; and
 - (7) Submitted by: _____ Date submitted: _____
- d. **Issuance of Changes** Proposed changes will be presented for comment to the PE. Final changes to the *JP3* will be distributed via the J-Net. Changes to the *JP3* are numbered as a change with the fiscal year and a change number (i.e. Change 2004-01). The month and year of the change is also noted (i.e. August 2004). Changes are distributed through a Procurement Bulletin. The effective date of any change is the date the Procurement Bulletin is announced in a broadcast bulletin. The electronic version of *JP3* is updated with the change. An [archive section](#) on the procurement webpage contains earlier versions of *JP3* and other procurement guidance documents issued since January 2003. The earlier versions are placed in the archive section on the procurement webpage. Each document's effective time frame is specified on each cover page.

Part 1.4. Procurement Integrity and Ethics

1.4.1. The Procurement Integrity Act (Public Law 104-106, 41 U.S.C. § 423)

- a. See [Part D](#) of the *Guide*, Volume 1, Chapter 8, for information on the application of the Procurement Integrity Act to the judiciary.
- b. A person who is a present or former official of the United States, or a person who (1) is acting or has acted for or on behalf of, or who is advising or has advised the United States with respect to, a federal agency procurement; and (2) by virtue of that office, employment, or relationship has or had access to contractor offer information or source selection information, must not, other than as provided by law, knowingly disclose contractor offer information or source selection information before the award of a procurement to which the information relates.
- c. **Non-disclosure of proprietary and source selection information** As specified in the *Guide* ([Volume 1, Chapter 8, Part D](#)), this Act prohibits judiciary employees, former judiciary employees, and persons who are acting or have acted on behalf of the judiciary from disclosing contractor offer information and source selection information. Source selection information includes documents which contain references to, directly cite, or paraphrase proprietary or source selection information. The contracting officer (CO) or any other individual who prepares, creates or controls, source selection information, or derivative documents must:
 - (1) ensure documents are marked so as to:
 - (a) identify the procurement; and
 - (b) identify the offeror and describe its interest in the procurement.
 - (2) provide physical security for documents in the office environment during and after duty hours; and
 - (3) ensure security of interoffice mailing or dissemination of documents.
- d. **Non-federal employment contacts** The Act requires federal agency employees (including procurement officers) to report any contact which may constitute an offer of employment by an offeror in a procurement which is in excess of \$100,000. The employee must either release or reject the offer of employment or disqualify oneself from further participation in the procurement. These contacts are to be reported to:
 - (1) their immediate supervisor;
 - (2) the PE; and
 - (3) OGC in the AO.
- e. **Compensation ban** The Act also prohibits certain personnel from accepting compensation from the contractor within one year if the contract exceeds ten million dollars (see *Guide* [Part D.6.D.](#) and [E](#)). Compensation is a payment or reimbursement, whether monetary or otherwise.
- f. In instances not clearly defined or not covered by the above, judiciary employees are to seek an ethics advisory opinion from OGC.
- g. All employees are to conduct all dealings with potential offerors and contractors in such a manner that no actual occurrence of, or appearance of, favoritism or competitive advantage is given to one business over another in dealing with the judiciary.

1.4.2. Conflicts of Interest

a. Organizational and Consultant Conflicts of Interest

- (1) When procuring products and services, there is a potential for an organizational or consultant conflict of interest. Such a situation may occur when:
 - (a) a contractor is unable, or potentially unable, to provide unbiased impartial assistance or advice to the judiciary because of conflicting roles; or
 - (b) a contractor has an unfair competitive advantage for an award.
- (2) Such potential conflicts of interest are not limited to any particular type of procurement, but are more likely to occur when involving the following:
 - (a) management support services;
 - (b) consultant services;
 - (c) assistance with technical evaluations; or
 - (d) systems engineering and technical direction.

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

- (1) *Unequal access to information* - access to internal judiciary business information as part of the performance of a contract that could provide the contractor a competitive advantage in a later competition for another judiciary contract. Such an advantage could easily be perceived as unfair by a competing vendor who is not given similar access to the relevant information.
- (2) *Competitive advantage* - the contractor, under a prior or existing contract, participates in defining or preparing the requirements or documents that are involved in a subsequent procurement where the contractor may be a competitor. This includes, but is not limited to, defining the requirements, preparing an alternatives analysis, drafting the statement of work or specifications, or developing the evaluation criteria.
- (3) *Impaired objectivity* - the contractor is required to assess or evaluate products or services produced or performed by the contractor or one of its business divisions, subsidiaries, or affiliates, or any entity with which it has a significant financial relationship. The contractor's ability to render impartial advice could appear to be undermined by the contractor's financial or other business relationship with the entity being evaluated.

When a potential conflict is foreseen, the CO must request assistance from the PE, who will consult OGC, to determine how to avoid the conflict.

c. Disqualified Offer and Offer Rejection Occasionally, a situation occurs, where it does not become apparent until offers are received that participation by a particular offeror may lead to a conflict of interest and/or unfair competitive advantage. In that case, the offeror may be disqualified and its offer rejected. Any such determination must be reduced to a written analysis of the proposed course of action. Actions in this area must be in consultation with the PE, who will consult with OGC.**d. Clauses** Include [Clause 1-1](#), "Employment by the Government," in all solicitations and awards for services. If the award involves expert or consultant services, include [Clause 1-5](#), "Conflict of Interest."**1.4.3. Standards of Conduct**

- a.** Judiciary employees are held to the highest standards of conduct in the performance of their duties and must conduct themselves so as to avoid even the appearance of any impropriety. For information concerning conduct refer to:
- (1) Volume 2, *Guide to Judiciary Policies and Procedures*, [Chapter 1, Code of Conduct for United States Judges](#) and [Chapter 2, Codes of Conduct for Judicial Personnel](#);
 - (2) Volume 1, Chapter 8, *Guide to Judiciary Policies and Procedures*, [Part D, Policy Governing Implementation of the Procurement Integrity Act](#); and
 - (3) *Human Resources Manual*, Chapter I, *Personnel Principles and Policies*, [Subchapter B, Code of Conduct for Administrative Office Employees](#) (Administrative Office only).
- b.** In addition, a CO must not knowingly award a procurement to:
- (1) a relative;
 - (2) a judiciary employee; or
 - (3) a business concern (or other organization) owned or substantially owned or controlled by one or more relatives of judiciary employees.
- If a compelling reason exists for such an award, full information must be provided to the PE, for consideration of an approved written exception.

1.4.4. Gratuities or Gifts

- a. Gifts to the Judiciary** Federal government entities may accept gifts only if statutorily authorized to do so. For the judicial branch that authority is vested in the Director of the Administrative Office under 28 U.S.C., Section 604(a)(17). The Director may accept gifts or bequests of personal property for the purpose of aiding or facilitating the work of the Judicial Branch of Government. Any gifts of money must be deposited in the Treasury as Miscellaneous Receipts. Judicial officers and employees of the courts have no authority to accept gifts on behalf of the judiciary.
- b. Personal Gifts**
- (1) The Judicial Conference of the United States, and the *Guide* ([Volume 2, Chapter 6, Part G](#)), define a gift as “any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other similar item having monetary value”.
 - (2) A gift does not include:
 - (a) modest items of food and refreshments, such as soft drinks, coffee and donuts, offered for present consumption and not as part of a meal;
 - (b) greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation;
 - (c) rewards and prizes given to competitors in contests or events, including random drawings, that are open to the public;
 - (d) social hospitality based on personal relationships;
 - (e) loans from banks and other financial institutions on terms that are available based on factors other than judicial status;
 - (f) opportunities and benefits, including favorable rates and commercial discounts, that are available based on factors other than judicial status;
 - (g) scholarships and fellowships awarded on the same terms and based on the same criteria applied to other applicants and that are based on factors other than judicial status;

- (h) anything for which market value is paid by the judicial officer or employee; or
 - (i) any payment, compensation or reimbursement the acceptance of which is permitted by the Regulations of the Judicial Conference Concerning Outside Earned Income, Honoraria, and Outside Employment.
- c. Prohibitions and Exceptions**
- (1) **Prohibitions** Judiciary employees should avoid impropriety and the appearance of impropriety in all activities. A judicial employee must not solicit or accept anything of value from any person who is seeking official action from or doing business with the courts or from any other person whose interests may be substantially affected by the performance or nonperformance of the employee's official duties. Nor may any gift be accepted by an employee in return for being influenced in the performance of an official act.
 - (2) **Exceptions** The gift regulations permit a judicial employee (other than a judge or a member of a judge's personal staff) to receive a gift, other than cash or investment interests, having an aggregate market value of \$50 or less per occasion, provided that the aggregate market value of individual gifts received from any one person or source does not exceed \$100 in a calendar year. However, this exception does not apply if the donor has sought or is seeking to do business with the court or other entity served by the judicial employee.
- d.** If there is evidence that an unlawful gratuity or gift was offered or given by a contractor to a judiciary officer or employee, the CO must:
- (1) Determine what actions are appropriate under an affected procurement; and,
 - (2) Determine whether debarment proceedings under *JP3 3.3.3.*, are appropriate.
- Disciplinary action may also be taken against the employee, as appropriate.
- e. Clause** All solicitations and contracts exceeding the judiciary's small purchase threshold must include [Clause 1-10](#), Gratuities or Gifts. The clause provides for possible termination of the contract for default upon a finding by the PE that a contractor (or the contractor's agent or representative) offered or gave a gratuity or gift to a judiciary officer or employee intended to obtain a contract or favorable treatment under a contract. Any termination decision must be approved in writing by the PE, who will coordinate with OGC.

Part 1.5. Ratification

1.5.1. Ratification

- a.** A ratification is the act of approving an unauthorized commitment by an official who has the authority to do so. The approval of an unauthorized commitment or act results in the act being given effect as if originally authorized. It is not a desirable method of procurement, because it is not in accordance with the judiciary's policies and procedures, and may result in punitive action against the person(s) who committed the unauthorized act. The CO is the only judiciary employee who is delegated procurement authority to legally commit the judiciary to a contractual relationship. An unauthorized commitment is an agreement that is not binding on the judiciary solely because the employee who made it lacked the appropriate procurement authority. An official who

has the authority to approve, adopt, or confirm the commitment may authorize a ratification.

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

- (1) The CO must instruct the contractor, orally and in writing, to stop all work immediately.
- (2) The person who committed the unauthorized act or a point of contact from the requesting office (program office/user) and the CO shall prepare a memorandum to the file containing the following information (also see form [AO-371](#)):
 - (a) the amount of the unauthorized commitment and the name of the contractor.
 - (b) a statement of facts concerning the unauthorized commitment, including:
 - 1) what procurement procedures were followed and why normal procurement procedures were not followed;
 - 2) the identity of the person(s) who made the unauthorized commitment;
 - 3) how the contractor was selected;
 - 4) a list of other sources considered, if any;
 - 5) a detailed description of the products or services ordered;
 - 6) verification that the products or services satisfy a bona fide need of the judiciary (see [Exhibit 1-1](#));
 - 7) whether price was discussed and the estimated or agreed-upon price, if one resulted from discussions;
 - 8) whether or not the products or services have been received and/or accepted or the current status of delivery or performance;
 - 9) whether funds were available for the unauthorized commitment at the time the purchase was made; and
 - 10) any invoices or requests for payment received from the contractor, and any other pertinent documents relating to the unauthorized commitment.
 - (c) A statement indicating corrective action taken to preclude a recurrence of similar unauthorized commitments in the future.

c. Ratification of the Procurement Action An unauthorized commitment may be ratified if **all** of the following criteria are met:

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

- (4) an individual who possesses the requisite procurement authority determines the price is fair and reasonable; and,
 - (5) funds are available and were available at the time the unauthorized commitment was made. Funds paid must be from the year in which the unauthorized commitment occurred, irrespective of when the ratification is accomplished.
- d.** If the procurement is found to have been appropriate in accordance with paragraph **c.** above, then the authorizing official may authorize the ratification and/or take other actions (i.e. punitive).
- (1) *Ratification actions within the CO's delegated procurement authority* The CO must submit ratification actions and the applicable documentation to the appropriate authorizing official (chief judge, FPD, or at the AO, the PE or the Director) for a written and signed authorization. After obtaining the signed authorization, the CO may ratify the unauthorized action (see **e.** below).
 - (2) *Ratification actions in excess of the CO's delegated procurement authority* The CO must submit ratification actions to the appropriate authorizing official (chief judge, FPD, or at the AO, the PE or the Director).
 - (a) If the action falls within the court unit's or FPDO's delegation authority, then the authorizing official or PLO (if delegated) will provide a one time delegation to the CO to ratify the unauthorized action or assign it to a CO with the appropriate authority.
 - (b) If the action does not fall within the court unit's or FPDO's delegation authority, the CO will then submit to the PE the ratification documentation and the signed authorization. The PE will review the documents and, if appropriate, provide a one time delegation authority for the CO to ratify the action.

After obtaining the one time delegation authority and the signed authorization, the CO may ratify the unauthorized action (see **e.** below).
- e.** If the ratification is ultimately approved in writing, the CO must prepare and execute procurement documents equivalent to those that should have been prepared had the requirement been properly executed initially. The date of the action must be the current date, but the effective date must be the date of the unauthorized commitment. The following must be noted on each such procurement document: "This *[fill in purchase order, delivery order, task order, contract, or modification]* ratifies an unauthorized commitment made on *[date]*." All ratification documents must be placed in the contracting file.
- f. Non-ratifiable Commitments** Not all actions can be ratified, such as those that are prohibited by law or otherwise improper. Examples include leasing space or construction services without an appropriate delegation of procurement authority from GSA, improper sole source awards which lack legal sufficiency, expenditures which are not proper under fiscal law, or awards which include improper terms and conditions. If this occurs, the CO must contact the PE first for assistance, then the PE will consult with OGC.
- g. Reporting Requirement** The chief judge or FPD shall submit a report (see [Exhibit 1-2](#)) to the PE each month listing each request received for ratification of an unauthorized procurement with the final disposition of each request. Reporting is not required during months with no ratification requests. The report shall include the following information:

- (1) name of court unit or FPDO;
- (2) unauthorized commitment value;
- (3) name of contractor;
- (4) description of products or services;
- (5) date ordered;
- (6) whether or not the unauthorized commitment was ratified; and
- (7) rationale for ratification/non-ratification.

1.6. Release of Information

1.6.1. Release of Procurement Documents to the Public

- a. **The Freedom of Information Act** does not apply to the judiciary. However, as a matter of policy, and to the extent not inconsistent with other policies governing the judiciary, documents relating to the procurement process, including awarded contracts, that would be released under FOIA will be released by the judiciary, upon request.
- b. **Awarded Contracts** will generally be released, including the successful offer, to the extent the offer is incorporated by reference into the contract, including the disclosure of fixed unit prices. However, trade secret information, and confidential or commercial information will **not** be released.
- c. **Internal documents** such as memos, correspondence, source selection plans, and offer evaluations, including individual score sheets, deliberations of technical and source selection officials, etc. may be deemed interagency or intra-agency memoranda which will not be disclosed. These documents may be released only after the CO consults with the appropriate judiciary requesting program office and only if disclosure would not inhibit communication or otherwise compromise the procurement process with regard to the subject of the request, as well as other ongoing procurements.
- d. **Release of Information** Since requests for documents, most particularly pricing information, often involve complex issues requiring knowledge of court rulings, statutes, and other issues, COs are cautioned to seek the guidance of the PE, who will consult with OGC, before disclosing documents which could be considered confidential, commercial, or trade secret information under FOIA or the Trade Secrets Act, or involve any other questions about release of information.
- e. **Unsuccessful Proposal.** Under this policy, any information contained in an unsuccessful proposal must not be disclosed under any circumstances.
- f. **Options** When the award includes options, only the pricing for an exercised option may be disclosed.
- g. **Debriefing** For information concerning what information may be disclosed during a debriefing of unsuccessful offerors see [3.5.20.](#), Award Debriefing.
- h. **Clause** All solicitations and contracts must include [Clause 1-15](#), “Disclosure of Contractor Information to the Public.”

Exhibit 1-1 Budget Considerations

The following information is not procurement policy. However, these budget rules and issues need to be considered during planning.

The Bona Fide Needs Rule

- a. The CO may only award procurements if the judiciary has a bona fide need for the product or service. The *bona fide needs rule* is a fundamental principle of appropriations law and is statutorily based in 31 U.S.C. § 1502(a), 31 U.S.C. § 1341(a), and 41 U.S.C. § 11. It provides that a fiscal year appropriation may be obligated only to meet a legitimate or bona fide need arising in the fiscal year for which the appropriation was made. There are restrictions on purchases with appropriated and decentralized funds. The following page contains an outline of restrictions on purchases with appropriated and decentralized funds.
- b. The bona fide needs rule does not prevent maintaining a legitimate inventory at reasonable levels, the “need” being reasonable to maintain the inventory level so as to avoid disruption of operations.
- c. The bona fide needs rule does not apply to “no year funds” (e.g., Judiciary Information Technology (JIT) funds). However, in accordance with judiciary policy, all JIT funds are treated as fiscal year funds.

Restrictions on Purchases with Appropriated and Decentralized Funds

- a. In general, items must not be purchased with appropriated funds that:
 - (1) are not consistent with the statutory purpose of the judiciary’s appropriation;
 - (2) might constitute or give the appearance of waste or abuse;
 - (3) may reflect negatively on the judiciary; or
 - (4) are prohibited by law.
- b. Items must not be purchased with decentralized funds for which:
 - (1) a general authorization has been established; or
 - (2) a separate specific appropriation exists.

The lists which follow must not be construed as all-inclusive.

- c. The following items may not be purchased with appropriated funds:
 - (1) valuable art work that exceed cost ceilings in the *Guide to Judiciary Policies and Procedures* [Volume 1, Chapter 5, Part C.5.I.1. and 2.](#);
 - (2) framing of personal items, such as family portraits, diplomas, certificates, etc.;
 - (3) restoration of personally-owned historical art work or documents;
 - (4) maintenance and care of live plants;
 - (5) antiques¹, regardless of price and circumstances;

¹“Antique” refers to something declared of high, significant, exceptional or extraordinary value, without regard to its actual chronological age.

Questions on items (1)-(5) above must be referred to the Office of Facilities and Security, Space and Facilities Division at 202-502-1340.

- (6) musical instruments;
- (7) general party decorations;
- (8) greeting cards/holiday cards;
- (9) individual membership fees and dues (for example, annual state bar association dues for a judge);
- (10) alcohol;
Questions on items (6)-(10) above must be referred to the Office of Finance and Budget at 202-502-2000.
- (11) judicial robes;
Questions on item (11) above must be referred to the Office of Judges Programs, Article III Judges Division at 202-502-1860, Bankruptcy Judges Division at 202-502-1900, or Magistrate Judges Division at 202-502-1830.
- (12) showers for individual use;
Questions on item (12) above must be referred to the Office of General Counsel at 202-502-1100
- (13) personal use accommodations, such as eyeglasses, hearing aids, for persons with disabilities;
Questions on item (13) above must be referred to the Employee Relations Office at 202-502-1380.
- (14) Individual Internet access accounts.
Questions on item (14) above must be referred to the Office of Information Technology at 202-502-2300. For federal public defender organizations (FPDOs) and Community Defender Organizations (CDOs) contact the Office of Defender Services at 202-502-3030.

d. Purchase of the following items with appropriated funds is generally prohibited, with limited exceptions:

- (1) draperies, except for offices eligible for executive furniture (see [U.S. Courts Design Guide](#));
- (2) purchase of any authorized furniture and furnishing items that exceed cost ceilings in the [Guide to Judiciary Policies and Procedures](#) unless:
 - (a) for court units - the purchase is approved in writing by circuit judicial council, and the excess is paid with local funds.
 - (b) for FPDOs an exception and written approval is coordinated through the Office of Defender Services;
- (3) decorative personal furnishings;
- (4) commercial cable television, unless determined that the information is not available from any other source at the court and it is necessary to the mission of the judiciary;
- (5) heating/cooling/air filters and similar type units for individual employee's use;
Questions on items (1)-(5) above must be referred to the Office of Facilities and Security, Space and Facilities Division at 202-502-1340.
- (6) telephone installation in residences ([see IRM Bulletin 2001-02](#));
Questions on item (6) above must be referred to the Office of Information Technology, IT Infrastructure Management Division at 202-502-2640.

- (7) bottled water, except:
 - (a) in cases where there is no available drinking water in the building or the available water is not potable (as determined from a chemical analysis of the water, arranged by GSA); or,
 - (b) as authorized by the refreshment policy. (Bottled water is permissible for jurors but must be charged to “Fees of Jurors . . .” account.)

Questions on item (7)(a) above must be referred to the Office of Facilities and Security, Space and Facilities Division at 202-502-1340.

Questions on item (7)(b) above must be addressed to the Office of Finance and Budget at 202-502-2000.
- (8) meals for employees at duty station except as authorized in the judiciary travel regulations;
- (9) insurance (Note: judges, court managers, and FPDOs may obtain professional liability insurance as authorized pursuant to judicial conference policy);
- (10) gifts/promotional items/souvenirs for non-employees;
- (11) (a) gifts for court unit employees, unless given from a recognized court employee award program;
- (b) gifts for employees of federal public defender organizations;
- (12) refreshments, except as authorized by the refreshment policy;
- (13) photographs of government employees, unless taken at official meetings and functions to accomplish judiciary purpose, but not to provide as free copies to those photographed as mementos;
- (14) clothing/personal property/special equipment for employees;
- Questions on items (8)-(14) above must be referred to the Office of Finance and Budget at 202-502-2000. Questions on item (12) for FPDOs must be directed to the Office of Defender Services.*
- (15) court reporter equipment and supplies, including postage;
- (16) contract court interpreter services for civil cases (unless it is for a defendant in a civil case initiated by the United States);
- Questions on items (15)-(16) above must be referred to the Office of Court Administration, District Court Administration Division at 202-502-1570.*

e. Purchases Prohibited with Decentralized Funds²

Court units cannot spend decentralized funds on items for which a general authorization has been established, or for which a separate specific appropriation exists. Information on the general authorizations for each FY can be found on the J-Net in the [Allotment Guidelines Section 10, General Authorizations](#) under the finance section. These items include:

- (1) professional liability insurance;

²This section does not apply to FPDOs.

- (2) travel of judges and chambers staff³;
- (3) salaries for positions that are centrally funded, such as *pro se* law clerks, death penalty law clerks, chambers staff;
- (4) training and training-related travel of judges and chambers staff;
Questions on items (1)-(4) above must be referred to the Office of Finance and Budget at 202-502-2000.
- (5) contract court interpreters for defendants in proceedings initiated by the United States;
- (6) psychiatrist or psychologist (court-ordered pre-sentence services);
- (7) transcripts;
- (8) jury-related fees (district court only);
Questions on items (5)-(8) above must be referred to the Office of Court Administration, District Court Administration Division at 202-502-1570 or, as appropriate, the Bankruptcy Court Administrative Division at (202) 502-1540.
- (9) security systems and equipment requirements which are funded through the Court Security Appropriation (x-ray machines, duress alarms, magnometers, surveillance cameras and other security related equipment).
Questions on item (9) above must be referred to the Office of Facilities and Security, Court Security Office at 202-502-1280.

³Court-related travel to judicial sittings and authorized meetings by judges and travel to judicial settings by court chambers staff, is to be paid from the general authorization for this purpose and not from decentralized funds allotted to local courts. The chief judge has authority to approve certain travel for purposes other than judicial sittings or authorized meetings by judges, subject to certain limitations. (See [Guide to Judiciary Policies and Procedures, Volume 3, Section C, Chapter 5, Exhibit A](#))

Exhibit 1-2
UNAUTHORIZED PROCUREMENT ACTIONS REPORT
[COURT NAME]
[DATE]

Unauthorized Commitment Amount	Contractor's Name	Description of Products or Services Ordered	Date Ordered	Unauthorized Commitment Ratified? Y/N	Rationale for Ratification/Non-ratification

CHAPTER 2 - PROCUREMENT PLANNING AND PREPARATIONS

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CHAPTER 2 - PROCUREMENT PLANNING AND PREPARATIONS

Part 2.1. Policy

2.1.1. General Effective procurement planning and preparation will produce more efficient and economical procurements, which will deliver products or perform services in an acceptable and timely manner. Procurement planning is the process by which the efforts of all personnel responsible for significant aspects of a project are coordinated and integrated in a comprehensive manner. The formality and detail of the planning and preparation process will vary with the size, complexity, mission-criticality, and projected dollar value of the requirement. Procurement planning must include the related budget planning. Major purchases must be planned and budgeted in a manner consistent with the court's budget process, governance mechanisms and management reporting processes. A summary of planned major procurements is included as part of management reports to the chief judge or federal public defender per the management oversight and standards handbook. It will include one-year, two-year, and five-year planning lead times.

2.1.2. Roles and Responsibilities Initiating and planning procurement actions requires a team effort. The team must include those from both the requesting and purchasing offices. For a court unit or federal public defender organization (FPDO), the purchasing office is the office where the procuring function resides; in the Administrative Office (AO), it is the Procurement Management Division (PMD). Although other judiciary offices play a role in the procurement process, overall responsibility for the contracting aspects within the procurement process lies with the Contracting Officer (CO). However, the planning for major purchases is the responsibility of the unit executive.

2.1.3. Requesting Office Responsibilities The requesting office must identify, prepare, and provide procurement requirements to the purchasing office. The procurement requirements will be in the form of a requirements package, containing documents which support the requirements. Requesting office representatives are responsible for:

- (1) identifying potential procurement requirements;
- (2) initiating discussions with purchasing office representatives;
- (3) providing a complete requisition, including, but not limited to:
 - (a) properly approved, in writing, expenditure authority;
 - (b) any required justifications, (for example, preparing a justification for other than full and open competition, if applicable);
 - (c) description of the essential elements of the proposed purchase:
 - 1) a clear and specific description of the products or services required;
 - 2) a schedule for delivery or performance;
 - 3) a list of deliverable data or reports:
 - (i) including media in which they will be furnished;
 - (ii) their frequency;

- (iii) due date; and
 - (iv) recipients;
 - (d) an independently developed government price or cost estimate for the requested products or services, including the base period and all option periods, as applicable; and
 - (e) technical evaluation criteria to be used in evaluating offers, if appropriate;
- (4) conducting market research and suggesting potential sources of supply;
- (5) recommending additional information to be incorporated into the solicitation package, including: the need for options; payment terms; license prerequisites; insurance or warranty requirements; the need for an indemnity; limitations on subcontracting; and other requirement-specific contractual provisions; and
- (6) advising on the necessity of conducting a pre-solicitation or pre-offer conference with the offeror.

2.1.4. Purchasing Office Responsibilities The purchasing office will help the requesting office prepare the requirements packages, as needed. COs are responsible for:

- (1) working with the requesting office to identify upcoming requirements, planning how to meet them, and preparing a source selection plan, as applicable;
- (2) ensuring that purchasing office resources will be available once the requesting office has established its requirements;
- (3) maintaining effective working relationships with requesting office representatives and other organizations that participate in the procurement process;
- (4) reviewing requirements packages for completeness and clarity;
- (5) conducting market research ([see 2.1.6.](#)) and ensuring that all firms to be solicited are given a fair and equitable opportunity to provide their most effective and economical products or services;
- (6) working directly with requesting office representatives to finalize statements of work and/or specifications and resolve any deficiencies;
- (7) establishing offer evaluation panels as needed;
- (8) determining appropriate contract type and terms and conditions;
- (9) sending all procurement actions exceeding the CO's delegation level to the PE for review (court unit and FPDOs only);
- (10) adhering to the procurement milestone schedule to ensure timely award;
- (11) issuing the solicitation package: request for quotations (RFQ); request for proposals (RFP); request for information (RFI) (see the glossary for definitions of these terms);
- (12) serving as the primary point of contact with potential and actual offerors;
- (13) analyzing the evaluation criteria from the solicitation, the offers, the reports from the offer evaluation panel, source selection boards, etc., as applicable;
- (14) determining the most advantageous offer, and making the award.

2.1.5. Procurement Planning Benefits Among the benefits of procurement planning are:

- (1) saving the judiciary money by obtaining price reductions through quantity discounts;

- (2) allowing better workload planning and scheduling;
- (3) consolidating requirements for greater economies;
- (4) providing sufficient lead time and resources in the selection of appropriate contract types and development of innovative contracting methods;
- (5) providing sufficient time to obtain required approvals before submission of requisitions;
- (6) identifying and obtaining necessary reviews and approvals throughout the procurement process;
- (7) allowing for early identification and resolution of potential problems;
- (8) ensuring the adequacy of specifications or statements of work;
- (9) identifying capable sources sufficient to promote adequate competition;
- (10) preventing unrealistic delivery or performance schedules; and
- (11) receiving acceptable products and services in a timely manner.

2.1.6. Market Research

- a. **General** Market research is central to sound procurement planning and must be addressed by the whole procurement team. Market research helps identify:
 - (1) products or services that are available to satisfy a requirement;
 - (2) whether the judiciary's minimum requirements are practical/realistic;
 - (3) source availability to furnish the required products or services;
 - (4) how to appropriately describe the requirements; and
 - (5) whether cost estimates and schedules are realistic.
- b. **Market Research Methods** may include:
 - (1) assessing the suitability and adaptability of commercially available products or services to satisfy judiciary requirements;
 - (2) identifying those elements of the requirements that may pose significant risks and added costs;
 - (3) determining the status of applicable technology and the extent and success of its commercial application;
 - (4) conducting industry briefings or presolicitation discussions or conferences with potential contractors to discuss requirements and to obtain recommendations;
 - (5) publicizing new specifications and, when appropriate, issuing solicitations for informational or planning purposes far enough in advance to permit generation and consideration of industry comments;
 - (6) attending industry and scientific conferences and acquiring literature about commercial products, industry trends, product availability, business practices, product/service reliability, and prices;
 - (7) testing and evaluating commercial products in a judiciary operating environment to develop reliable performance data, determine any necessary modifications, and develop operational cost information;
 - (8) analyzing the purchase history of requirements to determine the level of competition, prices, and performance results;
 - (9) publishing sources-sought notices in accordance with [3.2.](#); or

- (10) consulting with AO, other court units, other government agencies, or non-profit organizations.
- c. Solicitation Provisions and Clauses** The CO will insert [Provision 2-1](#), “Request for Information or Solicitation for Planning Purposes” in solicitations issued for planning or informational purposes, and clearly note on the face of the solicitation that it is for information or planning purposes. The CO will appropriately fill in the provision’s blank spaces.

2.1.7. Source Selection Plans

- a.** The CO will develop a source selection plan for each competitive procurement:
- (1) above the judiciary’s small purchase threshold (see [3.4.1.c.](#) and [Guide Volume 1, Chapter 8, Part B](#)); or
 - (2) below the judiciary’s small purchase threshold when the CO determines a best value solicitation is appropriate.
- b.** The CO will develop the source selection plan in collaboration with the evaluation panel, requesting office, and other advisors as needed.
- (1) The plan must outline the objective of the procurement and address operational requirements, the potential cost, and any special requirements for quality and reliability.
 - (2) If using best value, the plan must also include evaluation factors, tailored to the specific needs and nature of each procurement. They must address the significant discriminating areas that will be considered in evaluating and determining the best choice. The plan must include:
 - (a) the selected evaluation factors;
 - (b) their order of relative importance; and
 - (c) the evaluation methods and procedures that will be used in evaluating competing offers.
- c. Technically Acceptable Lowest Price** will be used when there is a cost or price competition between offers. The solicitation will state the judiciary’s minimum technical requirements. For example, a copy machine’s technical standard could be the number of pages photocopied per minute. All offers meeting or exceeding these technical requirements will be evaluated based on price. Technically acceptable lowest price:
- (1) is best suited for procurements where the judiciary is acquiring a product or routine service for which it has a well-defined specification or statement of work; and
 - (2) will include commercial or off-the-shelf products or services where there has been no justification for a best value source selection.
- d. Best Value Purchases** is used for procurements when the quality of performance above the minimum acceptable level will enhance mission accomplishment.
- (1) A best value competition involves an evaluation and comparison of cost or price and other factors.

- (2) The best value method of evaluation is suitable only for certain types of negotiated procurements and is more complicated to conduct than the technically acceptable lowest price approach.
- (3) When the judiciary is buying professional and technical services, or is buying a product to be built to a performance specification, the best value source selection is the preferred method.
- (4) When using a best value method of evaluation, the CO must make a meaningful cost/technical trade-off decision, which is derived from an analysis of the offers measured against the evaluation criteria.
- (5) Criteria for best value will be broadly stated in Section M of the solicitation, including the source selection plan, the evaluation factors, their relative importance, and any further guidance.
- (6) The cost/technical trade-off documentation must justify the CO's determination to make award on an offer other than the lowest priced/technically acceptable offer.

e. Evaluation Panels For each source selection plan, the CO must establish an evaluation panel.

- (1) The size and membership depends upon the purchase's:
 - (a) size;
 - (b) scope;
 - (c) complexity; and
 - (d) mission-criticality.
- (2) Evaluation panel responsibilities include the following:
 - (a) assist the CO in developing a source selection plan;
 - (b) evaluate the offers received, efficiently and impartially, in accordance with:
 - 1) the source selection plan; and
 - 2) the evaluation factors included in the solicitation;
 - (c) present a written report of its findings to the CO. The report will contain narrative statements discussing the major strengths and weaknesses of the various offers as compared to the evaluation factors. This report will be used by the CO to hold discussions, if necessary, and select the contractor.
- (3) Evaluation panel efforts may be limited to:
 - (a) one panel but two separate reviews:
 - 1) first reviewing the technical offers,
 - 2) then with cost or price evaluated; or
 - (b) subpanels may be established for separate evaluation of:
 - 1) the technical offer and
 - 2) the proposed price.

f. Evaluation Factors Properly chosen and clearly stated evaluation factors are essential to effective offer evaluation and proper ratings by evaluation panel members. See [Exhibit 2-1](#) for a sample of technical evaluation factors for use in a solicitation for services. Commercial off-the-shelf product solicitations are less complex. For example, in purchasing a printer, speed and dots per inch specifications could be of equal importance, but both of less importance than the expected life of the equipment.

- (1) Evaluation factors must be in accordance with the objectives of the purchase. Cost or price related factors and satisfactory past performance ratings are always evaluated, even if the relative weight is low.
 - (2) The appropriate weight must be stated for each factor in relation to the other factors. However, if a high rating is given to a less significant factor, the result may offset low scores on more important factors. This would result in an unbalanced overall score, complicating determinations for trade-offs or justification for award.
 - (3) These weights could be stated as:
 - (a) a list of the factors with a statement that they are in descending order of importance;
 - (b) a statement that one factor is more important, or significantly more important, than another;
 - (c) a percentage of the effort for each factor; or
 - (d) any other expression that clearly communicates the relative weight of the factors.
 - (4) The absence of a statement in the solicitation reflecting the relative weight(s) of evaluation factors will be construed as all factors being of equal weight.
 - (5) Use of too many factors can:
 - (a) unduly complicate and extend the evaluation process;
 - (b) dilute essential evaluation elements; and
 - (c) lead to an unintended leveling of the evaluation scores. Leveling of the scores tends to make the offers appear to be equal, when in fact they are not. This will make the final choice more difficult.
 - (6) Examples of other evaluation factors, other than cost or price, that may apply are:
 - (a) a demonstrated understanding of the solicitation requirement;
 - (b) a clearly developed management plan;
 - (c) an effective quality assurance plan;
 - (d) acceptably qualified and experienced key personnel;
 - (e) adequate resources;
 - (f) appropriate experience; and
 - (g) excellence of design.
- g. Evaluation Sub-factors** may be established under the appropriate evaluation factor. For example, under a "management plan" evaluation factor, there could be sub-factors for "organization" and "operational concepts."
- h. Cost or Price Related Factors** must be treated and evaluated separately from the other evaluation factors. Its weight must always be stated relative to the other evaluation factors in the solicitation, and it may increase in importance if the technical ranking of offerors is close. Cost/price offer specifics can also provide insight into an offeror's "understanding of the requirement," their "resources," "experience," or other evaluation factors.
- i. Rating Systems** Many forms of rating systems are suitable for evaluation purposes, from adjectival ratings (outstanding/excellent/good) to color codes (blue/green/yellow/red) to various forms of numerical scoring. Depending on the

specific procurement, one system may be preferable to another. However, the rating system used must be simple, practical, and applied in a consistent manner by the raters.

Part 2.2. Terms and Conditions

2.2.1. Quality Control/Assurance Requirements

- a. The CO must include the appropriate quality control/assurance requirements in all solicitations and contracts. The type and extent of contract quality control/assurance requirements depends on the complexity, size, and risks for delivery or completion of service involved in the procurement. Such requirements may be applied through means ranging from inspection at time of delivery to a requirement for the contractor's implementation of a comprehensive quality control program.
- b. Solicitations and contracts may provide for alternate inspection methods to promote competition and lower costs. The solicitation may also permit contractor-recommended alternatives.
- c. For products or services purchased using small purchase procedures, the judiciary usually relies on the contractor to accomplish all appropriate inspection and testing to ensure the deliverables conform to contract quality requirements.
- d. When the CO determines that the judiciary needs to test the products or services before delivery, or decides that the contractor's internal work processes are insufficient, the judiciary should not rely on inspection by the contractor. When making these determinations, the CO must consider the:
 - (1) nature of the products and services being purchased and their intended use;
 - (2) potential losses in the event of defects;
 - (3) likelihood of uncontested replacement or correction of defective work; and
 - (4) cost of detailed inspection.
- e. **Standard Inspection Requirements**
 - (1) [Clause 2-5A](#), "Inspection of Products" will be included in all solicitations and contracts for *products*, which are expected to exceed the judiciary's small purchase threshold.
 - (2) [Clause 2-5B](#), "Inspection of Services" will be included in all solicitations and contracts for *services*, which are expected to exceed the judiciary's small purchase threshold, unless another appropriate inspection clause applies (e.g., [Clause 5-10](#), "Inspection of Professional Services").
 - (3) The CO may include either of the above clauses in solicitations and contracts below the judiciary's small purchase threshold if the CO determines inclusion is in the judiciary's interest. Both clauses:
 - (a) require the contractor to provide and maintain an inspection system acceptable to the judiciary;
 - (b) give the judiciary the right to make inspections and tests while work is in process, if appropriate; and
 - (c) require the contractor to keep and make available to the judiciary complete records of its inspection.

- (4) [Clause 2-10](#), “Responsibility for Products” is required to be included in contracts for (a) products or (b) services involving the furnishing of products, when a fixed-price contract is contemplated and the contract is expected to exceed \$100,000. The CO may include the clause in actions below \$100,000 when the CO determines the clause is needed.

f. Quality Assurance at Judiciary Site or Destination

- (1) Quality assurance performed at destination is normally limited to inspection of the products or services. Inspection is appropriate at destination when:
 - (a) products are commercial or off-the-shelf and require no technical inspection;
 - (b) necessary testing equipment is located only at destination;
 - (c) the procurement is for services performed at destination; or
 - (d) it is determined to be in the judiciary's interest.
- (2) The CO may consider that it is unnecessary to include a formal judiciary quality assurance surveillance plan. Then the following suggestions will assist the judiciary in inspecting for the purposes of accepting or rejecting the product or service. The judiciary program representative will routinely examine products or services for the purposes of acceptance at the time of delivery or when an invoice is presented on a monthly basis. At this time, the representative (usually the COTR) will inspect the effectiveness of the delivery or performance to determine its acceptance. When the CO receives a report from the COTR which indicates that the delivery or performance is not in conformance with the CO requirements, then a deduction from the invoice may be negotiated for an appropriate amount, or the item may be re-delivered or re-performed if it is in the judiciary’s best interest, considering time and expense.

g. Quality Assurance at Contractor Site or Origin Solicitations and contracts must require that quality assurance, including inspection, be performed at origin (contractor's site) when:

- (1) performance at any other place would require uneconomical disassembly or destructive testing;
- (2) considerable loss would result from the manufacture and shipment of unacceptable products or from a delay in making necessary corrections;
- (3) special required instruments, gauges, or facilities are available only at origin;
- (4) performance at any other place would destroy or require the replacement of costly packing and packaging; or
- (5) it is determined to be in the judiciary's interest.

2.2.2. Acceptance of Products and Services

- a.** Acceptance constitutes acknowledgment that the products or services conform with applicable quality and quantity requirements, except as provided in this section and subject to other terms and conditions of the contract. Acceptance may take place before delivery, at the time of delivery, or after delivery, depending on the terms and conditions

- of the contract. Products or services will ordinarily not be accepted before completion of judiciary contract quality assurance actions.
- b. Acceptance certificate** Acceptance will ordinarily be evidenced by execution of an acceptance certificate on an inspection or receiving report form or commercial shipping document/packing list. The solicitation and contract must specify the place, time, and criteria for acceptance. Failure to specify clear and unambiguous criteria for acceptance can undermine the judiciary's ability to reject unacceptable products and/or services.
 - c. Responsibility for Acceptance** Acceptance of products or services is the responsibility of the contracting officer. The contracting officer may request information on acceptability from the COTR or other judiciary employee before accepting the product or service.
 - d. Place of Acceptance** Each procurement must specify the place of acceptance. Procurements which provide for judiciary contract quality assurance at origin will ordinarily provide for acceptance at origin. Procurements which provide for judiciary contract quality assurance at destination will ordinarily provide for acceptance at destination. Products accepted at a place other than destination will not be reinspected at destination for acceptance purposes, but will be examined at destination for quantity, damage in transit, and possible substitution or fraud.
 - e. Certificate of conformance** The contractor may execute a certificate of conformance in certain instances instead of relying on origin inspection (whether the contract calls for acceptance at origin or destination) at the discretion of the contracting officer if the following conditions apply:
 - (1) acceptance on the basis of a contractor's certificate of conformance is in the judiciary's interest;
 - (2) small losses would be incurred in the event of a defect; or because of the contractor's reputation or past performance it is likely that the products or services furnished will be acceptable and any defective work would be replaced, corrected, or repaired without contest. In no case will the judiciary's right to inspect products under the inspection provisions of the contract be prejudiced.
 - f. Transfer of title and risk of loss**
 - (1) Title to products will pass to the judiciary upon formal acceptance, regardless of when or where the judiciary takes physical possession, unless the contract specifically provides for earlier transfer of title.
 - (2) Unless the contract specifically provides otherwise, under JP3 clause 2-25A risk of loss of or damage to products will remain with the contractor until, and will pass to the judiciary upon:
 - (a) delivery of the products to a carrier if transportation is F.o.b. origin; or
 - (b) acceptance by the judiciary or delivery of the products to the judiciary at the destination specified in the contract, whichever is later, if transportation is F.o.b. destination.
 - (3) Paragraph (2) of this section will not apply to products that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such non-conforming products remains with the contractor until cure or acceptance. After cure or acceptance, paragraph (2) of this section will apply.

- (4) Under paragraph (2) of this section, the contractor will not be liable for loss of, or damage to, products caused by the negligence of officers, agents, or employees of the judiciary acting within the scope of their employment.

2.2.3. Warranties

- a. A warranty clause must be used when it is in the judiciary's interest to have the right to assert claims regarding defective products or services after their acceptance. A warranty clause gives the CO additional time after acceptance to require contractor correction of deficiencies or defects, reperformance, an equitable adjustment in the price, or other appropriate remedies.
- b. Warranty coverage may begin with delivery or at the occurrence of a specified event, such as installation of equipment. This coverage may continue for a given number of days or months or until the occurrence of another specified event. The value of a warranty clause depends upon the particular products or services being procured. The clause, its use, terms, and conditions are influenced by many factors and must be tailored to fit the specific purchase and individual risks involved. It is important to remember that warranty clauses impact an item's purchase price, may be included in an item's purchase price, and possibly make it more expensive.
- c. With input from the requesting office as to their needs, the CO decides whether or not to require and use a warranty clause. The clause may be used either for individual purchases or classes of purchases. Before making this decision, the CO must consider the following:
 - (1) cost of the warranty (including the effect of a warranty on price competition and the administrative cost and difficulty of enforcing the warranty);
 - (2) criticality of meeting specifications;
 - (3) potential damage to the judiciary in the event of defective performance;
 - (4) cost of correction or replacement, either by the contractor or another source, in the absence of a warranty;
 - (5) ability to take advantage of the warranty, considering shipping time, distance of the user from the source, and other factors;
 - (6) the effect of the warranty as a deterrent against deficiencies;
 - (7) the extent to which acceptance is to be based upon contractor inspection or quality control;
 - (8) whether the inspection and acceptance system provides adequate protection against deficiencies;
 - (9) reliance on brand-name integrity;
 - (10) whether a warranty is regularly given for a commercial component of a more complex end item;
 - (11) whether the product or service is intended for the safety or protection of employees;
 - (12) the stage of development of the item and the state of the art; and
 - (13) customary trade practices.

d. Clauses

- (1) [Provision 2-15](#), “Warranty Information” will be included in all solicitations for products or services, if warranties are customary in the trade.
- (2) A warranty clause will be included in all solicitations and contracts, when the CO has determined a warranty is appropriate for the products or services being purchased. At that time, one of the following clauses will be included in the solicitation:
 - (a) [Clause 2-20A](#), “Incorporation of Warranty” will be included when it is anticipated that a contractor’s standard commercial warranty will be offered.
 - (b) [Clause 2-20B](#), “Contractor Warranty” will be included for all solicitations and contracts for products when the CO has approved in writing the use of a warranty clause.
 - (c) [Clause 2-20C](#), “Warranty of Services” will be included in solicitations and contracts when services are contemplated and the CO has approved in writing the use of the warranty clause.

2.2.4 Delivery or Performance Schedule

- a. The solicitation and contract must specify the delivery mode, as well as, where and when the product or service is to be delivered. An essential element of the solicitation and contract is a realistic delivery or performance schedule, which must be clearly stated.
- b. **Clauses:**
 - (1) [Clause 2-25A](#), “Delivery Terms and Contractor’s Responsibilities” is included in all solicitations and contracts for products or services involving the furnishing of products.
 - (2) [Clause 2-25B](#), “Commercial Bill of Lading Notations” is included in all cost-reimbursement or fixed price F.o.b. origin solicitations and contracts for products or services involving the furnishing of products anticipated to exceed the judiciary’s small purchase threshold. The CO will appropriately fill in the clause’s blank spaces.
- c. Solicitation and delivery instructions will specify the F.o.b. point, as follows:
 - (1) *F.o.b. destination* delivery by the consignor or seller to a destination specified in the solicitation. The cost of shipping and risk of loss are borne by the seller or consignor. Title to the products passes to the judiciary when deliverables arrive at the stated destination; or
 - (2) *F.o.b. origin* The judiciary makes the arrangements for, and pays for, the pick-up, transportation, and delivery to the required destination. Title passes to the judiciary when delivery is made to the carrier. The contractor's risk is limited to loss or damage caused by improper marking or packing of the products.
- d. The F.o.b. point must be determined on the basis of overall costs involved. It is important to remember that delivery clauses impact an item’s price. The destination shipment expense may be included in an item’s purchase price, and possibly make it

- more expensive. The CO must consider that lower freight rates may be available to the judiciary and that government-controlled transportation may be available.
- e. When acceptance of products is at destination, the purchase document delivery terms must specify F.o.b. destination.
 - f. If the judiciary can expect to suffer damage from late delivery or performance, liquidated damages may be included in the solicitation or contract ([see 2.2.5.](#)).
 - g. When the delivery or performance schedule is stated in terms of specific calendar dates, the solicitation must state:
 - (1) that the schedule is based upon:
 - (a) the contractor's receipt of notice of award; or
 - (b) the contractor's notice to proceed by a specific date; and
 - (2) that the delivery or performance schedule will be extended by a specified number of days after the date the contractor receives notice of award or notice to proceed.
- Note:** It is sometimes more expedient to express required delivery dates in terms of number of calendar days or working days after the effective date of the contract or after award of the contract.
- h. Clauses concerning delivery relate to situations involving delivery schedules. The CO will include the following clauses as applicable in the solicitation or contract document:
 - (1) [Clause 2-30A](#), "Time of Delivery" When the solicitation specifies a required delivery schedule, but the judiciary may consider an earlier delivery advantageous, then this clause will be included in solicitations and contracts.
 - (2) [Clause 2-30B](#), "Desired and Required Time of Delivery" When the judiciary desires delivery by a certain time, but requires delivery by a specified later time, and the delivery schedule is to be based on the date of the procurement, then this clause will be included in solicitations and contracts.
 - (3) [Clause 2-35](#), "F.o.b. Destination, Within Judiciary's Premises" When delivery term is F.o.b. destination within the judiciary's premises, then this clause will be included in solicitations and contracts.
- i. **Other Solicitation Provisions and Clauses** During procurement planning, the CO must determine the applicability of provisions and clauses. Some provisions and clauses are mandatory for all purchases, others are applicable for purchases of a particular type.
 - (1) Quantity clauses are included in solicitations and contracts when the CO anticipates there may be a variation of quantity or delivery of excess quantities.
 - (a) [Clause 2-40A](#), "Variation in Quantity" is included in solicitations and contracts when authorizing a variation in quantity in fixed-price procurements for products or for services that involve the furnishing of products. The CO will appropriately fill in the clause's blank spaces.
 - (b) [Clause 2-40B](#), "Delivery of Excess Quantities" is included in solicitations and contracts when a fixed-price products procurement is contemplated and the judiciary may be willing to accept a quantity greater than that specified.
 - (2) [Clause 2-45](#), "Packaging and Marking" is included in all solicitations and contracts for products, or when a service involving the furnishing of products is anticipated.

- (3) [Clause 2-50](#), “Continuity of Services” is included in solicitations and contracts for services, when:
 - (a) the acquired services under the procurement are considered vital to the judiciary;
 - (b) must be continued without interruption;
 - (c) when, upon contract expiration, a successor (either the judiciary or another contractor), may continue them; and
 - (d) the judiciary anticipates difficulties during the transition from one contractor to another, or to the judiciary.
- (4) [Clause 2-55](#), “Privacy or Security Safeguards” This clause will be included in all solicitations and awards when the acquisition involves the design, development, or operation of a system of records using commercial information technology services or information technology support services.
- (5) [Clause 2-60](#), “Stop-Work Order” is included in all solicitations and contracts.
- (6) [Clause 2-65](#), “Key Personnel” For services when it is necessary to identify contractor key personnel because they have the required expertise for the procurement, then this clause will be included in solicitations, contracts, RFQs, and purchase orders. The CO may determine that this is not necessary, because contractor flexibility is desired, or it is more cost prohibitive to pay extra for specific expertise. The CO will appropriately fill in the clause’s blank spaces.
- (7) [Provision 2-70](#), “Site Visit” For services to be performed on judiciary installations, when a site visit is applicable, then this provision will be included in solicitations.

2.2.5. Liquidated Damages

- a. Liquidated damages are one of several remedies the judiciary may use when any delay in delivery or performance, solely attributable to the contractor, will cause damage to the judiciary. The CO must receive written approval from the PE before including liquidated damages in the solicitation. [Section 7.6.4.](#), Including Liquidated Damages, must also be reviewed.
- b. Liquidated damages may be included in solicitations when:
 - (1) the time, delivery, or performance is such an important factor in the performance of the contract that the judiciary may reasonably expect to suffer damage if the delivery or performance is delinquent; and
 - (2) the amount of actual damages would be difficult or impossible to determine or prove.
- c. Liquidated damages must not be used punitively for a contractor’s failure, but as a re-payment of judiciary loss. Any formula for calculating liquidated damages must be based on an analysis of the procurement-specific anticipated amount of judiciary losses that would directly result from delay in contractor delivery or performance.
- d. The CO must determine and document in each case:
 - (1) why the use of liquidated damages is appropriate; and
 - (2) how the rate was determined reasonable, and not punitive.

- (3) The determined rate must, as a minimum, cover the estimated cost of inspection and oversight for each day of delay. Whenever the judiciary is likely to suffer other specific damages due to a contractor-caused delay, the rate must also include an amount for these damages. Examples of specific damages are the:
 - (a) cost of substitute facilities;
 - (b) cost of lost work-hours or productivity; or
 - (c) rental of buildings or equipment.
- e. If appropriate to reflect the probable damages, the assessment of liquidated damages may be in two or more increments with a declining rate as the delay continues. To prevent an unreasonable assessment of liquidated damages, the CO may also include:
 - (1) an overall maximum dollar amount;
 - (2) a period of time during which liquidated damages may be assessed;
 - (3) or both.
- f. The CO also may consider terminating for default or taking other appropriate action in lieu of or following an earlier assessment of liquidated damages.
- g. Whenever liquidated damages are to be assessed for contractor delay, when the CO determines it is appropriate, the CO must include [Clause 2-75](#), "Liquidated Damages" in solicitations and contracts. The CO will insert the estimated dollar amount in the blank.

2.2.6 Judiciary Property The judiciary may provide materials or other property to a contractor for its use in performance of a contract when doing so will result in significant economies, standardization, expedited production, or when it is otherwise in the judiciary's interest. Judiciary-furnished property must be specified in the solicitation and the resulting award document in sufficient detail (including inventories or requisitioning procedures) to enable offerors to evaluate the requirement and consider it in their pricing proposal. When the judiciary will furnish property, the solicitation and resulting award document must include [Clause 2-80](#), "Judiciary Property."

2.2.7 Options

- a. Options may be included in solicitations and awards when:
 - (1) increased requirements during the performance period are anticipated;
 - (2) continuing performance past the original performance period may be required; or
 - (3) both.
- b. Options may be considered when additional requirements are anticipated and subsequent competition would be impractical due to such factors as production lead-time and delivery requirements.
- c. Option clauses may require that additional quantities be priced the same as the basic quantities or at a different price.
- d. There is no guarantee that the option will be exercised by the judiciary. Therefore, the improper or unnecessary use of options can result in unnecessarily elevated prices to the judiciary. Options may require offerors or contractors to offer firm prices:
 - (1) for additional quantities at the same level as the basic requirements;
 - (2) for quantities that may be ordered during extended periods of performance; or

- (3) both.
- e. The use of options during a competitive procurement may be preferable to later negotiating a price with the successful contractor at a time when it is the only practicable source.
- f. Option provisions and clauses may not be included in procurements when:
- (1) the contractor would be required to incur undue risks (such as when the price or availability of necessary materials or labor cannot be reasonably estimated); or
 - (2) market prices for the products or services involved are likely to fluctuate or change substantially. This may occur, for example, in procurement of IT equipment.
- g. The option quantities represent known firm requirements which are approved in writing, unless:
- (1) the basic quantity is a learning or testing quantity and there is some uncertainty as to contractor or equipment performance; and
 - (2) realistic competition for the option quantity is impracticable once the initial procurement is awarded.
- h. In the case of options for extended periods of performance of services, the total of the basic and option periods must not exceed five years. In the case of options for increased quantities, the total of the basic and option quantities must not exceed the requirements for five years.
- i. The CO must limit:
- (1) the additional quantities of products or services that may be purchased; and/or
 - (2) the duration of the period for which performance of the procurement may be extended under the option.
- j. The solicitation and resulting award document must also fix the period or window within which the option can be exercised. This period must be set to give the contractor adequate notice for performance under the option. In determining the period, consideration must be given to the necessary lead-time to ensure continuous production and the time required for additional funding and other approvals. The period for exercising the option must always be kept to a minimum.
- k. When a solicitation contains an option for additional quantities of products at prices not to exceed those for the initial quantities, care must be taken to ensure that the option quantities are reasonable to both the judiciary and the contractor. Otherwise, this may jeopardize future delivery or performance. The additional quantities or the period under option must be evaluated, justified, and documented in the procurement file by the CO.
- l. Option Provisions and Clauses**
- (1) Evaluation of Options provisions are usually included in solicitations exceeding the judiciary's small purchase threshold. However, the CO may determine that options are also appropriate to a small purchase. When appropriate, the solicitation will include one of the following as applicable:
 - (a) [Provision 2-85A](#), "Evaluation Inclusive of Options" is included in solicitations when evaluation will include the options;
 - (b) [Provision 2-85B](#), "Evaluation Exclusive of Options" is included in solicitations when evaluation will exclude the options.

- (c) [Provision 2-85C](#), “Evaluation of Options Exercised at Time of Contract Award” is included in solicitations if the CO has determined that there is a reasonable likelihood that the option will be exercised, and the option may be exercised at the time of award.
- (2) When options are involved the CO will include one of the following option clauses as applicable in solicitations and awards:
 - (a) [Clause 2-90A](#), “Option for Increased Quantity” will be included when the solicitation or contract expresses the option quantity as a percentage of the basic quantity or as an additional quantity of a specific line item.
 - (b) [Clause 2-90B](#), “Option for Increased Quantity - Separately Priced Line Item” is included in solicitations and awards for products when the inclusion of an option is appropriate and the option quantity is identified as a separately priced line item having the same nomenclature as a corresponding basic line item.
 - (c) [Clause 2-90C](#), “Option to Extend Services” is included when it is intended to have the option to extend the services to be performed up to six months beyond the resulting award’s period of performance. The CO will appropriately fill in the clause’s blank spaces.
 - (d) [Clause 2-90D](#), “Option to Extend the Term of the Contract” is included to provide for delivery of products or services when the inclusion of an option is appropriate and it is necessary to include:
 - 1) a requirement that the judiciary must give the contractor a preliminary written notice of its intent to extend the procurement;
 - 2) a statement that an extension of the procurement includes an extension of the option; and
 - 3) a specified limitation on the total duration of the procurement.
 The CO will appropriately fill in the clause’s blank spaces.
- m. Exercise of Options** Prior to exercising an option, the CO must send a preliminary notice to the contractor, stating the judiciary’s intent to exercise the option. This must be sent to the contractor within the time frame specified in the option clause (see [Clause 2-90C](#) or [D](#)). The CO may exercise options only after first determining that:
 - (1) sufficient funds are available;
 - (2) the requirement covered by the option fulfills an existing judiciary need;
 - (3) the exercise of the option is the most advantageous method of fulfilling the judiciary’s continuing need, price and other factors considered; and
 - (4) the CO, after considering price and other factors, makes a determination on the basis of at least one of the following:
 - (a) a new solicitation would fail to produce a better price or a more advantageous offer than that offered by the option;
 - (b) an informal analysis of prices or an examination of the market indicates that the option price is better than prices available in the market or that the option is the more advantageous offer; or

- (c) the time between the award of the procurement containing the option and the exercise of the option is so short that it indicates the option price is the lowest price obtainable or the more advantageous offer.

2.2.8. Equipment Lease or Purchase

- a. **General** This guidance pertains to the decision to obtain equipment by lease or purchase. It applies to both the initial procurement of equipment and the renewal or extension of existing equipment leases. The judiciary should consider whether to lease or purchase equipment or products based on a case-by-case evaluation of comparative costs and other factors.
- b. The CO will first obtain the requirement from the requesting office and conduct market research. If the lease vs buy decision can be made at this time, then a written decision must be documented in the procurement file. The solicitation or request for quotes also may allow vendors to offer both purchase and lease pricing options. The decision would then be made by award. Whether prior to the solicitation/request, or at award, the CO and requesting office must deliberate the lease vs buy decision, and the procurement file must be documented with the CO's written decision. The requesting office will assist the CO in making a determination as to whether leasing or buying is more advantageous. The following are factors which should be considered:
 - (1) estimated length of the period the equipment is to be used and the estimated usage within that period;
 - (2) financial and operating advantages of alternative types and makes of equipment;
 - (3) cumulative rental payments for the estimated period of use, including option periods. Use an inflation factor for the subsequent year(s). A budget analyst will assist in obtaining this factor;
 - (4) net purchase price;
 - (5) any differences in transportation and installation costs;
 - (6) any maintenance and other service costs;
 - (7) potential obsolescence of the equipment because of imminent technological improvements;
 - (8) availability of purchase options;
 - (9) trade-in or salvage value;
 - (10) availability of a servicing capability, especially for highly complex equipment: (i.e. if it is purchased, a determination if the equipment will be serviced by the judiciary or other sources). If by the lease contractor, then these costs must be considered;
 - (11) cost to terminate the lease if the judiciary no longer needs the equipment; and
 - (12) cost for any damage caused to the equipment.
- c. **Purchase method**
 - (1) Generally, the purchase method is appropriate if the equipment will be used beyond the point in time when cumulative leasing costs exceed the purchase costs. The estimate for cumulative leasing costs will include any proposed option

- periods, calculated with their inflation factor and any other costs associated with leasing (i.e. cost for termination, maintenance, installation, etc. See **b.** above).
- (2) COs should not rule out the purchase method of equipment in favor of leasing merely because of the possibility that future technological advances might make the selected equipment less desirable.

d. Lease method

- (1) The lease method may be appropriate after considering the factors in **b.** above and if the deliberations determine it is in the judiciary's advantage under the circumstances. The lease method may also serve as an interim measure:
- (a) when the circumstances require immediate use of equipment to meet program or system goals; and
 - (b) the circumstances do not currently support purchase.
- (2) If a lease is justified:
- (a) a lease with option to purchase is preferable (also see (4) and (5) below);
 - (b) a lease may be structured as a base period with options. Option period(s) should be negotiated at the time of initial award for the subsequent year(s) to be exercised at the discretion of the government;
 - (c) advance payment is not authorized for any lease period, except in accordance with 2.2.10. Payment must be made in arrears in accordance with a mutually agreed upon time period (e.g. monthly, quarterly, annually);
 - (d) the cost to terminate the lease must be discussed and included in the procurement. Any potential termination costs must be reserved at award.
- (3) Generally, a lease with numerous option periods should be avoided, but may be appropriate if an option to purchase or other favorable terms are included.
- (4) If a lease with option to purchase is used, the contract shall state the purchase price or provide a formula which shows how the purchase price will be established at the time of purchase.
- (5) The CO must insert *JP3* [Clause 2-110](#), "Option to Purchase Equipment," in solicitations and contracts involving a lease with option to purchase.

- e. Commercial agreement** If the lease includes a commercial agreement, then the procedures in [5.4](#) must be followed.

2.2.9. Funding Contract Awards

a. Policy

No officer or employee of the judiciary may create or authorize an obligation in excess of the funds available, or in advance of appropriations (Anti-Deficiency Act, 31 U.S.C. 1341), unless otherwise authorized by law. Before executing any contract, the contracting officer shall—

- (1) Obtain written assurance from responsible fiscal authority that adequate funds are available or

- (2) Expressly condition the contract upon availability of funds in accordance with [2.2.9.c](#), d and e below.

b. Contract Funding Requirements

- (1) If the contract is fully funded, funds are obligated to cover the price or estimated price of a fixed-price contract or the estimated cost and any fee of a cost-reimbursement contract.
- (2) If the contract is incrementally funded (e.g., a multi-year or cost-reimbursement contract), funds are obligated to cover whatever portion of the total price or estimated cost and corresponding increment of fee the judiciary determines to be appropriate. (See [4.1.14.b\(2\)](#) regarding minimum funding for multi-year contracts.)

c. Fiscal year contracts

The contracting officer may initiate a contract action properly chargeable to funds of the new fiscal year before these funds are available, provided that the contract includes [Clause 7-115](#), “Availability of Funds.”

d. Indefinite-quantity or requirements contracts

A one-year indefinite-quantity or requirements contract for services that is funded by annual appropriations may extend beyond the fiscal year in which it begins; provided, that any specified minimum quantities are certain to be ordered in the initial fiscal year.

e. Acceptance of supplies or services

The Government shall not accept supplies or services under a contract conditioned upon the availability of funds until the contracting officer has given the contractor notice, to be confirmed in writing, that funds are available.

f. Contracts Crossing Fiscal Years

- (1) A contract that is funded by annual appropriations may not cross fiscal years, except in accordance with statutory authorization (e.g., 31 U.S.C. 1308 and 28 U.S.C. 604(g)(4)(A) and (B)), or when the contract calls for non-severable services that cannot feasibly be subdivided for separate performance in each fiscal year.
- (2) The Director is statutorily authorized to enter into a contract, exercise an option, or place an order under a contract for severable services (e.g., equipment maintenance services, court reporting services, interpreter services, etc.) for a period that begins in one fiscal year and ends in the next fiscal year if the period of the contract awarded, option exercised, or order placed does not exceed one year (28 U.S.C. 604(g)(4)(A)). Funds made available for a fiscal year may be obligated for the total amount of the contract, option, or order entered into under this authority.
- (3) **All actions under paragraph f(2) above must be reported to PMD upon award for inclusion in consolidated reporting to Congress of the use of this authority.**

g. Limitation of Cost or Funds

- (1) When a contract contains [Clause 4-85](#), “Limitation of Cost” or [Clause 4-90](#), “Limitation of Funds”, the contracting officer, upon learning that the contractor is approaching the estimated cost of the contract or the limit of the funds obligated, shall promptly obtain funding and programming information pertinent to the contract’s continuation and notify the contractor in writing that—
 - (a) Additional funds have been obligated in a specified amount;
 - (b) The contract is not to be further funded and the contractor should submit a proposal for an adjustment of fee, if any, based on the percentage of work completed in relation to the total work called for under the contract;
 - (c) The contract is to be terminated; or
 - (d) The Government is considering whether to obligate additional funds. In this event, the CO’s notice must also include the statements that the contractor is entitled by the contract terms to stop work when the obligated funding is reached and that any work beyond the obligated funding will be at the contractor’s risk.
- (2) Upon learning that a partially funded contract containing any of the clauses referenced in paragraph g(1) above will receive no further funds, the contracting officer shall promptly give the contractor written notice of the decision not to provide funds.

h. Funding for Changes

- (1) Under a cost-reimbursement contract, the contracting officer may issue a change order, a direction to replace or repair defective items or work, or a termination notice without immediately increasing the funds available. Since a contractor is not obligated to incur costs in excess of the estimated cost in the contract, the contracting officer shall ensure availability of funds for directed actions. The contracting officer may direct that any increase in the funds obligated on a contract be used for the sole purpose of funding termination or other specified expenses.
- (2) Under a firm fixed price contract, the contracting officer must ensure that funds are available in the appropriate amount before authorizing changes.

i. Anti-Deficiency Act

Government personnel encouraging a contractor to continue work in the absence of funds will incur a violation of Revised Statutes section 3679 (31 U.S.C. 1341) that may subject the violator to civil or criminal penalties.

j. Clauses for contracting in advance of funds

- (1) Insert [Clause 7-115](#), “Availability of Funds”, in solicitations and contracts if the contract will be chargeable to funds of the new fiscal year and the contract action will be initiated before the funds are available.

- (2) Insert [Clause 7-120](#), “Availability of Funds for the Next Fiscal Year”, in labor-hour, time-and-materials, or cost-type solicitations and contracts if (a) the contract is funded using annual appropriations; (b) the performance period will cross fiscal years; and (c) there are insufficient funds in the current year for the initial period of performance.

2.2.10. Contract Financing

a. Definition

“*Contract financing payment*” means an authorized Government disbursement of monies to a contractor prior to the acceptance of products or services by the Government.

- (1) Contract financing payments include—
 - (a) Commercial advance payments;
 - (b) Performance based payments;
 - (c) Progress payments based on cost;
 - (d) Progress payments based on a percentage or stage of completion; and
 - (e) Interim payments under a cost reimbursement contract.
- (2) Contract financing payments do not include—
 - (a) Routine invoice payments for products and services that have been received and accepted;
 - (b) Payments for partial deliveries; or
 - (c) Lease and rental payments.

b. Authority

The Director has authority under 28 U.S.C. 604(g)(4)(C) to enter into contracts containing contract financing terms for the purchase of commercial item services. Of the various types of contract financing listed in [2.2.10.a](#), only advance payment is currently authorized for judiciary usage. This *JP3* section prescribes procedures applicable to the inclusion of commercial advance payment terms in purchase orders and contracts.

c. Delegation

Subject to the following limitations, the Director has delegated to chief judges and FPDs the authority to use commercial advance payment, subject to the limitations of the bona fide needs rule, in the purchase of services under the following conditions:

- (1) the purchase is for –
 - (a) commercial training for an individual employee or group of employees;
 - (b) maintenance support services for 1) photocopy equipment, 2) IT equipment and/or 3) software; or
 - (c) extended warranties of commercial items which are ordered at the same time the item is purchased;
- (2) the total amount of the commercial advance payment does not exceed \$25,000;
- (3) the period of performance to be paid in advance does not exceed a 12 month period (not applicable to the purchase of extended warranties); and
- (4) no advance payment is made prior to the end of the first month of the period of performance.

The Procurement Executive may approve the inclusion of commercial advance payment terms for transactions outside these limits.

d. Policy

In approving the use of commercial advance payments, the contracting officer must keep in mind that Congress intended this authority to be used sparingly since it poses certain risks to the Government should the contractor declare bankruptcy or fail to perform, for example. The security obtained, the amounts and timing of commercial advance payments, and the anticipated savings to the Government must be analyzed as a whole to determine whether making advance payment will be in the best interest of the Government. (See f.(4) regarding required determinations.)

e. Limitations

- (1) Any proposed use of a commercial advance payment which does not meet all of the conditions in paragraph c, Delegation, must be forwarded to the PE, for review prior to award. If the request is approved, a one-time delegation of authority to enter into the contract will be issued. (See f.(4) for required determinations.)
- (2) Performance is deemed to commence on the first day of the contract period of performance. While actual performance of services under maintenance support service agreements for photocopier equipment, IT equipment and/or software might not occur on the first day of the performance period, for advance payment purposes performance is deemed to commence on the first day of the contract period of performance. Similarly, when the award is made in advance of the first day of the contract period of performance (such as, for example, contracts awarded in August or September which begin performance in October), performance commences on the first day of the contract period of performance, not as of the date of award.
- (3) The Contracting Officer must obtain adequate security prior to authorizing a commercial advance payment. See Paragraph f(1) and (2) below.

f. Procedures

- (1) *Solicitations.* If an offeror proposes commercial advance payment terms in response to a solicitation for the services authorized in c(1), and the Contracting Officer is willing to consider the request, the solicitation must be amended to add [Clause 2-115](#), “Terms for Commercial Advance Payment of Purchases” to the solicitation to notify all offerors of the availability of advance pay.
- (2) *Evaluating offers with different payment terms.* An offer stating that the commercial advance payment terms will not be used by the offeror does not alter the evaluation of the offer, nor does it render the offer nonresponsive or otherwise unacceptable. In the event of award to an offeror who declined the proposed advance payment, the advance payment provisions shall not be included in the resulting contract. Acceptance or refusal of the commercial advance payment term shall not be a basis for adjusting offerors’ proposed prices, because the effect is reflected in each offeror’s proposed prices.
- (3) *Evaluating Adequacy of Security for Advance Pay.*

- (a) The Contracting Officer shall review the apparent successful offeror's financial condition to determine whether it is acceptable as adequate security for the risk incurred by making advance payment. Assessment of the contractor's financial condition shall consider both net worth and liquidity. If awarding under a GSA schedule, the Contracting Officer may consider that GSA has previously determined the contractor to be responsible, which includes a finding that the contractor has adequate financial resources to perform. Other methods of verifying the contractor's financial condition to make this determination include the following:
 - 1) Checking Dun and Bradstreet, if this service is available
 - 2) Requesting audited financial statements from the offeror
 - (b) If the Contracting Officer finds the offeror's financial condition to be adequate security, [Clause 2-125](#), "Security for Advance Payment," must be included in the awarded contract as well as [Clause 2-115](#), "Terms for Commercial Advance Payment of Purchases".
 - (c) If the Contracting Officer does not consider the offeror's financial condition to be adequate security, the Contracting Officer must require that the offeror provide an irrevocable letter of credit from a Federally insured financial institution as specified in [Clause 2-115](#). The letter of credit must be at least equal to the amount of the advance payment made to the contractor. If the offeror refuses to provide the required letter of credit, the Contracting Officer may request pricing based upon payment in arrears. If the revised proposal still is the apparent successful offer in accordance with the solicitation's evaluation procedures, the CO may make award upon the basis of payment in arrears. Any award made based upon payment in arrears should not include any advance payment clauses.
- (4) *Contract Administration.* The Contracting Officer shall be responsible for receiving, approving, and transmitting all commercial advance payment requests to the payment office. The contracting officer responsible for approving requests for commercial advance payment(s) shall also be responsible for determining that the security provided by the contractor continues to be adequate. If the contractor's financial condition is the Government's security, the contracting officer shall monitor the contractor's financial condition at least quarterly. If the Contracting Officer determines that the contractor's financial condition has become insufficient, the Contracting Officer must request additional security under [Clause 2-115](#). In this situation, in addition to an irrevocable letter of credit from a Federally insured financial institution, the following alternative forms of security may be accepted:
- (a) A lien paramount to all other liens without filing, notice, or other action by the judiciary. The contractor must identify what the lien is upon, e.g., the work in process, the contractor's plant, or the contractor's inventory, and the Contracting Officer must issue a modification to the contract to reflect the lien and the asset(s) supporting it. The Contracting Officer also

must ensure the Government's right to verify the existence and value of the asset. In addition, the contractor must certify that the assets subject to the lien are free from any prior encumbrances that may result from such things as capital equipment loans, installment purchases, working capital loans, lines of credit and revolving credit arrangements.

- (b) A bond from a corporate surety listed in [Department of Treasury Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies"](#) (the bond must guarantee repayment of the unliquidated advance payment).
- (c) A guarantee of repayment from a person or corporation of demonstrated liquid net worth, connected by significant ownership to the contractor; or
- (d) Title to identified contractor assets of adequate worth, such as U.S. Government securities, certificates of deposit, stocks and bonds actively traded on U.S. national stock exchange or real property.

The additional security obtained must be at least equal to the maximum unliquidated amount of the advance payment already made to the contractor. The following example illustrates this situation: Advance payment of \$12,000 has been made based on twelve months of performance at \$1,000/month. After seven months of performance the Contracting Officer determines additional security is required. The value of that security would be \$5,000 based upon the remaining five months of performance, since the value of the initial seven months of performance (\$7,000) has liquidated that portion of the advance payment. The value of the security may be adjusted periodically during contract performance, as long as it is always equal to or greater than the amount of unliquidated advance payment.

- (5) *Determinations.* The CO must include the following determinations in the contract file:
 - (a) a determination that it is appropriate or customary in the commercial marketplace to make commercial advance payments for the specific service being purchased (for those types of purchases listed at [2.2.10.c\(1\)](#), this determination has been made and the Contracting Officer shall simply state that the purchase meets the conditions of [2.2.10.c\(1\)](#));
 - (b) a determination that authorizing commercial advance payment is in the best interest of the Government, which shall include an analysis of the demonstrable savings expected to be realized by the use of commercial advance payment. The best interest of the judiciary determination shall address the following:
 - 1) A brief summary of the solicitation or contract requirements (description of services, period of performance, etc.);
 - 2) The contractor's need for commercial advance payments and the potential benefits to the judiciary from providing commercial advance payments;

- 3) Actions which the Contracting Officer will take to minimize the judiciary's risk of loss from providing commercial advance payment;
 - 4) The proposed commercial advance payment contract terms; and
 - 5) If the CO accepts the contractor's financial condition to be adequate security, the determination shall also include the CO's analysis supporting that decision. If the contractor has provided a letter of credit as security, a copy of the letter of credit must be provided.
- (6) *Clauses.* Include Clauses [2-115](#), "Terms for Commercial Advance Payment of Purchases", and [2-120](#), "Submission of Invoice", in all contracts which authorize commercial advance payment. Include Clause 2-115, Alt I if the purchase is for photocopy equipment maintenance and allows offers to request commercial advance payment. If the contractor's financial condition is accepted as adequate security, include [Clause 2-125](#), "Security for Advance Payment".
- (7) ***Reporting.*** All awards which include commercial advance payment terms under paragraph [2.2.10.c](#), Delegation, and do not require approval in advance by the PE, must be reported to PMD upon award for reporting to Congress on the use of this authority.

Part 2.3. Descriptions, Specifications, and Statements of Work

2.3.1. General

- a. All procurement actions require a clear and concise description of the products or services to be procured devoid of generalizations, ambiguities, and omissions. For requirements processed under small purchase procedures, the description may be less detailed than for complex requirements processed under formal contracting procedures. However, the CO must ensure that descriptions, specifications or statements of work (SOW) are prepared in a way that promote competition. Unnecessarily restrictive SOWs or specifications may negatively impact competition. Restrictive descriptions may require only one, or a limited number of vendors or product choices, when other choices, which closely resemble the requirements could also be considered, if the requirement is stated in less restrictive language.
- b. Specifications and SOWs that are susceptible to more than one reasonable interpretation are ambiguous and objectionable. They impede full and open competition by failing to ensure that offerors are competing on a "common" or "equal" basis. The result may lead to procurement administration problems or inadequate contractor performance.

2.3.2. Specifications

- a. Specifications are normally used when purchasing a product rather than a service. Specifications must fully and completely state the judiciary's needs considering the nature of the products being purchased. Specifications may be stated in terms of:

- (1) function, so that a variety of products may be considered as qualified;
 - (2) performance, including the range of acceptable characteristics or the minimum acceptable standards; or
 - (3) design requirements, providing exact dimensions, materials, or characteristics.
- b. Clause [Clause 2-95](#), “Material Requirements”** For products that are not commercial or off-the-shelf items and when it is necessary to specify the material requirements then this clause will be included in solicitations, contracts, RFQs, and purchase orders.

2.3.3. Statements of Work (SOW) Statements of Work (SOW) are normally used when purchasing services rather than end-products. However, a SOW may include specifications or product descriptions. The SOW must describe the work clearly and at a level of detail sufficient to ensure the judiciary obtains the service it seeks. After award, the SOW is the standard for measuring performance and is used by both the judiciary and the contractor to determine rights and obligations under the procurement.

2.3.4. Product Descriptions

- a.** Whenever standard or modified commercial products will meet judiciary requirements, product descriptions must be used instead of specifications. Product descriptions must include:
- (1) a common generic identification of the item. This is the preferred description. The identification must include the salient characteristics or function of the product. For example for a printer, it will be described that it is expected to print at a minimum x pages per minute, in black ink or color, etc.;
 - (2) the description may include known acceptable brand-name products, identified by model or catalog number, and the commercial catalogs in which they appear. If the brand-name is followed by the phrase “or equal,” and if it is the only clear way to describe the product, then this is acceptable. The CO must then consider other “or equal” products. However, if the brand name is specified without the phrase “or equal,” or 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 and a justification for other than full and open competition is required. (Also see Note in [3.6.1.c.\(2\)](#)). The product’s salient characteristics or function will generally be presented in the product’s advertisement. These could be used as the common generic identification of the item described in (1) above instead of describing it by the brand name; and
 - (3) a description of any required modification to the product.
- b.** If offers for equivalent (“or equal”) products other than those specified will be considered:
- (1) the product description must include a description of the item's essential characteristics, such as material, size or capacity, the equipment with which the items will be used, and any restrictive operating environmental conditions;

- (2) space must be provided for offerors to identify the manufacturer's brand names and models or catalog numbers of the “equal” product proposed.
- (3) [Provision 2-100](#), “Brand Name or Equal” When the product description includes a specific brand name and an “equal” product is also acceptable, then this provision will be included in the solicitation or RFQ.

c. Other Clauses and Provisions

- (1) [Provision 2-105](#), “Economic Purchase Quantity-Products” For products, this provision will be included in solicitations and RFQs, unless:
 - (a) purchased under a GSA multiple award schedule;
 - (b) the CO determines the judiciary already has the data;
 - (c) the data is not otherwise readily available; or
 - (d) it is impracticable for the judiciary to vary its future requirements.The offeror will appropriately fill in the provision’s blank spaces.
- (2) [Clause 2-110](#), “Option to Purchase Equipment” For the lease or rental of equipment with option to purchase, this clause will be included in solicitations, contracts, RFQs, and purchase orders.

Exhibit 2-1

Sample Technical Evaluation Factors

NOTE: This example is for a service contract solicitation and the evaluation factors are specific to that particular procurement. Each procurement will have their own specific requirements for this criteria. THIS IS ONLY AN EXAMPLE. For small purchases there would not be a section L or M. Therefore, for small purchases, it would be appropriate to use another paragraph numbering style which will correspond to the rest of the procurement.

The following is sample Section L Language:

L.7.2. Technical Approach

The offeror's proposal shall contain the following sections:

L.7.2.1. Section 1 - Staffing Plan/Retention Plan

This section shall contain the offerors proposed Staffing Plan and Retention Plan. At a minimum the offeror shall address:

1. Staffing Plan: The offeror shall describe its plan and company approach/policy for ensuring responsive access to adequate numbers of personnel with the qualifications and experience required under this solicitation. This plan shall address the offeror's staffing plan applicable to personnel who are or will be employed by your firm and available for tasking under this contract, as well as any plans/approach/policy regarding access to necessary skills and expertise available through other organizations. This plan shall also identify any teaming/subcontracting arrangements to be used in the performance of the contract and the benefit any such arrangement will bring to the offeror's staffing plan. This plan shall address the offeror's long term staffing plan as well as how specific (and sometimes unique) skills/resources will be acquired responsively for specific tasks identified in the statement of work.

2. Retention Plan: The offeror shall describe its plan/approach/policy for retaining sufficient personnel with the necessary qualifications and skills to support tasks under this contract. This plan should address the retention of employees of the offeror's firm as well as the retention of any agreements with other organizations under which the offeror plans to access qualified personnel to support this contract. This plan should fully describe the offeror's approach to retaining and maintaining a trained, technically proficient staff, with the experiences and expertise that will be required by the judiciary for specific tasks under this contract.

L.7.2.2. Section 2 - Past Performance and Past Experience

The offeror's past performance and past experience will be evaluated to assess the offeror's ability to successfully perform similar work required by this solicitation. In particular,

the offeror's experience will be evaluated to ascertain the breadth of experience as it relates to the requirements of this solicitation. At a minimum, the offeror shall provide descriptions of three (3) previous government or commercial projects/contracts performed successfully within five (5) years of proposal submission. The offeror shall demonstrate that these projects/contracts were for comparable services of a similar size and scope. The following information must be submitted for each:

- Name and description of project.
- Contract number/project number.
- Brief description of the project (including contract number and award date)
- Offeror's role (i.e. prime contractor; subcontractor)
- Percentage of work completed in offeror's role
- Name and address of customer company or government agency.
- Names, addresses, and telephone numbers of a customer's technical point of contact and the customer's contracting officer.
- Awarded price/cost
- Final, or projected final, price/cost
- Number of offeror's personnel assigned to the contract/project
- Time frame to complete project
- Narrative description of the size/scope of the project and how it directly relates to the requirements of this solicitation

References provided in this section will be additionally evaluated to assess the successful performance of the contract/project for which a reference was submitted. The judiciary will consider in its assessment the offeror's reliability of services, attention to customer requirements, control of costs, and level of customer satisfaction.

L.7.2.3. Section 3 - Key Personnel

The offeror shall provide the resume of the project director*, identified in Section C.9.1., to be assigned to the contract resulting from this solicitation. Each resume shall be no more than two (2) pages and contain the following information:

- Full name.
- Education.
- Chronological work experience, with most recent first, that substantiates by involvement and duration the skill positions and services for which they are being proposed. Include company name and phone number of immediate supervisor for each work experience.
- A brief narrative relating work experience for the proposed effort
- Affiliations with professional organizations
- Relevant licenses and certifications
- A dated and signed statement by the individual certifying that the information of the resume is true and accurate.

*Note: Any other key personnel positions identified in the solicitation will also be identified and a resume for each requested.

The following is sample Section M Language:

M.2.1.2.2. Technical Approach Evaluation

The technical approach factors will be evaluated based upon the information contained in the offeror's proposal, as well as any other outside information available to the judiciary that pertains to the offeror's technical approach. The ultimate objective of the evaluation is to determine which proposal offers the best technical value to the judiciary. Although price/cost is considered secondary to technical capabilities, it will be a significant criterion for award as part of an integrated assessment with the offeror's technical approach. The proposals will be evaluated based on the evaluation factors set forth below:

Technical Approach Factors

- A. Staffing Plan/Retention Plan (L.7.2.1.)
- B. Past Performance (L.7.2.2.)
- C. Past Experience (L.7.2.2.)
- D. Key Personnel (L.7.2.3.)

With respect to the evaluation of technical excellence, the technical approach factors identified above are listed in descending order of importance. For each factor, the evaluation will consist of an assessment of the degree to which the services offered in the proposal provide added value, added capability, and/or reduced risk. Additionally, the evaluation will identify the strengths, weaknesses, and risks in each offeror's proposal based on each evaluation factor.

M.2.1.2.3. Price Evaluation

The offeror's proposed pricing will be evaluated for reasonableness. Offers that are unrealistically high or low in price will be considered indicative of a lack of understanding of the complexity and risk associated with work performed under the resulting contract. Offers that contain unrealistic prices will not be considered for award.

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CHAPTER 3 - PURCHASING METHODS AND PROCEDURES

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CHAPTER 3 - PURCHASING METHODS AND PROCEDURES

Part 3.1. Procurement Sources

3.1.1. Sources of Supply

- a.** When acquiring products and services, procuring officials must consider the following sources:
 - (1) excess property (mandatory);
 - (2) workshops for people who are blind or severely disabled (mandatory);
 - (3) existing judiciary contracts;
 - (4) GSA federal supply schedule contracts;
 - (5) other federal agency contracts; or
 - (6) open market.
- b.** Once the judiciary has defined its requirement, it must perform market research to determine the sources capable of meeting its needs. When it is practicable to do so, the judiciary must use excess property as the first source of supply. Any personal property under the control of the judiciary that has been determined to be no longer required for its needs and the discharge of its responsibilities, is considered to be excess property. If excess property is not available, the judiciary must then check the procurement list maintained by the Committee for Purchase from People who are Blind or Severely Disabled (see [3.1.2.b.](#) below).
- c.** If excess property and the Procurement List for People who are Blind or Severely Disabled cannot meet the requirement, consideration must be given to all remaining sources, with potential cost to the judiciary as a primary consideration.
- d.** Some cost factors to consider when making a determination as to the source that will best meet the judiciary's needs consist of transportation costs, administrative overhead for procurement, negotiated discounts, trade-in value, extent of competition available, etc. The source determination must be documented in the procurement file.
- e.** Other federal agency contracts, which include government-wide agency contracts (GWACs), often impose a service charge on the judiciary. This service charge covers the other federal agency's administrative expenses associated with administering the contract, and is commonly expressed as a percentage of the value of the order to be placed. The surcharge must be calculated into administrative overhead when selecting a source.

3.1.2. Workshop for People Who are Blind or Severely Disabled

- a.** The Javits-Wagner-O'Day (JWOD) Act (41 U.S.C. §§ 46-48) and the implementing regulations (41 CFR Chapter 51), require that federal government agencies, including the judiciary, purchase certain products and services from qualified workshops employing people who are blind or severely disabled. The Committee for Purchase from People

who are Blind or Severely Disabled (Committee) determines what products and services are covered and the prices for those products and services.

- b. The Committee maintains a procurement list of all products and services required to be purchased from JWOD participating nonprofit agencies. The procurement list is published and updated in the Federal Register. The procurement list and additional information concerning JWOD are available online at <http://www.jwod.gov>. Questions concerning whether a product or service is on the procurement list must be referred to the Committee offices at the following address and telephone number:

Committee for Purchase from People Who Are Blind or Severely Disabled,
Crystal Square 3, Room 403
1735 Jefferson Davis Highway
Arlington, VA 22202-3461 (703) 603-7740 <http://www.jwod.com>

- c. The JWOD Act requires the judiciary to purchase products and services on the procurement list, at prices established by the Committee. COs must obtain products and services from a participating nonprofit agency approved by a central nonprofit agency (NIB or NISH). The National Industries for the Blind (NIB) has been designated to represent nonprofit agencies for the blind. NISH has been designated to represent participating nonprofit agencies employing persons with other severe disabilities. Central nonprofit agencies may authorize a CO to transmit orders for specific products or services, directly to a JWOD participating nonprofit agency. The written authorization remains valid until it is revoked by the central nonprofit agency or the Committee. The central nonprofit agency shall specify the normal delivery or performance lead time required by the nonprofit agency. The purchasing office must reflect this lead time in its orders. COs should check GSA federal supply schedules and other commercial vendors' catalogs for JWOD participating nonprofit agencies. The designation of JWOD for their products and services will allow the COs to order directly from these authorized distributors for those products and services specifically labeled as JWOD.

- d. **Purchase Exceptions** - Only if the procurement is granted an exception by the designated central nonprofit agency, then purchasing offices may acquire products or services on the procurement list from commercial sources. In compliance with JWOD Regulations (41 CFR Chapter 51) the following JWOD purchase exceptions apply:
- (1) A central nonprofit agency (NIB or NISH) will normally grant a purchase exception for products or services on the Procurement List when both of the following conditions are met:
 - (a) the central nonprofit agency or its nonprofit agency(ies) cannot furnish a product or service within the period specified, and
 - (b) the product or service is available from commercial sources in the quantities needed and significantly sooner than it will be available from the nonprofit agency(ies).
 - (2) The central nonprofit agency may also grant a purchase exception when the quantity involved is not sufficient to be furnished economically by the nonprofit agency(ies).

- (3) The Committee may also grant a purchase exception for the reasons set forth in paragraphs (1) and (2) of this section.
 - (4) The central nonprofit agency is required to obtain the approval of the Committee before granting a purchase exception when the value of the procurement exceeds their authority.
 - (5) When the central nonprofit agency grants a purchase exception under the above conditions, it is required to do so promptly and the exception should specify the quantities and delivery period covered by the exception.
 - (6) When a purchase exception is granted under paragraph (1) of this section:
 - (a) the CO must initiate commercial purchase actions within 15 days following the date of the purchase exception. The deadline may be extended by the central nonprofit agency (with the concurrence of the Committee, in cases of procurements exceeding the central nonprofit agency's authority).
 - (b) the CO must furnish a copy of the solicitation to the appropriate central nonprofit agency at the time it is issued, and a copy of the annotated offer abstract upon awarding of the commercial contract.
 - (7) Any decision by a central nonprofit agency regarding a purchase exception may be appealed to the Committee by the CO.
- e. Compliance with Orders** In compliance with JWOD regulations (41 CFR 51-6.10 Quality of Merchandise) the following applies:
- (1) Products furnished under government specification by nonprofit agencies employing persons who are blind or have other severe disabilities are required to be manufactured in strict compliance with such specifications. Where no specifications exist, products furnished are required to be of a quality equal to, or higher than, similar items available on the commercial market. Products are required to be inspected using nationally recognized test methods and procedures for sampling and inspection.
 - (2) Services furnished by nonprofit agencies employing persons who are blind or have other severe disabilities are required to be performed in accordance with government specifications and standards. Where no government specifications and standards exist, the services are required to be performed in accordance with commercial practices.
- f. Quality and Noncompliance Complaints** In compliance with JWOD regulations (41 CFR 51-6.11), the following applies:
- (1) When the quality of a product received is not considered satisfactory by the requesting office, the CO must take the following actions as appropriate:
 - (a) For products received from General Services Administration supply distribution facilities or a specifically authorized supply source, the CO must notify the supplying agency in writing in accordance with that agency's procedures. The supplying agency shall, in turn, provide copies of the notice to the nonprofit agency involved and its central nonprofit agency.

- (b) For products received directly from nonprofit agencies employing persons who are blind or have other severe disabilities, the CO must address complaints to the nonprofit agency involved, with a copy to the central nonprofit agency with which it is affiliated.
 - (2) When the quality of a service is not considered satisfactory by the purchasing office, the CO must address complaints to the nonprofit agency involved with a copy to the central nonprofit agency with which it is affiliated.
 - (3) **Order Compliance** When the central nonprofit agency or an individual nonprofit agency fails to comply with any of the terms of an order (quality, timeliness, etc.), the CO must make every effort to negotiate an adjustment before taking action to cancel the order. When a CO cancels an order for failure to comply with its terms, the central nonprofit agency must be notified, and, if practicable, requested to reallocate the order. The central nonprofit agency shall notify the Committee of any cancellation of an order and the reasons for that cancellation.
 - (4) Disputes between a nonprofit agency and a purchasing office arising out of matters covered in paragraph **f.** of this section, must be resolved, where possible, by the CO and the nonprofit agency, with assistance from the appropriate central nonprofit agency. Disputes which cannot be resolved by these parties must be referred to the Committee for resolution.
- g.** When the contract requires the contractor to purchase products or services on the Procurement List for judiciary use and these items are available from the Committee then [Clause 3-1](#), “Contractor Use of Mandatory Sources of Products and Services” will be included in solicitations, RFQs, contracts, and purchase orders. The CO must identify, in the schedule, the products or services that must be purchased from any mandatory sources and the specific source.

3.1.3. Randolph-Sheppard Act

- a.** The Randolph-Sheppard Act (20 U.S.C. §§ 107, et seq) and the implementing regulations (34 CFR § 395) http://www.access.gpo.gov/nara/cfr/waisidx_99/34cfr395_99.html, require that federal government agencies, including the judiciary, give priority for the operation of vending facilities on federal property to blind persons licensed by a state agency.
- b.** A state licensing agency is charged with the responsibility for overseeing the Randolph-Sheppard program. Prior to initiating any action to obtain vending machines (such as coin-operated copiers and food vending operations), the court unit or FPDO must:
 - (1) obtain any required delegation from GSA, if the building is operated by GSA;
 - (2) inform the state licensing agency of the court's requirements.
- c.** All procurement files for vending facilities must include a copy of the letter to the particular state licensing agency notifying it of the court's requirements and the response received. If the state licensing agency declines the judiciary's offer, their response must

be maintained in the procurement file to substantiate a competitive solicitation. A list of the [state licensing agencies](#) is provided at

http://jnet.ao.dcn/Procurement/Copy_Center_License_Agreements/Tab_5_BEPdir.00.html.

- d. A sample offering letter is at [Exhibit 3-1](#) attached to this chapter.

3.1.4. Judiciary-Wide Contracts

- a. **General** The judiciary encourages the establishment of national contracts for use on a judiciary-wide basis in order to:
 - (1) reduce administrative effort;
 - (2) simplify the supply of common-use products; and
 - (3) obtain discounts for buying in volume.
- b. PMD is responsible for establishing these contracts and designating the activities authorized to place orders. A list of the products and services available under national contracts is available on the J-Net procurement web page <http://jnet.ao.dcn/Procurement/index.html>
Flexibility in purchasing arrangements is needed in order to meet judiciary customer service requirements through rapidly changing technologies. Therefore, use of national contracts is not mandatory.
- c. When using these contracts, the delivery/task order must cite the applicable judiciary-wide contract for which the order is placed. The CO must follow the contract's ordering procedures. The contract's terms and conditions are applicable to the order.

3.1.5. GSA Federal Supply Schedules

- a. **General** The Federal Supply Schedule (FSS) program is also known as the General Services Administration (GSA) Schedules Program or the Multiple Award Schedule Program (MAS). The FSS program is directed and managed by GSA and provides federal agencies (including the judiciary) with a simplified process for obtaining commercial products and services at prices associated with volume buying. Indefinite delivery contracts are awarded to provide products and services at stated prices for given periods of time.
- b. GSA schedule contracts require all schedule contractors to publish an "Authorized Federal Supply Schedule Pricelist" (pricelist). The pricelist contains all the products and services offered by a schedule contractor. In addition, each pricelist contains the pricing and the terms and conditions pertaining to each Special Item Number (SIN) that is on schedule. The GSA schedule contractor is required to provide one copy of its pricelist to any ordering activity (judiciary contracting officer) upon request. Also, a copy of the pricelist may be obtained from FSS by submitting a written e-mail request to schedules.infocenter@gsa.gov or by telephone at 1-800-488-3111. This subsection together with the pricelists, contain necessary information for placing delivery orders (for

products) or task orders (for services) or (purchase orders in FAS₄T) with schedule contractors.

c. *Types of Schedules*

(1) “Single-Award Schedules” cover contracts made with one supplier at a stated price for delivery to a geographic area as defined in the schedule. Most schedules contain all information necessary for placing orders. Some schedules specify that the contractor's catalog must be used for additional ordering information to aid in the selection of variables such as fabrics and colors.

(2) “Multiple-Award Schedules” cover contracts made with more than one supplier for comparable products and services. Contracts are awarded to suppliers of the same generic type of products at varying prices for delivery within the same geographic area. Contractor catalogs and price lists must be used with the schedules to prepare delivery orders. The catalogs and price lists contain information such as item description, prices and discounts, order limitations, and delivery terms.

d. (1) GSA offers an on-line shopping service called "GSA Advantage!" through which judiciary COs may place orders against schedules. Judiciary COs may access "[GSA Advantage!](http://www.gsa.gov/schedules)" through the GSA Schedules Home Page at <http://www.gsa.gov/schedules>.

(2) GSA Advantage! enables judiciary COs to search specific information (i.e., national stock number, part number, common name), review delivery options, place orders directly with schedule contractors, and pay for orders using the judiciary purchase card.

e. *e-Buy* GSA's electronic Request for Quotation (RFQ) system, is a part of a suite of on-line tools which complement GSA Advantage! E-Buy allows judiciary COs to post requirements, obtain quotes, and issue orders electronically. Judiciary COs may access e-Buy at <http://www.ebuy.gsa.gov>. For more information or assistance on either GSA Advantage! or e-Buy, contact GSA at Internet e-mail address gsa.advantage@gsa.gov.

f. *Incidental Items* 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 open market items) to a FSS blanket purchase agreement (BPA), or an individual task or delivery order only if:

(1) the total price of the incidental items on the order or agreement is less than the GSA's competition threshold (\$2,500);

(2) the judiciary CO has determined the price for the item(s) not on the FSS is fair and reasonable;

(3) the item(s) are clearly labeled on the order as *incidental item(s)* which are not on the FSS; and

(4) all judiciary clauses applicable to the *incidental item(s)* are included in the order and labeled applicable to the incidental item(s). This includes the use of *JP3 Clause 3-3* and any other judiciary clauses applicable to the incidental item(s).

g. *Use of GSA Schedules* Judiciary COs issue delivery orders or task orders directly to the schedule contractors for the required products and services. The delivery/task order must

cite the applicable GSA contract number from which the order is placed. When placing orders or establishing a BPA (see **m.** below) under FSS contracts judiciary COs must not seek competition outside of the schedules or synopsize the requirement. 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 (See *Guide*, Part B). The judiciary is required to follow the GSA schedule ordering procedures as stated in this subsection when placing an order or establishing a BPA for products or services. The procedures in this section [3.1.5](#) apply to all schedules.

- h.** Orders placed by a judiciary CO under an FSS contract must, be consistent with the judiciary's procurement program requirements applicable to the procurement of the product or service. When ordering from GSA FSS, the judiciary is required to follow the GSA schedule ordering procedures, the GSA contract's terms and conditions, and GSA's competition threshold (\$2,500). The CO may determine that judiciary specific provisions or clauses are also applicable. The CO may then add those to the order. However, the CO should not include provisions or clauses:
 - (1) which are already part of the GSA contract (except as directed in judiciary procurement guidance);
 - (2) which conflict with the GSA contract provisions or clauses; or
 - (3) which create ambiguities when added to GSA contract provisions or clauses.
- i.** **Pricing** Products offered on the schedule are listed at fixed prices. Services offered on the schedule are priced either at hourly rates, or at a fixed price for performance of a specific task (e.g. installation, maintenance, and repair). GSA has already determined the prices of products and fixed-price services, and rates for services offered at hourly rates, under schedule contracts to be fair and reasonable. Therefore, judiciary COs are not required to make a separate determination of fair and reasonable pricing, except for a price evaluation as required by services requiring a statement of work (see **k.** below). Although GSA has already negotiated fair and reasonable pricing, judiciary COs should seek additional discounts before placing an order (see **n.** below).
- j.** **Ordering procedures** Judiciary COs must use the ordering procedures of this subsection when placing an order or establishing a BPA for products or services. The procedures in this subsection apply to all schedules.
 - (1) *Ordering procedures for products, and services **not** requiring a statement of work* Judiciary COs must use the procedures of this subsection when ordering products and services that are listed in the schedule contracts at a fixed price for the performance of a specific task, where a statement of work is not required (e.g. installation, maintenance, and repair).
 - (2) *Orders at or below GSA's competition threshold (\$2,500)* No competition is required. Judiciary COs may place orders at, or below GSA's competition threshold with any FSS contractor. 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.
- (3) *Minimum Competition* Soliciting three sources or reviewing pricing of three sources is a minimum requirement for an order requiring competition. Soliciting additional sources is likely to result in higher levels of customer satisfaction and lower cost to the judiciary. Conducting actual competition (i.e. requesting quotations), rather than only consulting prices is always preferable. Oftentimes, GSA contractors will quote pricing lower than those on the GSA schedule because of special offers or quantity discounts. 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, provided that the CO can determine the price to be fair and reasonable.
- (4) *GSA FSS Competitive Price/Quotation Requirements, Whether a Statement of Work is Required or Not* In requesting pricing or quotations for orders exceeding \$2,500:
- (a) the pricing/quotation requests must all be to GSA schedule holders, or their authorized resellers, that each vendor is among three or more GSA schedule holders being solicited for the requirement, and must specify that the procurements were conducted pursuant to FSS;
 - (b) 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;
 - (c) must be for products and/or services specified in the applicable schedule or within the general scope of the schedule;
 - (d) orders from the GSA FSS may not be split in order to circumvent the requirement to obtain three competitive prices/quotations; and
 - (e) must be for the same product or service description provided to each of the vendors solicited.
- (5) *Orders exceeding GSA's competition threshold (\$2,500) but not exceeding the maximum order threshold* Requests for quotations which use "best value" (price and other factors) determinations must include a full description of the evaluation/selection criteria and the relative importance of each factor. Also the CO must state how the evaluation criteria will be used to make the award decision. This information must be disclosed with the solicitation to each potential offeror (See [2.1.7.d.\(5\)](#)). Before placing an order, a judiciary CO must consider reasonably available information about the product or service offered under MAS contracts by surveying the GSA Advantage! on-line shopping service, or by reviewing the catalogs or pricelists of at least three schedule contractors. In addition to price, when determining best value*, the judiciary CO may consider, among other factors, the following:
- (a) past performance;

- (b) special features of the product or service required for effective program performance;
- (c) trade-in considerations;
- (d) probable life of the item selected as compared with that of a comparable item;
- (e) warranty considerations;
- (f) maintenance availability;
- (g) environmental and energy efficiency considerations; and
- (h) delivery terms.

*Note: For certification levels not delegated this authority, the solicitation package using “best value” must be submitted to PMD for written approval prior to soliciting quotes.

- (6) *Orders exceeding the maximum order threshold* Each schedule contract has a maximum order threshold established on a SIN-by-SIN basis. 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. In addition to following the procedures in paragraph (4) of this subsection and before placing an order that exceeds the maximum order threshold or establishing a BPA (see **m.** below), judiciary COs must:
 - (a) review the pricelists of additional schedule contractors (the GSA Advantage! on-line shopping service can be used to facilitate this review);
 - (b) based upon the initial evaluation, seek price reductions from the schedule contractor(s); and
 - (c) after seeking price reductions(See **n.** below), place the order with the schedule contractor. If further price reductions are not offered, an order may still be placed.

k. *Ordering procedures for services requiring a statement of work (SOW)*

- (1) 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.
- (2) *Statements of Work (SOWs)* All SOWs must include the work to be performed; location of work; period of performance; deliverable schedule; applicable performance standards; and any special requirement (e.g. security clearances, travel, special knowledge, analysis of requirements or system maintenance support).
- (3) *Request for Quotation Procedures* For orders of services which require a SOW to define the order, the judiciary CO must provide the Request for Quotation (RFQ), which includes the statement of work and evaluation criteria (e.g. experience and past performance), to schedule contractors that offer services that will meet the judiciary’s needs. The RFQ may be posted to GSA’s electronic RFQ system, e-Buy (see **f.** above).
 - (a) *Orders at or below, GSA’s competition threshold (\$2,500)* Judiciary COs may place orders at, or below, GSA’s competition threshold (\$2,500) with any FSS contractor that can meet the judiciary’s needs. The judiciary CO

must attempt to distribute orders among contractors, by rotating for similar purchases.

- (b) *For orders exceeding GSA's competition threshold (\$2,500), but not exceeding the maximum order threshold*
 - 1) The judiciary CO must develop a statement of work; in accordance with k.(2) above.
 - 2) The judiciary CO must provide the RFQ (including the statement of work and evaluation criteria) to at least three schedule contractors that offer services that will meet the judiciary's needs.
 - 3) The judiciary CO must request that contractors submit firm-fixed prices to perform the services identified in the statement of work.
- (c) *For proposed orders exceeding the maximum order threshold or when establishing a BPA* In addition to meeting the requirements of (b.) above, the judiciary CO must:
 - 1) provide the RFQ (including the statement of work and evaluation criteria) to additional schedule contractors that offer services that will meet the needs of the judiciary CO. When determining the appropriate number of additional schedule contractors, the judiciary CO may consider, among other factors, the following:
 - (i) the complexity, scope and estimated value of the requirement;
 - (ii) the market research results;
 - 2) seek price reductions
- (d) 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.

l. *Evaluation* The judiciary CO must evaluate all responses received using the evaluation criteria provided to the schedule contractors. 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. Place the order, or establish the BPA, with the schedule contractor. After award, judiciary COs should provide timely notification to unsuccessful offerors. If an unsuccessful offeror requests information on an award that was based on factors other than price alone, a brief explanation of the basis for the award decision must be provided.

m. *Blanket purchase agreements (BPAs)* For *Open Market BPAs* see [3.4.8.b.](#) and [4.1.6](#) for procedures on how to establish a BPA. Use this subsection for BPAs established with GSA schedule holders.

- (1) *Establishment* Judiciary COs may establish BPAs under any schedule contract to fill repetitive needs for products or services. BPAs may be established with one or more schedule contractors. 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:

- (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).
- (2) Establishment of a single BPA, or multiple BPAs, must be made using the same procedures outlined in **j.** and **k.** above. BPAs must address the frequency of ordering, invoicing, discounts, requirements (e.g. estimated quantities, work to be performed), delivery locations, and time.
- (3) When establishing multiple BPAs, the judiciary CO must specify the procedures for placing orders under the BPAs.
- (4) *Ordering from BPAs*
- (a) *Single BPA* If the judiciary CO establishes one BPA, authorized users may place the order directly under the established BPA when the need for the product or service arises.
 - (b) *Multiple BPA* If the judiciary CO establishes multiple BPAs, before placing an order exceeding GSA's competition threshold (\$2,500), the judiciary CO must:
 - 1) forward the requirement, or statement of work and the evaluation criteria, to an appropriate additional number of BPA holders, as established in the BPA ordering procedures; and
 - 2) Evaluate the responses received, make the award determination, (see g. above) and place the order with the BPA holder.
 - (c) *BPAs for hourly rate services* If the BPA is for hourly rate services, the judiciary CO must develop a statement of work for requirements covered by the BPA. All orders under the BPA must specify a price for the performance of the tasks identified in the statement of work.
 - (d) *Duration of BPAs* 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.
 - (e) *Review of BPAs*
 - 1) The judiciary CO that established the BPA must review it at least once a year to determine whether:
 - (i) the schedule contract, upon which the BPA was established, is still in effect;
 - (ii) the BPA still represents the best value* (See **j.**(5) above);
 - (iii) estimated quantities/amounts have been exceeded and additional price reductions can be obtained.
 - 2) The judiciary CO must document the results of its review.
- n. Price reductions and Other Negotiated Changes** In addition to seeking price reductions before placing an order exceeding the maximum order threshold, 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 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 under BPAs, regardless of the size of individual orders, offers the opportunity to secure greater discounts. Schedule contractors are not required to pass on to all schedule users a price reduction extended only to an individual CO for a specific order.

- o. *Authorized Resellers*** If provided by the schedule, offers 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. The designated agents or authorized resellers must be identified in the FSS contract. It is the CO's responsibility to review the FSS schedule.
- p. *Brand Name or Equal*** A "brand name or equal" description may be used, if the CO is prepared to evaluate and accept the item when it is 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 \$2,500 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 particular brand name, product, or feature is specified and an "or equal" product is not being considered, then the procurement is conducted under other than full and open competition requirements and needs to be justified as such (see [3.6.1.c](#)).
- q. *Sole source justification and approval***

 - (1) Orders placed under schedules are exempt from the requirements to advertise. However, judiciary COs must procure sole source requirements under this subsection only if the need to do so is justified in writing in accordance with section [3.6](#), 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 deem only one source is reasonably available (e.g. exclusive licensing agreement, etc.).
 - (2) Uniquely under GSA schedule purchases, for requests requiring a statement of work, sole source justifications are not generally appropriate for services schedule orders. Henceforth, generally it is not possible to structure a 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.
- r. *Documentation***

 - (1) *Minimum documentation* The information in this subsection is in addition to the documentation requirements in [7.1.1](#). The judiciary CO must document:

- (a) the contracts considered, noting the GSA contract number from which the order is placed, and the contractor name from which the product or service was purchased;
 - (b) a description of the product or service purchased;
 - (c) the amount paid; and
 - (d) if applicable, the circumstances and rationale for restricting consideration of schedule contractors to fewer than that required in **j.** or **k.** above. Justifications for such restrictions may include:
 - 1) only one source is capable of responding due to the unique or specialized nature of the work;
 - 2) the new work is a logical follow-on to an existing order provided that the original order was placed in accordance with **i.** or **j.** above (excluding orders placed previously under sole source requirements);
 - 3) the item is peculiar to one manufacturer. A brand name item, available on various schedule contracts, is an item peculiar to one manufacturer; or
 - 4) an urgent and compelling need exists and following the ordering procedures would result in unacceptable delays.
- (2) *Additional documentation for services* In addition to the documentation requirements of paragraph (1) of this subsection, when acquiring services using the procedures at **k.** above, the judiciary CO must also document:
- (a) the evaluation methodology used in selecting the contractor to receive the order;
 - (b) the rationale for any tradeoffs in making the selection;
 - (c) the price reasonableness determination required by **i.** above; and
 - (d) the rationale for using other than a firm-fixed order.
- s. Payment** The judiciary may make payments for oral or written orders by any authorized means, including FAS₄T and the judiciary's purchase card.
- t. Order placement** Judiciary COs may place orders orally (except for services requiring an SOW), use [Optional Form 347](#), or a FAS₄T form, to order products or services from schedule contracts. The judiciary CO must place an order directly with the contractor in accordance with the terms and conditions of the pricelists. Prior to placement of the order, the judiciary CO must ensure that the judiciary procurement program requirements have been applied. Orders must include the following information in addition to any information required by the schedule contract:
- (a) complete shipping and billing addresses;
 - (b) GSA contract number and date;
 - (c) judiciary order number;
 - (d) F.o.b. delivery point; i.e., origin or destination;
 - (e) discount terms;
 - (f) delivery time or period of performance;

- (g) special item number or national stock number;
 - (h) a statement of work 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).
 - (i) quantity and any variation in quantity;
 - (j) number of units;
 - (k) unit price;
 - (l) total price of order;
 - (m) points of inspection and acceptance;
 - (n) other pertinent data; e.g., delivery instructions or receiving hours and size-or-truck limitation.
 - (o) marking requirements; and
 - (p) level of preservation, packaging, and packing.
- u. Administration of Orders** GSA is responsible for administering FSS *contracts*, and the judiciary may not change, terminate, or otherwise undertake administration of an FSS *contract*. However, purchasing offices are responsible for administration of their own individual *orders* placed against an FSS contract, in accordance with the terms and conditions of the GSA schedule contract, and must deal directly with the contractor. Such functions include:
- (1) inspecting and accepting products and services;
 - (2) making or arranging for payment;
 - (3) modifying orders;
 - (4) terminating orders for default and charging contractors with resulting excess costs; and
 - (5) terminating orders for the convenience of the judiciary.
- v. Inspection and acceptance**
- (1) *Products*
 - (a) receiving offices must inspect products at destination except when:
 - 1) the schedule contract indicates that mandatory source inspection is required by the GSA schedule contracting agency; or
 - 2) a schedule item is covered by a product description, and the judiciary CO determines that the GSA schedule contracting agency's inspection assistance is needed (based on the ordering volume, the complexity of the products, or the past performance of the supplier).
 - (b) When the GSA schedule contracting agency performs the inspection, the judiciary CO will provide two copies of the order specifying source inspection to the GSA schedule contracting agency. The GSA schedule contracting agency will notify the judiciary CO of acceptance or rejection of the products.
 - (c) Material inspected at source by the GSA schedule contracting agency, and determined to conform with the product description of the schedule, must

not be reinspected for the same purpose. The receiving office must limit inspection to kind, count, and condition on receipt.

- (d) Unless otherwise provided in the schedule contract, acceptance is conclusive, except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

- (2) *Services* The judiciary CO has the right to inspect all services in accordance with the contract requirements and as called for by the order. The judiciary CO must perform inspections and tests as specified in the order's quality assurance surveillance plan in a manner that will not unduly delay the work.

w. Remedies for nonconformance

- (1) If a contractor delivers a product or service, but it does not conform to the order requirements, the judiciary CO must take appropriate action in accordance with the inspection and acceptance clause of the contract, as supplemented by the order.
- (2) If the contractor fails to perform an order, or take appropriate corrective action, the judiciary CO may terminate the order for cause or modify the order to establish a new delivery date (after obtaining consideration, as appropriate). Judiciary COs must follow the procedures at **x.** below when terminating an order for cause.

x. Termination for Cause

- (1) A judiciary CO may terminate individual *orders* for cause. Termination for cause must comply with the GSA requirements for commercial items, and may include charging the contractor with excess costs resulting from repurchase. The PE must review and approve, in writing, all proposed contract terminations whether for cause or convenience.
- (2) The GSA schedule contracting office must be notified of all instances where a judiciary CO has terminated for cause an individual order to a FSS contractor, or if fraud is suspected.
- (3) If the contractor asserts that the failure was excusable, the judiciary CO must follow the procedures at **y.** below, as appropriate.
- (4) If the contractor is charged excess costs, the following apply:
- (a) Any repurchase must be made at as low a price as reasonable, considering the quality required by the government, delivery requirement, and administrative expenses. Copies of all repurchase orders, except the copy furnished to the contractor or any other commercial concern, must include the notation:
- Repurchase against the account of _____ (*insert contractor's name*)
under Order _____ (*insert number*) under Contract _____ (*insert number*).
- (b) When excess costs are anticipated, the judiciary CO may withhold funds due the contractor as offset security. Judiciary COs must minimize excess costs to be charged against the contractor and collect or set-off any excess costs owed.

- (c) If a judiciary CO is unable to collect excess repurchase costs, it must notify the GSA schedule contracting office after final payment to the contractor.
- 1) The notice must include the following information about the terminated order:
 - (i) name and address of the contractor;
 - (ii) schedule, contract, and order number;
 - (iii) national stock or special item number(s), and a brief description of the item(s);
 - (iv) cost of schedule items involved;
 - (v) excess costs to be collected; and
 - (vi) other pertinent data.
 - 2) The notice must also include the following information about the purchase contract:
 - (i) name and address of the contractor;
 - (ii) item repurchase cost;
 - (iii) repurchase order number and date of payment
 - (iv) contract number, if any; and
 - (v) other pertinent data..
- (5) Only the GSA schedule contracting officer may modify the contract to terminate for cause any, or all, products or services covered by the schedule contract. If the GSA schedule contracting officer has terminated any products or services covered by the schedule contract, no further orders may be placed for those items. Orders placed prior to termination for cause must be fulfilled by the contractor, unless terminated for the convenience of the government by the judiciary CO.

y. Termination for the judiciary's convenience

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

z. Disputes It is the judiciary's policy that whenever possible, any disputes arising under orders placed by judiciary COs will be settled by the judiciary COs, within their COCP delegation authority. Above their delegation authority, the CO must refer the dispute to the PE.

- (1) *Disputes pertaining to the performance of orders under a schedule contract*
 - (a) Under the Disputes clause of the schedule contract, the judiciary CO may:

- 1) issue final decisions on disputes arising from performance of the order (but see paragraph (2) of this subsection); or
 - 2) refer the dispute to the GSA schedule contracting officer.
- (b) The judiciary CO must notify the GSA schedule contracting officer promptly of any final decision.
- (2) *Disputes pertaining to the terms and conditions of schedule contracts* The judiciary CO must refer all disputes that relate to the contract terms and conditions to the GSA schedule contracting officer for resolution under the “Disputes” clause of the contract and notify the schedule contractor of the referral.
 - (3) *Appeals* Contractors may appeal final decisions pertaining to disputes arising under the schedule contract, as well as orders placed thereunder, in accordance with the “Disputes” clause of the schedule contract to either the Board of Contract Appeals servicing the agency that issued the final decision or the U.S. Court of Federal Claims.
 - (4) *Alternative dispute resolution* The contracting officer should use the alternative dispute resolution (ADR) procedures, to the maximum extent practicable.

3.1.6. Other Federal Agency Contracts

- a. One method by which the judiciary may obtain products and services is by using other federal agency contracts (also referred to as multi-agency contracts). Other federal agency contracts are delivery or task order contracts established by one agency for use by other government agencies to obtain products and services.
- b. Various federal agencies have awarded contracts that may be used by other agencies. The authority to procure products and services under other federal agency contracts (other than GSA federal supply schedules¹), is either the Economy Act (31 U.S.C. § 1535) or specific statutory authority. See Section 5.5. When ordering from other federal agency contracts the judiciary is required to follow the contract’s ordering procedures and the other federal agency contract’s terms and conditions. The CO may determine that judiciary specific provisions or clauses 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 contract number from which the order is placed.
- c. See Section 5.5. for information on the procedures for ordering through an interagency agreement (IA) or memorandum of understanding (MOU).
- d. The following procedures must be followed when obtaining products and services through another federal agency contract:

¹GSA federal supply schedules are not considered “other federal agency contracts” as defined by section 3.1.6. Guidance on how to use the GSA federal supply schedules is contained in 3.1.5.

- (1) Determine if another federal agency contract is in the best interests of the government by:
 - (a) ensuring the products and services required are within the scope of the other federal agency contract;
 - (b) analyzing the total cost of obtaining the products or services from the other federal agency contract, including applicable service or processing fees imposed by the other federal agency;
 - (c) determining if there are any pricing advantages by using the other federal agency contract;
 - (d) considering intangibles, such as ease of use, time savings, etc.;
 - (e) comparing the expenditure of effort and associated costs with placing an order or procuring under other procedures; and
 - (f) identifying other restrictions, such as length of time during which the other federal agency contract will remain in force and effect, or in the procedures imposed by the other federal agency as a condition to using the contract.
- (2) If, after considering the factors described above, it is decided to obtain the products or services through an other federal agency contract under the Economy Act, the action must be supported by the following written determination and placed in the official procurement file; including supporting rationale:
 - (a) use of an other federal agency contract pursuant to the Economy Act 31 U.S.C. § 1535, is in the best interest of the government; and
 - (b) the products or services cannot be obtained as conveniently or economically by procurement directly with a private source.

3.1.7. Open Market Open market purchases are made directly from commercial sources using competitive procedures where applicable.

Part 3.2. Publicizing Open Market Procurement Actions

3.2.1. Policy

- a.** Generally, open market procurements for products or services for the judiciary may be made or entered into only after advertising a sufficient time (usually a minimum of 10 days) prior to receipt of offers. However, this is applicable unless one of the exceptions in paragraph **c.** below apply, or as otherwise provided in the delegated program, in the appropriation law, or other law applying to the procurement.
- b.** The publicizing information must include a clear and concise description of the products or services that is not unnecessarily restrictive of competition and will allow a prospective offeror to make an informed business judgment as to whether a copy of the solicitation must be requested. Other elements are the point of contact name and phone number, the solicitation number, and due date for offers. Electronic access to the solicitation could be provided to potential offerors. Estimated cost data must not

normally be included. However, estimated levels of effort must be furnished when purchasing labor hours.

c. Exceptions to posting are as follows:

- (1) when the independent government cost estimate (see [2.1.3.\(3\)\(d\)](#)) is less than \$25,000;
- (2) when the public exigencies require the immediate delivery of the articles or performance of the service. A PE written concurrence is required in order to use this exception;
- (3) when only one source of supply is available and the CO must so certify. A chief judge or FPD written concurrence is required within their delegation authority. Above the delegation authority or at the AO, the PE's written concurrence is required; or
- (4) when the services are required to be performed by the contractor in person and are:
 - (a) of a technical and professional nature (see Experts and Consultants [5.2.](#)); or
 - (b) under supervision and paid for on a time basis (see Personal Services [5.1.](#)).

When the exception listed in (4)(a) above is for a procurement more than \$25,000 or exception(4)(b) applies, then the CO will submit justification to the PE, for written approval, prior to solicitation.

3.2.2. Methods of Publicizing Procurement notices are intended to increase meaningful competition by disseminating and explaining the judiciary's requirements. COs must advertise each open market proposed procurement which is expected to exceed \$25,000, (see [3.2.1.c.](#) for exceptions). A court unit or FPDO has the authority to meet the publicizing requirement by advertising within the local trade area for open market solicitations over \$25,000, but less than \$100,000. However, national advertisement is encouraged whenever feasible. Open market procurements exceeding \$100,000, must be advertized nationally. There are several ways to disseminate information concerning the judiciary's needs:

- (1) **National Posting on the Government Point of Entry (GPE)** This is FedBizOpps (<http://fedbizopps.gov/>), a GSA forum listing government agency solicitations and contract awards.
- (2) **Local Posting** When required or desired to increase competition, local posting of solicitations must be prominently displayed in a public area. Depending on the location, solicitations may be posted in the public area of the purchasing activity, courthouse, or other visible area easily accessible by the public.
- (3) **Local Announcements and Advertisements** Announcements of proposed purchases may be placed in newspapers, trade journals, and magazines for publication. Paid commercial advertisements may be used when determined by the CO to be in the judiciary's interest.

- (4) **Electronically** Any appropriate public electronic means may also satisfy the local posting requirement.

Part 3.3. Contractor Qualifications

3.3.1. Responsible Prospective Contractors

- a.** Prior to award, COs must determine that the prospective contractor is responsible. If a contractor, who is not responsible, subsequently defaults, provides late delivery, or other unsatisfactory performance, the award of a procurement could eventually cost the judiciary more money or a loss of time. To qualify for award, a prospective contractor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors.
- b. General Standards** Certain key areas must be considered when determining an offeror's responsibility. At times the same areas may be used as evaluation factors. In such instances, the factors must be clearly stated in the solicitation and evaluated in accordance with its terms and conditions. To be determined responsible, a contractor must:
- (1) have financial resources adequate to perform the contract;
 - (2) be able to comply with the delivery or performance schedule, taking into consideration all existing commitments (including awards pending);
 - (3) have a good performance record;
 - (4) have a sound record of integrity and business ethics;
 - (5) have a quality control program that complies with solicitation requirements or the demonstrated ability to obtain one;
 - (6) have the necessary organization, experience, accounting, and operational controls, technical skills, and production and property controls, or the demonstrated ability to obtain them;
 - (7) have the necessary equipment and facilities, or the demonstrated ability to obtain them; and
 - (8) be otherwise qualified and eligible to receive an award under applicable laws and regulations.
- c. Subcontractor Responsibility** Generally, prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors (but see [3.3.3.](#) regarding debarred, suspended, or ineligible contractors). Matters of prospective subcontractor responsibility may affect the determination of the prospective prime contractor's responsibility. A prospective contractor may be required to provide written evidence of a proposed subcontractor's responsibility.
- d.** When it is in the judiciary's interest to do so, the CO may directly determine a prospective subcontractor's responsibility, using the same standards as used to determine a prime contractor's responsibility. This may be particularly appropriate if a subcontractor is considered critical to the contractor's successful performance or if the

proposed subcontracted effort is a substantial portion of the overall work to be performed.

3.3.2. Determining Responsibility and Nonresponsibility

- a. **Determination** The CO must make an affirmative written determination of responsibility in accordance with the provisions of [3.3.1](#) above before awarding any procurement, except for procurements of \$25,000 or less (for awards using small purchase procedures, see [3.4](#)). In the absence of information clearly showing that a prospective contractor meets applicable standards of responsibility, the CO must make a written determination of non-responsibility.
- b. **Documentation** Documents and reports supporting a determination of responsibility or non-responsibility, including any pre-award survey reports, must be included in the procurement file.
- c. **Obtaining Information** Before making a determination of responsibility, the CO must possess or obtain information sufficient to be satisfied that a prospective contractor currently meets applicable standards of responsibility. Sources of information include:
 - (1) judiciary's list of debarred, suspended, and ineligible contractors, and GSA's consolidated list of contractors debarred, suspended, or declared ineligible by other federal agencies (see [3.3.3](#));
 - (2) records and experience data, including verifiable knowledge from judiciary personnel in purchasing offices, audit offices, and from other agency's contracting offices;
 - (3) the prospective contractor, including offer information, questionnaire replies, financial data, information on production equipment, and personnel information; and
 - (4) suppliers, subcontractors, and customers of the prospective contractor, financial institutions, government agencies, and business and trade associations.
- d. **Discussion** Communication with a prospective offeror for the purpose of obtaining or clarifying information needed to determine responsibility is not "discussion" as defined in [3.5.11](#). Clarification with offerors does not require that discussions be held with all those in the competitive range.
- e. **Preaward Surveys**
 - (1) If available information does not provide an adequate basis for determining the responsibility or non-responsibility of a prospective contractor, the CO must perform a pre-award survey, by obtaining the assistance and participation of specialists as needed. The extent of the survey must be commensurate with the dollar value and complexity of the purchase, and may include any or all of the following:
 - (a) data on hand or from other government agencies or commercial sources;
 - (b) examination of financial statements and records;
 - (c) on-site inspection of plant and facilities to be used for contract performance.

- (2) Each participant in the survey must make a written report of findings to the CO, which must be retained with the CO's determination. The CO may require a consolidated survey report if there would otherwise be numerous individual reports.
- (3) The CO may discuss pre-award survey information with the prospective contractor being surveyed.

3.3.3. Debarment, Suspension, and Ineligibility

- a.** Purchasing offices must procure from responsible contractors only. Therefore, purchasing offices must not solicit offers from, award procurements to, or consent to subcontracts with debarred, suspended, or ineligible contractors or affiliates thereof, unless the PE determines in writing that there is a compelling reason for such action in the interest of the judiciary.
- b. List of Parties Excluded from Federal Procurement and Nonprocurement Programs**
The General Services Administration (GSA):
 - (1) compiles and maintains a current list of all parties debarred, suspended, proposed for debarment, or declared ineligible by the federal agencies and the General Accounting Office (GAO).
 - (2) periodically revises and distributes the list monthly and issues supplements, if necessary, to all agencies and the GAO; and
 - (3) includes in the list the name and telephone number of the official responsible for its maintenance and distribution.
- c.** The list contains:
 - (1) the names and addresses of all contractors debarred, suspended, proposed for debarment, or declared ineligible, in alphabetical order, with cross-references when more than one name is involved in a single action;
 - (2) name of the federal agency or other authority taking the action;
 - (3) cause for the action (see [3.3.3.h.](#)) or other statutory or regulatory authority;
 - (4) effect of the action;
 - (5) termination date for each listing;
 - (6) DUNS number; and
 - (7) name and telephone number of the point of contact for the action.
- d.** Any judiciary recommendation for debarment must be submitted to the PE for concurrence, containing the information in paragraph **c.** After concurrence, the PE will furnish GSA notice of any debarment or suspension determination made by the judiciary. The PE will:
 - (1) provide GSA with the information required by paragraph **c.** of this section after the action becomes effective;
 - (2) notify GSA after modifying or rescinding an action;
 - (3) maintain records relating to each debarment, suspension, or proposed debarment taken by the judiciary for six years and three months;

- (4) direct any inquiry about listed contractors to the federal agency or other authority who took the action.
- e. The List of Parties Excluded from Federal Procurement and Nonprocurement Programs is available as follows:
- (1) The electronic version is updated daily and is available via the internet at <http://epls.arnet.gov/>
 - (2) The printed version is published monthly. Copies may be obtained by purchasing a yearly subscription through the Government Printing Office Inquiry and Order Desk at (202) 512-1800.
- f. **Effect of Listing**
- (1) Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and COs must not solicit offers from, award procurements to, or consent to subcontracts with these contractors, unless the PE determines that there is a compelling reason for such action. Contractors debarred, suspended, or proposed for debarment are also excluded from conducting business with the government as agents or representatives of other contractors.
 - (2) Contractors listed as having been declared ineligible on the basis of statutory or other regulatory procedures are excluded from receiving procurements and, if applicable, subcontracts, under the conditions and for the period set forth in the statute or regulation. COs may not solicit offers or quotations from, award procurements to, or consent to subcontracts with such contractors under those conditions and for that period.
 - (3) Contractors debarred, suspended, or proposed for debarment are excluded from acting as individual sureties.
 - (4) After the opening of offers, the CO must review the List of Parties Excluded from Federal Procurement and Nonprocurement. Offers received from any listed contractor in response to a solicitation must be rejected unless the PE determines in writing that there is a compelling reason to consider the offer. Offers or quotations received from any listed contractor will not be evaluated for award or included in the competitive range, nor will discussions be conducted with a listed offeror during a period of ineligibility, unless the PE determines, in writing, that there is a compelling reason to do so. If the period of ineligibility expires or is terminated prior to award, the CO may, but is not required to, consider such offers or quotations.
 - (5) Immediately prior to award, the CO must again review the List of Parties Excluded from Federal Procurement and Nonprocurement Programs to ensure that no award is made to a listed contractor, unless the PE determines, in writing, that there is a compelling reason to do so.
- g. **Continuation of Current Contracts**
- (1) Notwithstanding the debarment, suspension, proposed debarment or ineligibility of a contractor, COs may continue contracts or subcontracts in existence at the time the contractor was debarred, suspended, or proposed for debarment unless the PE directs otherwise. A decision as to the type of termination action, if any,

to be taken should be made only after review by contracting and technical personnel and in consultation with the PE, who will coordinate with OGC, to ensure the propriety of the proposed action.

- (2) Purchasing offices may continue to place orders against existing contracts, including indefinite delivery contracts, unless the contract is terminated.
- (3) COs may not renew or otherwise extend the duration of current contracts, or consent to subcontracts, with contractors debarred, suspended, or proposed for debarment, unless the PE states, in writing, the compelling reasons for renewal or extension.

h. Causes for Debarment The PE is authorized, after conferring with OGC, to debar a contractor in accordance with procedures in this part for the following causes:

- (1) the PE may debar a contractor for a conviction of or civil judgment for:
 - (a) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract;
 - (b) violation of federal or state antitrust statutes relating to the submission of offers;
 - (c) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;
 - (d) commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a government contractor or subcontractor.
- (2) The PE may debar a contractor, based upon a preponderance of the evidence, for:
 - (a) violations of a judiciary contract or subcontract so serious as to justify debarment action, such as:
 - 1) willful failure to perform in accordance with the terms of one or more contracts; or
 - 2) a history of failure to perform or of unsatisfactory performance of one or more contracts or subcontracts.
 - 3) any other cause of so serious or compelling nature that it affects the present responsibility of a government contractor or subcontractor.

i. Conditions for Debarment The existence of any of the causes in subparagraph [3.3.3.h](#) does not necessarily require that a contractor be debarred. The decision to debar is within the discretion of the PE and must be made in the best interest of the judiciary. All mitigating factors must be considered in determining the seriousness of the offense, failure, or inadequacy of performance, and in deciding whether debarment is warranted.

j. The existence of any of the first two causes in subparagraph [3.3.3.h](#) must be established by criminal conviction in a court of competent jurisdiction. If appeal taken from such conviction results in a reversal of the conviction, the debarment must be removed upon the request of the contractor unless other causes for debarment exist.

k. The existence of any of the causes in subparagraph [3.3.3.h](#) must be established by evidence that the judiciary determines to be clear and convincing.

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

3.3.4. Period of Debarment

- a. When other agencies provide a specific period of debarment, statutes, executive orders, or controlling regulations thereof are controlling. In other cases, debarment by the judiciary must be for a reasonable, definite, stated period of time, commensurate with the seriousness of the offense or the failure or inadequacy of performance. Generally, a period of debarment may not exceed three years.
- b. Except as precluded by statute, debarment may be removed or the period may be reduced by the PE upon submission of an application by the debarred contractor. The application must be supported by documentary evidence setting forth appropriate grounds for the granting of relief, such as newly discovered material evidence, reversal of a conviction, bona fide change of ownership or management, or the elimination of the causes for which debarment was imposed. The PE may, as a matter of discretion, deny any application for removal of debarment or for reduction of its period. In any case in which a debarment is removed or the debarment period is reduced, the PE must transmit to OGC a notice and statement for the record of the reasons for the removal of the debarment or the reduction of the period of debarment.

3.3.5. Procedural Requirements for Debarment

- a. **Notice of proposal to debar** The PE, after conferring with OGC, must initiate a debarment proceeding by sending to the contractor a written notice of proposed debarment. The notice must be served by sending it to the last known address of the contractor by certified mail, return receipt requested. The notice must state:
 - (1) that debarment is being considered;
 - (2) the reasons for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based;
 - (3) the cause(s) relied upon under [3.3.3.h](#) for proposing debarment;
 - (4) that, within 30 days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts;
 - (5) the judiciary's procedures governing debarment decision making;
 - (6) the effect of the issuance of the notice of proposed debarment; and

- (7) the potential effect of an actual debarment, including the period of debarment and the proposed effective date;
- b. A contractor served with a notice of proposed debarment may request a hearing by addressing a request to OGC through the PE.
- c. When the PE proposes to debar a contractor already debarred by another government agency for a term concurrent with such debarment, the debarment proceedings before the judiciary may be based entirely upon the record of facts obtained from the other federal agency or upon such facts and additional facts. In such cases the facts obtained from the other federal agency must be considered as established, but the party to be debarred must have an opportunity to present information to the PE and to explain why debarment by the judiciary must not be imposed.

3.3.6. Causes for Suspension

- a. The PE may, when the interest of the judiciary requires, and after conferring with OGC, suspend any contractor upon adequate evidence of or indictment for:
 - (1) commission of fraud or a criminal offense incidental to obtaining, attempting to obtain, or performing a judiciary contract or subcontract;
 - (2) violation of the federal or state antitrust statutes relating to the submission of offers. Indictment for any of these causes constitutes adequate evidence for suspension;
 - (3) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; or any other offense indicating a lack of business integrity or business honesty that seriously and directly affects present responsibility as a contractor or subcontractor; or
 - (4) other cause(s) of so serious and compelling nature, affecting the present responsibility as a contractor or subcontractor, as may be determined by the PE to warrant suspension. A pending hearing for debarment may be such a cause.
- b. A suspension invoked by another government agency may be the basis for the imposition of a concurrent suspension by the PE, on behalf of the judiciary.
- c. **Notice of Suspension**
 - (1) The PE must send a notice of the suspension to be served upon the contractor and any specifically named affiliates to be suspended. The notice must be sent by certified mail, return receipt requested. The notice of suspension must be coordinated through OGC before issuance. The notice must state:
 - (a) that they have been suspended and that the suspension is based on an indictment or other adequate evidence that the contractor has committed irregularities:
 - 1) of a serious nature in business dealings with the government; or
 - 2) seriously reflecting on the propriety of further judiciary dealings with the contractor. Any such irregularities must be described in

terms sufficient to place the contractor on notice without disclosing the judiciary's evidence;

- (b) that the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue;
- (c) of the cause(s) relied upon under [3.3.6](#) for imposing suspension;
- (d) that, within 30 days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension, including any additional specific information that raises a genuine dispute over the material facts; and
- (e) that additional proceedings to determine disputed material facts will be conducted unless:
 - 1) the action is based on an indictment; or
 - 2) a determination is made that the substantial interests of the judiciary in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

d. Period of Suspension

- (1) Suspension must be for a temporary period pending the completion of investigation and any ensuing legal proceedings, unless sooner terminated by the PE or as provided in this section.
- (2) If legal proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless the PE requests its extension. See (3) below.
- (3) *Suspension extension* A suspension, while in effect, may be extended for an additional period of six months upon written determination of the reasons and necessity for the extension. Notice of any extension of suspension must be served upon the contractor in the manner set forth in subparagraph [3.3.6.c](#). In no event may a suspension plus its extensions exceed in the aggregate a period of 18 months, unless legal proceedings have been initiated within that period. In which case successive additional periods of suspension may be imposed until the proceeding in question has been completed. The termination of a suspension, however, may not prejudice a debarment proceeding that was pending or that may be brought for the same reasons that led to the suspension.

Part 3.4 Small Purchase Procedures

3.4.1. General Note: This section does not apply to GSA FSS (see [3.1.5.](#)) or orders from other federal agency contracts (see [3.1.6.](#)).

- a.** Purchases must be made on the basis of adequate competition whenever feasible. Adequate competition means the solicitation and participation of 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.

- b.** 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.
- c.** **Applicability** The small purchase procedures are for use in making open market fixed-price purchases up to \$25,000. This dollar limitation is referred to as the judiciary's small purchase threshold (see [Guide Volume 1, Chapter 8, Part B](#)).
- d.** **Limitations** A procurement estimated to total more than the judiciary's small purchase threshold may not be split into two or more purchases in order to use small purchase procedures. Nor may a known requirement for goods or services be split, parceled, divided or purchased over a period of time solely in order to avoid the dollar limitations for small purchase procedures.

3.4.2. Open Market Small Purchase Procedures With or Without Competition

- a.** In the judiciary, the open market threshold, with or without competition, is \$5,000. Open market purchases for \$5,000 or less may be made without obtaining competitive quotations, provided that the CO determines the price to be reasonable.
- b.** The administrative cost of verifying the reasonableness of the price for purchases may more than offset potential savings from detecting instances of overpricing. Therefore, action to verify price reasonableness need only be taken if:
 - (1) the CO suspects or has information to indicate that the price may not be reasonable (such as comparison to the previous price paid or personal knowledge of the product or service involved); or
 - (2) purchasing a product or service for which no comparable pricing information is readily available (such as a product or service that is not the same as, or is not similar to, other products or services that have been recently purchased on a competitive basis).
- c.** Where practicable, noncompetitive purchases must be distributed and rotated equitably among qualified suppliers. A quotation must be obtained from other than the previous supplier before placing a repeat order.

3.4.3. Competitive Small Purchase Procedures

- a.** For small purchase procedures, competition must be sought to the extent practicable for purchases estimated to be more than the open market competitive threshold (see [3.4.2.a.](#)) but less than the judiciary's small purchase threshold. (also see Part [3.6.](#) for Other Than Full and Open Competition.) For open market small purchases up to the judiciary's small purchase threshold, offers or quotations must be solicited from a sufficient number of qualified sources (normally at least three) to ensure that the price is fair and reasonable. Notwithstanding the minimum number of qualified sources that must be

solicited to ensure adequate competition, the CO is encouraged to solicit as many potential sources as time will permit, commensurate with the scope of the procurement. For any open market purchases over \$25,000, the requirement must be advertised (see [3.2.2.](#)). For any open market purchases over the judiciary's small purchase threshold (see [3.4.1.c.](#)), see the standard competitive contracting procedures for formal contracts ([3.5.](#)).

- b.** When determining how many quotations will be solicited, the CO may consider the following factors:
- (1) the nature of the product or service to be purchased and whether it is highly competitive and readily available in several makes or brands or if relatively few suppliers provide the product or service;
 - (2) information obtained in making recent purchases of the same or similar item;
 - (3) the urgency of the proposed purchase; and
 - (4) past experience concerning specific vendors' prices.

3.4.4. Purchases of Services

- a.** The Service Contract Act (the Act) applies to service contracts over \$2,500, including purchase orders, which furnish services through the use of service employees. 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. The Act applies regardless of the beneficiary of the services (judiciary or general public); the source of funding (judiciary or the public); or the place of performance (judiciary or contractor's premises).
- b.** The Act 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 must service employees be paid less than the minimum wages specified in the Fair Labor Standards Act, 29 U.S.C. 206(a)(1). In addition to including a provision in the contract notifying contractors that the Act applies, a wage determination issued by the Department of Labor (DOL) must be made part of the contract.
- c.** **Exceptions** There are exceptions to the Service Contract Act. For example, professional services or services for the maintenance and repair of automation equipment and office/business machines are excepted, if the services are performed on the office/business machines by the manufacturer or supplier of the equipment.
- d.** **Wage Determinations** Judiciary COs may obtain wage determinations through the DOL website <http://www.wdol.gov/index.html>. The website contains a manual for its use and a point of contact for assistance. The website asks questions specific to the proposed procurement (i.e. performance location, type of service). If a wage determination is available, the website will provide a printer friendly version. The CO will print out the wage determination, include it in the solicitation, in the contract or order award, and maintain it as file documentation. If the wage determination is not available then an electronic 98 (e-98) may be used, which is also accessible through the website. If an e-98

is necessary, it must be submitted to DOL not less than 60 days nor more than 120 days prior to the estimated solicitation release date. In order to complete e-98, the CO may need to review the DOL publication, Service Contract Act Directory of Occupations to determine the appropriate classes of service employees to be employed for the procurement. Normally, the DOL will issue a wage determination within 30 days of receipt of the e-98.

- e. The wage determination is to be made part of the solicitation document. In no case is a service contract to be awarded without a wage determination. If the contract is funded by fiscal year appropriations and the term of the contract is extended, such as by exercising an option or by modifying the contract, a new wage determination must be obtained. 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.
- f. The Code of Federal Regulations (CFR) and the DOL publication Service Contract Act Directory of Occupations may be obtained from the Superintendent of Documents, Government Printing Office, at <http://www.gpo.gov>.
- g. **Clause [Clause 3-160](#)**, “Service Contract Act of 1965, as Amended” is included in every contract over \$2,500 for services covered by the Act or any such award modified to exceed \$2,500. This includes indefinite-delivery contracts and ordering agreements when orders are expected to aggregate more than \$2,500.

3.4.5. Soliciting Under Small Purchase Procedures

- a. **General** For procurements less than the judiciary’s small purchase threshold (see [3.4.1.c.](#)) soliciting of quotations under small purchase procedures may be done either in writing or orally. Whether the solicitation is oral or written, the CO must request the vendor’s DUNS number. When determining responsibility (see [3.3.2.](#)) and checking the debarred list (see [3.3.3.](#)), the DUNS number will assist in obtaining information about the vendor. When the award is made, the DUNS number must be included in the name and address block on the procurement instrument (purchase/delivery/task order).
- b. **Written Solicitations** Under small purchase procedures, a written solicitation is referred to as a request for quotations (RFQ). Because written solicitations provide a clearer understanding of the requirement, they must be used in the following circumstances:
 - (1) when a large number of line items is included in a single proposed procurement;
 - (2) when obtaining oral quotations is not considered economical or practical;
 - (3) when extensive specifications are involved; or
 - (4) when purchasing services, unless the services are generally pre-defined and would normally be priced in a catalog.
- c. **Oral Solicitations** An oral solicitation may be used when a written solicitation would be impracticable, as when processing a written solicitation would cause a delay detrimental to the judiciary. Records of oral solicitations must be in the purchasing file (see [7.1.1.](#)).
- d. **Amending Solicitations**

- (1) An amendment to the RFQ must be issued on the standard form for amendments (SF30) or the appropriate form in FAS₄T. The purchase file must be documented to show the reason for any amendment.
- (2) Prior to receipt of offers, an amendment may make the following types of changes:
 - (a) quantity;
 - (b) specifications;
 - (c) delivery schedule; or
 - (d) other corrections as needed.

3.4.6. Basis for Award

a. Policy

- (1) The basis for award must be determined in advance of the request for offers and must not change once offers have been received.
- (2) Small purchases may be awarded on the basis of:
 - (a) technically acceptable/lowest price. The price includes items such as transportation and administrative charges; or
 - (b) best value, which involves an evaluation and comparison of cost or price and other factors.
- (3) For small purchases, technically acceptable/lowest price is the preferred basis for award (see **b.** below). If appropriate, best value may be used, but the circumstances requiring its use must be documented and maintained in the purchase file. Under the Contracting Officers' Certification Program (COCP - see [Guide Volume 1, Chapter 8, Part B](#)), 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 (see **c.** below).

b. Technically acceptable/lowest price Offers are evaluated based on price. Awards are made to the lowest priced offer or quote which meets the judiciary's stated minimum technical requirements and is made by a responsible offeror. This method is normally used for standard commercial off-the-shelf products or services of acceptable quality for which there is adequate competition (see also [2.1.7.c.](#)).

c. Best Value Awards based on best value are made to the responsible offeror 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 [3.5.](#)) no matter the dollar value of the purchase.

- (1) **Evaluation factors** are of value or concern to the requiring organization, vary depending on the product or service, and may include, but are not limited to:
 - (a) quality;
 - (b) experience;
 - (c) delivery schedule;
 - (d) maintainability;
 - (e) ease of operation;
 - (f) size or weight, etc.
- (2) **Evaluation Strategy** 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:
 - (a) the need to use evaluation factors other than price;
 - (b) the evaluation factors to be used and their relative weight or order of importance;
 - (c) the overall importance of the other evaluation factors relative to price (i.e., greater than, equal to, less than); and
 - (d) the individual or individuals who will perform the evaluation (see [2.1.7.e.](#)).
- (3) **Award** is made after comparing each offer to the evaluation factors, and scoring it based on the relative weight of the factors. The decision is then made by comparing the scores with the differences in price to the judiciary. The CO will prepare a justification, which documents the trade-off of best value to lowest price.

3.4.7. Receipt and Evaluation of Quotations

- a. Written and oral quotations must be clearly recorded in a format permitting ready comparison of prices and other details. The CO must place this record in the purchase file.
- b. **Late Quotations** Late quotations in response to written or oral solicitations may be considered when an award has not yet been made, provided that the CO determines that doing so is in the judiciary's best interest. This determination must be documented in the purchase file.
- c. **Evaluation** Evaluation must be made on the basis of price, or price and other factors as set forth in the RFQ. Regardless of the basis of award, the CO must make a price reasonableness determination and document it in the purchase file.

3.4.8. Ordering Methods Under Small Purchase Procedures

- a. **Purchase Order** A purchase order is used to place orders when quotations have been obtained in response to an oral quote or a written RFQ. Because a quotation is not an

offer subject to acceptance by the judiciary, a purchase order issued in response to a quotation does not become a binding contract until the contractor either signifies acceptance by (1) commencing delivery or performance of the work; or (2) accepts the purchase order in writing.

(1) **Contents of a Purchase Order** The following items must be included on each purchase order:

- (a) purchase order number and date;
- (b) technical point of contact;
- (c) vendor's name; address; Dun and Bradstreet Universal Numbering System (DUNS) or Tax ID Number(TIN);
- (d) descriptions of product(s)/service(s) required;
- (e) quantity/unit and extended prices/total;
- (f) billing address;
- (g) payment provisions;
- (h) contract number if order is placed against an existing contract;
- (i) delivery requirements:
 - 1) date/time;
 - 2) quantity;
 - 3) form;
 - 4) place;
- (j) appropriations data;
- (k) inspection and acceptance provisions; and
- (l) CO's signature.

(2) **Purchase Order Terms and Conditions** In order 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.

(3) **Open Market Purchases** COs must include [Clause 3-3](#), "Terms and Conditions - Small Purchases" in RFQs and purchase orders. It lists the basic terms and conditions required on any open market purchase order estimated to be less than the judiciary's small purchase threshold. The CO must also consult the clause matrix and include any other clauses which may be applicable to the specific purchase order.

(4) **Modification of Purchase Orders** must be processed on SF30 (or the appropriate form in FAS₄T), must identify the order it modifies and contain an appropriate modification number. If written acceptance is determined to be necessary to ensure the contractor's compliance, the CO must obtain a contractor's written acceptance of a purchase order modification (See also [7.8](#)).

b. Blanket Purchase Agreement (BPA) is an ordering agreement (see [4.1.6](#)). It permits individuals, designated in writing by name or title, to place orders ("calls") by telephone, over-the-counter, e-mail, or in writing. A BPA is not a contract and may be established without an obligation of funds. Instead funds are obligated at the time a call is placed against a BPA. BPAs are normally established with suppliers from which frequent,

repetitive purchases are made. They can significantly reduce paperwork and administrative costs.

c. Types of BPAs There are two types of BPAs: priced and unpriced

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

d. Use of BPAs BPAs are used when:

- (1) 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;
- (2) there is a desire to reduce preparation of numerous written orders and processing of invoices since billing is done collectively for several calls over an established time period (usually monthly); or
- (3) there is a need to provide commercial sources of supply for ordering by offices that do not have other purchasing authority.

e. Sources 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 certain suppliers who are dependable, 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, with other federal agencies, or on the open market using the same competition and ordering procedures established in [3.1.5](#) (GSA), [3.1.6](#) (other federal agency), or [3.4.8](#) (small purchase procedures). Any competitive procurement must be conducted with the same type of source (i.e. all GSA, all other federal agencies, or all open market).

f. Number The number of BPAs established for a given product or service should be based on a strategy that is expected to maximize the effectiveness of the BPA(s). In determining how many BPAs to award, the CO must consider:

- (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 orders.

- g. Single Award BPAs** Individual calls placed against a Single Award BPA will not require additional competition, if the BPA is established in accordance with this paragraph. A single BPA may be established, if the awarded BPA is priced, but will not require statements of work, and:
- (1) if during the life of the BPA, the total of all the calls will not exceed the competition threshold;
 - (2) if the awarded BPA was competed when established and multiple BPAs were not appropriate (see **h.** below);
 - (3) if the solicitation for the BPA was appropriately justified and approved for other than full and open competition (see [3.6.](#)).
- h. Multiple Award BPAs** BPAs for the same class of products or services should be established concurrently with more than one supplier, unless there is written approved justification in the file why only one source is capable of providing the products or services (see **g.** above and [3.6.3.](#)). If competition cannot be obtained from the Multiple Award BPAs, then another procurement method may be appropriate. The CO must determine if other than full and open competition is appropriate and document the file accordingly.
- (1) If the purchase requires a *statement of work* or the BPA is *unpriced*, then the call should be competed among the Multiple Award BPA holders.
 - (2) When *priced* Multiple Award BPAs are established, and purchases are estimated to be:
 - (a) *less than* the applicable competition threshold, then the calls do not need to be competed. However, they should be rotated among the priced Multiple Award BPA holders for the same class of products or services.
 - (b) *more than* the applicable competition threshold, then they should be competed among the Multiple Award BPA holders.
- i. Mandatory Source Restriction** If BPAs are established for products or services which are required to be obtained or purchased from required sources as specified in [3.1.](#), then they must be established only with the mandatory source(s).
- j. Establishing BPAs** BPAs, priced and unpriced; single and multiple award, are established in accordance with requirements for ordering agreements (see [4.1.6.](#)) and small purchases (see [3.1.](#) through [3.4.](#)).
- k. Ordering** Documentation of BPA calls must be limited to essential information to process the request (i.e. description, delivery terms, price, competitive offers, applicable justifications or determinations, etc.). Calls issued under the BPA will, by reference, incorporate the terms and conditions pursuant to that BPA. The calls should be documented in the BPA file. Invoicing may be processed periodically (i.e. monthly) and will include all the calls placed during that time period.
- l. Review of BPAs** The BPA's CO must conduct monthly random reviews of the calls placed by authorized ordering personnel to determine that the orders were placed appropriately in accordance with the agreement and within applicable procurement guidance. 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.

- m. **Closing out BPAs** BPAs are closed out in the same manner as purchase orders (see [3.4.11.](#)), with the exception that all the documents (calls, invoices, justifications, determinations, etc.) are maintained with the BPA until the expiration date of the BPA.

3.4.9. Administration Under Small Purchase Procedures Purchases must be administered in accordance with the terms and conditions of the order or agreement. Follow up of purchase orders is generally by exception when a problem is identified to the CO. After the order is placed, the requesting office awaits delivery or performance, inspects the receipt of 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. Modifications are made as necessary to clarify, correct, terminate, cancel the order, or make appropriation changes or corrections. The last administration action is to close out the purchase order (see [3.4.11.](#)).

3.4.10. Termination and Cancellation of Purchase Orders

- a. If an order needs to be ended prior to its completion then either a termination or cancellation needs to be processed.
- b. If a purchase order has been accepted in writing by the contractor or the contractor has commenced performance, then a *termination* must be processed. The CO must process the termination in accordance with the provisions of [7.10.](#)
- c. If a purchase order has not been accepted in writing by the contractor or the contractor has not commenced performance, then a *cancellation* must be processed. The CO may cancel by notifying the contractor in writing that the purchase order is being canceled and request the contractor's written acceptance of the cancellation.
- d. If the contractor accepts the cancellation and does not claim that costs were incurred as a result of beginning performance under the purchase order, the purchase order must be canceled. The CO will process a modification to cancel the purchase order and deobligate any funds.
- e. If the contractor does not accept the cancellation or claims that costs were incurred as a result of beginning performance under the purchase order, the CO must treat the action as a termination in accordance with the provisions of *JP3* [Clause 3-3.](#)

3.4.11. Closing Out Purchase Orders Once final acceptance and final payment are made, the order is considered closed. Transactions using small purchase procedures are destroyed three years after final payment, or until audited, whichever is later. (See [7.11.3.](#))

Part 3.5. Standard Competitive Contracting Procedures

3.5.1. Standard Competitive Contracting Procedures means the competitive procurement of products and services made under procedures other than those applicable to small purchase procedures. These procedures do not apply to orders or contracts placed under GSA FSS (see [3.1.5.](#)) or other federal agency contracts (see [3.1.6.](#)).

a. Contract A contract is used when offers have been obtained in response to a written Request for Proposal (RFP). Because an offer is subject to acceptance by the judiciary, a contract issued in response to an RFP is signed by both the contractor and the contracting officer. The contractor's DUNS number is included in the name and address block of the award document.

(1) **Contents of a Contract** The following items must be included on each contract:

(a) date and contract number prepared in accordance with the uniform contract format (See [Appendix A](#)):

<u>Section</u>	<u>Description</u>
A	- Solicitation/Contract Form
B	- Products or Services and Prices/Costs
C	- Description/Specifications/Statement of Work
D	- Packaging and Marking
E	- Inspection and Acceptance
F	- Deliveries or Performance
G	- Contract Administration Data
H	- Special Contract Requirements
I	- Contract Clauses
J	- List of Attachments

(b) contractor's signature; and

(c) CO's signature.

(2) **Contract Terms and Conditions** In order 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 contract issued.

b. Soliciting Under Standard Competitive Contracting Procedures

(1) **Preparation of Solicitations** Solicitations must be prepared in accordance with [Appendix A](#), Uniform Contract Format.

(2) **Offer Time** Consistent with specific purchase requirements, all solicitations must allow sufficient time for offerors to prepare and submit offers.

(a) *Nonstandard, noncommercial products and services* the CO must require at least thirty days, unless there is written approved justification from the PLO (for the court units or FPDO) or PE (at the AO) for awarding earlier.

(b) *Standard commercial products and services* the CO will make a decision as to the sufficient length of solicitation time by taking into consideration the availability of competition, complexity of the purchase, delivery time required, etc. This length of time is usually a small number of days.

(3) **Method of Solicitation** The CO will determine the method by which the solicitation is delivered to potential offerors. This determination will take into

consideration such choices as sent via regular mail or electronic mail, or posted on a website. Choices are dependent on the size of the solicitation package, the number of vendors being solicited, the time required for the responses to be returned, and/or other pertinent considerations.

- (4) **Posting and Synopsis** The CO must comply with the Methods of Publicizing listed in [3.2.2](#).
- (5) **Availability of Solicitations** The purchasing office must maintain a reasonable number of copies of solicitations to be provided to prospective offerors upon request. If the solicitation is advertised as being available on an electronic site, the solicitation must remain available to prospective offerors until the posted closing time for the solicitation.

c. Provisions and Clauses

The CO will include the following clauses and provisions in solicitations exceeding the judiciary's small purchase threshold (see [3.4.1.c](#)). The provisions or clauses are included in all solicitations unless the prescription indicates otherwise:

- (1) [Provision 3-5](#), "Taxpayer Identification;"
- (2) [Provision 3-10](#), "Data Universal Numbering System (DUNS) Number;"
- (3) [Provision 3-15](#), "Place of Performance;"
- (4) [Provision 3-20](#), "Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters." The offeror will appropriately fill in the provision's blank spaces.
- (5) [Clause 3-25](#), "Protecting the Judiciary's Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment;"
- (6) [Provision 3-30](#), "Certificate of Independent Price Determination" is included in all solicitations for firm-fixed price contracts or fixed-price with economic price adjustment, which are expected to exceed the judiciary's small purchase threshold (see [3.4.1.c](#) and *Guide Volume 1, Chapter 8, Part B*). The offeror will appropriately fill in the provision's blank spaces.
- (7) [Clause 3-35](#), "Covenant Against Contingent Fees;"
- (8) [Clause 3-40](#), "Restrictions on Subcontractor Sales to the Government;"
- (9) [Clause 3-45](#), "Anti-Kickback Procedures;"
- (10) [Clause 3-50](#), "Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity;"
- (11) [Clause 3-55](#), "Price or Fee Adjustment for Illegal or Improper Activity;"
- (12) [Provision 3-60](#), "Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions;"
- (13) [Clause 3-65](#), "Limitation on Payments to Influence Certain Federal Transactions;"
- (14) [Provision 3-70](#), "Determination of Responsibility;"
- (15) [Clause 3-75](#), "Limited Criminal Background Suitability Check;"
- (16) [Provision 3-80](#), "Submission of Offers;"
- (17) [Provision 3-85](#), "Explanation to Prospective Offerors;"
- (18) [Provision 3-90](#), "Late Submissions, Modifications and Withdrawal of Offers;"

- (19) [Provision 3-95](#), “Preparation of Offers;”
- (20) [Provision 3-100](#), “Instructions to Offerors” is included in all solicitations. Alternate I is included if the judiciary intends to make award after discussions with offerors within the competitive range; or Alternate II is included if the judiciary would be willing to accept alternate offers;
- (21) [Clause 3-105](#), “Audit and Records - Negotiation;”
- (22) [Provision 3-115](#), “Facsimile Offers” is included in all solicitations, if facsimile offers are authorized;
- (23) [Clause 3-120](#), “Order of Precedence;”
- (24) [Provision 3-125](#), “Acknowledgment of Solicitation Amendments;”
- (25) [Provision 3-130](#), “Authorized Negotiators.” The offeror will appropriately fill in the provision’s blank spaces.
- (26) [Provision 3-135](#), “Single or Multiple Awards” is included in solicitations for indefinite-quantity contracts that may result in multiple contract awards;
- (27) [Clause 3-140](#), “Notice to the Judiciary of Labor Disputes” is included in solicitations and contracts that involve programs or requirements for which it is necessary that contractors be required to notify the judiciary of actual or potential labor disputes that are delaying or threaten to delay the timely performance;
- (28) [Clause 3-145](#), “Payment for Overtime Premiums” is included in solicitations and contracts when a cost-reimbursement contract is contemplated. The CO will appropriately fill in the clause’s blank spaces.
- (29) [Clause 3-150](#), “Contract Work Hours and Safety Standards Act - Overtime Compensation” is included when the procurement may involve the employment of laborers or mechanics;
- (30) [Clause 3-155](#), “Walsh-Healy Public Contracts Act” - is included if the procurement is for the manufacturing or furnishing of products and expected to be in excess of \$10,000;
- (31) [Clause 3-160](#), “Service Contract Act of 1965, as Amended” is included in every solicitation and award for services covered by the Act expected to exceed \$2,500 or modified to exceed \$2,500. This includes indefinite-delivery contracts and ordering agreements when orders are expected to aggregate more than \$2,500;
- (32) [Clause 3-170](#), “Statement of Equivalent Rates for Federal Hires” is included in solicitations and contracts when an award for services is expected to exceed \$2,500, and includes Clause 3-160. The CO will appropriately fill in the clause’s blank spaces;
- (33) [Clause 3-175](#), “Fair Labor Standards Act and Service Contract Act - Price Adjustment (Multiple Year And Option Contracts)” - is included in solicitations, and contracts when expected to be a fixed-price service contract with [Clause 3-160](#) included, it is expected to exceed the judiciary’s small purchase threshold (see [3.4.1.c](#)) and includes options to renew;
- (34) [Clause 3-180](#), “Fair Labor Standards Act and Service Contract Act - Price Adjustment” is included in solicitations and contracts when expected to be a

fixed-price service contract with [Clause 3-160](#) included, is expected to exceed the judiciary's small purchase threshold, and is not a multiple year contract or a contract with options to renew;

- (35) [Provision 3-185](#), "Evaluation of Compensation for Professional Employees" is included in solicitations for negotiated service contracts when the contract amount is expected to exceed \$500,000 and the service to be provided will require meaningful numbers of professional employees;
- (36) [Clause 3-190](#), "SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA)" is included in solicitations, RFQs, contracts, and purchase orders, when:
- [Clause 3-160](#), "Service Contract Act" applies (see [3.5.1.c\(31\)](#) above);
 - the contract resulting from the solicitation succeeds a contract for substantially the same services to be performed in the same locality;
 - the incumbent contractor has negotiated or is negotiating a collective bargaining agreement with some or all of its service employees; and
 - all applicable Department of Labor wage determinations have been requested but not received.

The CO will appropriately fill in the clause's blank spaces.

- (37) [Provision 3-195](#), "Exemption from Application of Service Contract Act Provisions" is included in any solicitation or RFQ and resulting award calling for the maintenance, calibration, and/or repair of information technology, scientific and medical, and office and business equipment if the CO determines that the resultant award may be exempt from Service Contract Act coverage;
- (38) [Clause 3-200](#), "Service Contract Act - Place of Performance Unknown" is included in solicitations, RFQs, contracts, and purchase orders when the place of performance is unknown at the time the solicitation was issued. When the procurement is subject to the Service Contract Act and when a public notice is required (see [3.2.2.](#)), the CO will include a statement in the notice to the effect that:
- the place of performance is unknown at the time the solicitation was issued;
 - and the CO has requested wage determination for the possible places or areas of performance; and
 - the CO will request wage determinations for additional possible places of performance if asked to do so in writing.

The CO will appropriately fill in the clause's blank spaces;

- (39) [Clause 3-205](#), "Protest After Award" is included in all solicitations and contracts;
- (40) [Provision 3-210](#), "Protests" is included in all solicitations exceeding the judiciary's small purchase threshold (see [3.4.1.c.](#)). The CO will appropriately fill in the provision's blank spaces.

3.5.2. Pre-Offer Conference

- a. Whenever circumstances warrant, such as when a solicitation has complicated specifications or requirements, a pre-offer conference may be held to brief prospective offerors and respond to questions.
- b. If the need for a pre-offer conference is foreseen, notice of the conference must be given in the solicitation. Otherwise, all offerors that received the solicitation must be given written notice of the time, place, nature, and scope of the conference. If time allows, prospective offerors must be instructed to submit written questions in advance, so that prepared answers can be distributed at the conference.
- c. The CO or a designated representative must conduct the conference, with the assistance and participation of program officials, technical personnel or others as appropriate.
- d. A record of the conference must be furnished to all prospective offerors that received the solicitation. Conferees must be informed that statements and explanations at the conference do not change any terms, specifications, or other requirements of the solicitation. These may only be changed by the CO issuing a written amendment.

3.5.3. Amendment of Solicitations

- a. If it becomes necessary to make changes in a solicitation, a solicitation amendment must be issued.
- b. An amendment must be issued in sufficient time to permit offerors to consider it in submitting or modifying their offers. The amendment could change the offer due date, if necessary.
- c. When the CO feels it is necessary to give notification of a change by telephone or email, a written amendment confirming the change must be processed and distributed to the offerors.
- d. When deciding which offerors are affected by a change, the CO must consider the stage of the procurement as follows:
 - (1) if offers are not yet due, the amendment must be sent to all prospective offerors that received the solicitation and it must be posted in the same place as the solicitation;
 - (2) if the time for receipt of offers has passed, but offers have not yet been evaluated, the amendment must be sent to the responding offerors; and
 - (3) if the competitive range (see [3.5.16.](#)) has been established and the amendment would have no effect on the basis for establishing the competitive range, only those offerors within the competitive range must be sent the amendment.

3.5.4. Cancellation of Solicitations

- a. Solicitations must not be canceled unless circumstances make cancellation necessary. Examples of circumstances are when there is no longer a requirement for the products or

services, or the solicitation requires amendments of such magnitude that a new solicitation is needed.

- b. Written notice of the cancellation must explain the reason for cancellation. It must be sent to all prospective offerors that received the solicitation and posted in the same place as the solicitation.
- c. If the solicitation is canceled before the date for receipt of offers, any offers received must be returned unopened to the offerors. If the solicitation is canceled after the date for receipt of offers, any offers received must be kept unopened for five years after cancellation.

3.5.5. Disclosure and Use of Information

- a. **Before Solicitation** Information concerning proposed purchases must not be released outside the judiciary before solicitation of offers, except for information publicized through briefings, market research, announcements, or notices. This information must be restricted to those having a legitimate interest.
- b. **After Release of the Solicitation**
 - (1) After issuance of a solicitation, only the CO, or others specifically authorized by the CO, may communicate or transmit information concerning the solicitation.
 - (2) When the information is needed for the preparation of offers or if lack of it would be prejudicial to uninformed prospective offerors, any information given to one prospective offeror must be furnished promptly to all other prospective offerors as an amendment to the solicitation.
 - (3) General information that would not give a prospective offeror an advantage may be furnished upon request, such as an explanation of a clause, a procedural requirement, or a provision of the solicitation. If it becomes apparent that an ambiguity must be clarified or an error corrected, the solicitation must be formally amended.
- c. **After Receipt of Offers**
 - (1) The content of offers and the number or identity of offerors 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.
 - (2) During the preaward period, only the CO, and others specifically authorized by the CO, may transmit technical or other information and conduct discussions with offerors. Information must not be furnished to any offeror which by itself, or together with other information, would possibly give one offeror an advantage over others. However, general information that is not prejudicial to others may be furnished upon request.

3.5.6. Receipt of Offers

- a. **Handling** Offers must be marked with the date and time of receipt and kept secure at all times. It is equally important to keep them secure before and after opening as well as during the recording and evaluation processes.
- b. **Opening and Recording** After the time established for receipt, the CO will open and record the offers.
- c. **Modification and Withdrawal** Offers may be modified or withdrawn by written notice. 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.
- d. **Late Offers** Any offer received at the office designated in the solicitation after the exact date and time specified for receipt of offers will not be considered unless it is received before award is made and:
 - (1) 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);
 - (2) 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);
 - (3) 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 prior to the date specified for receipt of offers. The term “working days” excludes weekends and U.S. federal holidays;
 - (4) 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 prior to the date specified for receipt of offers;
 - (5) there is acceptable evidence to establish that it was received at the activity designated for receipt of offers and was under the judiciary’s control prior to the time set for receipt of offers, and the CO determines that accepting the late offer would not unduly delay the procurement;
 - (6) it is the only offer received; or
 - (7) the CO decides that acceptance is in the best interest of the judiciary, provided offers have not been opened.
- e. As prescribed in [3.5.1.c.\(18\)](#), [Provision 3-90](#), “Late Submissions, Modifications, and Withdrawal of Offers” is included in all solicitations exceeding the judiciary’s small purchase threshold. Each late offer and modification must be retained in the solicitation file with a statement as to whether it was considered, with the reasons.
- f. If facsimile offers are authorized, [Provision 3-115](#), “Facsimile Offers” is included as prescribed in [3.5.1.c.\(22\)](#).

3.5.7. Failure to Acknowledge Amendments

- a. *Awards Made Without Discussions* Offers lacking acknowledgment of the amendment, or clear indication in the offer that the amendment had been received, must be disregarded when the amendment affects price, quantity, quality, or delivery.
- b. *Awards Made After Discussions* Uncertainties regarding the amendment may be resolved through discussions.
- c. As prescribed in [3.5.1.c.\(24\)](#), [Provision 3-125](#), “Acknowledgment of Solicitation Amendments” is included in all solicitations.

3.5.8. Mistakes in Offers COs must examine offers for mistakes. Communication with an offeror concerning potential mistakes is clarification, not discussion. 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.

3.5.9. Evaluation of Offers

- a. **General** Offer evaluation is an assessment of both the offer and the offeror's ability (as demonstrated by the offer), to perform the prospective procurement 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, color (blue, yellow, green) or adjectival ratings (fair, satisfactory, good, excellent, etc.), numerical weights (percentages, all weighted factors added together must total no more than 100%), and ordinal rankings (of 1st, 2nd, 3rd, etc. in importance). The relative strengths, deficiencies, significant weaknesses, and risks supporting the offer evaluation must be documented in the procurement file.
- b. **Price or Cost Evaluation** Prices or estimated costs must be evaluated in accordance with [4.4.](#) or [4.5.](#) Price or cost analysis is necessary to determine the reasonableness and validity of a proposed price or cost estimate, and to assist in determining an offeror's understanding of the work and ability to perform the contract.
- c. **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:
 - (1) the basis for evaluation;
 - (2) an analysis of the acceptable and unacceptable offers, including an assessment of each offeror's ability to accomplish the solicitation requirements;
 - (3) a narrative statement of the major strengths and weaknesses of the various offers;
 - (4) a summary, matrix, or quantitative ranking of each offer in relation to the best rating possible; and
 - (5) a summary of the evaluation team's finding, as well as each evaluator's independent findings.

- d. Only One Offer** If only one offer is received in response to a competitive solicitation, it may be evaluated and considered for award. It is considered to be a competitive offer so long as more than one source was solicited and there was a reasonable expectation of more than one offer. A determination of price reasonableness must be included in the procurement file based on:
- (1) market research;
 - (2) previous purchases of the same or similar product or service;
 - (3) current price lists, catalogs, or advertisements;
 - (4) a comparison with similar items in a related industry;
 - (5) the CO's personal knowledge of the item being purchased;
 - (6) comparison to an independent government estimate; or
 - (7) any other reasonable basis.

3.5.10. Selection for Award

- a.** The award will be made to the offeror whose offer receives the highest evaluation in accordance with the evaluation factors identified in the solicitation (see [3.5.9.c.](#)).
- b.** Awards based on technically acceptable/lowest price are made to the responsible offeror submitting the lowest priced offer which meets the technical requirements stated in the solicitation. This method is normally used for standard commercial products or services of acceptable quality for which there is adequate competition.
- c.** For awards based on best value, the source selection authority (usually the CO) is ultimately responsible for making the contractor selection decision and is responsible for trade-off judgments involving cost and other evaluation factors. Contractor selection will be made in accordance with the solicitation's stated evaluation factors and must be documented. The documentation will include a determination by the CO that the price is fair and reasonable and the basis for determination.
- d.** The CO will specify any rankings and ratings, and any recommendations prepared by specifically requested evaluation groups. However, the findings of the technical and price evaluators are only guides for the CO's final selection decision and must be presented in sufficient depth to permit the intelligent weighing of alternatives and the making of trade-off judgments.
- e.** The offers are not compared to each other, but are compared to the evaluation criteria. The supporting documentation prepared for the selection decision must show the relative differences among the offeror's scores, demonstrating their strengths, weaknesses, and risks as compared to the solicitation's evaluation factors. The supporting documentation must include the basis and reason for the decision.
- f.** Award may be made only after the CO makes a favorable determination of the selected offeror's responsibility (see [3.3.2.](#)).

3.5.11. Discussing Offers

- a. A contractor may be selected and award made with or without discussing offers with the offerors. This depends upon the circumstances of the purchase, such as the complexity of the requirement, the extent of competition, and the quality of the offers received.
- b. Whenever price is the most important (or the only evaluation factor), award will normally be made without discussions. If adequate competition exists, offerors will be encouraged to submit their most favorable offers at the outset. However, even when award will be based on price alone, the CO may determine that discussions are necessary in order to determine that the price is fair and reasonable.

3.5.12. Rejection of All Offers All offers received may be rejected if the CO determines that:

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

3.5.13. Award Without Discussions

- a. Verification, withdrawal, or correction under this procedure does not constitute discussion. Award may be made without discussion of offers whenever adequate competition or price analysis make it clear that acceptance of the most favorable initial offer will result in a reasonable price. [Provision 3-100](#), "Instructions to Offerors" is included in all solicitations above the judiciary's small purchase threshold ([3.4.1.c](#)). Paragraph f. of this provision states that the CO intends to award without discussions. However, the judiciary reserves the right to conduct discussions, if the CO later determines them to be necessary. The clause with Alternate I is used if the judiciary intends to make award after discussions with offerors within the competitive range; or the clause is used with Alternate II if the judiciary would be willing to accept alternate offers.
- b. Whenever there is uncertainty as to the pricing, technical, or other aspects of the most favorable initial offer, award may not be made without discussions, unless the uncertainty can be resolved by clarification. Discussions must be held under such circumstances.
- c. If equal low prices are proposed, the solicitation contains no other evaluation factors, selection of the offer for award may be based on factors such as performance record, experience, or other factors in the judiciary's interest. Award may be determined by drawing lots only if there is no other basis for selection.
- d. The following procedure will be used to resolve mistakes without discussions, if:
 - (1) the CO informs the offeror of the suspected mistake, identifies the mistake and requests verification. The CO points out the circumstances giving rise to the suspicion of mistake (such as unusual offer requirements, changes from the requirements of previous purchases, or significant differences from the judiciary estimate or with other prices previously proposed by the offeror.) This must be

- done without disclosing other offers or the judiciary estimate. If a mistake is confirmed, the offeror may withdraw its offer or seek its correction;
- (2) the offeror verifies its offer, then the offer is evaluated as submitted;
 - (3) the offeror requests correction of a mistake. The CO, with the concurrence of the PE, may permit the correction without discussion if both the existence of the mistake, and the offer actually intended, are clearly ascertainable from the solicitation and the offer. If there is insufficient evidence to permit the correction without discussions and discussions will not be held, the offeror will be given a final opportunity to withdraw its offer. If not withdrawn, the offer is evaluated as submitted.

3.5.14. Award With Discussions When appropriate, written or oral discussions may be held with offerors to resolve uncertainties in their offers, to give them an opportunity to correct deficiencies, and to revise their offers. Prior to conducting negotiations, the CO must establish written prenegotiation objectives commensurate with the dollar value and complexity of the negotiation by writing a Memorandum of Negotiation Objectives. The memo must be approved in writing by the PLO (for the court units or FPDO), or by the PE (at the AO). Discussions must not favor one offeror over another; reveal another offeror's technical solution or any information that would compromise an offeror's intellectual property; nor reveal another offeror's price. If discussions are held with one offeror, all offerors in the competitive range must be afforded the opportunity to have discussions and submit revised offers, if appropriate.

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

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

3.5.16. Competitive Range

- a. The competitive range must be determined on the basis of cost or price and other factors stated in the solicitation and include all offers that have a significant chance of being

- selected for award. When there is doubt as to whether an offer is in the competitive range, the offer must be included.
- b.** The competitive range may not be established in advance on the basis of an arbitrary standard. It must reflect the fair evaluation of the competing offers. The competitive range may include offers with the potential for improving their competitive position, after appropriate discussions and revision. Even if an offer has a potential for significant improvement, it may be excluded from the competitive range if, relative to other offers, it has no significant chance of selection for award.
 - c.** If the CO determines that the number of offerors that would otherwise be included in the competitive range exceeds the number at which an efficient competition can be concluded, the CO may limit the number of offerors in the competitive range. This will include the greatest number that will permit efficient competition among the offerors with the highest evaluation criteria ratings. However, elimination of such offers must be done very cautiously. When negotiations are not anticipated to be complex or time-consuming, a relatively large number of offerors might not result in inefficiency. In contrast, a complex procurement may anticipate substantial negotiations and offer revisions. Then limiting the competitive range could be desirable.
 - d.** The CO must send prompt written notification to those offerors not in the competitive range and to those eliminated from the competitive range as a result of discussions.

3.5.17. Best and Final Offers

- a.** Upon completion of discussions, the CO will issue a request for best and final offers to all offerors in the competitive range.
- b.** The request must include:
 - (1) notice that discussions are concluded;
 - (2) notice of the opportunity to submit best and final offers in the form of revisions to any aspect of the offer; and
 - (3) a common cutoff date and time that allows a reasonable opportunity for submission of written best and final offers.
- c.** After receipt of best and final offers, the CO must not reopen discussions unless it is clearly necessary and in the judiciary's interest to do so, such as when information available does not provide adequate basis for contractor selection and award. If discussions are reopened, the CO must issue an additional request for best and final offers to all offerors still within the competitive range.

3.5.18. Selection and Negotiation

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

- b. Any uncertainties or deficiencies remaining in the offer selected must be clarified or corrected through discussions or negotiations, as appropriate, leading to a definitive contract. Negotiations must include the disclosure and resolution of all deficiencies and all unsubstantiated areas of cost and price. No changes may be made in the judiciary's requirements or in the offer that, if made before contractor selection, would have affected the basis for selection.

3.5.19. Award

- a. Award may be made by written acceptance of an offer or by execution of the award document by both parties.
- b. If a proposed award requires higher-level written approval or delegation of contracting authority, award may not be made until the written approval or delegation has been obtained.
- c. When more than one award results from any single solicitation, separate award documents must be executed, each suitably numbered in accordance with [Provision 3-135](#), "Single or Multiple Awards." When an award is made to an offeror for fewer than all items that may be awarded to that offeror and additional items are being withheld for subsequent award, the first award to that offeror must state that the judiciary may make subsequent awards on additional items within the offer acceptance period, if applicable.
- d. **Award Notification** Promptly after award, the CO must send all offerors a written notice including:
 - (1) the number of offers received;
 - (2) the name and address of each offeror receiving an award;
 - (3) total award amount(s);
 - (4) if award was made without discussions, a statement to that effect; and
 - (5) a brief statement of the basis for the selection decision which addresses the selection in general terms and does not reveal another offeror's trade secrets or other proprietary information.

3.5.20. Award Debriefing

- a. An unsuccessful offeror must request a debriefing in writing. Unsuccessful offerors who request a debriefing, must be debriefed and told the basis for selection decision and award. Debriefings must be scheduled promptly and conducted forthrightly.
- b. The CO or a designated representative must conduct the debriefing with the assistance and participation of program officials, technical personnel, or others including OGC, as appropriate.
- c. Debriefing information must include the judiciary's evaluation of the significant weak or deficient factors in the offer as compared to the evaluation criteria, and not as a point-by-point comparison with other offers.
- d. Information must not be disclosed to any offeror as to:

- (1) trade secrets;
 - (2) privileged or confidential manufacturing processes and techniques;
 - (3) business and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; or
 - (4) unique or innovative concepts contained in an offer.
- e. The CO must include a summary of each debriefing in the solicitation file.

Part 3.6. Other Than Full and Open Competition

3.6.1. General

- a. COs must take all reasonable steps to avoid contracting without providing for full and open competition. However, there are valid circumstances when it is both necessary and in the best interest of the judiciary to award a sole source contract.
- b. Contracting without providing for full and open competition cannot be justified on the basis of insufficient time to conduct a competitive procurement because of:
- (1) a lack of advance planning by the requesting office; or
 - (2) concerns related to the amount of, or expiration of, funds available to the requesting office.
- c. When not providing for full and open competition, the CO must:
- (1) prepare a written justification specifically demonstrating why the requirement cannot be obtained using full and open procurement procedures; and
 - (2) ensure that all the steps under this section for the justification, documentation, and written approval of the procurement are completed before the procurement is solicited.

Note: *Application for brand name descriptions* A procurement that uses a brand name description or other purchase description to specify a particular brand name, product, or feature of a product, peculiar to one manufacturer does not provide for full and open competition regardless of the number of sources solicited. It must be justified and approved in accordance with [3.6.3](#). The justification should indicate that the use of such descriptions in the procurement is essential to the judiciary's requirements, thereby precluding consideration of a product manufactured by another company. "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 competition and do not require justifications and approvals to support their use.

- d. **Limitations on Use** Contracting without providing for full and open competition must be approved in writing as set forth in [3.6.3](#). by the purchasing office's chief judge, FPD or, in the AO, the PE.
- e. **Applicability** This section does not apply to the following:

- (1) purchases of products and services from qualified workshops, as determined by the Committee for Purchase from People who are Blind or Severely Disabled (see [3.1.2.](#));
- (2) orders placed against national judiciary contracts (see [3.1.4.](#));
- (3) other agencies contracts under the Economy Act (see [3.1.6.](#));
- (4) purchases not expected to exceed the non-competitive open market small purchase threshold (see [3.4.2.a.](#));
- (5) orders placed under indefinite-delivery contracts (see [4.1.5.](#));
- (6) modifications within the scope of a contract or the exercise of options, such as lease extensions and renewal options; and
- (7) software modifications, enhancements, upgrades, maintenance, and renewals of licenses or leases for previously purchased commercial computer software within the scope of the contract.

3.6.2. Circumstances Permitting Other than Full and Open Competition Competition must be sought for any open market purchase expected to exceed the open market noncompetitive threshold ([3.4.2.a.](#)) except when:

- (1) the public exigencies require 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;
- (2) the CO certifies that only one responsible source of supply is available and no other products or services will satisfy judiciary requirements. A chief judge or FPD written concurrence is required within their delegation authority. Above the delegation authority or at the AO, the PE's written concurrence is required;
- (3) the services are required to be performed by the contractor in person and are:
 - (a) of a technical and professional nature (see Experts and Consultants [5.2.](#)) or
 - (b) under the judiciary supervision and paid for on a time basis (see Personal Services [5.1.](#));

Note: The exceptions of (3)(a) and (b) above are subject to the delegation authority of the court unit or FPDO. Above the delegation authority, or at the AO, the PE's written concurrence is required; or

- (4) an unsolicited offer acceptably meets the criteria in [3.7.6.](#) A chief judge or FPD written concurrence is required within their delegation authority. Above the delegation authority or at the AO, the PE's written concurrence is required.

3.6.3. Justification for Other Than Full and Open Competition The CO must not award any procurement without providing for full and open competition unless the CO justifies it in writing, and receives the required written approval from the purchasing office's chief judge, FPD, or in the AO, the PE. Also see [3.1.5.d.\(2\)](#) which explains that sole source is not appropriate for GSA schedule orders for services. As a minimum, each justification must include the following information:

- (1) identification of the judiciary organization and specific identification of the document as a “Justification for Other Than Full and Open Competition;”
- (2) the nature or description of the proposed procurement;
- (3) a description of the requirement, including estimated value and/or cost;
- (4) a specific citation to the circumstance(s) which provides justification for the use of other than full and open competition (see [3.6.2.](#));
- (5) an explanation of the unique nature of the procurement or other factors that qualify the requirement for the use of other than full and open competition;
- (6) an explanation of the proposed contractor’s unique qualifications or other factors that qualify the proposed contractor for the procurement;
- (7) a determination that the proposed costs to the judiciary will be fair and reasonable;
- (8) a description of the market survey conducted and the results (or a statement of the reasons why a market survey was not conducted), and a list of the potential sources contacted by the CO or which expressed, in writing, an interest in the procurement; and
- (9) any other pertinent facts or reasons supporting the use of other than full and open competition.

3.6.4. Award Procedures

- a.** The same procedures are used as those required for award with discussions(see [3.5.14.](#)), except:
 - (1) the restrictions on conduct of discussions do not apply;
 - (2) a best and final offer may be sought, but is not required; and
 - (3) contractor selection will normally have been justified and documented in:
 - (a) the procurement plan, or
 - (b) the Justification for Other Than Full and Open Competition.
- b.** Particular attention must be given to pricing in a noncompetitive purchase. Cost analysis may be required in addition to price analysis (see [3.8.4.](#) and [3.8.5.](#)). Price negotiations must be fully documented, and the CO must make a written determination of price reasonableness, fully explaining the basis for the determination.
- c.** There is no requirement to publicize a solicitation for a procurement made using other than full and open competition.
- d.** The CO must make a responsibility determination (see [3.3.2.](#)) prior to awarding a procurement.

3.7. Unsolicited Offers

3.7.1. General

- a. Unsolicited offers allow unique and innovative ideas or approaches that have been developed outside the government to be made available to the judiciary for use in accomplishing its mission. Unsolicited offers are initiated by a potential contractor with the intent that the judiciary will enter into a contract with the offeror for efforts supporting the judiciary mission. They often represent a substantial investment of time and effort by the offeror.
- b. Unsolicited offers are not advertising material, commercial item offers, or contributions (see glossary for definition), or routine correspondence on technical issues.
- c. A valid unsolicited offer must:
 - (1) be innovative and unique;
 - (2) be independently originated and developed by the offeror;
 - (3) be prepared without judiciary supervision, endorsement, direction, or direct judiciary involvement;
 - (4) include sufficient detail to permit a determination that judiciary support could be worthwhile and the proposed work could benefit the judiciary's mission responsibilities; and
 - (5) not be an advance offer for a known judiciary requirement that can be acquired by competitive methods.
- d. Unsolicited offers in response to a publicized general statement of judiciary needs are considered to be independently originated.

3.7.2. Judiciary Points of Contact

- a. Only the CO has the authority to bind the judiciary regarding unsolicited offers. The CO will be the primary point of contact to receive any unsolicited offers and to manage the evaluation process.
- b. Preliminary contact with a judiciary CO before preparing a detailed unsolicited offer or submitting proprietary information to the judiciary may save considerable time and effort for both parties. The CO will provide information to the applicable judiciary program or other appropriate judiciary personnel. The CO will make available to potential offerors of unsolicited offers at least the following information:
 - (1) procedures for submission and evaluation of unsolicited offers; and
 - (2) instructions for identifying and marking proprietary information so that it is protected.

3.7.3. Content of Unsolicited Offers

- a. Unsolicited offers must contain the following information to permit consideration in an objective and timely manner:
- b. **Basic information** including:
 - (1) offeror's name, address and type of organization; e.g., profit, nonprofit, educational;

- (2) names and telephone numbers of technical and business personnel to be contacted for evaluation or negotiation purposes;
 - (3) identification of proprietary data to be used only for evaluation purposes;
 - (4) names of other federal, state or local agencies or parties receiving the offer or funding the proposed effort;
 - (5) date of submission; and
 - (6) signature of a person authorized to represent and contractually obligate the offeror.
- c. Technical information** including:
- (1) concise title and abstract of the proposed effort (approximately 200 words);
 - (2) a reasonably complete discussion stating:
 - (a) the objectives of the effort or activity;
 - (b) the method of approach;
 - (c) extent of effort to be employed;
 - (d) the nature and extent of the anticipated results; and
 - (e) the manner in which the work will help to support accomplishment of the judiciary's mission;
 - (3) names and biographical information on the offeror's key personnel who would be involved, including alternates; and
 - (4) type of support needed from the judiciary; e.g., facilities, equipment, materials, or personnel resources.
- d. Supporting information** including:
- (1) proposed price or total estimated cost for the effort in sufficient detail for meaningful evaluation;
 - (2) period of time for which the offer is valid (a six-month minimum is suggested);
 - (3) type of contract preferred;
 - (4) proposed duration of effort;
 - (5) brief description of the organization, previous experience, relevant past performance, and facilities to be used;
 - (6) other statements, if applicable, about organizational conflicts of interest, security clearances, and environmental impacts; and
 - (7) the names and telephone numbers of judiciary personnel already contacted regarding the offer.

3.7.4. Receipt and Initial Review

- a.** Before initiating a comprehensive evaluation, the judiciary contact point will determine if the offer:
- (1) is a valid unsolicited offer, meeting the requirements of [3.7.1.c.](#);
 - (2) is suitable for submission in response to an existing judiciary requirement;
 - (3) is related to the judiciary's mission;
 - (4) contains sufficient technical and cost information for evaluation;

- (5) has been approved in writing by a responsible official or other representative authorized to obligate the offeror contractually; and
- (6) complies with the marking requirements of [3.7.8.](#)
- b.** If the offer meets these requirements, the contact point must promptly acknowledge receipt and process the offer.
- c.** If an offer is rejected, the judiciary contact point will promptly return the unsolicited offer and inform the offeror, in writing, as to the reason for rejection.

3.7.5. Evaluation

- a.** Comprehensive evaluations must be coordinated by the judiciary contact point, who will attach or imprint on each unsolicited offer, circulated for evaluation, the legend required by [3.7.8.d.](#)
- b.** When performing a comprehensive evaluation of an unsolicited offer, evaluators must consider the following factors, in addition to any other factors appropriate for the particular offer:
 - (1) unique, innovative, and meritorious methods, approaches, or concepts demonstrated by the offer;
 - (2) potential contribution of the effort to the judiciary's specific mission;
 - (3) the offeror's capabilities, related experience, facilities, techniques, or unique combinations of these that are integral factors for achieving the offer objectives;
 - (4) the qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel critical to achieving the offer objectives; and
 - (5) the realism of the proposed cost.
- c.** The evaluators must notify the judiciary point of contact of their recommendations when the evaluation is completed.

3.7.6. Criteria for Acceptance and Negotiation of an Unsolicited Offer

- a.** A favorable comprehensive evaluation of an unsolicited offer does not, in itself, justify awarding a contract without providing for full and open competition. The judiciary point of contact must return an unsolicited offer to the offeror, citing reasons, when its substance:
 - (1) is available to the judiciary without restriction from another source;
 - (2) closely resembles a pending competitive procurement requirement;
 - (3) does not relate to the judiciary's mission;
 - (4) does not demonstrate an innovative and unique method, approach, or concept; or
 - (5) is otherwise not deemed a meritorious offer.
- b.** The CO may commence negotiations on a sole source basis only when:
 - (1) the judiciary requesting office sponsoring the procurement furnishes the necessary funds;
 - (2) an unsolicited offer has received a favorable comprehensive evaluation;

- (3) a valid sole source justification has been documented and approved in writing (see [3.6.3.](#)) and
 - (a) the source has submitted an unsolicited offer that demonstrates a unique capability to provide the particular products or services proposed;
 - (b) offers a product, concept, or services not otherwise available to the judiciary; and
 - (c) it does not resemble the substance of a pending competitive procurement.

3.7.7. Prohibitions

- a. Judiciary personnel will not use any data, concept, idea, or other part of an unsolicited offer as the basis, or part of the basis, for a solicitation or in negotiations with any other firm unless the offeror is notified of and agrees to the intended use. However, this prohibition does not preclude using any data, concept, idea or other part in the offer that also is available from another source without restriction.
- b. Judiciary personnel will not disclose restrictively marked information included in an unsolicited offer. The disclosure of such information concerning trade secrets, processes, operations, style of work, apparatus, and other matters, except as authorized by law, may result in criminal penalties under 18 U.S.C. § 1905.

3.7.8. Limited Use of Data

- a. An unsolicited offer may include data that the offeror does not want disclosed to the public for any purpose or used by the judiciary except for evaluation purposes. If the offeror wishes to restrict the data, the title page must be marked with the following legend:

Use and Disclosure of Data

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

- b. The offeror must also mark each sheet of data it wishes to restrict with the following legend:

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

- c. The judiciary point of contact must return to the offeror any unsolicited offer marked with a legend different from that provided in paragraph (a) of this section. The return letter will state that the offer cannot be considered because it is impracticable for the judiciary to comply with the legend. It will further state that the judiciary will consider the offer, if it is resubmitted with the proper legend.
- d. The judiciary point of contact must place a cover sheet on the offer or clearly mark it as follows, unless the offeror clearly states in writing that no restrictions are imposed on the disclosure or use of the data contained in the offer:

Unsolicited Offer - Use of Data Limited

All personnel must exercise extreme care to ensure that the information in this offer is not disclosed to an individual who has not been authorized access to such data in accordance with *JP3 Part 1.4* Procurement Integrity and Ethics, and this offer is not duplicated, used, or disclosed in whole or in part for any purpose other than evaluation of the offer, without the written permission of the offeror. If a contract is awarded on the basis of this offer, the terms of the contract must control disclosure and use. This notice does not limit the judiciary's right to use information contained in the offer if it is obtainable from another source without restriction. This notice must not by itself be construed to impose any liability upon the judiciary's evaluation personnel for disclosure or use of data contained in this offer.

- e. Use of the notice in paragraph (d) of this section is solely as a manner of handling unsolicited offers. An offeror must identify trade secrets, commercial or financial information, and privileged or confidential information to the judiciary (see paragraph (a) of this section).
- f. If the offer is received with the restrictive legend (see paragraph (a) of this section), the cover sheet (see paragraph (d) of this section) must also be used and permission must be obtained from the offeror before release of the offer for evaluation by non-judiciary personnel.
- g. When the judiciary receives an unsolicited offer and conducts an evaluation by personnel outside the judiciary, or by experts outside of the judiciary, written permission must be obtained from the offeror before release of the offer for evaluation. The judiciary point of contact must:
 - (1) clearly mark the cover sheet with the legend in paragraph (d); and
 - (2) obtain a written agreement from any non-judiciary evaluator stating that data in the offer will not be disclosed to persons outside the judiciary.

Part 3.8. Price Negotiations

3.8.1. Pre-Negotiation Procedures

- a. Negotiations are generally held to reach agreement on price, profit or fee, and contract terms and conditions, whether for an initial award or modification. Prior to conducting

- negotiations, the CO must establish written prenegotiation objectives commensurate with the dollar value and complexity of the negotiation by writing a Pre-Negotiation Memorandum (PNM). This document must be written to also include the Post-Negotiation Memorandum discussed in [3.8.6](#) so that the PNM covers both the pre-negotiation objectives and later the post-negotiation summary. The memo must be approved in writing by the PLO (for the court units or FPDOs), or the PE (at the AO).
- b.** The process of determining prenegotiation objectives helps the CO judge the overall reasonableness of the offer and to negotiate a fair and reasonable price or cost. In setting the prenegotiation objectives, the CO must analyze the offer, and take into account any advisory reports received, and other pertinent data (such as independent cost estimates and price histories). The CO may deem it is appropriate to conduct prenegotiation fact-finding sessions with the offeror.
 - c.** The scope and depth of the analysis supporting the prenegotiation objectives must be directly related to the dollar value, importance, and complexity of the pricing action. When cost analysis is required, the analysis must address:
 - (1) the pertinent issues to be negotiated;
 - (2) the cost objectives; and
 - (3) a profit or fee objective.

3.8.2. Negotiation

- a.** Price negotiation does not require that agreement be reached on every element of cost. Reasonable compromises may be necessary. The recommendations of auditors and other specialists are advisory only. It may not be possible to negotiate a price that is in accord with all advisory opinions or with the CO's prenegotiation objectives. The CO is responsible for exercising the necessary judgment and is solely responsible for the final pricing decision. However, the CO must include explanatory comment in the memorandum of negotiation when advisory recommendations are not adopted.
- b.** The negotiation of contract type and price are related. They must be considered together with the issues of risks and uncertainty to the contractor and the judiciary. Therefore, the CO must not become preoccupied with any single element. The contract type, must be balanced with the risks, cost, and profit or fee negotiated. This will achieve a total result of a price fair and reasonable to both the judiciary and the contractor. Because profit, or fee, is only one of several interrelated variables, the CO must not agree on profit or fee without concurrent agreement on cost and type of contract (see also [Chapter 4](#)).

3.8.3. Cost or Pricing Data The CO must obtain sufficient pricing data before the award of any competitive procurement or modification in order to determine reasonableness of price. Only the data needed to make that determination must be obtained (see [4.5.2](#)).

3.8.4. Price Analysis

- a. Price analysis is the process of examining and evaluating an offered price without evaluating its separate cost elements and proposed profit.
- b. Before awarding any competitive procurement, the CO must select and use whatever price analysis techniques will reveal whether the judiciary is receiving a fair and reasonable price.
- c. One or more of the following techniques may be used to perform price analysis:
 - (1) comparison of proposed prices received in response to a competitive solicitation;
 - (2) comparison of prior proposed prices and/or contract prices under judiciary or other federal agency contracts with current proposed prices for the same or similar end items in comparable quantities;
 - (3) application of estimating metrics (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry;
 - (4) comparison with competitive published catalogs or price lists, published market prices or commodities, similar indexes, and discount or rebate arrangements;
 - (5) comparison of proposed prices with independent judiciary cost estimates; or
 - (6) ascertaining that the price is set by law or regulation.

3.8.5. Cost Analysis Cost analysis is the review and evaluation of the separate cost elements and proposed profit of an offeror's or contractor's cost or pricing data -- and the judgmental factors applied in projecting from the data to the estimated costs to form an opinion on the degree to which the proposed costs represent what the procurement will probably cost, assuming reasonable economy and efficiency. Cost analysis is normally appropriate only when there is not adequate price competition and no method of price analysis will reveal whether the judiciary is receiving a fair and reasonable price.

3.8.6. Post-Negotiation Memorandum (PNM) Following any negotiation of an initial or revised price, the CO must promptly prepare a memorandum summarizing the principal elements of the price negotiation. The memo would include the pre-negotiation elements as discussed in [3.8.1.a](#). The memo must be approved in writing by the PLO (for the court units or FPDO), or PE (at the AO). The memorandum must be included in the procurement file and must contain at least the following information:

- (1) the purpose of the negotiation;
- (2) a description of the purchase, or modification, with identifying number;
- (3) a summary of the technical and cost negotiation results;
- (4) the name, position, and organization of each person representing the offeror or the judiciary in the negotiation;
- (5) if cost or pricing data have been obtained, the extent to which the CO:
 - (a) relied on the cost or pricing data submitted, and used them in negotiating the price; and

- (b) recognized as inaccurate, incomplete, or noncurrent any cost or pricing data submitted; the action taken by the CO and the offeror or contractor as a result; and the effect of the defective data on the price negotiated.
- (6) a summary of the offer, any advisory report recommendations, and the reasons for any significant variances between them and the negotiated amount;
- (7) the most significant facts or considerations controlling the establishment of the prenegotiation price objective and the negotiated price, including an explanation of any significant differences between the two positions;
- (8) the basis for determining the profit or fee prenegotiation objective and the profit or fee negotiated; and
- (9) documentation of fair and reasonable pricing.

Part 3.9. Judiciary Protest Procedures

3.9.1. Policy

- a. Any office receiving a protest must immediately forward it to PMD without taking any action.
- b. It is the policy of the judiciary to encourage parties to seek resolution of disputes with the Administrative Office of the United States Courts (AO).
- c. A mere disagreement with the decision of the CO does not constitute grounds for a protest. A “protest” for purposes of these procedures is a written objection by an interested party to any of the following:
 - (1) a solicitation or other request for offers for the procurement of products or services;
 - (2) an award or proposed award of a procurement; and
 - (3) a cancellation of the solicitation or other request.

3.9.2. Procedural Requirements

- a. **Interested Parties** For purposes of filing a judiciary level protest, an interested party means an actual or prospective offeror whose direct economic interest would be affected by the award of a procurement or by the failure to award a procurement.
- b. **Election of Forum** The protestor has a choice of protest forums (see [3.9.1.](#)). However, if the same party files a protest with an external forum on the same solicitation as a new or pending judiciary protest, the judiciary protest will be dismissed.
- c. **Filing a Judiciary Protest** A judiciary protest may be filed in writing with the CO designated in the solicitation for resolution of the protest, with a copy to the PE and to OGC. It must identify the solicitation or contract protested and set forth a complete statement of the grounds for protest. A statement of intent to file a protest is not a protest.

- d. Protest Decision Authority** The PE will be the deciding official for the protest. In reaching a decision on the protest, the PE will confer with OGC. The decision of the PE will constitute the final decision of the judiciary.
- e. Time for Filing a Protest** A judiciary protest must be filed not later than ten calendar days after the basis of the protest is known, or should have been known. Any protest based on alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of offers must be filed prior to the closing date for receipt of offers. The judiciary, in its discretion, may consider the merits of any protest which is not timely filed. The office hours of the AO are 8:30 a.m. to 5:00 p.m., eastern time. Time for filing a document expires at 5:00 p.m., eastern time, on the last day on which such filing may be made.
- f. Form of Protest** A judiciary protest must include:
- (1) the protester's name, address, and telephone number, including fax number and e-mail address;
 - (2) the solicitation or contract number;
 - (3) identity of the contracting activity and the CO's name;
 - (4) a detailed statement of all legal and factual grounds for the protest, to include a description of the alleged prejudice to the protester;
 - (5) copies of relevant documents;
 - (6) a request for a ruling by the judiciary;
 - (7) a request for relief and the protester's suggested form of relief;
 - (8) all information establishing that the protester is an interested party for the purpose of filing a protest;
 - (9) all information establishing the timeliness of the protest; and
 - (10) a signature by an authorized representative of the protester.
- g. Processing of Judiciary Protests** The CO will immediately forward the protest to PMD, including a copy of the contract, any pertinent documentation, and the CO's explanation and recommendation. The PE will issue a written decision on the protest within 35 calendar days after the filing of the protest. The written decision will be binding on the cognizant contracting office.
- h. Protest Filed Before and After Award**
- (1) **Protest Before Award** When a timely protest has been filed with the CO before award, award may not be made until the matter has been resolved, unless the CO, after consulting with the PE, and with the concurrence with OGC, determines in writing, that urgent and compelling circumstances which significantly affect the interests of the judiciary will not permit delay of the award until the protest has been resolved, and that the award must be made without awaiting the decision. When authorized to make an award before a protest is resolved, the CO must inform the protester, in writing, of the judiciary's determination to proceed with the award.
 - (2) **Protest After Award** When a protest is filed within 10 days after award, the CO must immediately suspend performance pending resolution of the protest by the

judiciary. Performance need not be suspended in those instances where the CO determines, in writing, that urgent and compelling circumstances exist or it is otherwise in the best interests of the judiciary to allow the contractor to proceed. Prior to making such a determination, the CO must consult with the PE, who will coordinate with OGC.

- i. **Resolution** The PE, after conferring with OGC, will prepare a decision that is well reasoned, and that provides sufficient explanation for the basis of the decision. It must also advise the protester that the decision constitutes the final determination of the judiciary on the protested matter. A copy of the protest decision must be furnished to the protester and to the CO.

Exhibit 3-1
Sample Offering Letter to Randolph Sheppard Agency

[Date]

(Point of Contact Name)
State Agency Rehabilitation Services
(Street address)
(City, State and Zip Code
(obtain name/address information from list in website)

Dear M :

We have a need for _ vending machine(s) at our location which is:
United States xxxxxxCourt
***** District of xxxxxxxx
(Suite, Floor, Street Address, etc.)
(City, State and Zip Code)

This request is made in accordance with the provisions of the Randolph Sheppard Act of 1974.
Our request for proposal with our specific requirements is enclosed. Please review the documents and provide us a
determination if a blind licensee can meet our needs.

Please indicate your interest by completing the information below and returning a copy to the
attention of (name) via fax at (***) ***-*****. If you have any questions, or need additional
information, please contact (name) at (xxx) xxx-xxxx.

Sincerely,

Procurement Liaison Officer

Enclosure

(Name)
State Agency Rehabilitation Services

[] We have identified a licensed Randolph Sheppard vendor interested in providing copy center
services at your location. We will contact you shortly.

[] We are unable to provide a licensed Randolph Sheppard vendor to provide copy center services
at your location.

Signature:_____

Printed Name:_____

Title:_____

Phone:_____

FAX:_____

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CHAPTER 4 - TYPES OF CONTRACTS & ANALYSIS OF OFFERS

CONTRACT TYPES

Part 4.1. Selecting Contract Type

4.1.1. General

- a. The choice of contract type and price are closely related and must be considered together with the issues of requirement complexity, schedule, technical, and cost risks involved.
- b. The type of contract used should reflect the risks and responsibility assumed by the judiciary and the contractor. Full cost and performance responsibility is assumed by the contractor under a firm-fixed-price contract; while the contractor undertakes less cost and performance responsibility under cost-reimbursement, labor-hour and time-and-material contracts. Where the contractor does not take on the cost and performance risk, it must be assumed by the judiciary. The profit or fee calculations will also reflect the cost and performance cost responsibilities resulting from the contract type selected. Generally, a contractor will be able to collect more profit or fee as it assumes increased cost risks and performance risks.
- c. When a contract type other than firm-fixed-price is used, the contract file must include adequate documentation to explain the choice (i.e. memo to the file signed by the CO).
- d. This chapter describes various different contract types which are authorized for use in the judiciary. Contract types which require the prior approval of the PE are listed at [4.1.3.a](#). Any contract type not described in this chapter is not authorized for use in the judiciary. The most commonly used contract types include:
 - (1) firm-fixed-price (see [4.1.4.](#));
 - (2) indefinite-delivery (see [4.1.5.](#))
 - (a) indefinite-quantity and
 - (b) requirements;
 - (3) ordering agreement - a commonly used type of instrument even though it is not a contract (see [4.1.6.](#));
 - (4) labor-hour (see [4.1.7.](#)); and
 - (5) time-and-materials (see [4.1.8.](#)).

4.1.2. Selecting Contract Type

- a. The CO is responsible for selecting the contract type appropriate to the circumstances of the procurement.
- b. Although contract type is a matter for negotiation, competitive purchasing procedures require that the solicitation specify an intended type of contract in order to provide a basis for comparing competing offers. Solicitation [Provision 4-1](#), "Type of Contract" must be included in all solicitations which exceed the judiciary's small purchase threshold (see [3.4.1.c](#). and [Guide Volume 1, Chapter 8, Part B](#)), and which are not for information or planning purposes. The CO will appropriately fill in the provision's blank spaces.
- c. A firm-fixed-price contract is generally preferred because it makes the contractor fully responsible for cost control, performance, and minimizes the need for judiciary

monitoring of cost performance. However, when there is no reasonable basis for firm fixed pricing, a solicitation requiring a firm-fixed-price contract may reduce competition. It may lead to higher prices because compensation for contingencies will be added by the offerors for protection from real or perceived risks. Whenever the probable cost of performance cannot be reasonably estimated, a firm-fixed-price contract should not be used.

- d. When a firm-fixed-price contract is not appropriate, costs may be controlled by using incentives. Efficient performance is promoted by relating the amount of profit or fee available under the contract to the contractor's ability to manage performance costs effectively.
- e. Factors to be considered include:
 - (1) realism of cost estimate;
 - (2) extent of competition;
 - (3) nature of the required product or service (e.g., commercial or developmental);
 - (4) performance risks and uncertainties;
 - (5) complexity of the requirement;
 - (6) adequacy and firmness of specifications;
 - (7) likelihood of changes;
 - (8) prior experience (pricing and production);
 - (9) extent of subcontracting;
 - (10) adequacy of contractor's cost estimating and accounting system; and
 - (11) urgency of the requirement.

4.1.3. Limitations

- a. COs must obtain the prior written approval of the PE before using any of the following contract types:
 - (1) Indefinite-Delivery ([4.1.5.](#));
 - (2) Labor-Hour ([4.1.7.](#));
 - (3) Time and Materials ([4.1.8.](#));
 - (4) Letter Contract ([4.1.9.](#));
 - (5) Fixed-Price Award Fee ([4.1.10.](#));
 - (6) Fixed-Price Incentive Contract ([4.1.11.](#));
 - (7) Fixed-Price Contract with Economic Price Adjustment ([4.1.12.](#));
 - (8) Cost Reimbursement Contract ([4.1.13.](#)).
- b. If a situation develops where the CO determines that one of the contract types listed above would be of benefit for a particular procurement, a justification for the use of the specific contract type, along with a statement of work for the proposed procurement must be forwarded to the PE for review and written approval. A cost-plus-a-percentage-of-cost contract must not be used.

4.1.4. Firm-Fixed-Price Contracts

- a. **Description** A firm-fixed-price (FFP) contract requires a price that is not subject to change or adjustment based on the contractor's cost of performance, provided the specified requirements are not changed during performance, and both parties fulfill their obligation under the contract. The contractor assumes full responsibility for all costs and

resulting profits/losses, maximizing the motive to control costs and perform effectively, economically, and efficiently. It is the least burdensome type of contract for the judiciary to administer when requirements are stable. However, if frequent changes are likely, administration will be difficult. The amount to be recorded is the full contract/delivery order/task order price using funds available in the period awarded, regardless of whether or not performance will continue into future fiscal years. For a firm fixed price contract, delivery order or task order in which the government has an option to purchase additional products and/or services, the contract price for the basic products and/or services is an obligation at the time the contract is awarded, and the options become an obligation only when they are exercised.

b. Application A firm-fixed-price contract is suitable for:

- (1) commercial products or services;
- (2) modified commercial products or services; or
- (3) products or services having reasonably definitive specifications or statements of work; and
- (4) whenever fair and reasonable prices can be reasonably estimated at the procurement outset, such as when:
 - (a) adequate price competition is anticipated;
 - (b) there are reasonable price comparisons with prior purchases of the same or similar products or services made on a competitive basis;
 - (c) in noncompetitive procurement situations, it is anticipated that cost or pricing data is expected to be adequate to permit realistic and reasonable estimates of the costs of performance; or
 - (d) the cost impact of performance uncertainties can be estimated closely enough to reach agreement on a reasonable price representing appropriate assumption of the risks involved.

4.1.5. Indefinite-Delivery Contracts: Indefinite Quantity and Requirements

a. General An indefinite delivery contract may be used when it is known or anticipated that there will be requirements for products or services over a period of time, but specific quantities, times, and/or places of delivery are not known at the time of contract award. The contract authorizes orders to be placed directly by using activities or by specified purchasing offices with contract deliveries made directly to using activities. Only the amount of the minimum guarantee must be obligated with funds at the time of award. The later placement of delivery and task orders against the contract will require additional fund obligations when placed. The amount to be obligated against individual orders will depend upon the prescribed order type. Fixed price orders must be obligated to the full amount of the order; labor hour or time and materials orders may be incrementally funded.

b. Reserved

c. Reserved

d. Indefinite-Quantity Contracts An indefinite delivery/indefinite-quantity (IDIQ) contract provides for an indefinite quantity of specific products or services, within

contract specified minimum and maximum limits, to be delivered during the contract period to designated locations when ordered. The stated minimum quantity is guaranteed to be ordered. However, the total estimated quantity is not guaranteed. The price for the guaranteed minimum is obligated at contract award. Additional quantities up to the stated contract maximum are obligated on individual delivery orders or task orders. Maximum limits may be stated on an individual order basis or for the contract as a whole or both. Minimums and maximums may be stated in terms of quantities or in terms of dollars. This type is for use when precise quantities for products or services during the contract period, above known minimum requirements, cannot be determined before contract award.

- (1) The contract must require the judiciary to order, and the contractor to deliver, at least a stated minimum quantity of products or services during the contract period and requires the contractor to deliver any additional quantities ordered, not to exceed a stated maximum quantity. If the judiciary does not order the guaranteed minimum quantity over the stated term of the contract, the contractor is entitled to payment of the guaranteed amount regardless of the circumstances.
- (2) The established minimum quantity must not exceed known requirements and the maximum quantity must be realistic. The contract may specify minimum or maximum quantities for individual delivery orders and a maximum that may be ordered during a specified time. The contractor is not obligated to deliver or perform beyond the stated maximum amounts.

e. Requirements Contracts A requirements contract provides for filling all requirements of designated activities for specific products and services to be delivered as ordered during the contract period. It is for use when recurring requirements are anticipated during the contract period, but precise quantities cannot be determined before contract award. However, this contract type must be used cautiously, as it obligates the designated judiciary activities to place all of their orders for the specific products and services during the life of the contract with the contractor.

- (1) The solicitation and contract must state an estimated total quantity, and, if feasible, the maximum limit of the contractor's obligation to deliver. The total quantity estimate must be as realistic as possible, based on records of previous requirements and current information. The contract may specify minimum or maximum quantities for individual delivery orders and a maximum that may be ordered during a specified ordering period. The estimates of a requirements contract are not a commitment that the estimated quantity will be ordered and there is no minimum order requirement.
- (2) When a requirements contract is for repair, modification, or overhaul of items of judiciary property, the solicitation must state that failure of the judiciary to furnish such items in the amounts described as "estimated" or "maximum" will not entitle the contractor to any price adjustment under the "Property" clause of the contract.

f. Contract Terms

Both IDIQ contracts and requirements contracts must identify the period for placing orders and the activities authorized to place orders. The contract must also state estimated quantities, describe the scope of the products or services to be provided, contain appropriate terms and conditions, and provide for the placement of delivery orders or task orders by the CO. These two types of contracts are suitable when

purchasing an estimated kind and amount of products or services anticipated to be needed, but the requirement is not definite at the time of contract award. In addition, IDIQ solicitations must state whether a single award or multiple awards are anticipated, and, in the case of multiple awards, must state the basis for competing delivery or task orders under the contract. See [3.5.1.c.\(26\)](#) instructions for use of [Provision 3-135](#), “Single or Multiple Awards.”

g. Delivery Orders or Task Orders

- (1) Delivery orders (for products) and task orders (for services, or services with some products) are two types of orders that can be placed under indefinite contracts. Once it is clear what is needed, the CO places orders against the contract. These orders clearly quantify and specify the requirement to deliver products or task the contractor to perform services in accordance with the terms and conditions of the contract.
- (2) Each order describes the products to be delivered or task to be performed and specifies the price, either as the price established by the contract or the price agreed to after competition and negotiation.
- (3) Each order must be within the scope, period, and maximum value of the contract.
- (4) Ordinarily, orders must be placed in writing or by written communication; when necessary, oral orders may be made if they are promptly confirmed in writing. Orders must contain:
 - (a) date of order, contract number, and order number;
 - (b) item number and description, unit price, and total price;
 - (c) place and date of delivery or performance;
 - (d) packaging, packing, and shipping instructions (if these are not already defined in the contract);
 - (e) accounting and fiscal data; and
 - (f) any other pertinent information.
 - (g) If the price cannot be negotiated before issuance of the order, the order must have a ceiling price limiting the judiciary’s obligation and the definitive price must be negotiated as soon as practicable.

h. Reserved

i. Clauses

- (1) The following clauses are included when a requirements contract, or an IDIQ contract is contemplated:
 - (a) [Clause 4-5](#), “Ordering,” and
 - (b) [Clause 4-10](#), “Order Limitations.” The CO will appropriately fill in the clause’s blank spaces;
- (2) Reserved
- (3) [Clause 4-20](#), “Requirements” when an indefinite delivery, requirements contract is contemplated;
- (4) [Clause 4-25](#), “Indefinite Quantity” when an indefinite delivery, indefinite-quantity contract is contemplated.

4.1.6. Ordering Agreements

- a. General** Ordering agreements (i.e., blanket purchasing agreement (BPA), basic ordering agreement (BOA), and basic agreement (BA)) do not constitute legally binding contracts at the time of award, and thus, no obligation must be recorded. An ordering agreement is not a contract. It is a written agreement negotiated between a purchasing office and a contractor that contains terms and conditions applying to future transactions between the parties. Ordering agreements are useful to expedite contracting for uncertain requirements for products or services when specific quantities and prices are not known at the time the agreement is signed, but substantial quantities of the products or services covered by the agreement are expected to be purchased from the contractor. Ordering agreements reduce administrative lead time and inventory investment. They are agreements that establish the terms and conditions, and sometimes the price.
- b. Types of Ordering Agreement**
- (1) A **BPA** is a simplified way of buying products and services. The BPA contains pre-negotiated terms and conditions that will apply if and when an order (or “call”) is placed against the BPA for products or services. Funds are not required at the time a BPA is established; funds are obligated at the time a call is placed against the BPA. BPA calls can be made informally by telephone, fax, letter, email, etc. BPAs are very useful for a repetitive requirement over a period of time. There are two sources for BPAs - open market and GSA; and two types - single and multiple. See [3.4.8.b.](#) for further information on awarding BPAs and placing orders.
 - (2) A **BOA** is a written instrument of understanding, negotiated between the judiciary purchasing office, and a contractor. The use of a BOA can result in economies in ordering parts for equipment by reducing administrative lead-time, inventory investment, and inventory obsolescence due to design changes. A BOA may be used to expedite contracting for uncertain requirements for products or services when specific items, quantities, and prices are not known at the time the agreement is executed, but a substantial number of requirements for the type of products or services covered by the agreement are anticipated to be purchased from the contractor. Orders issued under a BOA require competition above the open market noncompetitive threshold or advertising for any individual call above the small purchase threshold unless a valid exemption is justified. For open market BOAs which were competed, there is no requirement to compete each individual call regardless of the dollar amount. A BOA contains:
 - (a) terms and clauses applying to future contracts (orders) between the parties during its terms;
 - (b) a description, as specific as practicable, of products or services to be provided; and
 - (c) methods for pricing, issuing and delivering future orders under the BOA.
 - (3) A **BA** will be used when a substantial number of separate contracts may be awarded to a contractor during a particular period and significant recurring negotiating problems have been experienced with the contractor. A BA is a written instrument of understanding, negotiated between the judiciary purchasing office and a contractor that:
 - (a) contains contract clauses applying to future contracts between the parties during its term, and

- (b) contemplates separate future contracts that will incorporate by reference or attachment the required and applicable clauses agreed upon in the basic agreement.
- c. **Obligation** The obligation of funds for agreements occurs when an order (or “call”) is placed. The amount to be obligated on such orders depends on the order type (i.e., fixed-price, labor hour, time and material, etc). Note: All BPA calls must be firm fixed price or fixed unit price.
- d. **Limitations**
 - (1) An ordering agreement may not state or imply any obligation or agreement by the judiciary to place future contracts or orders with the contractor.
 - (2) An ordering agreement may be changed only by modifying the agreement itself and not by individual orders issued under it. Modifying an ordering agreement does not retroactively affect orders previously issued under it.
 - (3) An ordering agreement extending for more than one year must be reviewed annually to determine whether there is a continuing need for the products or services covered by the agreement and whether any revisions to the agreement are necessary.
- e. **Content of Agreement** An ordering agreement must:
 - (1) describe the products and services to be provided;
 - (2) describe the method for determining prices to be paid to the contractor for the products or services;
 - (3) include delivery terms and conditions or specify how they will be determined;
 - (4) list the authorized ordering officers of the requesting office authorized to issue orders under the agreement;
 - (5) specify the point at which each order becomes a binding contract (for example, issuance of the order, acceptance of the order in a specified manner, or failure to reject the order within a specified number of days);
 - (6) provide that failure to reach agreement on price on any one order issued before its price is established is a dispute under [Clause 7-235](#), “Disputes” included in the ordering agreement; and
 - (7) contain the clauses prescribed for the type of contract represented by the orders to be placed. Note: BPAs are always firm-fixed price. For clauses which are prescribed according to the contract dollar amount, the aggregate value of orders expected to be placed under the agreement over its full life must be estimated.
- f. **Ordering** A CO or an authorized ordering officer representing any requesting office listed in an ordering agreement may issue orders for products or services covered by that agreement. Competition must be obtained before placing an order, unless permitted by other than full and open competition circumstances. (See [3.4.8.b](#). concerning awarding BPAs and ordering from them. Also see [3.6](#).) If an order is placed without obtaining competition, the file must be documented to show the reason. If the orders are competed open market, then the ordering agreement must state that it is open, allowing any other qualified firms to get agreements at any time (does not apply to BPAs).
- g. The CO will state in the solicitation how the BPA, BOA or BA will be competed. Competition for ordering agreements may be by oral or written solicitation:
 - (1) limited to firms holding ordering agreements for the same products or services;
 - (2) competed on the open market subject to the estimated dollar value of the requirement and the terms and conditions of the ordering agreement; or

(3) both (1) and (2).

- h. Pricing** Ordinarily, the CO may not authorize the contractor to begin work on an order under an ordering agreement until prices have been established. However, with prior written approval of the PE, if urgency precludes advance pricing and the order establishes a ceiling price limiting the judiciary's obligation, then the CO may place an unpriced order. Pricing must be accomplished as soon as possible after issuance of an unpriced order.

4.1.7. Labor-Hour Contracts

- a.** A labor-hour contract provides for direct labor hours at specified, fixed hourly rates (which include wages, overhead, general and administrative expense, and profit). It requires labor hours only; materials are not supplied by the contractor. Labor hour contracts containing a not to exceed amount may be fully funded at the time of award or may be incrementally funded provided that the funding balance is always in excess of the cumulative value of the services ordered, and provided that a clause reserving this right is contained in the contract.
- b. Application** A labor-hour contract is for use only when it is not possible to estimate in advance the extent or duration of the work required or to anticipate costs with any reasonable degree of confidence. It does not encourage effective contractor management or control of costs. Therefore, this contract form may be used only when provision is made for adequate monitoring by judiciary personnel during performance, to give reasonable assurance that inefficient or wasteful methods are not being used. Examples of situations in which this type of contract might be appropriate are:
- (1) repair, maintenance, and overhaul work; and
 - (2) work to be done in emergency situations.
- c. Limitation** This type of contract may be used only if no other type of contract will meet the judiciary's needs and when approved in writing by the PE. The CO must establish a ceiling price that the contractor exceeds only at its own risk. The CO must document the contract file to show the basis for any change in the ceiling.
- d. Clause** [Clause 4-30](#), "Payment (Time-and-Materials and Labor-Hour Contracts)" is included when a time-and-materials or labor-hour contract is contemplated.

4.1.8. Time-and-Materials Contracts

- a. Description** Time-and-materials contracts reimburse the contractor for labor at fixed labor rates and for materials at cost. The contract must contain a not-to-exceed amount and may be fully funded at the time of award or incrementally funded provided that the funding balance is always in excess of the cumulative value of the services ordered and the materials provided, and provided that a clause reserving this right is contained in the contract. A time-and-materials contract is similar to a labor-hour contract except that it includes reimbursement at cost for materials. It provides for the purchase of:
- (1) direct labor hours at specified, fixed hourly rates (which include wages, overhead, general and administrative expense, and profit); and
 - (2) materials reimbursed at cost. No profit is allowed on the material component of a time and materials contract. When appropriate, material-handling costs are reimbursed as a part of material costs. Material-handling costs may include all

indirect costs, including general and administrative expense, allocated to direct materials in accordance with the contractor's usual accounting practices. Such material-handling costs may include only costs clearly excluded from the fully burdened labor-hour rate.

- b. Application** A time-and-materials contract is for use only when it is not possible to estimate in advance the extent or duration of the work required or to anticipate costs with any reasonable degree of confidence. Because it does not encourage effective contractor management control of costs by the contractor, this contract form may be used only when provision is made for adequate monitoring by judiciary personnel during performance, to give reasonable assurance that inefficient or wasteful methods are not being used. Examples of situations in which this type of contract might be appropriate are:

 - (1) repair, maintenance, and overhaul work; and
 - (2) work to be done in emergency situations.
- c. Limitation** This type of contract may be used only if no other type of contract will meet the judiciary's needs and when approved in writing by the PE. The CO must establish a ceiling price that the contractor exceeds at its own risk. The CO must document the contract file to show the basis for any change in the ceiling.
- d. Optional Method of Pricing Material** When the work to be performed requires the contractor to furnish material that is regularly sold to the general public in the normal course of business by the contractor, the CO may provide for charging and reimbursement of material on a basis other than at cost if:

 - (1) the total estimated contract price does not exceed \$25,000 or the estimated price of material so charged does not exceed 20 percent of the estimated contract price;
 - (2) the material to be so charged is identified in the contract;
 - (3) no element of profit on material so charged is included in the profit in the fixed hourly labor rates; and
 - (4) the contract provides that the price to be paid for such material must be on the basis of an established catalog or list price, in effect when material is furnished, less all applicable discounts, and not exceeding the contractor's sales price to its most favored customer for the same item in like quantity, or the current market price, whichever is lower.

4.1.9. Letter Contract

- a. Description** A letter contract is a written preliminary contractual instrument that authorizes the contractor to begin work immediately, before negotiation of a definitive contract.
- b. Application** A letter contract is for use when:

 - (1) the requirement demands that the contractor be given a binding commitment so that work can commence immediately; and
 - (2) it is not possible to negotiate a definitive contract in sufficient time to meet the requirement.
- c.** Each letter contract must be as complete and definitive as possible under the circumstances. When award is based on price competition, an overall price ceiling must be included in the letter contract.
- d.** Each letter contract must contain a negotiated definitization schedule including a:

 - (1) date for submission of the contractor's priced offer;

- (2) date for the start of negotiation; and
- (3) target date for definitization, which must be the earliest practicable date.
- e. Each letter contract must state the maximum liability of the judiciary. This is the amount estimated to be needed to cover performance prior to contract definitization; it may not exceed 50 percent of the total estimated cost of the contract.
- f. The definitization schedule must provide for definitization of the contract within 180 days after the date of the letter contract or before completion of 40 percent of the work to be performed, whichever occurs first. However, the PE may, in extreme cases, authorize an additional period if, after exhausting all reasonable efforts, the CO and the contractor cannot negotiate a definitive contract agreement because of failure to reach agreement on price or fee. [Clause 4-45](#), “Contract Definitization” requires the contractor to proceed with the work and provides that the CO may determine a reasonable price or fee subject to appeal as provided in [Clause 7-235](#), “Disputes.”
- g. **Limitations** A letter contract:
 - (1) may be used only if no other type of contract is suitable and if prior written approval is given by the PE;
 - (2) may not commit the judiciary to a definitive contract in excess of the funds available at the time the letter contract is executed; and
 - (3) may not be modified to add new work unless the work added is inseparable from the work being performed under the letter contract.
- h. **Clauses**
A letter contract must include clauses required for the type of definitive contract contemplated, and any additional clauses known to be appropriate. In addition, all letter contracts must include the following clauses:
 - (1) [Clause 4-35](#), “Execution and Commencement of Work (Letter Contract)”. The CO will appropriately fill in the clause’s blank spaces;
 - (2) [Clause 4-40](#), “Limitation of Judiciary Liability (Letter Contract)”. The maximum liability in the clause is the amount necessary to cover the contractor’s performance before definitization. The CO will appropriately fill in the clause’s blank spaces.
 - (3) [Clause 4-45](#), “Contract Definitization”. Also included is the definitization schedule established in accordance with subparagraphs (a) and (b) above. If the contract is not awarded on the basis of price competition, paragraph (d) of the clause is omitted. The CO will appropriately fill in the clause’s blank spaces.
 - (4) [Clause 4-50](#), “Payment of Allowable Costs Before Definitization,” is included when definitization of the letter contract is expected to result in a definitive cost-reimbursement contract.

4.1.10. Fixed-Price Award Fee Contract

- a. **Description** A fixed-price award fee contract is used in fixed-price contracts when the judiciary wishes to motivate a contractor and another incentive cannot be used because contractor performance cannot be measured objectively.
- b. **Application** Such contracts must:
 - (1) establish a fixed price (including normal profit) for the effort. This price will be paid for satisfactory contract performance. Award fee earned (if any) will be paid in addition to the fixed price; and

- (2) provide for periodic evaluation of the contractor's performance against an award-fee plan.
- c. Limitations** A solicitation contemplating award of a fixed-price contract with award fee must not be issued unless the following conditions exist:
- (1) the administrative costs of conducting award-fee evaluations are not expected to exceed the expected benefits;
 - (2) procedures have been established for conducting the award-fee evaluation;
 - (3) the award-fee board has been established; and
 - (4) may be used only if no other type of contract is suitable and if prior written approval is given by the PE.

4.1.11. Fixed-Price Incentive Contract

- a. Description** A fixed-price incentive (FPI) contract specifies fixed prices, but provides for a profit adjustment formula to be applied either at a pre-determined mid-point of performance or upon completion of performance in order to establish the final contract price. The formula is based on the relationship of the total actual cost to an established target cost. For each item subject to incentive price revision, the contract must specify a target cost, a target profit, a target price, a price ceiling, and a profit adjustment formula. The price ceiling is the maximum that may be paid to the contractor, except for adjustments specially provided for under contract clauses.
- b. Application** A fixed-price incentive contract is appropriate when the parties can negotiate at the outset an initial target cost, target profit, and profit adjustment formula that will provide a fair and reasonable incentive and a ceiling that provides for the contractor to assume an appropriate share of the risk. When the contractor assumes a considerable or major share of the cost responsibility under the adjustment formula, the target profit must reflect this responsibility.
- c. Limitations** This contract type may be used only when:
- (1) a firm-fixed-price contract is not suitable;
 - (2) the nature of the products or services being procured and other circumstances of the procurement are such that the contractor's assumption of a degree of cost responsibility will provide a positive profit incentive for effective cost control and performance; and:
 - (a) if the contract also includes incentives on technical performance or delivery, the performance requirements provide a reasonable opportunity for the incentives to have a meaningful impact on the contractor's management of the work;
 - (b) the contractor's accounting system is adequate for providing data for negotiating firm targets and a realistic profit adjustment formula, as well as later negotiation of final costs; and
 - (c) adequate cost or pricing information for establishing a reasonable firm target is reasonably expected to be available for contract negotiations.
 - (3) A fixed-price incentive contract must be used only when the CO determines that this type of contract would be less costly than another type or that it is impractical to obtain products or services of the kind or quality required without the use of this contract type.

- (4) A fixed-price incentive contract with a firm target must at the outset of the contract negotiate and specify these elements:
 - (a) a target cost;
 - (b) a target profit;
 - (c) a price ceiling (but not a profit ceiling or floor);and
 - (d) a profit adjustment formula.
- (5) The profit adjustment formula must have the following:
 - (a) when the final cost is less than the target cost, application of the formula will result in a final profit greater than the target profit;
 - (b) when the final cost is more than the target cost, application of the formula will result in a final profit less than the target profit or net loss; and
 - (c) if the final negotiated cost exceeds the price ceiling, the contractor will absorb the difference as a loss.
- (6) In a fixed-price incentive contract with a firm target, the price ceiling must be the maximum that may be paid to the contractor, except for any adjustment under other contract clauses.
- (7) When the contractor completes contract performance, the CO and the contractor must negotiate the contractor's final cost and establish the final price by applying the formula.

4.1.12. Fixed-Price Contract with Economic Price Adjustment

- a. **Description** A fixed-price contract with economic price adjustment provides for the upward and downward revision of the contract price based upon the occurrence of contingencies that are defined in the contract.
- b. **Application** This type of contract is appropriate when there is serious doubt as to the stability of market and labor conditions that will exist during an extended period of contract performance and contingencies that would otherwise be included in a firm-fixed-price contract are identifiable and can be covered separately. Its usefulness is limited by the difficulties of its administration.
- c. **Limitation** The CO must not use a fixed-price contract with economic price adjustment unless the CO first determines that it is necessary to protect the contractor and the judiciary against significant fluctuations in labor or material costs or to provide for contract price adjustment in the event of changes in the contractor's established prices.
- d. An economic price adjustment may be one of the following general types:
 - (1) adjustment in price based on increases or decreases from an agreed-upon level in published or otherwise established prices of specific items or the contract end items (e.g., Consumer Price Index);
 - (2) adjustment based on increases or decreases in specified costs of labor or material that the contractor actually experiences during contract performance; or
 - (3) adjustment based on increases or decreases in labor or material cost standards or indices that are specifically identified in the contract.
- e. Price adjustments based on established catalog prices must be restricted to industry-wide contingencies. Industry-wide contingencies must be those affecting a particular industry as a whole and not be dependent on circumstances within the contractor's control.
- f. Price adjustments based on labor and material costs must be limited to contingencies beyond the contractor's control.

- g.** When establishing the base level from which adjustment may be made, the CO must ensure that contingency allowances are not duplicated by inclusion in both the base price and the adjustment requested by the contractor.
- h.** In contracts that do not require submission of cost or pricing data, the CO must obtain adequate information to establish the base level from which adjustments will be made and may require verification of data submitted.
- i.** Fixed-price contracts provide for economic price adjustment when:

 - (1) there is no major element of design engineering or development work involved,
 - (2) there are identifiable labor or material cost factors subject to change, and
 - (3) the CO determines it is necessary to protect the contractor and the judiciary against significant fluctuations in labor or material costs or to provide for contract price adjustment in the event of changes in the contractor's established prices.
- j. **Clauses**** When contemplating standard products that have an established catalog or market price [Clause 4-55](#), "Economic Price Adjustment-Standard Products" must be included. The offeror will appropriately fill in the clause's blank spaces.

4.1.13. Cost-Reimbursement Contract

- a. **General**** Cost reimbursement contracts may be incrementally funded, as long as the amount obligated is always in excess of the cumulative costs that it is anticipated that the contractor will incur during the following voucher period. These contracts establish an estimate of the total performance cost for the purpose of committing and obligating funds. They also establish a total estimated reimbursement cost. The contractor may not exceed the total estimated reimbursement cost, except at its own risk, without the prior written approval of the CO. Cost-reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit the establishment of reasonably accurate fixed prices.
- b. **Limitations**** A cost-reimbursement contract may be used only when:

 - (1) the contractor's accounting system is adequate for recording and segregating costs applicable to the contract;
 - (2) appropriate judiciary monitoring during performance will provide reasonable assurance that efficient methods and effective cost controls are used; and
 - (3) the CO determines in writing, that:

 - (a) the use of a cost-reimbursement type contract is likely to be less costly than any other type; or
 - (b) it is impractical to obtain products or services of the kind or quality required without the use of this contract type.
- c. **Cost Contract**** A cost contract is a cost-reimbursement contract under which the contractor receives no fee (profit). A cost contract may be appropriate for research and development work, particularly with nonprofit educational institutions or other nonprofit organizations.
- d. **Cost-Sharing Contract**** A cost-sharing contract is a cost-reimbursement type contract under which the contractor does not receive a fee and is reimbursed only for an agreed upon portion of its allowable costs. It is suitable for use where there is a high probability that the contractor will receive substantial commercial benefits as a result of contract performance.
- e. **Cost-Plus-Incentive-Fee Contract****

- (1) A cost-plus-incentive-fee contract is a cost-reimbursement contract that provides for the initially negotiated fee to be adjusted later by application of a formula based on the relationship of total allowable performance costs to target costs. This contract type specifies a target cost, a target fee, minimum and maximum fees, and a fee adjustment formula.
- (2) **Application** A cost-plus-incentive-fee contract is suitable when a cost-reimbursement contract is appropriate and a target cost and fee adjustment formula likely to motivate the contractor to manage the contract effectively can be negotiated. The fee adjustment formula must provide an incentive effective over the full range of reasonably foreseeable variations from target cost. If a high maximum fee is negotiated, the contract must provide for a low minimum fee, or even a zero or negative fee.

f. Cost-Plus-Fixed-Fee Contract

- (1) **Description** A cost-plus-fixed-fee contract is a cost-reimbursement contract that provides for payment to the contractor of a negotiated fee in a fixed amount. The fixed fee amount does not vary with actual performance costs incurred, but may be adjusted as a result of changes made in contract requirements. This contract type gives the contractor only a minimum incentive to control costs.
- (2) **Application** The CO may use a cost-plus-fixed-fee contract when contracting for efforts that might otherwise present too great a risk to the contractor, such as when the contract is for a study and the level of effort cannot be reasonably estimated.
- (3) **Completion or Term Form** A cost-plus-fixed-fee contract must be in one of two basic forms: the **completion** form or the **level-of-effort** form.
 - (a) **Completion Form** The completion contract form describes the scope of work by stating a definite goal or target and specifying an end product deliverable. This form of contract normally requires the contractor to complete and deliver the specified end product within the estimated cost, if possible, as a condition for payment of the entire fixed fee. If the work cannot be completed within the estimated cost, the judiciary may require more effort without an increase in fee, but the estimated cost and funding must be increased.
 - (b) **Term Form** The term form describes the scope of work in general terms and obligates the contractor to devote a specified level of effort for a stated time period. Under this form, if performance is satisfactory, the fixed fee is payable at the expiration of the agreed upon period, upon contractor certification that the level of effort specified in the contract has been expended in performing the contract work. It does not require a deliverable end product. Renewal for further periods of performance requires new cost and fee arrangements and is treated as a new purchase.
- (4) **Preference** Because of the greater risks and obligation assumed by the contractor, the completion form is preferred over the term form whenever the work can be defined well enough to permit a reasonable cost estimate within which the contractor can be expected to complete the work.

g. Cost-Plus-Award-Fee Contract

- (1) **Description** A cost-plus-award-fee contract is a cost-reimbursement contract that provides for a fee consisting of

- (a) a base amount (which may be zero) fixed at inception of the contract; and
- (b) an award amount, based upon a judgmental evaluation by the judiciary, sufficient to provide motivation for excellence in contract performance in such areas as quality, timeliness, technical ingenuity, and cost-effective management. The amount of the award fee to be paid is determined by the judiciary's judgmental evaluation of the contractor's performance in terms of the criteria stated in the contract. This determination and the methodology for determining the award fee are unilateral decisions made solely at the discretion of the judiciary.

(2) **Application**

- (a) The cost-plus-award-fee contract is suitable for use when:
 - 1) the work to be performed is such that it is neither feasible nor effective to devise predetermined objective incentive targets applicable to cost, technical performance, or schedule;
 - 2) the likelihood of meeting procurement objectives will be enhanced by using a contract that effectively motivates the contractor toward exceptional performance and provides the judiciary with the flexibility to evaluate both actual performance and the conditions under which it was achieved; and
 - 3) any additional administrative effort and cost required to monitor and evaluate performance are justified by the expected benefits.
- (b) The number of evaluation criteria and the requirements they represent will differ widely among contracts. The criteria and rating plan must motivate the contractor to improve performance in the areas rated, but not at the expense of at least minimum acceptable performance in all other areas.
- (c) Cost-plus-award-fee contracts must provide for evaluation at stated intervals during performance, so that the contractor will periodically be informed of the quality of its performance and the areas in which improvement is expected. Partial payment of fee must generally correspond to the evaluation periods. This makes effective the incentive which the award fee can create by inducing the contractor to improve poor performance or to continue good performance.

(3) **Limitations** A cost-plus-award-fee contract will not be awarded unless:

- (a) all of the limitations in [4.1.13.b](#) are complied with; and
- (b) the contract amount, performance period, and expected benefits are sufficient to warrant the additional administrative effort and cost involved.

h. Clauses Cost-reimbursement contracts must include the following clauses, as applicable:

- (1) [Clause 4-60](#), "Allowable Cost and Payment" is included when a cost reimbursable contract is contemplated;
- (2) Cost plus-fixed-fee contracts must include [Clause 4-65](#) "Fixed Fee";
- (3) Cost-plus-incentive-fee contracts must include [Clause 4-70](#), "Incentive Fee". The CO will appropriately fill in the clause's blank spaces.
- (4) Cost no fee contracts must include [Clause 4-75](#), "Cost Contract - No Fee";
- (5) Cost-sharing contracts must include [Clause 4-80](#), "Cost-Sharing Contract - No Fee;"

- (6) Include [Clause 4-85](#), “Limitation of Cost” when a fully funded cost reimbursable contract is contemplated, whether or not the contract provides for payment of a fee;
- (7) Include [Clause 4-90](#), “Limitation of Funds” when an incrementally funded cost reimbursable contract is contemplated.

4.1.14. Multi-Year Contracts

a. General

This part prescribes guidance for the acquisition of products and services through multi-year contracting;

- (1) Definitions as used in this subpart—
 - (a) “Cancellation” means the cancellation (within a contractually specified time) of the total requirements of all remaining contract years. Cancellation results when the contracting officer notifies the contractor that funds will not be made available for contract performance for any subsequent contract year
 - (b) “Cancellation ceiling” means the maximum cancellation charge that the contractor can receive in the event of cancellation.
 - (c) “Cancellation charge” means the amount of unrecovered costs which would have been recouped through amortization over the full term of the contract, including the term canceled.
 - (d) “Multi-year contract” means a contract for the purchase of products or services for more than 1, but not more than 5, contract years. A multi-year contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds, and (if it does so provide) may provide for a cancellation payment to be made to the contractor if appropriations are not made. The key distinguishing difference between multi-year contracts and multiple year contracts is that multi-year contracts represent more than one year’s commitment to a vendor without establishing and having to exercise an option for each contract year after the first.
 - (e) “Fixed costs” means those costs which are generally incurred on a one-time basis and include such costs as plant or equipment relocation, plant rearrangement, special tooling and special test equipment, preproduction engineering, initial spoilage and rework, and specialized work force training.
 - (f) “Variable costs” means costs that vary with the quantity being produced, such as labor and materials.

b. Multi-year contracting.

Multi-year contracting is a special contracting method which allows the judiciary to order products or services to meet known requirements over a period of up to a maximum of five years, unless otherwise authorized by statute. Multi-year contracts are not indefinite ordering vehicles and the solicitation and contract are limited to definite known requirements for the proposed multi-year period. Multi-year contracts may either be fully funded for the entire multi-year period at the time of award or may be funded by

contract year. See Paragraph [4.1.14.e\(1\)](#) below regarding requirements to fund cancellation charges when annually funding multi-year contracts.

- (1) Multi-year contracting is a flexible contracting method applicable to a wide range of acquisitions. The extent to which cancellation terms are used in multi-year contracts will depend on the unique circumstances of each contract.
- (2) The funds obligated for multi-year contracts must be sufficient to cover any potential cancellation and/or termination costs; and multi-year contracts for the acquisition of products should be fully funded or funded in stages that are economically or programmatically viable. If funded in stages, the funding must always include the potential cancellation costs.
- (3) The termination for convenience procedure may apply to any Government contract, including multiyear contracts. As contrasted with cancellation, termination can be effected at any time during the life of the contract (cancellation is effected between contract years) and can be for the total quantity or partial quantity (where as cancellation must be for all subsequent contract years' quantities).

c. Use of Multi-Year Contracting:

- (1) Prior to issuance of a multi-year solicitation or contract, the contracting officer must prepare and obtain PE approval of a determination addressing the following factors:
 - (a) The need for the products or services is reasonably firm and continuing over the period of the contract; and
 - (b) A multi-year contract will serve the best interests of the Judiciary by encouraging full and open competition or promoting economy in administration, performance, and operation of the agency's programs. Factors which should be addressed within the required determination and finding to the extent that they are applicable include:
 - 1) Lower costs;
 - 2) Enhancement of standardization;
 - 3) Reduction of administrative burden in the placement and administration of contracts;
 - 4) Substantial continuity of production or performance, thus avoiding annual startup costs, preproduction testing costs, make-ready expenses, and phaseout costs;
 - 5) Stabilization of contractor work forces;
 - 6) Avoidance of the need for establishing quality control techniques and procedures for a new contractor each year;
 - 7) Broadening the competitive base with opportunity for participation by firms not otherwise willing or able to compete for lesser quantities, particularly in cases involving high startup costs;
 - 8) Providing incentives to contractors to improve productivity through investment in capital facilities, equipment, and advanced technology.

d. Type of contract. If a fixed price multi-year contract is planned, the Contracting Officer should consider inclusion of economic price adjustment terms and profit objectives commensurate with contractor risk and financing arrangements.

e. Cancellation procedures.

- (1) All contract years except the first are subject to cancellation. For each contract year subject to cancellation, the contracting officer shall establish a cancellation ceiling. Ceilings must exclude amounts for requirements included in prior contract years. The contracting officer shall reduce the cancellation ceiling for each contract year in direct proportion to the remaining requirements subject to cancellation. If a multi-year contract is not fully funded upon award, but is funded at the beginning of each contract year, the modification obligating each year's funds must also establish and obligate the cancellation ceiling or cancellation charge applicable in the event the contract is cancelled at the end of that contract year.
 - (2) The contracting officer shall incorporate in the contract cancellation dates for each contract year's requirements and the date by which funding for these requirements can reasonably be established.
- f. Payment of cancellation charges.** If cancellation occurs, the Government's liability will be determined by the terms of the applicable contract.
- g. Payment limit.** The contracting officer shall limit the Government's obligation to an amount available for contract performance. If funding at the beginning of each contract year, the contracting officer shall insert the amount for the first contract year in the contract upon award and modify it for successive contract years upon availability of funds.
- h. Termination payment.** If the contract is terminated for the convenience of the Government in whole, including requirements subject to cancellation, the Government's obligation shall not exceed the amount specified in the contract as available for contract performance, plus the cancellation ceiling.
- i. Solicitations.** Solicitations for multi-year contracts may be awarded on either a best value or a lowest price/technically acceptable basis. In either case, the solicitation must identify all the factors related to multi-year contracting that will be considered in offer evaluation and shall including the following specific information:
- (1) The requirements, by item of supply or service, for the—
 - (a) First contract year; and
 - (b) Multi-year contract including the requirements for each contract year.
 - (2) Criteria for comparing the lowest evaluated submission on the first contract year requirements to the lowest evaluated submission on the multi-year requirements.
 - (3) A provision that, if the Government determines before award that only the first contract year requirements are needed, the Government may evaluate offers and make award solely on the basis of prices offered on that year's requirements.
 - (4) A provision for the vendor to propose a separate cancellation ceiling (on a percentage or dollar basis) and dates applicable to each contract year subject to a cancellation. The solicitation shall also include a requirement that the vendor provide its rationale and supporting data for its proposed cancellation ceiling(s).
 - (5) A statement that award will not be made on less than the first contract year requirements.
 - (6) The Government's administrative costs of annual contracting (only permissible if they can be reasonably established).
 - (7) A statement that the cancellation ceiling shall not be an evaluation factor.
 - (8) All other technical evaluation factors.
- j. Evaluation**

- (1) Evaluation of offers shall involve (a) determination of the lowest overall evaluated cost to the Government for both the multiyear and the first contract year acquisitions, and (b) comparison of the cost of buying the total requirement under a multiyear acquisition with the cost of buying the total requirement in successive independent acquisitions.
 - (2) To determine the lowest evaluated unit price, the Contracting Officer shall compare the lowest evaluated offer on the first program year alternative against the lowest evaluated offer on the multiyear alternative as follows:
 - (a) Multiply the evaluated unit price for each item of the lowest evaluated offer on the first program year alternative by the total number of units of that item required by the multiyear alternative.
 - (b) Add the total amount for all the items to the dollar amount of any administrative costs identified in the solicitation.
 - (c) Compare this result against the total evaluated price of the lowest offer on the multiyear alternative.
 - (d) Where the multiyear acquisition is being computed on a basis other than price alone, the Contracting Officer shall conduct the evaluation based on the evaluation factors contained in the solicitation.
 - (e) The evaluation procedures contained in this paragraph may be modified if necessary to meet the unique circumstances of a particular acquisition.
- k. Options.** Benefits may accrue by including options in a multi-year contract. In that event, contracting officers must follow the requirements of [2.2.7](#). Options should not include charges for plant and equipment already amortized, or other fixed charges which were included in the basic contract. The total duration of a multi-year contract shall not exceed five years.
- l. Contract clauses**
The CO will include the following clauses in solicitations and contracts for multi-year contracts unless the prescription indicates otherwise:
- (1) [Clause 4-150](#), “Cancellation Under Multi-year Contracts”;
 - (2) [Clause 4-55](#), “Economic Price Adjustment - Standard Products” (applicable to fixed price multi-year contracts);
 - (3) [Clause 3-175](#), “Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multi-Year and Option Contracts)” (applicable 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, as amended”);
 - (4) [Provision 4-155](#), “Evaluation of Price Proposal – Multi-year Contract”;
 - (5) [Clause 4-160](#), “Cancellation Period and Ceiling”;
 - (6) [Provision 4-165](#), “Price Proposal Instruction – Multi-year Contract.”

OFFER ANALYSIS

Part 4.2. Technical Analysis

- 4.2.1. Technical Analysis** Technical analysis must be performed as necessary to assist in price and/or cost analysis. The CO will rely on the technical expertise of the requesting activity’s designated expert(s) or other appropriate advisors. Technical analysis of offers may range from evaluating technical offers in accordance with evaluation factors

specified in the solicitation (competitive offers) to extensive analysis of materials, labor hours and labor mix, special tooling and facilities, and other factors.

Part 4.3. Price Evaluation

4.3.1. General This section describes procedures for evaluating initial prices, subcontract prices, and pricing modifications. COs are responsible for ensuring that prices are fair and reasonable. To carry out this responsibility, COs must:

- (1) evaluate proposed prices using the methods of price or cost analysis described in this chapter; and
- (2) price each contract separately and independently without considering:
 - (a) proposed price reductions under other contracts; or
 - (b) losses or profits on other contracts.

4.3.2. Offer Analysis The CO exercises sole responsibility for the final pricing decision with advice and assistance appropriately obtained in accordance with the complexity and dollar value of the offer to be analyzed. As circumstances warrant, the CO must obtain and evaluate the advice of specialists, including, but not limited to, specialists in contracting, finance, law, audit, quality assurance, engineering, and pricing. The team effort involved in the analysis must be coordinated by the CO. When complex problems involving significant matters will be addressed, the CO must have appropriate specialists in attendance for advice during the negotiations. The CO may assign responsibility to a negotiator or price analyst for:

- (1) determining the necessary extent of specialists' advice;
- (2) evaluating the specialists' advice;
- (3) coordinating a team of experts;
- (4) consolidating pricing data;
- (5) developing a prenegotiation objective; and
- (6) conducting negotiations.

4.3.3. Adequate Price Competition

a. Price competition is adequate when:

- (1) at least three offers are solicited;
- (2) two or more independent and responsible offerors submit priced offers meeting the solicitation's requirements; and
- (3) the solicitation identifies price as an evaluation factor for award.

b. If price competition exists, it is presumed as adequate unless:

- (1) the solicitation is made under conditions that unreasonably deny one or more known and qualified offerors an opportunity to compete;
- (2) the low offeror has such a decided advantage that it is practically immune from competition; or
- (3) the CO determines that the lowest price is not fair and reasonable.

4.4. Price Analysis

4.4.1. Price Analysis

- a.** Price analysis (defined in [3.8.4.](#)), rather than cost analysis (defined in [3.8.5.](#)), is the preferred method of evaluating and negotiating the competitive pricing for firm fixed price contracts, the unit prices of many indefinite delivery contracts, the burdened hourly rates contained in labor hour and time and material contracts, and other contract instruments where prices can be compared to prices for the same or similar products or services sold in substantial quantities in the same time frame elsewhere in the market place. It is a method of determining that the overall price is fair and reasonable without a detailed analysis of its cost and profit components.
- b.** The CO is responsible for selecting and using appropriate price analysis techniques to ensure a fair and reasonable price. One or more of the following techniques may be used to perform price analysis:

 - (1) comparison of proposed prices received from two or more offerors in response to the solicitation;
 - (2) comparison of prior proposed prices with current proposed prices for the same or similar end items in comparable quantities;
 - (3) compare with similar products or services purchased previously;
 - (4) compare with similar products or services purchased at other federal agencies;
 - (5) application of estimating metrics (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies which may warrant additional pricing inquiry;
 - (6) comparison with competitive published catalogs or price lists, published market prices or commodities, similar indices, and discount or rebate arrangements;
 - (7) comparison of proposed prices with independent judiciary estimates; or
 - (8) ascertaining that the price is set by law or regulation.
- c.** At a minimum, whenever adequate price competition has been obtained, the CO will compare the proposed prices with the independently developed government estimate (see [2.1.3.\(3\)\(d\)](#)). Comparison of competed prices will ordinarily suffice to meet price analysis requirements.

4.5. Cost Analysis

4.5.1. Cost Analysis

- a.** Cost analysis must be performed when it is necessary to examine individual cost elements, such as labor or material prices, to determine the reasonableness of price. Cost analysis and requests for supporting data must be limited only to those cost elements that the CO decides need analysis.
- b.** Cost analysis involves the following techniques and procedures as appropriate:

 - (1) Verification and evaluation of individual cost elements, including --
 - (a) the necessity for, and reasonableness of, proposed costs, including allowances for contingencies;
 - (b) projection of the offeror's cost trends, on the basis of current and historical cost or pricing data;
 - (c) a technical appraisal of the estimated labor, material, tooling, and facilities requirements and of the reasonableness of scrap and spoilage factors; and
 - (d) the application of audited or negotiated indirect cost rates and labor rates.

- (2) Evaluating the effect of the offeror's current practices on future costs. In conducting this evaluation, the CO must ensure that the effects of inefficient or uneconomical past practices are not projected into the future. In pricing production of recently developed, complex equipment, the CO must make a trend analysis of basic labor and materials even in periods of relative price stability.
- (3) Comparison of costs proposed by the offeror for individual cost elements with:
 - (a) actual costs previously incurred by the same offeror;
 - (b) previous cost estimates from the offeror or from other offerors for the same or similar items;
 - (c) independent judiciary cost estimates; and
 - (d) forecasts of planned expenditures;
- (4) Analysis of contractor make-or-buy decisions in evaluating subcontract costs;
- (5) Verification that the offeror's cost submissions are in accordance with the cost principles in [4.5.](#);
- (6) Review to determine whether any cost or pricing data necessary to make the contractor's offer accurate, complete, and current have not been either submitted or identified in writing by the contractor. If there is such data, the CO must attempt to obtain it. If it cannot be obtained, satisfactory allowance for the incomplete data must be made in negotiations; and
- (7) Analysis of any applicable Defense Contract Audit Agency (DCAA) audits for the contractor.

4.5.2. Cost or Pricing Data

- a. *Exceptions* The CO may determine that cost or pricing data is not required if:
 - (1) the price reasonableness can be determined by adequate competitive offers;
 - (2) prices are set by law or regulation;
 - (3) the prices are based on commercial catalogs or price lists; or
 - (4) a waiver is granted by the CO.
- b. Cost or pricing data may be obtained before the award of any competitive contract or contract modification when the CO requires it for the analysis and determination of price reasonableness. Only the data needed to make that determination will be obtained. If the price reasonableness can be determined due to adequate price competition, the fact that prices are set by law or regulation or when a commercial item is being acquired, then it is not necessary to request cost or pricing data. When the CO requires the contractor to provide cost or pricing data, then the CO will send the contractor [Exhibit 4-1](#), Certificate of Current Cost or Pricing Data and [Table 4-2](#), Instructions for Submitting Cost/Price Offers When Cost or Pricing Data is Required (see [Exhibit 4-2](#)). When warranted, and before an agreement on price can be reached, the CO must require the contractor to update the data as of the latest dates for which information is reasonably available.
- c. The CO must require offerors or contractors to obtain cost or pricing data for proposed subcontracts or subcontract modifications only when necessary to determine the reasonableness of the proposed subcontract price, including negotiated final pricing actions (such as termination settlements and total final price agreements for fixed-price incentive contracts).
- d. The offeror or contractor is responsible to submit to the CO, as part of its cost or pricing data, its price analysis or cost analysis on subcontract offers, including the results of its

subcontract price reviews and analysis. In unusual circumstances, to ensure that adequate analysis is performed, the CO may require the offeror or contractor to submit, along with its own cost or pricing data, the subcontract cost or pricing data obtained. This in no way diminishes the offeror's or contractor's responsibility to perform subcontract cost or price analysis and negotiate fair and reasonable subcontract prices.

- e. If cost or pricing data is required by the CO to determine fair and reasonable pricing and the offeror or contractor refuses to provide necessary data in spite of repeated requests, the CO must withhold the award or contract modification and refer the matter to the PE. The ultimate disposition of the matter must be documented.

4.5.3 . Profit

- a. Except for architect-engineer contracts (see [5.3.](#)), it is judiciary policy that predetermined percentages or limitations on profit or fee must not be used. However, for cost-plus-fixed-fee contracts, the fee must not exceed 10 percent of the contract's estimated cost, excluding fee.
- b. When adequate price competition is obtained or price analysis techniques are sufficient to ensure a fair and reasonable price, then analysis of profit is not appropriate.
- c. When cost analysis is required for price negotiations, profit must be analyzed as well. Profit must be analyzed with the objective of rewarding contractors for:
 - (1) financial and other risks they assume;
 - (2) resources they use; and
 - (3) organization, performance, and management capabilities they employ.
- d. Due consideration must be given to:
 - (1) the complexity of materials requirements;
 - (2) the extent of subcontracting;
 - (3) the ratio of indirect costs to direct costs;
 - (4) the contribution of capital investments to contract performance; and
 - (5) weighted guidelines profit analysis.
- e. If the pricing action involves a contract change or modification that requires essentially the same type and mix of work as the basic contract, and is of relatively small dollar value compared to the total contract amount, then the profit or fee may be established on the basis of the basic contract's profit or fee rate.

4.5.4. Defective Cost or Pricing Data

- a. If, before a price agreement is reached, the CO learns that any of the cost or pricing data required to be submitted are inaccurate, incomplete, or noncurrent, the CO must immediately bring the matter to the attention of the offeror or contractor, regardless of whether the defective data increases or decreases the price. The CO must then negotiate using any new data submitted or make allowance for the incorrect data and document the file accordingly.
- b. If, after award, the CO learns or suspects that the data furnished was not accurate, complete, and current, the CO must obtain an audit to evaluate the data. The CO may not reprice the contract solely because the profit was greater than forecast or because some contingency specified in the submission failed to materialize.

- c. For each advisory audit received based on a postaward review which indicates defective pricing, the CO must determine if the data submitted was defective and relied upon. Before making such a determination, the CO must give the contractor an opportunity to support the accuracy, completeness, and currency of data in question. If the CO relied on the data, and the results of any contract action taken, the CO must prepare a memorandum indicating the CO's determination, as to whether the submitted data was accurate, complete, and current as of the date of final agreement on price. The CO must send one copy of this memorandum to the contractor.
- d. If, after award, the requested and submitted cost or pricing data is found to be inaccurate, incomplete, or noncurrent as of the date of final agreement on price, the judiciary may be entitled to a price adjustment, including profit or fee, of any significant amount by which the price was increased because of the defective data. This entitlement is ensured by including in the contract the appropriate clause prescribed in [4.5.5](#) below. The appropriate clause gives the judiciary the right to a price adjustment for defects in cost or pricing data submitted by the contractor, a prospective contractor, or an actual subcontractor. In arriving at a price adjustment under the clause, the CO must consider:
 - (1) the time by which the cost or pricing data became reasonably available to the contractor;
 - (2) the extent to which the judiciary relied upon the defective data; and
 - (3) any understated cost or pricing data submitted in support of price negotiations, up to the amount of the judiciary claim for overstated pricing data arising out of the same pricing action. This includes the initial pricing of the same contract or the pricing of the same modification order. Such offsets need not be in the same cost groupings (such as materials, direct labor, or indirect costs).
- e. If both contractor and subcontractor submitted cost or pricing data, the judiciary has the right, under the clauses prescribed in [4.5.5](#) below, to reduce the prime contract price if it was significantly increased because a subcontractor submitted defective data. This right applies whether the data supported subcontract cost estimates or supported firm agreements between subcontractor and contractor.
- f. If the audit discloses defective subcontractor cost or pricing data, the information necessary to support a reduction in prime contract and subcontract prices may be available only from within the judiciary. To the extent necessary to secure a prime contract price reduction, the CO must make this information available to the prime contractor or appropriate subcontractor upon request. If release of the information would compromise judiciary security or disclose trade secrets or confidential business information, the CO may release it only under the conditions that will protect it from improper disclosure. Information made available under this subparagraph must be limited to that used as the basis for the prime contract price reduction. In order to afford an opportunity for corrective action, the CO must give the prime contractor reasonable advance notice before determining to reduce the prime contract price.
- g. When a prime contractor includes defective subcontract data in arriving at the price, but later awards the subcontract to a lower priced subcontractor (or does not subcontract for the work), any adjustment in the prime contract price due to defective subcontract data is limited to the difference (plus applicable indirect cost and profit markups) between (1) the subcontract price used for pricing the prime contract, and (2) either the actual subcontract price or the actual cost to the contractor, if not subcontracted, provided the data on which the actual subcontract price is based are not themselves defective.

- h.** Under cost-reimbursement contracts and fixed-price incentive contracts, payments to subcontractors that are higher than they would be had there been no defective subcontractor cost or pricing data will be the basis for disallowance or nonrecognition of costs under the clauses prescribed in 4.5.5. below.

4.5.5. Clauses Include the following provisions and clauses in solicitations and contracts as applicable:

- (1) [Clause 4-95](#), “Price Reduction for Defective Cost or Pricing Data” is included when cost or pricing data will be required from the contractor or subcontractor for the negotiation of a contract award.
- (2) [Clause 4-100](#), “Price Reduction for Defective Cost or Pricing Data - Modification” is included when cost or pricing data is not required for the contract award, but may be required for the negotiation of a modification of a contract and [Clause 4-125](#) “Cost Accounting Standards” has not been included.
- (3) [Clause 4-105](#), “Integrity of Unit Prices” is included in solicitations and contracts estimated to exceed the judiciary’s small purchase threshold, except when:
 - (a) the contract is for architect-engineer services;
 - (b) the contract is for utility services;
 - (c) the contract is for services and no products are to be provided;
 - (d) the contract is for a commercial product; or
 - (e) the contract is for petroleum products.
- (4) [Provision 4-110](#), “Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data” is included in all solicitations when it is reasonably certain that cost or pricing data or information other than cost or pricing data will be required. The provision with Alternate I will be used if cost or pricing data are not expected to be required, but it is reasonably certain that information other than cost or pricing data will be required.
- (5) [Clause 4-115](#), “Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data - Modification” is included in all solicitations and contracts when it is reasonably certain that cost or pricing data or information other than cost or pricing data will be required for negotiation of modifications to a contract. The clause with Alternate I will be used if cost or pricing data are not expected to be required, but it is reasonably certain that information other than cost or pricing data will be required for the negotiation of modifications.

Part 4.6. Cost Principles

4.6.1. General This part contains the principles for determining or negotiating the allowability of costs. When the CO determines that price analysis is not sufficient, then the CO will make a written determination of the allowable costs under new contract offers. These principles apply to the:

- (1) determination of allowable costs under cost-reimbursement contracts and subcontracts;
- (2) determination or negotiation of cost or price when required by a contract clause;
- (3) pricing or estimation of costs in change orders or contract modifications; and
- (4) settlement of contract costs for contracts which have been terminated.

4.6.2. Contract Costs

- a. **Composition of Total Cost** The total cost of a contract is the sum of the allowable direct and indirect costs allocable to the contract, incurred or to be incurred, less any allowable credits.
- b. A contractor may use any consistently applied, generally accepted method of determining or estimating costs which is equitable under the circumstances.
- c. Whenever a contractor is required by the judiciary to submit a cost or price offer, the contractor must:
 - (1) estimate costs in a manner consistent with generally accepted cost accounting principles;
 - (2) consistently apply the cost accounting principles to its pricing;
 - (3) be in accordance with its DCAA audited rates; and
 - (4) be consistent with the provisions of this chapter.
- d. **Direct Cost** is any cost that can be specifically identified directly with delivery or performance of a specific contract. Direct costs are segregated from other costs, recorded into separate accounts, and are identified as costs for a particular contract. They are not mingled with costs associated with other contracts, nor with indirect, administrative or management costs of the business.
- e. **Indirect Costs**
 - (1) Indirect costs are those costs that, because of their incurrence for common or joint contractor objectives, are neither readily segregable nor subject to treatment as direct costs. Indirect costs may be allocated to contracts on the basis of necessity to the overall operation of the contractor's business.
 - (2) An indirect cost must not be allocated to a judiciary contract if:
 - (a) other costs incurred for the same purpose, in like circumstances, have been included as a direct cost of that contract ; or
 - (b) the costs have been included as any final cost objective not related to the judiciary contract.
 - (3) Indirect costs must be accumulated into logical groupings known as “indirect cost pools.”
 - (4) The contractor’s method of allocating indirect costs must be in accordance with generally accepted accounting principles which are consistently applied in accordance with the provisions of this chapter.
 - (5) The CO must examine the contractor’s method of allocating indirect costs when any of the following apply:
 - (a) a substantial difference exists between the cost patterns of work performed under the contract and the contractor’s other work;
 - (b) a significant change occurs in:
 - 1) the nature of the contractor’s business;
 - 2) extent of subcontracting;
 - 3) fixed asset improvement programs;
 - 4) inventories;
 - 5) volume of sales and production;
 - 6) manufacturing processes;
 - 7) products;
 - 8) other relevant circumstances; or

- (c) indirect cost groups developed for a contractor's primary location are applied to off-site locations. Then separate cost groups for costs allocable to off-site locations may be necessary to distribute the contractor's costs on the basis of the benefits accruing to the appropriate cost objective.
- (6) The CO must consider the base period for indirect cost allocation as the one in which the costs are incurred and accumulated for distribution to work performed in that period.
- f. Credits** A credit is the applicable portion of any income, rebate, allowance, or other credit relating to any allowable cost and received by or accruing to the contractor.
- g. Provisions and Clauses** Include the following provisions and clauses as indicated. These clauses are not applicable to awards to small businesses.
 - (1) [Provision 4-120](#), "Cost Accounting Standards Notices and Certification" is included in solicitations for negotiated contracts when the CO anticipates requiring certified cost and pricing data. The offeror will appropriately fill in the provision's blank spaces.
 - (2) [Clause 4-125](#), "Cost Accounting Standards" is included in negotiated contracts when the CO requires certified cost and pricing data.
 - (3) [Clause 4-130](#), "Disclosure and Consistency of Cost Accounting Practices" is included in negotiated contracts when the CO requires certified cost and pricing data.
 - (4) [Clause 4-135](#), "Cost Accounting Standards - Educational Institution" is included in all negotiated solicitations and contracts when an award to an educational institution is contemplated and when the CO requires certified cost and pricing data.
 - (5) The CO must insert [Clause 4-140](#), "Predetermined Indirect Cost Rates" in solicitations and contracts when a cost-reimbursement contract with an educational institution is contemplated, predetermined indirect cost rates are to be used, and when the CO requires certified cost and pricing data.
 - (6) [Clause 4-145](#), "Administration of Cost Accounting Standards" is included in all negotiated solicitations and contracts when *JP3* Clauses [4-125](#), [4-130](#), and/or [4-135](#) are used.

4.7. Cost Allowability

4.7.1. Determining Cost Allowability

- a.** When determining whether an incurred cost is allowable, the CO must consider the following factors:
 - (1) reasonableness;
 - (2) allocability;
 - (3) consistency with generally accepted accounting principles and practices appropriate to the particular circumstances;
 - (4) consistency with the requirements and terms of the contract; and
 - (5) consistency with the limitations set forth in this chapter.
- b.** If a contractor's accounting practices are inconsistent with this chapter, the CO must not allow costs resulting from those practices in excess of the amount that would have resulted from using practices consistent with this chapter.

4.7.2. Determining Reasonableness

- a. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business.
- b. In determining the reasonableness of a specific cost, matters to consider include:
 - (1) whether it is the type of cost generally recognized as ordinary and necessary for the conduct of the contractor's business or contract performance;
 - (2) the restraints or requirements imposed by such factors as:
 - (a) generally accepted sound business practices;
 - (b) arm's-length bargaining; and
 - (c) federal and state laws and regulations;
 - (3) the action that a prudent business person would take under the circumstances considering responsibilities to:
 - (a) the owners of the business;
 - (b) employees;
 - (c) customers;
 - (d) the judiciary; and
 - (e) the public at large;
 - (4) any deviations from the established practices of the contractor that may unjustifiably increase the contract costs; and
 - (5) any other relevant factors.

4.7.3. Determining Allocability

- a. An incurred cost is allocable to a contract if it:
 - (1) is incurred specifically for performance of the contract;
 - (2) benefits both the contract and other work, and can be distributed to them in reasonable proportion to the benefits received; or
 - (3) is necessary to the overall operation of the business, even though a direct relationship to the contract cannot be shown.
- b. **Advance Agreements**
 - (1) Because the reasonableness or allocability of costs may be difficult to determine in some cases, the contracting parties must reach advance agreement on the treatment of special or unusual costs to avoid later disputes and disallowances.
 - (2) Advance agreements may be negotiated either before or during a contract but must be negotiated before contractor incurrence of the costs involved. The agreements must be in writing, signed by both parties, and incorporated into applicable current and future contracts. An advance agreement must contain a statement of its applicability and duration.
 - (3) Advance agreements may be negotiated with a particular contractor for a single contract, a group of contracts, or all the contracts of one or more purchasing activities.
 - (4) Advance agreements may not provide for treatment of costs inconsistent with this chapter.
 - (5) The absence of an advance agreement on any cost will not, in itself, affect the reasonableness or allocability of that cost.

- (6) Examples of costs for which advance agreements may be particularly important are:
- (a) compensation for personal service, including but not limited to, allowances for off-site pay, incentive pay, relocation allowances, hardship pay, and cost-of-living differentials;
 - (b) use charges for fully depreciated assets;
 - (c) deferred maintenance costs;
 - (d) pre-contract costs;
 - (e) independent research and development and bid and proposal costs;
 - (f) royalties and other costs for use of patents;
 - (g) selling and distribution costs;
 - (h) travel and relocation costs;
 - (i) costs of idle facilities and idle capacity;
 - (j) costs of information technology;
 - (k) severance pay to employees on support services contracts;
 - (l) professional services (for example, legal, accounting, and engineering);
 - (m) general administrative costs (such as corporate, division, or branch allocations attributable to the general management, supervision, and conduct of the contractor's business as a whole, particularly in construction, job-site, architect-engineer, and facilities contracts);
 - (n) costs of construction plant and equipment; and
 - (o) costs of public relations and advertising.

4.7.4. Selected Costs

This section discusses certain specific types of costs in terms of allowability. It does not cover every element of cost, nor does the omission of a specific type of cost from this section imply that it is either allowable or unallowable. A determination of allowability must be based upon the principles and standards of this Chapter and treatment of similar or related items.

- a. Public Relations and Advertising Costs** Incurred public relations and advertising costs are unallowable except for costs of:
 - (1) responding to inquiries concerning company policies and activities;
 - (2) essential communication with the public, press, stockholders, creditors, and customers, including communication on matters of public concern;
 - (3) participation in community service activities, such as blood bank drives, charity drives, and disaster assistance (but not contribution to civil defense funds and projects);
 - (4) recruitment of personnel needed for contract performance;
 - (5) acquiring scarce items for contract performance; and
 - (6) disposing of scrap or surplus materials acquired for contract performance.
- b. Bad Debts** Bad debts costs, including actual or estimated losses arising from uncollectible accounts receivable due from customers and other claims, and any directly associated costs such as collection costs and legal costs are not allowable.
- c. Contributions or Donations** Contractor contributions or donations, including cash, property, and services, except as provided in [4.7.4.a.\(3\)](#) above are not allowable.

- d. **Dividends** Dividend provisions or payments and distribution of profits are not allowable when part of an employee's compensation if that compensation is based on changes in stock prices or corporate ownership.
- e. **Entertainment Costs** Contractor costs of amusement, diversion, social activities, and directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities are not allowable. Costs of membership in social, dining, or country clubs or other organizations having the same purposes are not allowable, regardless of whether or not the cost is reported as taxable income to the employees.
- f. **Fines and Penalties** Contractor costs of fines and penalties resulting from violations of, or failure of, the contractor to comply with, federal, state, local, or foreign laws and regulations are not allowable, except when incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the CO.
- g. **Life Insurance** Contractor costs for insurance on the lives of officers, partners, or proprietors are not allowable, unless the insurance represents additional compensation.
- h. **Interest and Other Financial Costs** Contractor interest costs on borrowings (however represented), bond discounts, costs of financing and refinancing capital, and the costs of preparing and issuing prospectuses and stock rights, are not allowable.
- i. **Lobbying Costs**
 - (1) Contractor costs associated with attempts to influence the outcome of any federal, state, or local election, referendum, initiative, or similar procedure through contributions, endorsements, publicity, or similar activities are not allowable.
 - (2) Costs associated with establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections are not allowable.
 - (3) Costs associated with any attempt to influence (i) the introduction of federal or state legislation, or (ii) the enactment or modification of any pending federal or state legislation through communication with any member or employee of the Congress or state legislature (including efforts to influence state or local officials to engage in similar lobbying activity), or with any judiciary official or employee in connection with a decision to sign or veto enrolled legislation are not allowable.
 - (4) Costs associated with any attempt to influence the introduction of federal or state legislation, or the enactment or modification of pending federal or state legislation by preparing, distributing, or using publicity or propaganda, or by urging members of the general public to contribute to or participate in any mass demonstration, march, rally, fund-raising drive, lobbying campaign, or letter-writing or telephone campaign are not allowable.
 - (5) Costs associated with legislation liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of, or knowledge of preparation, for an effort to engage in activities for which the unallowable costs are not allowable.
 - (6) The cost of providing a technical and factual presentation of information on a topic directly related to the performance of a contract through hearing testimony, statements, or letters to the Congress or state legislature, or subdivision, member, or cognizant staff member thereof, in response to a documented request

- (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the recipient member, legislative body or subdivision, or a cognizant staff member thereof are allowable.
- (7) The costs for transportation, lodging or meals in connection with the activities authorized under 4.7.4.i. must not be allowable unless incurred for the purpose of offering testimony at a regularly scheduled congressional hearing in response to a written request for such presentation made by the chair or ranking minority member of the committee or subcommittee conducting such hearing.
 - (8) Any lobbying to influence state legislation in order to directly reduce contract cost, or to avoid material impairment of the contractor's authority to perform the contract are allowable.
 - (9) Any activity specifically authorized by statute to be undertaken with funds from the contract are allowable.
- j. Losses on Other Contracts** An excess of costs over income under any other contract (including the contractor's contributed portion under cost-sharing contracts) are not allowable.
- k. Taxes** The following costs are not allowable:
- (1) federal income and excess profits taxes;
 - (2) taxes in connection with financing, refinancing, refunding operations, or reorganizations;
 - (3) taxes from which exemptions are available to the contractor directly, or available to the contractor based on an exemption afforded the judiciary, except when the CO determines that the administrative burden incident to obtaining the exemption outweighs the corresponding benefits accruing to the judiciary. The term "exemption" means freedom from taxation in whole or in part and includes a tax abatement or reduction resulting from mode of assessment, method of calculation, or otherwise;
 - (4) special assessments on land that represent capital improvements;
 - (5) taxes (including excises) on real or personal property, or on the value, use, possession or sale thereof, which is used solely in connection with work other than on judiciary contracts;
 - (6) taxes on accumulated funding deficiencies of, or prohibited transactions involving, employee deferred compensation plans; and
 - (7) income tax accruals designed to account for the tax effect of differences between taxable income and pretax income as reflected by the books of account and financial statements.
- l. Defense of Fraud Proceedings** Contractor costs incurred in connection with defense of any of the following are not allowable:
- (1) criminal or civil investigation, grand jury proceeding, or prosecution;
 - (2) civil litigation; or
 - (3) administrative proceedings such as suspension or debarment, or any combination of the foregoing, brought by the judiciary against a contractor, its agents or employees, are unallowable when the charges that are the subject of the investigation, proceedings, or prosecution involve fraud or similar criminal offenses (including filing of a false certification) on the part of the contractor, its agents or employees, and result in conviction (including conviction entered on a plea of *nolo contendere*), judgment against the contractor, its agents or employees, or decision to debar or suspend, or are resolved by consent or

compromise. When the charges of fraud are resolved by consent or compromise, the parties may agree on the extent of allowability of such costs as a part of such resolution.

- m. Accounting for Unallowable Costs** The CO must identify and exclude from each billing, claim, and offer those costs that are expressly unallowable under this chapter or as mutually agreed to be unallowable under an advance cost agreement (see [4.7.3.b.](#)).
- (1) When costs are identified as unallowable or mutually agreed to be unallowable, all directly associated costs are also unallowable.
 - (2) Costs and directly associated costs specifically designated as unallowable as a result of a written decision by a CO must be identified when included in or used in computing any billing, claim, or offer applicable to a judiciary contract.
 - (3) For those costs which have been identified as unallowable, the CO must require records as support for claims, billings, and offers. These must be adequate to establish and maintain visibility of those costs and directly associated costs.
 - (4) The CO must identify unallowable costs involved in determining rates used for standard costs, indirect cost offers, or billings at the time rates are proposed, established, revised, or adjusted.

4.7.5. Termination Costs

- a. General** Contract terminations generally give rise to the occurrence of costs or the need for special treatment of costs that would not have arisen, if the contract had not been terminated. This part describes the cost principles peculiar to termination situations to be used in conjunction with the other cost principles.
- b. Common Items** The costs of items reasonably usable on the contractor's other work are not allowable unless the contractor submits evidence that the items could not be retained at cost without sustaining a loss. The CO must consider the contractor's plans and orders for current and planned production when determining if items can reasonably be used on other work of the contractor.
- c. Costs Continuing After Termination** Costs that cannot be discontinued immediately after the effective date of termination are generally allowable. However, any costs continuing after the effective date of the termination because of the negligent or willful failure of the contractor to discontinue them are unallowable.
- d. Start-Up Costs** Reasonable start-up and preparatory costs are generally allowable. When included in the settlement offer as a direct charge, they must not also be included in overhead. Start-up costs for one contract must not be allocated to others.
- e. Loss of Useful Value** Loss of useful value of special tooling and special machinery and equipment is generally allowable provided the:
- (1) special tooling or special machinery and equipment is not reasonably capable of use in the other work of the contractor;
 - (2) judiciary's interest is protected by transfer of title or by other means deemed appropriate by the CO; and
 - (3) loss of useful value for any one terminated contract is limited to that portion of the equipment cost which bears the same ratio to the total cost as the terminated portion of the contract bears to the entire terminated contract and to other judiciary contracts for which the special tooling or special machinery and equipment were acquired.

- f. Rental Under Unexpired Leases** Rental costs under unexpired leases, less the residual value of such leases, are generally allowable when shown to have been reasonably necessary for the performance of the terminated contract when the:
- (1) amount of rental claimed does not exceed the reasonable use value of the property leased for the period of the contract and such further period as may be reasonable; and
 - (2) the contractor makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease.
- g. Alterations of Leased Property** The cost of alterations and reasonable restorations required by the lease may be allowed when the alterations are necessary for performing the contract.
- h. Settlement Expenses** Settlement expenses, including the following are generally allowable:
- (1) accounting, legal, clerical, and similar costs reasonably necessary for the:
 - (a) preparation and presentation, including supporting data, of settlement claims to the CO; and
 - (b) termination and settlement of subcontracts.
 - (2) reasonable costs for storage, transportation, protection and disposition of property acquired or produced for the contract;
 - (3) indirect costs related to salary and wages incurred as settlement expenses under (1) and (2) above. Normally, such indirect costs must be limited to payroll taxes, fringe benefits, occupancy costs, and immediate supervision costs.
- Note:** If settlement expenses are significant, a cost account or work order must be established to separately identify and accumulate them.
- i. Subcontractor Claims** Subcontractor claims, including the allocable portion of the claims common to the contract and to other work of the contractor are generally allowable. An appropriate share of the contractor's indirect expenses may be allocated to the amount of settlements with subcontractors, provided that the amount allocated is reasonably proportionate to the relative benefits received and is otherwise consistent with the principles of this chapter. The indirect expense so allocated must exclude the same and similar costs claimed directly or indirectly as settlement expenses.

Exhibit 4-1
Certificate of Current Cost or Pricing Data.

When cost or pricing data are required, the contracting officer must require the contractor to execute a Certificate of Current Cost or Pricing Data, using the format in this paragraph, and must include the executed certificate in the contract file.

Certificate of Current Cost or Pricing Data

This is to certify that, to the best of my knowledge and belief, the cost or pricing data being submitted, either actually or by specific identification in writing, to the contracting officer or to the contracting officer's representative in support of the offer (as identified below) are accurate, complete, and current as of the date of execution completed below. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the government that are part of the offer.

Document Number _____

(Identify the offer, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., RFP No.).)

Firm Name _____

Signature _____

Printed Name of Signer _____

Title of Signer _____

Date of execution _____

(Insert the day, month, and year when price negotiations were concluded, price agreement was reached, and signing was effected or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.)

(end of certificate)

Exhibit 4-2
Table 4-2 - Instructions for Submitting Cost/Price Offers
When Cost or Pricing Data Is Required

This document provides instructions for preparing a contract pricing offer when cost or pricing data are required.

Note 1 There is a clear distinction between submitting cost or pricing data and merely making available books, records, and other documents without identification. The requirement for submission of cost or pricing data is met when all accurate cost or pricing data reasonably available to the offeror have been submitted, either actually or by specific identification, to the contracting officer or an authorized representative. As later information comes into your possession, it should be submitted promptly to the contracting officer in a manner that clearly shows how the information relates to the offeror's price offer. The requirement for submission of cost or pricing data continues up to the time of agreement on price, or an earlier date agreed upon between the parties if applicable.

Note 2 By submitting your offer, you grant the contracting officer or an authorized representative the right to examine records that formed the basis for the pricing offer. That examination can take place at any time before award. It may include those books, records, documents, and other types of factual information (regardless of form or whether the information is specifically referenced or included in the offer as the basis for pricing) that will permit an adequate evaluation of the proposed price.

I. General Instructions

- A. You must provide the following information on the first page of your pricing offer:
- (1) solicitation, contract, and/or modification number;
 - (2) name and address of offeror;
 - (3) name and telephone number of point of contact;
 - (4) name of cognizant contract administration office (if available);
 - (5) type of contract action (that is, new contract, change order, price revision/redetermination, letter contract, unpriced order, or other);
 - (6) proposed cost; profit or fee; and total;
 - (7) whether you will require the use of judiciary property in the performance of the contract, and, if so, what property;
 - (8) whether your organization is subject to cost accounting standards; whether your organization has submitted a CASB Disclosure Statement, and if it has been determined adequate; whether you have been notified that you are or may be in noncompliance with your Disclosure Statement or CAS (other than a noncompliance that the cognizant federal agency official has determined to have an immaterial cost impact), and, if yes, an explanation; whether any aspect of this offer is inconsistent with your disclosed practices or applicable CAS, and, if so, an explanation; and whether the offer is consistent with your established estimating and accounting principles and procedures and, if not, an explanation;
 - (9) the following statement:
 "This offer reflects our estimates and/or actual costs as of this date and conforms with the instructions provided by the contracting officer and in Table 4-2. By submitting this offer, we grant the contracting officer and authorized representative(s) the right to examine, at any time before award, those records, which include books, documents, accounting procedures and practices, and other data, regardless of type and form or whether such supporting information is specifically referenced or included in the offer as the basis for pricing, that will permit an adequate evaluation of the proposed price."
 - (10) date of submission; and
 - (11) name, title, and signature of authorized representative.
- B. In submitting your offer, you must include an index, appropriately referenced, of all the cost or pricing data and information accompanying or identified in the offer. In addition, you must annotate any future additions and/or revisions, up to the date of agreement on price, or an earlier date agreed upon by the parties, on a supplemental index.
- C. As part of the specific information required, you must submit, with your offer, cost or pricing data (that is, data that are verifiable and factual). You must clearly identify on your cover sheet that cost or pricing data are included as part of the offer. In addition, you must submit with your offer any information reasonably required to explain your estimating process, including:

- (1) The judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data; and
 - (2) The nature and amount of any contingencies included in the proposed price.
- D. You must show the relationship between contract line item prices and the total contract price. You must attach cost-element breakdowns for each proposed line item, using the appropriate format prescribed in the "Formats for Submission of Line Item Summaries" section of this table. You must furnish supporting breakdowns for each cost element, consistent with your cost accounting system.
- E. When more than one contract line item is proposed, you must also provide summary total amounts covering all line items for each element of cost.
- F. Whenever you have incurred costs for work performed before submission of a offer, you must identify those costs in your cost/price offer.
- G. If you have reached an agreement with government representatives on use of forward pricing rates/factors, identify the agreement, include a copy, and describe its nature.
- H. As soon as practicable after final agreement on price or an earlier date agreed to by the parties, but before the award resulting from the offer, you must, when requested by the contracting officer., submit *JP3 Exhibit 4-1* Certificate of Current Cost or Pricing Data.

II. Cost Elements

Depending on your system, you must provide breakdowns for the following basic cost elements, as applicable:

- A. *Materials and services* Provide a consolidated priced summary of individual material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.). Include raw materials, parts, components, assemblies, and services to be produced or performed by others. For all items proposed, identify the item and show the source, quantity, and price. Conduct price analyses of all subcontractor offers. Conduct cost analyses for all subcontracts when cost or pricing data are submitted by the subcontractor. Include these analyses as part of your own cost or pricing data submissions for subcontracts expected to exceed the appropriate threshold. Submit the subcontractor cost or pricing data as part of your own cost or pricing data as required in paragraph II.A.(2) of this table. These requirements also apply to all subcontractors if required to submit cost or pricing data.
- (1) *Adequate Price Competition* Provide data showing the degree of competition and the basis for establishing the source and reasonableness of price for those contracts (such as subcontracts, purchase orders, material order, etc.) priced on the basis of adequate price competition. For interorganizational transfers priced at other than the cost of comparable competitive commercial work of the division, subsidiary, or affiliate of the contractor, explain the pricing method.
 - (2) *All Other* Obtain cost or pricing data from prospective sources for those procurements (such as subcontracts, purchase orders, material order, etc.) and not otherwise exempt (i.e., adequate price competition, prices set by law or regulation, the prices are based on commercial catalogs or price lists, or waiver by the contracting officer). Also provide data showing the basis for establishing source and reasonableness of price. In addition, provide a summary of your cost analysis and a copy of cost or pricing data submitted by the prospective source in support of each subcontract, or purchase order that is \$10,000,000 or more, or more than 10 percent of the prime contractor's proposed price. The contracting officer may require you to submit cost or pricing data in support of offers in lower amounts. Subcontractor cost or pricing data must be accurate, complete and current as of the date of final price agreement, or an earlier date agreed upon by the parties, given on the prime contractor's Certificate of Current Cost or Pricing Data. The prime contractor is responsible for updating a prospective subcontractor's data. For standard commercial items fabricated by the offeror that are generally stocked in inventory, provide a separate cost breakdown, if priced based on cost. For interorganizational transfers priced at cost, provide a separate breakdown of cost elements. Analyze the cost or pricing data and submit the results of your analysis of the prospective source's offer. When submission of a prospective source's cost or pricing data is required as described in this paragraph, it must be included along with your own cost or pricing data submission. You must also submit any other cost or pricing data obtained from a subcontractor, either actually or by specific identification, along with the results of any analysis performed on that data.
- B. *Direct Labor* Provide a time-phased (e.g., monthly, quarterly, etc.) breakdown of labor hours, rates, and cost by appropriate category, and furnish bases for estimates.
- C. *Indirect Costs* Indicate how you have computed and applied your indirect costs, including cost

- breakdowns. Show trends and budgetary data to provide a basis for evaluating the reasonableness of proposed rates. Indicate the rates used and provide an appropriate explanation.
- D. *Other Costs* List all other costs not otherwise included in the categories described above (e.g., special tooling, travel, computer and consultant services, preservation, packaging and packing, spoilage and rework, and federal excise tax on finished articles) and provide bases for pricing.
 - E. *Royalties* If royalties exceed \$1,500, you must provide the following information on a separate page for each separate royalty or license fee:
 - (1) name and address of licensor;
 - (2) date of license agreement;
 - (3) patent numbers;
 - (4) patent application serial numbers, or other basis on which the royalty is payable;
 - (5) brief description (including any part or model numbers of each contract item or component on which the royalty is payable);
 - (6) percentage or dollar rate of royalty per unit;
 - (7) unit price of contract item;
 - (8) number of units;
 - (9) total dollar amount of royalties.
 - (10) If specifically requested by the contracting officer, a copy of the current license agreement and identification of applicable claims of specific patents.
 - F. *Facilities Capital Cost of Money* When you elect to claim facilities capital cost of money as an allowable cost, you must submit Form CASB-CMF and show the calculation of the proposed amount.

III. Formats for Submission of Line Item Summaries

A. <i>New Contracts (including letter contracts)</i>			
Cost Elements	Proposed Contract Estimate-Total Cost	Proposed Contract Estimate-Unit Cost	Reference
(1)	(2)	(3)	(4)
<u>Column</u>	<u>Instruction</u>		
(1)	Enter appropriate cost elements.		
(2)	Enter those necessary and reasonable costs that, in your judgment, will properly be incurred in efficient contract performance. When any of the costs in this column have already been incurred (e.g., under a letter contract), describe them on an attached supporting page. When pre-production or startup costs are significant, or when specifically requested to do so by the contracting officer, provide a full identification and explanation of them.		
(3)	Optional, unless required by the contracting officer.		
(4)	Identify the attachment in which the information supporting the specific cost element may be found.		
	(Attach separate pages as necessary.)		

B. Change Orders, Modifications, and Claims.						
Cost Elements	estimated cost of all work deleted	Cost of deleted work already performed	net cost to be deleted	cost of work added	net cost of change	reference
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Column		Instruction				
(1)		Enter appropriate cost elements.				
(2)		Include the current estimates of what the cost would have been to complete the deleted work not yet performed (not the original offer estimates), and the cost of deleted work already performed.				
(3)		Include the incurred cost of deleted work already performed, using actuals incurred if possible, or, if actuals are not available, estimates from your accounting records. Attach a detailed inventory of work, materials, parts, components, and hardware already purchased, manufactured, or performed and deleted by the change, indicating the cost and proposed disposition of each line item. Also, if you desire to retain these items or any portion of them, indicate the amount offered for them.				
(4)		Enter the net cost to be deleted, which is the estimated cost of all deleted work less the cost of deleted work already performed. Column (2) minus Column (3) equals Column (4).				
(5)		Enter your estimate for cost of work added by the change. When nonrecurring costs are significant, or when specifically requested to do so by the contracting officer, provide a full identification and explanation of them. When any of the costs in this column have already been incurred, describe them on an attached supporting schedule.				
(6)		Enter the net cost of change, which is the cost of work added, less the net cost to be deleted. Column (5) minus Column (4) equals Column (6). When this result is negative, place the amount in parentheses.				
(7)		Identify the attachment in which the information supporting the specific cost element may be found.				
		(Attach separate pages as necessary.)				
C. Price Revision/Redetermination						

Cutoff Date	Number of Units completed		Number of units to be completed	Contract Amount	Redetermination offer amount	difference	
(1)	(2)		(3)	(4)	(5)	(6)	
Cost Elements	incurred cost-pre-production	incurred cost-completed units	incurred cost-work in progress	total incurred cost	estimated cost to complete	estimated total cost	reference
(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
(Use as applicable)							
<u>Column</u>	<u>Instruction</u>						
(1)	Enter the cutoff date required by the contract, if applicable						
(2)	Enter the number of units completed during the period for which experienced costs of production are being submitted.						
(3)	Enter the number of units remaining to be completed under the contract.						
(4)	Enter the cumulative contract amount.						
(5)	Enter your redetermination offer amount.						
(6)	Enter the difference between the contract amount and the redetermination offer amount. When this result is negative, place the amount in parentheses. Column (4) minus Column (5) equals Column (6).						
(7)	Enter appropriate cost elements. When residual inventory exists, the final costs established under fixed-price-incentive and fixed-price-redeterminable arrangements should be net of the fair market value of such inventory. In support of subcontract costs, submit a listing of all subcontracts subject to repricing action, annotated as to their status.						
(8)	Enter all costs incurred under the contract before starting production and other nonrecurring costs (usually referred to as startup costs) from your books and records as of the cutoff date. These include such costs as pre-production engineering, special plant rearrangement, training program, and any identifiable nonrecurring costs such as initial rework, spoilage, pilot runs, etc. In the event the amounts are not segregated in or otherwise available from your records, enter in this column your best estimates. Explain the basis for each estimate and how the costs are charged on your accounting records (e.g., included in production costs as direct engineering labor, charged to manufacturing overhead). Also show how the costs would be allocated to the units at their various stages of contract completion.						
(9)	Enter in Column (9) the production costs from your books and records (exclusive of pre-production costs reported in Column (8)) of the units completed as of the cutoff date.						

(10)		Enter in Column (10) the costs of work in process as determined from your records or inventories at the cutoff date. When the amounts for work in process are not available in your records but reliable estimates for them can be made, enter the estimated amounts in Column (10) and enter in column (9) the differences between the total incurred costs (exclusive of pre-production costs) as of the cutoff date and these estimates. Explain the basis for the estimates, including identification of any provision for experienced or anticipated allowances, such as shrinkage, rework, design changes, etc. Furnish experienced unit or lot costs (or labor hours) from inception of contract to the cutoff date, improvement curves, and any other available production cost history pertaining to the item(s) to which your offer relates.
(11)		Enter total incurred costs (Total of Columns (8), (9), and (10)).
(12)		Enter those necessary and reasonable costs that in your judgment will properly be incurred in completing the remaining work to be performed under the contract with respect to the item(s) to which your offer relates.
(13)		Enter total estimated cost (Total of Columns (11) and (12)).
(14)		Identify the attachment in which the information supporting the specific cost element may be found.
		(Attach separate pages as necessary.)

CHAPTER 5 – SPECIAL CATEGORIES OF PROCUREMENTS

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CHAPTER 5 - SPECIAL CATEGORIES OF PROCUREMENTS

Part 5.1. Personal Services Contracts

5.1.1. General

- a. Personal service contracts are those which include terms or administration practices which create a relationship tantamount to that of employer-employee and makes the contractor personnel appear, in effect, to be government employees. Restrictions on the use of personal service contracts must be considered separately from any other procurement limitations.
- b. **Prohibition** Personal service contracts are strictly prohibited, with limited exceptions (as described in [5.1.1.c.](#) and [5.2.](#) below). The judiciary is required to obtain employees by direct hire under competitive appointment or under other personnel procedures. Thus, when the judiciary engages the services of a contractor to perform identifiable tasks, the nature of the relationship between the judiciary and the contractor must be as an independent contractor. It must not, in effect, create an employer-employee relationship subject to the supervision by a judiciary employee. Also the contractor must not be placed in a position which requires contractor supervision of any judiciary employees.
- c. Personal service contracts are only authorized under limited circumstances which require statutory authority. The Director of the Administrative Office (AO) has statutory authority to procure personal services only in the following circumstances:
 - (1) Under [28 U.S.C. § 602](#) (c), personal services are authorized by [5 U.S.C. § 3109](#) for an “expert” or “consultant” for services which are not available within the judiciary (see [5.2.1.](#)). However, this circumstance does not allow the use of contractors to perform the duties which normally would be performed by judiciary employees.
 - (2) Under [28 U.S.C. § 612](#) (a), personal services are authorized for the effective management, coordination, operation, and use of information technology equipment, purchased by the Judiciary Information Technology (JIT) fund.
- d. When considering a service procurement, the CO must consider all the personal services indicators by answering the following questions.
 - (1) Will the individual(s) require frequent direction and supervision?
 - (2) Will the services be performed on the judiciary site?
 - (3) Will the principal tools and equipment necessary for performance of the services be provided by the judiciary?
 - (4) Will the services be applied directly to the integral effort of the judicial organization, and are they in direct furtherance of its assigned function or mission?
 - (5) Will comparable services, meeting comparable needs, be performed elsewhere in the judiciary using judiciary employees?
 - (6) Will the need for the type of provided services be reasonably expected to last beyond one year?
 - (7) Will the inherent nature of the service, or the manner in which it is provided, reasonably require direct, or indirect, judiciary supervision of contractor employees in order to:
 - (a) adequately protect the judiciary’s interest;
 - (b) retain control of the function involved; or

- (c) retain full personal responsibility for the function supported in a duly authorized judiciary officer or employee?
- e. A “yes” answer to any of the above questions, may indicate that the proposed procurement is “personal” in nature. The existence of any of these elements may indicate the likelihood that supervision exists. However, the existence of any one of the indicators in [5.1.1.d.](#) alone, must not necessarily lead the CO to conclude that services are “personal.” There is no acid test as to how many of the indicators must be present to result in a conclusion that personal services exist. Instead, this is necessarily a subjective judgment that is made by the CO, based on the individual circumstances, and documented in the file.
- f. **Clause**
[Clause 5-1](#) “Payments under Personal and Professional Services Contracts” is included in solicitations and contracts for personal services.

Part 5.2. Expert and Consultant Services Contracts

5.2.1. General

- a. **Authority** The judiciary is authorized to obtain expert and consultant services under [5 U.S.C. § 3109](#).
- b. These services are not required to be competed or advertised. When retaining the services of a consultant or expert pursuant to [5 U.S.C. § 3109](#), the CO is not required to prepare a sole source justification, inasmuch as there is no competition requirement. However, the file documentation must reflect that these services are acquired under the authority of section 3109 so that anyone reviewing the contract file will understand why the requirement was not competed or advertised.
- c. A purchase/delivery/task order cannot be used for expert and consultant services. A formal written contract must be used. The contract must contain all the requisite terms and conditions of a formal government contract. It must contain some price or cost analysis, indicating that the compensation paid is fair and reasonable. This may require an informal market survey (see [2.1.6.](#)), or other objective facts, which demonstrate the reasonableness of the price (see [4.7.2.](#)).
- d. Prior to acquiring the services of an individual or business entity as an expert or consultant, the CO must determine that the individual or business entity qualifies as an “expert” or “consultant” under section 3109.
- e. An “expert” is defined as one with a high degree of attainment in a professional, scientific, technical, or other field and with excellent qualifications, skills, and knowledge above those of the ordinary person in the field. An expert’s knowledge and mastery of the practices, problems, methods and techniques of a field of activity, or of a specialized field, are clearly superior to those usually possessed by ordinarily competent persons in that activity. An expert usually is regarded as an authority or as a practitioner of unusual competence and skill by other persons in the profession, occupation, or activity. An individual or business entity must meet all of the criteria in this definition in order to satisfy the definition of an “expert.”
- f. A “consultant” is defined as one who provides views on opinions or problems, but does not supervise or carry out operating functions. The person or business entity serves primarily as an adviser to an officer or instrumentality of the judiciary, as distinguished from an officer or employee who carries out the judiciary’s duties and responsibilities. A

consultant provides views or opinions on problems or questions presented by the judiciary, but neither performs nor supervises performance of operating functions. Generally, a consultant has a high degree of broad administrative, professional, or technical knowledge or experience which must make the advice distinctively valuable to the agency.

- g.** The use of consultants or experts under section 3109 is only appropriate when:
- (1) the work of the position is temporary or intermittent, as opposed to continuous and full time. "Temporary" is defined as one year or less and is continuous. It includes periods of less than 130 days and must not exceed one year in duration. Therefore, it is not appropriate to include options. "Intermittent" is occasional or irregular work on programs, projects and problems requiring intermittent services as distinguished from continuous. An intermittent service contract cannot exceed 130 days in a service year, but may be renewed from year to year;
 - (2) the position does not involve policy, management, or operating duties of judiciary employees; and
 - (3) the individual or business entity possesses the necessary skills and expertise to qualify as an expert or consultant (see [5.2.1.e.](#) and f.).
- h. Applicability** Expert or consultant viewpoints must include the alternatives considered and the rationale for the recommended point of view. The recommendation may include suggestions for the decision, but the ultimate decision is made by the judiciary. The following examples of the purposes for which it is appropriate to procure expert and consulting services include, but are not limited to, obtaining:
- (1) specialized opinions, professional or technical advice not available within the judiciary or from another federal agency;
 - (2) outside viewpoints, to avoid too limited a judgment on critical administrative or technical issues;
 - (3) advice on developments in industry;
 - (4) the opinions of experts whose national or international prestige can contribute to the success of an important project; or
 - (5) the skills of specialized persons who are not needed continuously.
- i. Restrictions** A CO cannot contract for expert or consulting services for any of the following purposes:
- (1) to perform work of a policy-making, decision-making, or managerial nature that is the direct responsibility of judiciary officials;
 - (2) to bypass, circumvent, or undermine personnel ceilings, pay limitations, or competitive employment procedures. Also a consultant or expert may not be hired in anticipation of career appointments;
 - (3) The expert or consultant must not be tasked to perform duties which otherwise would be duties required by a judiciary employee, even if the judiciary position is considered as an expert or consultant;
 - (4) Experts or consultants can not be used for full-time, continuous work or to perform a job that can be done by judiciary employees; or
 - (5) services of experts or consultants may not be procured under a succession of short-term contracts for full or part time services where the resulting continuous employment would be in excess of one year.
 - (6) The CO must ensure that a contract for expert or consulting services does not establish or allow any of the following:
 - (a) an employer-employee relationship between the judiciary and the contractor, including detailed control or supervision by judiciary

personnel of the contractor or its employees with respect to the day-to-day operations of the contractor or the methods of accomplishment of the services; or

(b) supervision of judiciary employees by the contractor.

j. For procurement of expert or consulting services, the CO must ensure that the following are accomplished:

- (1) each requirement is appropriate and fully justified in writing. The justification must include:
 - (a) a statement of need; and
 - (b) the requesting official must certify that the services do not unnecessarily duplicate any previously performed work or services;
- (2) each work statement is specific and complete, and states a fixed period of performance within which the services are to be provided;
- (3) each contract file contains documentation as to the justifications and determinations for the expert or consultant service as discussed in this section;
- (4) appropriate disclosure is required of, and warning is given to, contractor personnel to avoid conflicts of interest;
- (5) each contract is properly administered and monitored to ensure that performance meets the requirements of the contract; and
- (6) each proposed contract action is properly authorized by a written, signed document.
- (7) Before processing any contractual action or solicitation for expert or consulting services, the CO must ensure that the applicable provisions of this chapter have been complied with and that the required documentation is complete and included in the contract file.

k. Since “temporary” services by definition are not to exceed one year, a contract for temporary expert and consulting services must not include an option and cannot be extended by modification. When additional services are required, a new contract must be awarded subject to the requirements and limitations of this section. If in fact the requesting office is interested in procuring services which will be more than a year, they are probably not appropriately “expert” or “consulting” services under section 3109. However, intermittent services can be renewed from year to year. (See definitions in [5.2.1.g.](#))

l. Former government employees There is no *per se* prohibition on this, and it can in fact be appropriate, depending upon the circumstances. The individual must meet the definition of an “expert” or “consultant.” However, the definition prohibits procuring services which are to be performed by full-time government employees. Simply because the individual has expertise in a particular matter, which was obtained because of their work on that matter as a government employee, does not mean that they automatically meet the definition of an “expert” or “consultant” under section 3109. An abuse of this would be procuring the services of former government employees to perform the operating duties of the government workforce or to continue with work the individual was involved in as a regular government employee. Then the requesting office could consider other alternatives instead of contracting with the individual, such as re-employment. This would not necessarily be on a full-time basis, but could be worked out through the personnel office on a temporary or intermittent basis as the circumstances deem appropriate. If the individual satisfies the section 3109 criteria as an “expert” or “consultant,” the nature of the relationship may in fact be personal services rather than that of an independent contractor. This is largely determined by the degree of

supervision by the government over the individual's work. The fact that the individual may work independently, does not alone satisfy the independent contractor test. The essence of the test is whether the government, on a close and continuous basis, controls what is done and how the individual contractor employee performs the work

- m. **Travel Reimbursement** The contract establishes the travel reimbursement terms agreed to by the parties. As a practical matter, however, contractors must not be reimbursed at levels greater than judges.
- n. **Licenses** When purchasing expert or consulting services for which individuals are normally required to be licensed (such as medical, legal, accounting, and architecture), the solicitation must require a license as a prerequisite to award. Acceptable licenses may be limited to those issued by a particular state or entity, but only when it is necessary for successful contract performance to limit the award to local expertise.
- o. **Provisions and Clauses** All contracts for experts or consulting services must include the following clauses, unless otherwise indicated:
 - (1) [Clause 1-5](#), "Conflict of Interest" is included in solicitations and contracts for experts and consultant services.
 - (2) The CO must include [Clause 2-65](#), "Key Personnel" in contracts for professional services. Professional services are those which are provided by an individual whose position requires a license or certification, such as a doctor or a certified public accountant. The clause requires use of the key personnel identified in the contractor's offer, unless the CO approves substitution. It provides for contract termination for failure to comply. The CO will appropriately fill in the clause's blank spaces.
 - (3) [Clause 5-1](#), "Payments under Personal and Professional Services Contracts;"
 - (4) [Clause 5-5](#), "Nondisclosure (Professional Services);"
 - (5) [Clause 5-10](#), "Inspection of Professional Services" which provides for inspection of the professional's work product and acceptance of only those products that meet reasonable professional standards;
 - (6) [Clause 7-125](#), "Invoices," with Alternate I, must be included in all non-fixed-price contracts for professional services. The clause requires presentation of invoices showing who performed the services, the hours and partial hours of service provided each day, and the services provided each hour or partial hour. Contractors may be allowed to set minimum charges for partial hours or days.
 - (7) [Clause 5-20](#), "Records Ownership" which gives the judiciary ownership of procurement files, including copies of all contractor work papers; and
 - (8) [Provision 5-25](#), "Identification of Uncompensated Overtime" is inserted in all solicitations valued above the judiciary's small purchase threshold (see [3.4.1.c.](#) and [Guide Volume 1, Chapter 8, Part B](#)) for professional or technical services to be acquired on a labor-hour, time and materials, or cost-reimbursement basis.
 - (9) [Clause 6-70](#), "Work for Hire" is inserted in solicitations and contracts when the contract involves the acquisition of professional services and it is determined by the contracting officer that the contract should be treated as a "work for hire." (See [6.5.9.b.](#))
- p. **Contract Type** Firm fixed priced contracts are preferred. When a firm fixed price contract is not suitable, the CO must first document the reasons. A labor-hour contract may be used, but it is only suitable when the CO includes a ceiling price that the contractor exceeds at its own risk.

Part 5.3. Architect-Engineer Contracts

5.3.1. Architect-Engineer Services

- a. Delegation** This type of procurement is only delegated to COCP Levels 2, 6, and 7. For those COs delegated at Level 2 this is only delegated, if there is a GSA building delegation for the particular building location (see [Guide, Part B, Exhibit B-2](#)). When there is a GSA building delegation, this section is not applicable. Then the building delegation specifies that the judiciary must follow the GSA rules and regulations. (Also see [Guide, Volume 1, Chapter 8, Part C, Paragraph 4F](#).)
- b.** The following services are considered architect-engineer services for the purpose of this section:
- (1) professional services of an architectural or engineering nature, as defined by applicable state law, which the state law requires to be performed or approved in writing by a registered architect or engineer;
 - (2) professional services of an architectural or engineering nature associated with design or construction of real property;
 - (3) other professional services of an architectural or engineering nature or services incidental thereto that logically or justifiably require performance by registered architects or engineers or their employees. These services include:
 - (a) studies;
 - (b) investigations;
 - (c) surveying and mapping;
 - (d) tests;
 - (e) evaluations;
 - (f) consultations,
 - (g) comprehensive planning;
 - (h) program management;
 - (i) conceptual designs;
 - (j) plans and specifications;
 - (k) value engineering;
 - (l) construction phase services;
 - (m) soils engineering;
 - (n) drawing reviews;
 - (o) preparation of operating and maintenance manuals; and
 - (p) other related services;
 - (4) professional surveying and mapping services of an architectural or engineering nature. Surveying is considered to be an architectural and engineering service and must be procured from registered surveyors or architects and engineers. Mapping associated with the research, planning, development, design, construction, or alteration of real property is considered to be an architectural and engineering service. However, mapping services that are not connected to traditionally understood or accepted architectural and engineering activities, are not incidental to such architectural and engineering activities or have not in themselves traditionally been considered architectural and engineering services and must not be procured pursuant to this section.

- c. Sources for contracts for architect-engineer services must be selected in accordance with the procedures in this chapter rather than the solicitation or source selection procedures prescribed elsewhere in this manual.
- d. **Publicizing**
 - (1) The judiciary must publicly announce all requirements for contracts of architect-engineer services and negotiate contracts for these services based on the demonstrated competence and qualifications of prospective contractors to perform the services at fair and reasonable prices.
 - (2) The CO must evaluate each potential contractor based on the following criteria:
 - (a) professional qualifications necessary for satisfactory performance of the required services;
 - (b) specialized experience and technical competence in the type of work required;
 - (c) capacity to accomplish the work in the required time;
 - (d) past performance on contracts with the judiciary, other governmental entities, and private industry in terms of cost control, quality of work, and compliance with performance schedules; and
 - (e) acceptability under other appropriate evaluation criteria.
- e. **Data Files** The PE must encourage firms engaged in the lawful practice of their profession to submit annual statements of qualifications and performance data.

5.3.2. Architect-Engineer Evaluation Board

- a. When procuring architect-engineer services, the PLO in the court unit or FPDO, or the PE in the AO, must establish one or more architect-engineer evaluation boards composed of at least three members. Two members are acceptable for projects where the anticipated fee is not over the judiciary's small purchase threshold. All three members must be individuals who are highly qualified professional employees of the judiciary and who, collectively, have experience in architecture, engineering, construction, and related matters.
- b. One member of each board must be designated as the chairperson. Neither the CO nor anyone delegated to conduct architect-engineer contract negotiations for a given project may be a member of the evaluation board for that project.
- c. No firm can be eligible for award of an architect-engineer contract during the period in which any of its principals or associates are participating as members of the awarding evaluation board.

5.3.3. Architect-Engineer Evaluation Board Functions

The evaluation board must perform the following functions under the general direction of the CO:

- (1) review the current data files on eligible firms, including firms furnishing qualification statements in response to any notice publicizing the contemplated contract;
- (2) evaluate the firms in accordance with the prescribed criteria in [5.3.1.d.\(2\)](#) above;
- (3) hold discussions with at least three of the most highly qualified firms about concepts and the relative utility of alternative methods of furnishing the required services;
- (4) prepare for the CO a selection report recommending, in order of preference, at least three firms that are evaluated to be the most highly qualified to perform the

required services. The selection report must include a description of the discussions and evaluation conducted by the board. This report will allow the CO to review the considerations upon which the recommendations are based.

5.3.4. Architect-Engineer Selection

- a.** The CO must:
 - (1) review the recommendations of the evaluation board, and
 - (2) with the advice of appropriate technical and staff representatives, make the final selection.
- b.** The final selection must be a listing, in order of preference, of the firms considered most highly qualified to perform the work.
- c.** If the firm listed as the most preferred is not recommended as the most highly qualified by the evaluation board, the CO must include in the contract file a written explanation of the reason for the selection. All firms on the final selection list must be considered “selected firms” with which the CO may negotiate.
- d.** The CO cannot add firms to the selection report. If the firms recommended in the report are not deemed to be qualified, or the report is considered inadequate for any reason, the CO must record the reasons and return the report through channels to the evaluation board for appropriate revision.
- e.** The CO must promptly inform the evaluation board of the final selection.

5.3.5. Architect-Engineer Selection Process for Small Purchases

- a.** When authorized by the delegated CO (See [5.3.1.a.](#)), the short process set forth in this section may be used as an alternative to the processes set forth in [5.3.3.](#) and [5.3.4.](#) to select firms for contracts not estimated to exceed the judiciary’s small purchases threshold ([3.4.1.c.](#)), if so delegated.
- b.** When the CO decides that formal action by the board is not necessary in connection with a particular selection, the following procedures must be used:
 - (1) the chairperson of the board must perform the functions of the board in accordance with [5.3.3.](#);
 - (2) the CO must review the report and approve it or return it to the chairperson for appropriate revision; and
 - (3) upon receipt of a written approved report, the CO is authorized to commence negotiations.

5.3.6. Cost Estimate for Architect-Engineer Contracts

- a.** Before the CO can negotiate any proposed contract or contract modification is initiated, an independent cost estimate for the required Architect-Engineer services must be developed based on a detailed analysis of the costs expected to be generated by the work.
- b.** The estimate must be prepared by the requiring organization and be sent to the CO with the request for services.
- c.** Access to information concerning the cost estimate must be limited to judiciary personnel and agents whose official duties require knowledge of the estimate.

5.3.7. Negotiations of Architect-Engineer Contracts

- a. The CO must first attempt to negotiate a contract with the first firm on the list (see [5.3.4.](#)) for the required services at a price which the CO determines in writing to be fair and reasonable. Negotiations must be conducted in accordance with [3.8.](#) The CO must ordinarily request an offer from the firm, ensuring that the solicitation does not inadvertently preclude the firm from proposing the use of modern design methods.
- b. The CO must ensure that the firm has a clear understanding of the scope of work, specifically the essential requirements involved in providing the required services, and determine whether the firm will make available the necessary personnel and facilities to perform the services within the required time.
- c. The CO must limit the firm's subcontracting to firms agreed upon during negotiations or through a formal contract modification.
- d. If a mutually satisfactory contract cannot be negotiated, the CO must notify the firm that negotiations are terminated. The CO must then initiate negotiations with the next qualified firm rated on the list. This procedure must be continued until a mutually satisfactory contract has been negotiated.
- e. If unable to negotiate a satisfactory contract with any of the selected firms, the CO must request a listing of additional firms from the evaluation board and continue negotiations in accordance with this section until an agreement is reached.
- f. Architect-Engineer contracts are normally of the fixed-price type. However, any contract type authorized in [Chapter 4](#) may be used, if approved in writing by the PE.
- g. In addition to provisions/clauses prescribed in Chapter 4 for particular contract types, the following clauses are inserted in solicitations and contracts for architect/engineer services:
 - (1) [Clause 5-30](#), "Authorization and Consent;" The clause with Alternate I will be used in all research and development (R&D) solicitations and contracts (including those for architect-engineer services calling exclusively for R&D work or exclusively for experimental work). When a proposed contract involves both R&D work and products or services, and the R&D work is the primary purpose of the contract, the CO will use this alternate. The CO will use the clause with Alternate II if the solicitation or contract is for communication services with a common carrier and the services are unregulated and not priced by a tariff schedule set by a regulatory body.
 - (2) [Clause 5-35](#), "Payments under Fixed-Price Architect-Engineer Contracts" when a fixed price contract is contemplated;
 - (3) Reserved
 - (4) [Clause 5-45](#), "Design Within Funding Limitations," when the project must be designed so that construction costs do not exceed a contractually specified dollar limit (funding limitation);
 - (5) [Clause 5-50](#), "Responsibility of the Architect-Engineer Contractor" when a fixed price contract is contemplated;
 - (6) [Clause 5-55](#), "Work Oversight in Architect-Engineer Contracts;"
 - (7) [Clause 5-60](#), "Requirements for Registration of Designers;"
 - (8) [Clause 5-65](#), "Subcontractors and Outside Associates and Consultants (Architect-Engineer Services);"
 - (9) [Clause 5-70](#), "Termination (Fixed-Price Architect-Engineer)," is included when a fixed price contract is contemplated; and
 - (10) [Clause 5-75](#), "Suspensions and Delays."

5.4. Commercial Use Agreements

5.4.1. General

- a. Commercial agreements, license agreements (including software licenses), and special use agreements are frequently requested by contractors as conditions to entering into contracts with the judiciary for the purchase of products, services, and commercial meeting or conference facilities. These agreements are usually written for commercial entities rather than federal agencies and contain terms and conditions that must be modified or removed.
- b. COs must not sign commercial agreements. Instead the CO should issue a judiciary contract containing the appropriate judiciary terms and conditions. If this is not possible, then the following steps must be taken before the modified agreement is signed:
 - (1) the CO must review the commercial agreement and negotiate with a representative from the company to delete or modify the following terms and conditions:
 - (a) *Credit Application/Master Account* Credit provisions are not applicable to the judiciary and must be deleted;
 - (b) *Attorney Fees* Any attorney fees included in the agreement must be negotiated out;
 - (c) *Automatic Renewals of Agreements* Provisions that automatically renew the commercial agreement from year-to-year must be negotiated out;
 - (d) *Payments in Advance* The judiciary cannot pay in advance, unless it is charges for a publication. This must be deleted;
 - (e) *Taxes* If the court unit or FPDO is issuing a purchase order, the judiciary is immune from paying taxes and this must be deleted;
 - (f) *Insurance* Insurance provisions must be removed because the judiciary is self insured;
 - (g) *Availability of funds* When the procurement is being conducted in the current fiscal year to be delivered or served in a future fiscal year, a statement that the agreement is subject to the availability of funds must be included;
 - (h) *Indemnification and/or Hold Harmless* These provisions must be replaced with the following:

“Notwithstanding any other term or provision of this agreement, the liability of the judiciary with respect to any claim for personal injury, death, property loss or damage pursuant to this agreement, is limited by and subject to the procedures and terms of the Federal Tort Claims Act, the Anti-deficiency Act and all other applicable federal laws and regulations.”
 - (i) *Damage Deposits* Any damage deposits must be negotiated out, since the above paragraph will cover damages to the facility.
 - (2) It is ***strongly recommended*** as being in the best interests of the judiciary that the CO attempt to modify the following commercial agreement provisions:
 - (a) *Governing Law* The agreement should contain a choice of law clause that makes federal law applicable. However, often the agreement lists the governing law as the law of the particular state where the agreement is being performed. If the CO is unable to negotiate the applicability of federal law and state law remains the governing law, then the CO should

ensure that the Clerk of Court is aware that any litigation concerning the agreement against the court would be decided based on state law.

- (b) *Interest* Any interest charges should be negotiated out as the government is not liable for interest in the absence of express provisions in statutes or a lawful contract. If the requirement to pay interest remains in the agreement, then sufficient funds must be available to pay any such interest charges to avoid violation of the Anti-Deficiency Act, [31 U.S.C § 1341\(a\)\(1\)](#).

- (c) *Cancellation*

1) Any schedule or fixed rate of liquidated damages or fees associated with the cancellation or reduction of the service should be negotiated out;

2) if the vendor insists on damages for cancellation, replace any schedule of damages with language that states:

“In the event of cancellation or reduction, the vendor agrees to make every effort to resell the cancelled or reduced product or service, and any revenue received by the vendor from the resale will be deducted from the amount owed by the judiciary. In the event the vendor is unable to resell all the cancelled or reduced products or services, the judiciary will be responsible for such amounts that reflect the actual losses sustained by the vendor.”

- (d) *Subject to Change without Notice* Any language that indicates that the terms of the agreement are subject to change without notice should be negotiated out;

- (e) Provisions specific to commercial meeting or conference facilities:

1) *Early Departure Fee* Any fees for changing departure dates to an earlier date after check-in should be negotiated out;

2) *Food and Beverage Policy* Restrictions that require all food and beverages consumed at the facility to be purchased at the facility should be negotiated out;

3) *Group Commitment* Charges based upon actual number of attendees rather than an estimated number should be negotiated out; and

4) *Deposit* The judiciary can provide a “reasonable” deposit in exchange for the hotel or facility to reserve or guarantee a space.
NOTE: The funds must be obligated for any deposit paid.

- c. (1) The CO must ensure that:
- (a) either a new commercial agreement is generated which incorporates all the negotiated changes; or
- (b) both parties have initialed all modifications made to the original commercial agreement.
- (2) If the contractor and the CO cannot agree to the terms, the CO must:
- (a) identify and recommend options that may be available to the judiciary. Options could include a recommendation that the product or service be procured elsewhere; or
- (b) contact PMD for assistance, if the provisions at issue are those specified in paragraph **b.**(1) above.
- (3) In the event the CO is unable to negotiate the provisions in paragraph **b.**(2) as recommended above and proceeds with the agreement, then the CO must

calculate any potential increase in cost that may be incurred to obtain or use the products, services, commercial meeting or conference facility under such terms that may not be favorable to the judiciary. The cost will be calculated using a “worst case scenario” [Note: Sufficient funds must be reserved to cover the costs of the worst case scenario at the time the purchase order is awarded].

5.5. Interagency Agreements (IAs) and Memoranda of Understanding (MOUs) for Obtaining Products and Services

5.5.1. General

- a. The Director has authority to enter into interagency agreements (IAs) and memoranda of understanding (MOUs) (See [Guide, Vol 1, Chapter 8, Part A.8.A.](#) and L.). This JP3 section prescribes procedures applicable to IAs and MOUs for obtaining products and services. The Director has delegated to all chief judges and FPDs the authority to obtain products or services from other federal agencies through IAs or MOUs, for amounts not-to-exceed their delegation authority (see [Guide, Vol 1, Chapter 8, Part B.5.C.\(8\)](#)).
- b. The judiciary may enter into four types of IA or MOU transactions for obtaining products and services. The first three types *require* an IA or MOU and the judiciary provides funding to the providing agency directly. Under the fourth type (multi-agency contracts) the judiciary provides funding directly to the contractor. This fourth type *may or may not require* an IA or MOU with the providing agency. In these instances, the judiciary CO will check with the providing agency’s CO to determine if an IA or MOU is required. If required, the CO will follow the procedures outlined in this section to establish the IA or MOU. The four types of IA or MOU for obtaining products and services are those:
 - (1) with another federal agency (hereinafter referred to as the providing agency). In this type, the providing agency will perform work for, or provide services to, the judiciary;
 - (2) with a providing agency who will contract with a vendor to provide products or services to the judiciary;
 - (3) with a providing agency for work to be performed under an existing contract held by the providing agency;
 - (4) in which the judiciary issues a task or delivery order directly to a providing agency’s contractor following the procedures contained in JP3 [3.1.6.](#), Other Federal Agency Contracts. The task or delivery order must be issued by an employee with at least a COCP Level 3 delegated procurement authority (see [Guide Vol 1, Chapter 8, Part B.](#); [Section 5.C.\(8\)](#)) or COCP Level 2 as specified by the special delegated program.

5.5.2. Limitations

- a. IAs and MOUs:
 - (1) can be made only with a federal agency. (Also see *Economy Act Transactions* in [5.5.3.c.](#));
 - (2) must comply with the bona fide needs rule (See [Exhibit 1-1](#));
 - (3) may not be used to circumvent conditions or limitations on the use of appropriated funds; and

- (4) may not be used to make prohibited purchases, whether prohibited by the judiciary or by the other agency.
- b.** An IA or MOU must be in writing. As in any contract situation, the agreed upon written terms establish the scope of the undertaking and the rights and obligations of the parties. Also, the written IA or MOU can establish a not-to-exceed amount on the judiciary's financial obligation. If the other agency does not provide an agreement or if the judiciary is the providing agency, then the IA/MOU template (see [Procurement webpage](#)) may be used. The IA or MOU should specify at least the following:
- (1) a citation of the statute or authority authorizing the IA or MOU;
 - (2) period of duration;
 - (3) responsibilities of the providing agency and the judiciary;
 - (4) description of services to be provided or products to be furnished;
 - (5) the cost of performance, including appropriate ceilings when cost is based on estimates. This estimated cost cannot be obligated beyond the fiscal year;
 - (6) mode of payment - advance or reimbursement (see [5.5.4.](#));
 - (7) any applicable special requirements or procedures for assuring compliance;
 - (8) mutual termination provisions. The judiciary and providing agency should agree to procedures for the resolution of disagreements that may arise under an IA or MOU, including resolution by the PE. It should also include the requirement and procedures for the providing agency to notify the judiciary if it appears that performance will exceed estimated costs and to cease or curtail performance as may be necessary. This is an important safeguard to protect the judiciary from a potential Anti-Deficiency Act violation; and
 - (9) approvals and signatures by authorized officials (see **c.** below).
- c.** The chief judge, FPD, (or the PLO, if delegated) shall approve the use of IAs or MOUs for obtaining products or services from another federal agency subject to the following limitations:
- (1) the IA or MOU must not exceed the procurement delegation authority amount (see [Guide, Vol 1, Chapter 8, Part B.5.C.\(8\)](#)). If it is expected to exceed the delegation authority, then see (4) below;
 - (2) the IA or MOU is signed by the chief judge, FPD, or (if delegated) a CO, certified at the appropriate COCP level;
 - (3) adherence to applicable statutory and/or regulatory requirements, including appropriations law. This means, for example, that the judiciary may not enter into IAs or MOUs which obligate funds prior to or beyond the current fiscal year. However, the IA or MOU may include yearly option periods which, if the CO exercises the option, will require the obligation of fiscal year funds available for the option period through the execution of a new order with the providing agency;
 - (4) Reserved
 - (5) At the AO, the PE must approve all IAs and MOUs.
- d.** Authority is *not* delegated:
- (1) to the Courts or Federal Public Defenders to be *providers* of products or services to another federal agency;
 - (2) for the detail of personnel between the judiciary and another federal agency, whether paid or unpaid;
 - (3) for any IA or MOU exceeding the delegation authority amount (see [Guide, Vol 1, Chapter 8, Part B.5.C.\(8\)](#)).

- e. Proposed IAs or MOUs which exceed the delegation authority, or for which authority is specifically not delegated under paragraph **d.** above, must be forwarded to the PE for review, approval and issuance of a one-time delegation of authority.

5.5.3. Requirements

- a. IAs and MOUs are authorized under one of the following categories:
 - (1) specific statutory authority for the purchase; or
 - (2) the Economy Act ([31 U.S.C. § 1535](#)).
- b. For those IAs or MOUs entered pursuant to specific statutory authority, the Determination and Finding is not required. However, the applicable statutory authority must be specified in the procurement documentation. An example of an IA or MOU for obtaining products and services under specific statutory authority is a GSA Reimbursable Work Authorization (RWA).
- c. For those IAs and MOUs entered pursuant to specific statutory authority, contact the PE to validate the applicability of the statutory authority.
- d. *Economy Act Transactions* The Economy Act (Act) applies when more specific statutory authority does not exist or when the specific authority does not apply to the judiciary. For example, the Clinger-Cohen Act, [40 U.S.C. § 11314](#), which authorizes government-wide agency contracts (GWACs), does not apply to the judiciary and thus the Economy Act must be relied upon. The Act does not provide authority to enter into IAs or MOUs with state or local agencies. All IAs and MOUs under the Act must be supported by a Determination and Finding (see **e.** below and [Exhibit 5-1](#)) which shall be maintained in the procurement file.
- e. *Economy Act Determination and Finding* Before entering into an IA or MOU pursuant to the Act, the CO must prepare and sign a Determination and Finding. If the providing agency requires a copy of the judiciary's Determination and Finding, this should be provided with the IA or MOU. The Determination and Finding must determine:
 - (1) that use of an IA or MOU for obtaining products or services, made pursuant to the Economy Act ([31 U.S.C. § 1535](#)) is in the best interest of the judiciary; and
 - (2) the products or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise.
 - (3) In order to make the determinations required in (1) and (2) above, the following must be considered and included in the Determination and Finding and file documentation:
 - (a) total cost analysis of obtaining the products or services from the providing agency;
 - (b) determination if there are any pricing advantages to using an IA or MOU for obtaining products or services;
 - (c) consideration of intangibles, such as ease of use, time savings, etc.;
 - (d) comparison of the expenditure of effort and associated costs with placing an order or contract under other procedures; and
 - (e) identification of other restrictions (e.g. length of time during which the IA or MOU will remain in force and effect; or specified procedures imposed by the providing agency as a condition of the agreement).
 - (4) For IAs and MOUs within the delegated procurement authority (see [Guide, Vol 1, Chapter 8, Part B.5.C.\(8\)](#)), the Determination and Finding must be approved by the chief judge or FPD (or PLO, if delegated). For IAs and MOUs above the

delegated procurement authority, and at the AO, the Determination and Finding must be approved by the PE.

- f. *Economy Act Costs* Payment under the Act, whether in advance, with subsequent adjustment, or by reimbursement, must be based on the actual costs of products or services provided (including a minimal administrative fee) in order to avoid unauthorized augmentation of either agency's appropriations. It cannot include "profit" to the providing agency. Actual costs include all direct costs attributable to the performance of a service or the furnishing of products. It also includes only those indirect costs that are funded out of the providing agency's currently available appropriations and which bear a significant relationship to the service or work performed or materials furnished.
- g. *Transfer of Funds* Other federal agencies may require that payment be made by transferring funds via the Department of Treasury's Intra-Governmental Payment and Collection (IPAC) system. It is preferable for court units and FPDOs to pay for the products/services by check rather than through IPAC. If the providing agency requires that payment be made via the IPAC system, the purchasing CO shall provide the agency location code in the IA/MOU template (see Procurement webpage) or provide it in the other federal agency's form. These set forth the accounting information for both the providing and purchasing agencies, in addition to other relevant details. Because IPAC transfers can only be accomplished at the AO, the CO shall seek assistance, if necessary, from the Accounting and Financial Systems Division (AFSD) and ensure that the template/form is properly completed, executed, and a copy forwarded to AFSD. The template/form must be signed by the chief judge or FPD (or PLO, if delegated) as the Authorizing Official, indicating concurrence. At the AO the PE will sign it. These discussions should be carried out and all the funding issues resolved prior to requesting chief judge, FPD, PLO or PE approval of the IA or MOU.
- h. The CO must provide a copy of *all* new or renewed IAs or MOUs to the PE marked as "Information Only." Also see [5.5.2.c.\(4\)](#) above concerning transactions above the delegation authority.

5.5.4. Payment

- a. Payments to federal agencies may be made in advance or upon receipt of the products or services.
 - (1) *Advance* The provisions of the written IA or MOU may permit advance payment for all or part of the estimated cost of furnishing the products or services. If payment is made in advance, then any adjustments on the basis of actual costs must be made as agreed to by the providing agency and judiciary. Amounts in excess of actual costs must be returned to the judiciary. Bills rendered or requests for payment are not subject to audit or certification in advance of payment.
 - (2) *Reimbursement* If approved by the providing agency, payment for actual costs may be made by the judiciary after the products or services have been furnished on a reimbursement basis.
- b. If the IA or MOU is under the Economy Act, see the information in [5.5.3.f.](#) above.
- c. In most instances, an IA, MOU, or an order placed directly with another agency's contractor obligates the judiciary's appropriations and is recorded as the obligation. If this is an Economy Act transaction, then the amount obligated is deobligated to the extent that the providing agency has not incurred obligations, before the end of the period of availability of the appropriation, in:

- | (1) providing products or services; or
- | (2) making an authorized contract with another person to provide the requested
- | products or services.

Exhibit 5-1
DETERMINATION AND FINDING FOR A PROCUREMENT
USING AN INTERAGENCY AGREEMENT (IA) OR
MEMORANDUM OF UNDERSTANDING (MOU)
PURSUANT TO THE ECONOMY ACT (TITLE 31 U.S.C. § 1535)

As required by the Economy Act, the attached documentation includes facts which demonstrate that (1) amounts are available to meet the proposed cost; (2) the order is in the best interest of the judiciary; (3) the agency to fill the order is able to provide, or get by contract, the ordered products and services; and (4) the ordered products or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise.

To the best of my knowledge and belief, I hereby certify that the information provided in this Determination and Finding, including the attached supporting documentation, is accurate and complete.

Typed Name: _____

Signature: _____

Title: _____

Typed Name of Approving Official: _____

Signature of Approving Official: _____

Title of Approving Official: _____

(Chief Judge or FPD, within their delegation authority (or PLO, if delegated), or at the AO the Procurement Executive)

CHAPTER 6 - BONDS, INSURANCE, TAXES, AND INTELLECTUAL PROPERTY

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CHAPTER 6 - BONDS, INSURANCE, TAXES, AND INTELLECTUAL PROPERTY

Part 6.1. Bonds

6.1.1. General A bond is a written instrument executed for the benefit of the judiciary as security for the offeror's or contractor's obligations, and to assure payment of any bond loss. A bond is executed by an offeror or contractor identified in the instrument as the principal, together with a second party identified as the surety. Bonds and performance guarantees will be obtained only when needed to protect the interest of the judiciary. Procurement plans (see Chapter 2) must describe and explain any requirements for bonds and performance guarantees. If contemplating the requirement of a bond, the CO must submit that request to the PE for written approval before including the requirement for a bond in the solicitation.

6.1.2. Performance Bonds for Other than Construction Contracts

a. Requirement A performance bond is a bond which secures performance and fulfillment of the contractor's obligations under the contract. Performance bonds may be required only when the CO determines that performance bonding is essential to the interest of the judiciary. Examples of situations when a performance bond may be needed include when:

- (1) a contract provides for the contractor's use of judiciary property, or judiciary funds in performance; or
- (2) a contractor has sold all its assets to, or has merged with, another firm and the judiciary needs assurance of the new firm's responsibility.

b. Amount The amount of the bond must be the minimum needed to protect the judiciary's interest.

c. Clause

- (1) Clause 6-1, "Performance Bond Requirements" must be included in solicitations for nonconstruction contracts that contain a requirement for both payment bonds (see 6.1.3) and performance bonds.
- (2) Clause 6-1 with its Alternate I is included when only a performance bond is required.

The CO must determine the amount of each bond for insertion in the clause. If the amount of the bond is less than 100 percent of the contract price, the provision must be modified accordingly. The amount must be adequate to protect the interest of the judiciary. The CO must also designate the period of time (normally ten days) for return of executed bonds.

d. Annual Performance Bonds Annual performance bonds may be used only for contracts other than construction. The amount of such a bond may not be more than the total amount of all contracts secured by the bond.

6.1.3. Payment Bonds for Other than Construction Contracts

a. Requirement A payment bond is a bond which assures payments as required by law to all persons supplying labor or material in the prosecution of the work provided for in the contract. Payment bonds may be required only when the CO determines that payment

bonding is essential to the interest of the judiciary. Examples of situations when a payment bond may be needed include when:

- (1) a contract is for products or services unique to the judiciary that can be obtained only from a source that is not the producer of the products or services;
 - (2) a contractor has sold all its assets to, or merged with, another firm and the judiciary needs assurance of the new firm's responsibility; or
 - (3) uninterrupted provision of the products or services is essential to the continued operation of judiciary functions.
- b. Amount** The amount of the bond must be the minimum needed to protect the judiciary's interest.
- c. Annual Payment Bonds** Annual payment bonds may be used only for contracts other than construction. The amount of such a bond must be sufficient to cover the bonded portions of the contracts awarded.

6.1.4. Fidelity Bonds

A fidelity bond, in an amount sufficient to protect the interest of the judiciary, may be required for any contract that requires contractor employees to handle judiciary funds or judiciary employee funds. When a fidelity bond is required, Clause 6-5, "Fidelity Bond Requirements" must be included in the solicitation and contract and the amount must be reviewed periodically to ensure that the judiciary's interest is adequately protected. The CO will include the amount of the bond required in the contract's schedule.

6.1.5. Other Types of Bonds

Bonds, other than those discussed in this chapter, may be required only when the CO determines such bonds are necessary to protect the judiciary's interest.

6.1.6. Execution of Bonds

- a. Prescribed Formats** If the applicable clause has not specified a prescribed format for a bond, a suitable commercial bond form may be used, or an appropriate format may be prepared with the assistance of the PE in consultation with OGC.
- b. Original Copy** An original signed copy of any bond must be retained in the solicitation or contract file.
- c. Authority of Agents** Bonds signed by persons acting in a representative capacity must be accompanied by proof that the agent is authorized to act in that capacity. Proof may be a notarized power of attorney, a properly executed corporate certificate, or resolution attested to by the corporate secretary.
- d. Partnership as Principal** When a partnership is a principal, the names of all members of the firm must be listed in the bond following the trade name of the firm (if any) and the phrase: "a partnership composed of." When a corporation is a principal, the state of incorporation must be listed.
- e. Date** Unless an annual bond is accepted, performance or payment bonds must be dated after the effective date of the contract.
- f. Modifications**
 - (1) When a modification changes the contract scope or increases the contract price by

ten percent or more or when the CO determines that the amount of the original bond must be increased, the contractor and the surety must execute a consent of surety and increase of penal amount of the bond. This is then submitted to the CO. When more than one surety's consent is required, each surety must execute the form.

- (2) When an increased bond amount is obtained from a party other than the original surety, the original surety must execute a consent of surety. Novation agreements require the execution of a consent of surety.

Part 6.2. Sureties

6.2.1. Sureties

- a. General** Bonds must be supported by acceptable corporate sureties (see **b.** below), individual sureties (see **c.** below), by assets (see 6.2.2.) acceptable as security for the contractor's obligation, or irrevocable letters of credit (6.2.3.).
- b. Corporate Sureties** Any corporate or individual surety offered for a bond furnished the judiciary must appear on the list contained in Treasury Department Circular 570, which may be obtained from the following:
 - U.S. Department of the Treasury
 - Financial Management Service
 - Surety Bond Branch
 - 401 14th St., SW, 2nd Floor--West Wing
 - Washington, DC 20227
 - or at fms.treas.gov/c570/c570.html
- c. Individual Sureties** On a case by case basis, the judiciary may accept individual sureties.
- d. Amount of the Bond** The penal amount of the bond should not exceed that surety's underwriting limit as stated in Circular 570. "Penal amount" means the amount of money specified in a bond as the maximum payment for which the surety is obligated or the amount of security required to be pledged to the judiciary in lieu of a corporate or individual surety for the bond.

6.2.2. Deposit of Assets Instead of Surety Bonds

- a.** In lieu of any bond, the contractor may deposit certain kinds of assets with the judiciary instead of furnishing a bond.
- b.** The only assets acceptable in place of a surety bond are described below:
 - (1) U.S. bonds or notes with a maturity date less than five years from the date of the contract, together with an agreement authorizing collection or sale in the event of default. The par value of the bonds or notes must be at least equal to the penal amount of the bond;
 - (2) a certified check, cashier's check, bank draft, postal money order, or currency. The deposit must be at least equal to the penal amount of the surety bond and payable to the finance office of the individual court unit, FPDO, or AO which required the bond.
- c.** The CO must turn all assets over to finance or another authorized judiciary official for

deposit into an interest bearing account at a Federal Reserve Bank (or branch with requisite facilities) with instructions to hold the funds for the benefit of the contractor. A perpetual inventory of all deposited items must be kept by the senior contracting official at the purchasing office.

- d. When the contractor pledges assets instead of providing a surety bond, the contractor must complete the bond form as principal and the bond form must describe the assets pledged.
- e. **Clauses**
 - (1) For all contracts involving the furnishing of bonds, Provision 6-10, "Deposit of Assets Requirements" must be included in the solicitation.
 - (2) Clause 6-15, "Deposit of Assets Instead of Surety Bonds" must be included in every solicitation and contract requiring a bond for which assets may be deposited in lieu of bonds.

6.2.3. Irrevocable Letter of Credit (ILC)

- a. Any person required to furnish a bond has the option to furnish a bond secured by an ILC in an amount equal to the penal sum required to be secured. A separate ILC is required for each bond.
- b. The ILC must be irrevocable and expire only as provided in **g.** below. ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least \$25 million in the past year.
- c. The ILC must be issued or confirmed by a federally insured financial institution rated investment grade or better. The contractor must provide the CO a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC. If the CO learns that a financial institution's rating has dropped below the required level, the CO will give the contractor 30 days to substitute an acceptable ILC or will draw on the ILC using a sight draft.
- d. Letters of credit must indicate that the financial institution may not cancel the letter of credit before 90 days following the scheduled contract completion date (see 6.2.4.c.(2) for contract completion disposition of assets after final contract payment).
- e. If the contractor does not furnish an acceptable replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the CO will immediately draw on the ILC.
- f. To draw on the ILC, the CO will use a sight draft and present it with the ILC to the issuing financial institution or the confirming financial institution, if any.
- g. The expiration dates of the ILC shall be the later of:
 - (1) 90 days following final payment; or
 - (2) until completion of any warranty period for performance bonds only.
- h. When the contract performance period is extended, the CO will require the contractor to provide an ILC with an appropriately extended maturity that meets the requirements in **g.** above.
- i. If, after the period of performance of a contract where ILCs are used to support payment bonds, there are outstanding claims against the payment bond, the CO will draw on the ILC prior to the expiration date of the ILC to cover these claims.

6.2.4. Contract Administration (also see Chapter 7)

a. Information and Notice to Sureties

- (1) **Correspondence** A copy of all correspondence relating to contract modification, termination, renewal, or nonperformance must be provided to each surety with proof of delivery requested. Additional information on contract performance and payment must be provided to sureties upon request.
- (2) **Failure to Perform** The CO must send each surety a copy of any notice of impending termination, demand for adequate assurances, assessment of liquidated or other damages, or other formal notice of failure to perform under the contract with a notice that the surety may be liable for damages suffered by the judiciary.
- (3) **Claims Against Sureties** If a contractor's failure to perform necessitates a claim against a surety, the CO must give the surety written notice of the amount of and reasons for the claim. If the surety refuses to pay or does not respond, the CO must obtain advice from the PE, who will consult with OGC.

b. Surety Takeover Agreements

- (1) Because of the surety's liability for damages resulting from a contractor's default, the surety has certain rights and interests in the completion of the contract work and the application of any undisbursed funds. Before terminating a contract for default, the CO must consider any offer by the surety for completion of the work. The surety must be permitted to complete the work unless the CO has reason to believe that the persons or firms proposed by the surety to complete the work are not competent or qualified.
- (2) Because of the possibility of conflicting demands for the defaulting contractor's unpaid earnings (including retained percentages), the surety may condition its offer of completion upon the execution of a takeover agreement establishing the surety's right to payment from the unpaid earnings. If so, with the prior written concurrence of the PE and after consulting with OGC, the CO may enter into such an agreement with the surety in writing after the effective date of contract termination. The CO must consider including the defaulting contractor as a party to the agreement in order to preclude any disagreement on the contractor's residual rights.
- (3) The agreement must provide that the surety will complete the work according to all contract terms and conditions and that the judiciary will pay the surety the balance of the contract price unpaid at termination but not more than the surety's costs and expenses, subject to the following conditions:
 - (a) Any unpaid earnings of the defaulting contractor, including retained percentages, for work accomplished before termination, are subject to debts owed the judiciary by the contractor except to the extent that the unpaid earnings are required to pay the completing surety the actual costs and expenses it incurs in completing the work exclusive of the surety's payments and obligations under the payment bond given in connection with the contract.
 - (b) The agreement may not waive or release the judiciary's right to liquidated damages for any delay in completion of the work that is not excusable under the contract.
 - (c) If the contract proceeds have been assigned to a financing institution, the surety may not be paid from unpaid earnings unless the assignee consents

to the payment in writing.

- (d) The surety may be reimbursed for discharging its liabilities under the payment bond of the defaulting contractor only when:
 - 1) there is mutual agreement among the judiciary, the defaulting contractor, and the surety; or
 - 2) a court of competent jurisdiction orders payment.

c. Contract Completion

- (1) Upon contractor completion of all contract obligations, the CO must issue a Certificate of Completion to any surety. The certificate's terms may not release the surety from any obligation under a payment bond.
- (2) When the contractor has deposited assets instead of providing a surety on a payment bond, the CO must refund the assets, with accrued interest (see 6.2.2.c.), within 90 days after final completion of contract performance, unless notice of a claim is received during the 90-day period. If a claim is received, the assets may be released only with the agreement of the contractor or by order of a court of competent jurisdiction.
- (3) Assets deposited to secure any other bond may be refunded, with accrued interest, upon final completion and receipt of the contractor's written release.

Part 6.3. Insurance

6.3.1. General COs may require contractors to carry insurance only when necessary to protect the interest of the judiciary. Examples of situations that may warrant insurance are when:

- (1) it is desirable to use the facilities and services of the insurance industry (for example, safety protection and claim services);
- (2) insurance is necessary or desirable in connection with performance; or
- (3) commingling of property or other contract conditions makes insurance reasonably necessary for protection of the parties' interests.

6.3.2. Types of Insurance The CO will specify the kinds of insurance and the minimum amounts in the schedule for the contract.

a. Workers' Compensation and Employers' Liability Insurance Compliance with applicable workers' compensation and occupational disease statutes is required, and employers' liability coverage must be obtained when available. In jurisdictions where occupational disease is not compensable by law, the contractor must carry insurance for occupational disease under the employers' liability section of the insurance policy.

b. General Liability Insurance

- (1) The contractor must carry bodily injury liability insurance, with minimum limits of \$200,000 per person and \$500,000 per occurrence for death or bodily injury.
- (2) The contractor must carry property damage liability insurance in an amount of at least \$20,000 per occurrence.
- (3) **Automobile Liability Insurance** The contractor must carry automobile liability insurance on a comprehensive form of policy that provides for bodily injury and property damage liability covering the operation of all automobiles used in contract performance. Minimum limits of \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage

must be carried.

c. Clauses

- (1) Clause 6-20, "Insurance - Work on a Judiciary Installation" is included in solicitations and contracts when:
 - (a) a fixed-price contract is contemplated;
 - (b) the contract amount is expected to exceed the judiciary's small purchase threshold (see 3.4.1.c .and *Guide* Volume 1, Chapter 8, Part B); and
 - (c) the contract will require work on a judiciary installation; unless only a small amount of work is required (i.e. a few brief visits per month).
- (2) Clause 6-25, "Insurance - Liability to Third Persons" is included in solicitations and contracts (other than those for construction contracts and architect-engineer services) when a cost-reimbursement contract is contemplated.
- (3) Clause 6-30, "Insurance" is included in all solicitations, contracts, RFQs, and purchase orders when the CO requires insurance in the contract's schedule.

6.3.3. Self-Insurance If contemplating acceptance of a contractor's self-insurance, the CO must submit that request to the PE for written approval before accepting the contractor's self-insurance. A qualified program of self-insurance covering any kind of liability may be approved in place of any type of insurance discussed in 6.3.2. when found to be in the interest of the judiciary. However, in a jurisdiction where workers' compensation does not completely cover employers' liability to employees, a program of self-insurance for workers' compensation may be approved in writing only if:

- (1) the contractor also maintains a written approved program of self-insurance for any employer's liability that is not covered; or
- (2) the contractor has shown that the combined cost to the judiciary of self-insurance for workers' compensation and commercial insurance for employers' liability will not exceed the cost of covering both kinds of risks by commercial insurance.

6.3.4. Errors and Omissions Insurance

- a. Professional Services** Contractors providing the following categories of services must carry errors and omissions (malpractice) insurance:
 - (1) accountants;
 - (2) architects;
 - (3) engineers; and
 - (4) fiscal agents.
- b. Amount** Insurance coverage must be at least \$200,000. However, the CO may determine that a different limit is needed to protect the interest of the judiciary. This limit is then set forth in the schedule of the contract.
- c. Waiver** The CO may waive the requirement for errors and omissions insurance, in whole or in part, after first conferring with the PE, who will consult with OGC.
- d. Other Professional Services** The CO may require other professional services contractors to carry errors and omissions insurance when in the interest of the judiciary.
- e. Clauses** Clause 6-35, "Errors and Omissions" is included in solicitations, contracts, RFQs and purchase orders when errors and omissions insurance is required in accordance with this section.

6.3.5. Insurance Policies

When insurance is required, it may be provided either by a specific insurance policy or by the contractor's existing insurance policy. When an existing policy is used, it must be amended to name the loss payee as the finance office for the individual court unit, FPDO or AO (whichever required the insurance).

6.3.6. Notice of Cancellation or Change

When insurance (other than errors and omissions insurance issued on an occurrence basis) is required by the CO, the insurance policy must contain an endorsement to the effect that a cancellation of, or material change in, the policy that adversely affects the interest of the judiciary will not be effective until at least 30 days after written notice of the cancellation or change is given to the CO.

Part 6.4. Taxes

6.4.1. General Contract tax problems are essentially legal in nature and vary widely. Specific tax questions must be resolved by reference to the applicable contract terms and pertinent tax laws and regulations. Therefore, when tax questions arise, COs must confer with the PE, who will consult with OGC.

6.4.2. Federal Excise Taxes

- a. **Applicability** Federal excise taxes are levied on the sale or use of particular products and services. Questions on the applicability of federal excise taxes must be directed to the PE, who will consult with OGC.
- b. **Solicitations** COs must solicit price offers on a tax-exclusive basis when it is known that the judiciary is exempt from federal excise taxes and on a tax-inclusive basis when no exemption exists.

6.4.3. State and Local Taxes

- a. State and local taxes means taxes levied by the states, the District of Columbia, Puerto Rico, possessions of the United States, or their political subdivision.
- b. **Applicability** Although the judiciary, as an establishment of the federal government, is constitutionally immune from state and local taxes imposed directly on it, the applicability of particular taxes is a legal question often requiring the advice and assistance of OGC. The applicability of a tax depends on the nature of the tax and whether its legal incidence falls directly on the judiciary (as the purchaser) as compared to a tax imposed directly on a vendor with the vendor passing the cost of the tax on to its customers (including the judiciary) as part of its cost of doing business. In this latter instance, the legal incidence would not fall directly on the judiciary, but on the vendor, and the judiciary would probably not be immune. Each state's taxing laws are different; therefore, immunity in one state does not automatically transfer to another state. Most states have provided GSA with a copy of their respective state tax letters regarding purchases made with the government purchase card, and can be found on the internet at:

<http://www.gsa.gov>. Search for “*State Tax Letters*.” These may provide helpful information concerning an individual state’s taxes.

- c. Prime contractors and subcontractors may not normally be designated as agents of the judiciary for the purpose of claiming exemption from state and local taxes. Such designation, when appropriate, must be accomplished in the solicitation and only after coordination with the PE, who will consult with OGC.
- d. **Exemption from Tax**
 - (1) Whenever a state or locality asserts its right to tax judiciary property directly or to tax a contractor's possession, use of, or interest in, judiciary property, the CO must obtain advice from the PE, who will consult with OGC, concerning the appropriate course of action.
 - (2) If the solicitation or contract includes Clause 6-40, “Federal, State and Local Taxes” or Clause 6-45, “Federal, State and Local Taxes (Noncompetitive Contract),” it is the offeror's responsibility to determine to what extent state and local taxes are applicable to its offer. The CO must make no representations concerning the applicability of any state or local tax and, except as provided in paragraph (3) below, the judiciary will have no involvement in resolving any dispute between the contractor and a taxing authority concerning tax applicability.
 - (3) The judiciary will, upon the contractor's request, furnish the contractor evidence to establish exemption from any specified tax if a reasonable basis for the exemption exists.
- e. Evidence of exemption may include:
 - (1) a copy of the contract;
 - (2) copies of other documents (such as shipping documents or invoices) identifying the judiciary as the buyer;
 - (3) a U.S. Tax Exemption Certificate (Standard Form 1094)
<http://www.gsa.gov/Portal/formslibrary.jsp?type=view&category=Standard+Forms&expandview>;
 - (4) a state or local form indicating that the products or services are for the exclusive use of the judiciary or the federal government;
 - (5) any other state or locally required document for establishing exemption; or
 - (6) shipping documents indicating that shipments are in interstate or foreign commerce.
- f. **Matters Requiring Special Consideration** The resolution of tax issues requiring special consideration must be coordinated with the PE, who will consult with OGC, in the course of solicitation preparation. The following are examples of state and local tax issues that may require special treatment:
 - (1) When there is a reasonable question of the applicability or allocability of a tax or when the applicability of a tax is in litigation, the contract may:
 - (a) state that the contract price includes or excludes the particular tax and is subject to adjustment upon resolution of the tax question; or
 - (b) require the contractor to take specific actions regarding payment, non-payment, refund, protest, or other treatment of the tax.
 - (2) When the applicability of state and local taxes depends on the place and terms of delivery and the effect of tax on the contract price will be substantial, alternative places of delivery and contract terms should be considered in light of tax consequences.

6.4.4. Clauses

- (1) Clause 6-40, “Federal, State and Local Taxes ” is included in solicitations and contracts if the contract is to be performed wholly or partly within the United States, its possessions, or Puerto Rico, when a fixed-price competitively awarded contract is contemplated; and the contract is expected to exceed the judiciary’s small purchase threshold., unless Clause 6-45 is included in the contract;
- (2) Clause 6-45, “Federal, State, and Local Taxes (Noncompetitive Contract)” is included in fixed-price noncompetitive contracts exceeding the judiciary’s small purchase threshold to be performed wholly or partly within the United States, its possessions, or Puerto Rico, and when the CO is satisfied that the contract price does not include contingencies for state and local taxes, and that, unless the clause is used, the contract price will include such contingencies.

Part 6.5. Rights in Data and Copyrights

6.5.1. Data Rights Policy

- a. **General** It is the policy of the judiciary to acquire only those rights in data which are necessary to the fulfillment of its mission and programs. For purposes of this chapter, the term “data” means recorded information, regardless of the form or media on which it is recorded. The term includes technical data and computer software, but does not include information incidental to contract administration, such as financial, administrative, cost or pricing or management information. The judiciary requires rights to data to:
 - (1) obtain competition among potential suppliers of products and services;
 - (2) fulfill certain responsibilities for disseminating and publishing the results of activities;
 - (3) ensure appropriate use of the results of development and demonstration activities, including the dissemination of technical information to foster subsequent developments; and
 - (4) meet other programmatic and statutory requirements.
- b. **Contractor Proprietary Interest** The judiciary recognizes that its contractors may have a legitimate proprietary interest (a property or other economic interest) in data resulting from private development and investment. Protection of such data from unnecessarily wide dissemination and use is necessary in order to avoid jeopardizing the contractor’s commercial position and economic interest and to preclude impairment of the judiciary’s ability to obtain access to or use such data. Protection of such data is also necessary to encourage prospective contractors to contract with the judiciary.
- c. In light of the considerations identified in **a** and **b** above, COs should pay particular attention to the interests of the judiciary and the contractor when deciding the scope of data rights protection to be included in each procurement. All procurements that require data to be produced, furnished, acquired or specifically used in meeting contract performance requirements must contain terms that delineate the respective rights and obligations of the government and the contractor regarding the use, duplication and disclosure of such data.
- d. As a general rule, the data rights Clause 6-60, “Rights in Data - General,” is appropriate in solicitations and contracts for data. However, in certain instances, the particular subject matter of the contract or the intended use of the data may require the use of other

prescribed clauses.

6.5.2. Unlimited Rights Data

- a.** “Unlimited rights data” is data that the government procures to use, disclose, reproduce, prepare derivative works, distribute copies to the public and perform and display publicly, in any manner and for any purpose, and to have or permit others to do so.
- b.** Generally, data in the following categories should be acquired with unlimited rights (except for copyrights):
 - (1) data first produced in the performance of a judiciary procurement, including computer software;
 - (2) form, fit and function data delivered under a procurement. Form, fit, and function data are data relating to items, components, processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, functional characteristics and performance requirements; for computer software. This term refers to data identifying source, functional characteristics and performance requirements, but excludes source code, algorithm, process, formulae, and flow charts to software;
 - (3) data that constitute manuals or instructional and training material for installation, operation, or routine maintenance of items, components, or processes delivered or furnished under a procurement; and
 - (4) all other data delivered under the procurement unless it is limited rights data or restricted computer software.
- c.** The “Rights in Data - General” clause recognizes that the contractor has the right to use, release to others, reproduce, distribute, or publish data first produced in the performance of the procurement. The CO may, however, place restrictions on the contractor’s right to use the data for these purposes. However, such restrictions should not be imposed unless they are determined to be necessary to the furtherance of judiciary mission objectives, needed to support specific judiciary programs, or necessary to meet statutory requirements.

6.5.3. Limited Rights Data

- a.** “Limited rights data” is data developed at private expense and which embody trade secrets or commercial or financial and confidential or privileged data. In asserting that such data is limited rights data, the contractor must identify such data in accordance with Provision 6-50, “Representation of Rights in Data.” The contracting officer must include this provision in solicitations and RFQs. Such limited rights data will not, without the permission of the contractor, be used by the judiciary for manufacture, and will not be disclosed outside the government except for certain specific purposes as may be set forth in the notice.
- b.** The following are examples of specific purposes which may be added to the Limited Rights Notice:
 - (1) use by support contractors (except for manufacturing);
 - (2) use by non government evaluators in evaluating contractor offers;
 - (3) use by other contractors participating in judiciary programs for use and information in connection with performance under the procurement.

In such instances, the CO will add paragraph (c) of Provision 6-50, "Representation of Rights in Data" to the solicitation or RFQ.

6.5.4. Restricted Computer Software

- a.** "Restricted computer software" is software developed at private expense; that is a trade secret; is commercial or financial and confidential or privileged; or is published copyrighted computer software. The contracting officer must include Provision 6-50 in solicitations or RFQs. Restricted computer software normally is acquired with restricted rights. Contractors claiming that software is restricted computer software must identify such software in accordance with Provision 6-50, "Representation of Rights in Data," and, when it is delivered to the judiciary, place on it the procurement required restricted rights legend.
- b.** Unlike other data, computer software is also an end item in itself, such that if withheld and form, fit and function data are provided in lieu thereof, an operational program may not be acquired. Thus, if delivery of restricted computer software is anticipated to be needed to meet contract performance requirements, the CO should assure that the restricted rights afforded the judiciary to such computer software permit the following, where appropriate:
 - (1) used or copied for use in or with the computer or computers for which it was acquired, including use at any government installation to which such computer(s) may be transferred;
 - (2) used or copied for use with a backup computer if any computer for which it was acquired becomes inoperative;
 - (3) reproduced for safekeeping or backup purposes;
 - (4) modified, adapted, or combined with other computer software, provided that the modified, combined or adapted portions of any derivative software incorporating restricted computer software are subject to the same restricted rights;
 - (5) disclosed to and reproduced for use by support; or
 - (6) used or copied for use in or transferred to a replacement computer.
- c.** When computer software developed at private expense is modified or enhanced as a necessary part of performing a contract, only that portion of the resulting product in which the original product is recognizable will be restricted computer software.
- d.** The restricted rights set forth above are the minimum rights the judiciary will obtain with restricted computer software. However, either greater or lesser rights, consistent with the purposes and needs for which the software is to be acquired, may be specified by the CO in a particular procurement. For example, consideration should be given to any networking needs or any requirements for use of the computer software from remote terminals. Also, the scope of the restricted rights may be different from the documentation accompanying the computer software than for the programs and databases. Any additions to, or limitation on the restricted rights set forth in the Restricted Rights Notice are to be expressly stated in the procurement or in a collateral agreement incorporated in and made part of the contract.
- e.** Clause 6-55, "Delivery of Limited Rights in Computer Software" When the contractor has, in its offer, identified pre-existing proprietary data or restricted computer software pursuant to Provision 6-50, "Representation of Rights in Data" of the solicitation, then Clause 6-55 must be included in contracts and purchase orders.

6.5.5. Copyrighted Data

- a. In order to facilitate the dissemination of information produced at government expense, contractors are normally authorized, without prior approval of the CO, to establish claim to copyright in technical or scientific articles based on or containing data first produced in performance of work under a contract containing the Clause 6-60, "Rights in Data-General," and published in academic, technical, or professional journals, symposia proceedings and similar works. Otherwise, the permission of the CO must be obtained if the contractor desires to establish claim to copyright in data first produced in the performance of a contract.
- b. Usually, permission for a contractor to establish copyright in data first produced under the contract will be granted when copyright protection will enhance the transfer or dissemination of data and the commercialization of products or the process to which it pertains. The request for permission must be in writing, should identify the data involved or furnish copies of the data for which permission is sought, as well as a statement with the intended publication or dissemination media or other purpose for which copyright is requested. The request will normally be granted unless:
 - (1) the data consist of a report that represents the official views of the judiciary or that the judiciary is required by statute to prepare;
 - (2) the data are intended primarily for internal use by the government;
 - (3) the data are of the type that the judiciary itself distributes to the public;
 - (4) the judiciary determines that data should remain in the public domain and be disseminated without restriction.
- c. Whenever a contractor establishes claim to copyright subsisting in data first produced in the performance of a contract, the government is granted a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute to the public, perform publicly and display publicly by or on behalf of the government, all such data. The judiciary may, on a case by case basis, obtain a license of different scope than set forth in this paragraph, only with the concurrence of the PE, who will consult with OGC, and only if such a license will not interfere with the judiciary's use of the data as contemplated by the procurement.
- d. Whenever a contractor establishes claim to copyright, the contractor is required to affix the applicable copyright notices of 17 U.S.C. 401 and 401 and acknowledgment of government sponsorship (including the contract number) to the data whenever such data are delivered to the government, published, or deposited for registration as a published work in the U.S. Copyright Office. Failure to do so could result in such data being treated as unlimited rights data.

6.5.6. Data Not First Produced in Performance of a Contract

Contractors are not to incorporate in data delivered under a contract any data that is not first produced under the contract and that is marked with the copyright notice of 17 U.S.C. 401 or 401, without either:

- (1) acquiring for or granting to the government certain copyright license rights, as set forth in paragraph (c) of Clause 6-60, "Rights in Data - General"; or
- (2) obtaining permission from the CO to do otherwise.

6.5.7. Unmarked or Improperly Marked Data or Software

- a. Data or software received without a restrictive legend are deemed to have been furnished with unlimited rights. However, the CO may permit the contractor to place a restrictive legend on the data or software within six months of delivery if the contractor demonstrates that:
 - (1) its omission was inadvertent; and
 - (2) use of the legend is authorized.
- b. The judiciary has no liability with respect to the use or disclosure of data or software made before the addition of the legend to the data/software.
- c. Data or software received with a restrictive legend not permitted by the terms of the contract may be used with limited rights only pending inquiry to the contractor. If no response has been received within 30 days, or if the response fails to show that the restriction is authorized, the CO, after consultation with the PE, who will consult with OGC, may obliterate the legend, notify the contractor accordingly, and thereafter use the data/software as if acquired with unlimited rights.

6.5.8. Special Works

- a. Special works may be used in procurements, or portions thereof, that are primarily for the production or compilation of data for the judiciary's own use. Examples of such procurements may include those for:
 - (1) the production of audiovisual works;
 - (2) histories of the judiciary;
 - (3) works pertaining to training or career guidance;
 - (4) works pertaining to the instruction or guidance of judiciary employees in the discharge of their duties.
- b. Where the procurement involves the acquisition of special works, the CO will insert Clause 6–65, “Rights in Data - Special Works” in solicitations, contracts, RFQs, and purchase orders.

6.5.9. Professional Services/Work for Hire

- a. Contracts for professional consultant, research or other highly specialized services, such as those under 5 U.S.C. 3109 for expert or consultant services, may require that the judiciary retain broad intellectual property rights. In such cases, the work may be specifically characterized in the contract as a work for hire, in which case the intellectual property rights which accrue to the judiciary are those that would arise if the work were performed by a government employee. In such an instance, the contract must specify that the work is a “work for hire.” When the work is classified as a “work for hire,” the contractor enjoys no right to the data produced under the contract but rather, all materials, data and other information developed, delivered, furnished or otherwise called for under the contract are works of the United States and are in the public domain. Because the government's needs can generally be met by acquiring unlimited rights in data, as set forth in Clause 6-65, the inclusion of a clause treating all data as a work for hire should be used cautiously and only in those instances where the judiciary or public's needs cannot otherwise be adequately met.
- b. Where the contract or purchase order involves the procurement of professional services and it is determined by the CO that the contract should be treated as a “work for hire,”

the CO will insert clause 6-70, "Work for Hire" in solicitations, contracts, RFQs, and purchase orders.

6.5.10. Acquisition of Existing Computer Software

- a.** When contracting other than from GSA Multiple Award Schedule contracts for the acquisition of existing computer software (i.e. software which is privately developed and normally sold commercially under a license or lease agreement restricting its use, disclosure, or reproduction), no specific contract clause need be used, but the procurement must specifically address the judiciary's right to use, disclose and reproduce the software, and these rights must be sufficient for the judiciary to fulfill the need for which the software is being acquired. Such rights may need to be negotiated and set forth in the procurement. If the computer software is to be acquired with unlimited rights, the procurements must specifically provide for this. In negotiating these rights, the CO must also consider any computer programs and or data bases, the form (tapes, punch cards, disk pack, etc.) as well as all necessary documentation.
- b.** If the procurement incorporates, makes reference to, or uses a contractor's standard commercial license, lease, or purchase agreement, the CO must review the agreement to assure that it is consistent with other procurement provisions and the judiciary's needs. Caution should be exercised in accepting a contractor's terms and conditions since these may conflict with other procurement provisions and may not be appropriate. Any inconsistencies in a contractor's standard commercial agreement will be addressed in the procurement and the terms will specify that the procurement terms take precedence over the contractor's standard commercial agreement. (Also see 5.4.)

6.5.11. Rights to Data in Successful Offers

- a.** COs may, in consideration of award, desire to acquire unlimited rights in technical data contained in a successful offer upon which an award is based. However, before such unlimited rights are acquired, the prospective contractor must be afforded the opportunity either:
 - (1) to advise the CO that the data, or portions thereof (to be identified by the prospective contractor) are covered by any restrictive notice regarding the disclosure and use of offer information; or
 - (2) establish to the CO's satisfaction that identified portions of technical data do not relate directly to or will not be used in the work to be performed under the procurement, and request that such portions be excluded from the judiciary's rights.
- b.** If unlimited rights to data in successful offers are to be acquired, the use of the Clause, 6-75, "Rights to Data in an Offer" will be used in solicitations, contracts, RFQs, and purchase orders. Any excluded data will be identified by inserting appropriate offer page numbers in the clause. If there is a need to have access to any of the excluded data during contract performance, consideration should be given to its acquisition as limited rights data, if it so qualifies. The CO will appropriately fill in the contract's blank spaces.

CHAPTER 7 - CONTRACT ADMINISTRATION

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CHAPTER 7 - CONTRACT ADMINISTRATION

Part 7.1. Maintaining Records

7.1.1. Procurement Files (Purchase/Delivery/Task Order or Contract Files)

- a. A file must be established and maintained for every purchase action, solicitation, and contract. Procurement files must be maintained in a secured area and otherwise not left unattended nor in open view when personnel without a need-to-know are present. Access to procurement files and related documents must be limited to authorized judiciary procurement and audit personnel. See [Guide, Vol 1, Chapter 8, Part D](#) for a discussion on obtaining and disclosing procurement documents in accordance with the Procurement Integrity Act. Purchases made with the purchase card are exempt from the requirement to establish files for each individual transaction. However, the transaction must be recorded in either an electronic or manual purchase card log (see [Judiciary Purchase Card Program Manual](#)). The type of files depends on the dollar amount and award type (See [Chapter 4](#) for contract types. Purchases are awarded using a purchase order for open market purchases, which are less than the judiciary's small purchase threshold (see [3.4.1.c.](#) and [Guide Volume 1, Chapter 8, Part B](#)). Delivery orders are used for products and task orders are used for services in accordance with the contract (i.e. GSA federal supply schedule, other federal agency contract, indefinite delivery contracts, etc.). If the purchase is estimated to be over the judiciary's small purchase threshold or whenever formal contract procedures are used, then it will use a contract file. The judiciary's threshold for open market purchases with or without competition is \$5000 (see [3.4.2.a.](#)). When placing orders against a GSA federal supply schedule or another federal agency contract, the judiciary must comply with the other federal agency's competition threshold as well as the other federal agency's contract terms and conditions. Files for each procurement must contain the following documentation:
- b. **Open Market Purchases With or Without Competition- up to \$5,000 (purchases from GSA schedule or other federal agency contracts up to GSA or the other federal agency's competition threshold)**
- (1) requisition or statement of need with signature of authorizing official;
 - (2) signed purchase/delivery/task order and any signed modifications;
 - (3) supporting documentation for each purchase/delivery/task order modification, including the documentation required in [3.1.5.d.](#) for GSA schedule orders;
 - (4) copies of all invoices or vouchers; and,
 - (5) any other pertinent information (e.g. documented phone conversations with offerors/contractors, evaluation worksheets, correspondence to and from offerors, commercial agreements, etc.).
- c. **Small Purchases greater than the applicable noncompetitive purchase threshold (1. greater than \$5,000 open market and less than or equal to the judiciary's small purchase open market threshold or 2. purchases from GSA schedule or other**

federal agency contracts greater than their competition threshold and up to the judiciary's delegated limit for GSA schedule or other federal agency contracts):

- (1) determination of need with signature of authorizing official;
- (2) rationale for selection of source of supply;
- (3) evidence of the level of competition required by the specific contract in its terms of use;
- (4) justification if other than full and open competition, including required written approvals;
- (5) copy of the one-time delegation of procurement authority from the PE (applicable if the procurement exceeds the CO's delegation level);
- (6) copies of solicitations, amendments, questions, clarifications, all correspondence with prospective offerors and their replies;
- (7) copies of unsuccessful offers;
- (8) determination of fair and reasonable and basis of selection. (If price is not the basis of selection, the required PMD written approvals must be included.);
- (9) signed purchase/delivery/task order and any signed modifications with the supporting documentation;
- (10) copies of receiving documents;
- (11) copies of all invoices or vouchers;
- (12) if multiple payments, a log of payments made and balances remaining; and
- (13) and any other pertinent information (e.g., documented phone conversations with offerors, evaluation worksheets, commercial agreements, records of site visits by prospective offerors, etc.).

d. Formal Competitive Open Market Contracts - over the judiciary's small purchase threshold

- (1) determination of need with signature of authorizing official;
- (2) rationale for selection of source of supply;
- (3) one-time delegation of procurement authority from the PE (applicable if the procurement exceeds the CO's delegation level or is not covered by one of the special delegations);
- (4) copy of the issued solicitation and any of its amendments, if applicable;
- (5) justification if other than full and open competition, including required written approvals;
- (6) copies of the advertisement of the requirement and/or documentation that the requirement was advertised locally or on the GPE (or the approved exception from advertising);
- (7) copies of all offers received;
- (8) copies of all correspondence to prospective offerors and their replies;
- (9) determination of fair and reasonable and basis of selection. If price is not the basis of selection, include the required written approvals;
- (10) copy of the contract and delivery order/task order, if an IDIQ contract, and all modifications and all other documents supporting them (i.e. copies of solicitations, competitive range determinations, memo of negotiations, pre-

- negotiation positions, post performance assessment, contractor reports and copies of deliverables, if appropriate; etc);
- (11) copies of unsuccessful offers;
- (12) copies of debriefing from unsuccessful offerors and documentation of debriefing, if any;
- (13) documentation of protests, if any;
- (14) copy of the obligating document and any modifications to that document;
- (15) copies of receiving documents;
- (16) copies of all invoices or vouchers; and
- (17) any other pertinent information (e.g., designation of COTR, documented phone conversations with potential/actual offerors, evaluation worksheets, commercial agreements, records of site visits by contractors, logs of payments, etc.)

Part 7.2. Responsibilities

7.2.1. Contract Administration Process

- a.** Once a procurement is awarded, the contract administration process begins. Every contract-related issue that arises after the procurement is awarded becomes part of the contract administration process. Contract administration encompasses a broad range of functions that, together, ensure that the judiciary obtains exactly what it has purchased. For contract administration involving sureties, see [6.2.3](#). The contract administration process includes:
 - (1) receiving, inspecting, and either accepting or rejecting contractor deliverables in a timely manner;
 - (2) monitoring the contractor's progress, making sure deliverable schedules are maintained and that products and services are of acceptable quality;
 - (3) ensuring that the judiciary is meeting its own contractual obligations, such as reviewing deliverables timely or providing the contractor data that it may need;
 - (4) placing orders under some procurement types and treating those orders as mini-contracts which must be separately administered;
 - (5) providing guidance, answering questions, and addressing contractor issues;
 - (6) changing or modifying the procurement as necessary;
 - (7) ensuring that the contractor is paid only the amount to which it is entitled, but is not paid prior to delivery and fulfillment of acceptance criteria of each procurement;
 - (8) ensuring that other functional specialists provide assistance to the CO in addressing unusual contract actions when necessary, such as protests, disputes, terminations, etc.; and
 - (9) closing out the contract and orders. (See [3.4.11](#) for closing out purchase orders.)
- b.** There are many individuals involved in the contract administration process. Each of these individuals or groups has specific functions, responsibilities, and accountability.

7.2.2. Participants in the Contract Administration Process

- a.** The contracting officer (CO) is the only judiciary employee who is delegated authority to legally commit the judiciary to the purchase of products and services. The CO is supported by other individuals in the judiciary. One of the support individuals is the contracting officer's technical representative (COTR). This individual is appointed by the CO after the person completes the required COTR training. Appointments are evidenced by signed certificates. Such appointments may be renewed only if refresher training is completed every three years.
- b.** The CO delegates specific contract administration responsibilities to the COTR through a written designation. Through this memo of designation, the COTR is empowered to fulfill the delegated responsibilities on a specific contract and/or delivery or task order as appropriate. The respective roles of the CO and COTR are discussed in more detail in [7.2.3.](#) below.
- c. Other Participants**
 - 1. OGC staff members provide essential requested legal reviews and guidance.
 - 2. Financial and budget officials provide the funding that may be required to exercise options, make changes, and settle claims.
 - 3. The CO tracks expenditures against contracts/orders, weighs the adequacy and accuracy of vouchers and invoices, and ultimately approves payments to the contractor.
 - 4. Other financial officials ultimately provide payments to the contractor after written approval of the CO. They also track expenditures against contracts/orders, and weigh the adequacy and accuracy of vouchers and invoices.
- d.** With the single exception of the COTR, all support personnel operate under their own authorities derived through their organizations. It is only the COTR who, through formal appointment and designation, shares authorities otherwise reserved exclusively for the CO.

7.2.3. Distinctions between Contracting Officer(CO) and Contracting Officer's Technical Representative (COTR)

The CO is the only person with the legal authority to commit the judiciary to a business arrangement and expend appropriated funds for that purpose. It is the sole responsibility of the CO to administer each contract. The COTR assists the CO by providing specific services as directed by the CO. However, the CO has the final word and signature authority in the contracting matter. The CO and the COTR are the primary members of a team which provides proper contract administration and oversight. This team's efforts ensure that tax dollars are being wisely and efficiently expended and that the judiciary and, in particular, the customer organization that generates each requirement, is receiving the full measure of the products and/or services which it has purchased.

7.2.4. Functions of the CO and COTR

- a. Monitoring the progress of a contractor and making sure deliverable schedules are maintained This is a shared responsibility. However, the CO and the COTR often look at different aspects of the contractor's performance. The CO will examine delivery and reporting schedules and consult with the COTR to determine if the contractor is making all deliveries in accordance with the procurement's delivery schedule. Since the COTR is more closely involved in the contractor's day-to-day activities, the COTR acts as the eyes and ears of the CO and customer. The COTR is in effect an early-warning system. For instance, the COTR will be the first one to know when a contractor does not understand or meet a procurement requirement, is making inaccurate assumptions, or is asking questions that suggest that it is not making adequate contract performance progress.
- b. Making sure that the judiciary is meeting its contractual commitments This is a shared responsibility. For instance, when the judiciary is required by the procurement to provide the contractor equipment or publications for the contractor to do its work, it must be done within the time frame set forth in the procurement. If the judiciary is required to provide equipment or publications as in this example, the COTR provides the material or, in some circumstances, oversees the provision of this material by other employees. The CO, in turn, manages the procurement to ensure that the judiciary meets all of its contractual responsibilities. If the judiciary is failing to meet its responsibilities, the contractor may be entitled to an equitable adjustment. The CO may then have to negotiate a change with the contractor, which may ultimately cause the expenditure of further judiciary funds and/or a delay in delivery or other contract performance.
- c. **Placing orders under some contract types and often treating those orders as mini-contracts, which must be separately administered** The CO is responsible for the placement of orders since it normally involves obligating judiciary funds. Administering each of these orders requires similar actions as the administration for the contracts under which the orders were issued.
- d. **Receiving, inspecting, and either accepting or rejecting contractor deliverables** The COTR recommends acceptance or rejection of the deliverable. If applicable the COTR will normally provide this recommendation only after consulting with customer organizations to confirm their satisfaction with the contractor's performance. This is because the COTR is generally on-site and either observes the provision of services first-hand or is the delivery point for material deliverables. The CO has the final decision for acceptance or rejection after accepting or discussing the delivery or performance with the COTR.
- e. **Providing "technical direction," consisting of guidance, answering questions, and addressing other issues that the contractor may have; but not "changing" the procurement** The COTR provides technical direction. Only the CO can change a procurement. This is a vital area for both the CO and the COTR since open communication between the contractor and the judiciary can mean the difference between success and failure. The COTR may provide guidance only within the general scope of the procurement and only if the guidance does NOT alter any of the procurement specifications or the statement of work, or terms and conditions of the procurement.

Guidance and/or direction that is outside the scope of the procurement or which alters specifications, terms, or conditions would be considered new work. Only the CO is empowered to change a procurement, whether any adjustment in the contract price will result or not. COs and COTRs must work together closely in this area as it is often quite difficult to distinguish between “technical direction” and “changes.”

- f. **Changing or modifying the contract** As discussed above, this is a function strictly reserved for the CO and it may not be delegated. However, the COTR will be asked to support this process by evaluating offers, participating in negotiations, etc.
- g. **Ensuring that the contractor is paid for services and products that have been delivered and accepted** This is primarily a COTR function which requires the COTR to work closely with accounting/disbursement personnel, to ensure that payments are made in proper amounts and within reasonable or contract specified timeframes.
- h. **Maintaining procurement files** Both the CO and the COTR must maintain files for every purchase action, solicitation, and contract. The file requirements for the CO are located in [7.1.1](#). The COTR must maintain a contract work file. The CO files, the COTR files, and other procurement documents must be maintained in a secured area and otherwise not left unattended nor in open view when personnel without a need-to-know are present. Access to procurement files and related documents must be limited to authorized judiciary procurement and audit personnel. See [Guide, Vol 1, Chapter 8, Part D](#) for a discussion on obtaining and disclosing procurement documents in accordance with the Procurement Integrity Act. The contract work file must contain all relevant documentation such as notes of conversations with the contractor, written instructions given to the contractor and similar items as called for by the CO. The COTR must document all significant actions including any technical directions given to the contractor in an action file. This file must contain enough detail so that if a contract dispute or claim occurs, the CO can reconstruct what the COTR did or did not do. Because it is often difficult to determine what might be the subject of a dispute or claim, the COTR must adequately document significant actions that might develop into a problem later. The file must also contain copies of the contract, all modifications, the COTR delegation letter, and all correspondence between the COTR and the contractor or the CO. The file must be maintained intact and updated by each successor COTR until the contract ends.
- i. **Closing out contracts and orders** This is a shared function. First the COTR ascertains that final receipt and acceptance of all products and services has occurred and recommends that the contractor must be relieved of any further legal responsibilities under the contract. Then the CO determines if final payment has been made. The CO negotiates any final payments or actions for the closeout of the contract.
- j. **Supporting unusual contract actions when necessary, such as protests, disputes, terminations, etc.** This is always a joint function but with a clear separation of responsibilities. The COTR plays a major part in the program related aspects of the action, including providing supporting information which impacts the specification or statement of work. The CO has sole responsibility for negotiations and the business and

financial aspects of the transaction, such as deciding whether any payments will be made to the contractor.

7.2.5. COTR's Obligations to the Customer Office

- a.** Aside from the COTR responsibilities to the CO, the COTR also has concurrent responsibilities to the customer office. The COTR must work closely with customer personnel during contract delivery or performance to ensure that the customer office is receiving satisfactory products and services in accordance with the procurement. Moreover, the COTR needs to be involved closely enough with the project to anticipate newly evolving requirements which may result in the need to change the procurement. Under certain types of contracts, the COTR will also be responsible to draft work requirements which will be assigned to the contractor through task orders. The COTR will review and approve technical offers and quotations that the contractor may be required to submit, and will participate in negotiations.
- b.** The COTR also has the critical responsibility to recommend acceptance or rejection of contract/order deliverables and/or performance. If there is premature acceptance of the performance or deliverables, the judiciary may inadvertently waive many of its rights to require the contractor to perform remedial activities or modify the deliverables. Thus, the COTR must closely observe the contractor's performance or delivery and consult often with management within the customer office and with the CO before deciding whether or not to accept performance or deliverables.

7.2.6. Role of COTR's Supervisor The COTR's direct supervisor must provide all of the individual's time and resources needed to allow the COTR to fulfill all of the delegated COTR responsibilities. Formal COTR appointment and designation comes from the PLO (in the court units and FPDs) and from the COs (in the AO). Therefore, the COTR will have procurement responsibilities to the CO. The COTR will also have procurement and non-procurement responsibilities to the COTR's direct supervisor. If a COTR's work conflicts in fulfilling these concurrent responsibilities, the COTR's direct supervisor must confer with the CO to resolve the conflict. Finally, in evaluating job performance, the COTR's direct supervisor must take into account performance as a COTR by gathering input from the CO prior to issuing a rating.

7.2.7. Becoming a COTR

- a.** Judiciary employees are normally nominated in writing by the customer organizations. Provided that the individual completed the required training and is otherwise capable, the PLO (or in the AO the CO) will appoint the employee as a COTR. Information about the required COTR training is available on the procurement website on the J-Net. A formal appointment is evidenced by the issuance of a certificate signed by the PLO or the Administrative Office CO.

- b. The CO will subsequently designate the COTR for specific contracts, delivery orders, and task orders. Formal designation to act as a COTR on a specific contract, delivery order, and/or task order is evidenced by a letter of designation, signed by the CO. A copy of this designation will be furnished to the COTR's immediate supervisor, and to the contractor.
- c. The designation letter will describe the exact functions the COTR will be required to perform on the particular contract. Separate letters of designation will be required for each contract, delivery order, or task order assigned to the COTR. COTR designations expire automatically at the conclusion of the contract, delivery order, or task order under which the COTR was designated.

7.2.8. Use of Contractors to Monitor Contract Performance

- a. Facilities Contracts COs may contract with architects, engineers, or real estate management professionals to assist in selected contract administration functions that may be delegated to a judiciary COTR.
- b. Other Contracts COs may contract with third parties to perform contract administration responsibilities such as testing for conformance (but not acceptance); reviewing contractor submittals, shop drawings, written requests for design approval; developing negotiation positions; reviewing offers; advising panels; drafting mods; etc. However, the CO remains as the signature authority for any contract actions.

7.2.9. Relationship Between Judiciary and Contractor Representatives

- a. The objective of any purchase action is performance or delivery of the contract requirements, not control of the contractor's business. Judiciary administrative personnel must devote their efforts to tasks associated with that requirement, such as quality assurance, cost monitoring, and other activities intended to ensure compliance with contract terms. They may not direct the contractor's management activities or intervene to supervise, train, or discipline contractor personnel (See [5.1. - Personal Services](#)).
- b. Disputes with contractors are an obstacle to contract performance or delivery. CO's and their supporting staffs must seek to resolve contract disputes through businesslike approaches that promote efficiency and cost-effectiveness and enforce the judiciary's interests.

7.2.10. Clauses

- a. The following clauses are included in all solicitations and contracts:
 - (1) [Clause 7-1](#), "Contract Administration;" The CO will provide the CO's name, business address, e-mail address and telephone number in a cover letter accompanying the solicitation or contract.
 - (2) [Clause 7-5](#), "Contracting Officer's Technical Representative;"

- (3) [Clause 7-10](#), “Contractor Representative;” The offeror will appropriately complete the clause’s blank spaces.
 - (4) [Clause 7-15](#), “Observance of Regulations/Standards of Conduct;”
 - (5) [Clause 7-20](#), “Security Requirements;”
 - (6) [Clause 7-25](#), “Indemnification”(also include in purchase orders when applicable);
 - (7) [Clause 7-30](#), “Public Use of the Name of the Federal Judiciary;” and
 - (8) [Clause 7-35](#), “Disclosure or Use of Information.”
- b. [Clause 7-40](#), “Judiciary-Contractor Relationships” is included in all solicitations and contracts which do not involve the use of judiciary information technology funds.
 - c. [Clause 7-45](#), “Travel” is included in all solicitations, RFQs, contracts, and purchase orders when travel is reimbursable either as a separate line item in an award that is otherwise fixed price or as part of cost-reimbursement contract.
 - d. [Clause 7-50](#), “Parking” is included in all solicitations, RFQs, contracts, and purchase orders when performance will be at the AO.
 - e. [Clause 7-55](#), “Contractor Use of Judiciary Networks” is included in all solicitations RFQs, contracts, and purchase orders when the contractor will use judiciary computer networks during performance.

Part 7.3. Judiciary Property

7.3.1. General

- a. The CO must review the contractors' property control systems to ensure compliance with the contract's property clauses, if applicable.
- b. The CO must notify the contractor in writing when its property control system does not comply with the contract requirements, requesting prompt correction of deficiencies. If the contractor does not correct the deficiencies within a reasonable period, the CO may:
 - (1) notify the contractor in writing of any required corrections and establish a schedule for completion;
 - (2) caution the contractor that failure to take the required corrective action within the time specified will result in withholding or withdrawing system approval; and
 - (3) advise the contractor that its liability for loss of or damage to judiciary property may increase if approval is withheld or withdrawn.
- c. **Clauses**
 - (1) [Provision 7-60](#), “Judiciary Furnished Property or Services” is included in all solicitations.
 - (2) [Clause 7-65](#), “Protection of Judiciary Buildings, Equipment, and Vegetation” is included in solicitations and contracts for services to be performed on judiciary installations.
 - (3) [Clause 7-70](#), “Judiciary Property Furnished ‘As Is’” is included in solicitations RFQs, contracts, and purchase orders when judiciary property is to be furnished "as is."

7.3.2. Property Records

- a. Contractor records of judiciary property, established and maintained under the terms of the contract, are the judiciary's official records.
- b. Contracts must provide for the official records to be maintained by the judiciary when judiciary property is furnished to a contractor:
 - (1) for repair or servicing and return to the shipping organization;
 - (2) for use at a judiciary installation;
 - (3) under a local support service contract;
 - (4) under a contract with a short performance period or involving judiciary property having a contract cost of \$50,000 or less; and
 - (5) when otherwise determined by the CO to be in the judiciary's interest.
- c. A detailed inventory list of judiciary-furnished products, material or services specifying, applicable, quantity, nomenclature, serial number, model number, and general condition must be maintained in the contract file and kept current at all times.

Part 7.4. Subcontracting

7.4.1. General

- a. When a contract contains [Clause 7-75](#), "Subcontracts" the contractor must give the CO advance notice of its intent to subcontract. The contractor may enter into a subcontract unless notice of disapproval is received from the CO within 15 days from the date the CO was notified. The CO must:
 - (1) promptly evaluate contractor notices of intent to subcontract;
 - (2) obtain assistance in this evaluation, as necessary, from subcontracting, audit, pricing, technical, or other specialists; and
 - (3) notify the contractor in writing if the subcontract is disapproved.
- b. The CO must review the notice of intent to subcontract with any supporting data and consider the following:
 - (1) Will the subcontractor acquire special test equipment or facilities that are available from judiciary sources?
 - (2) Is the subcontractor's selection of the particular products, equipment, or services technically justified?
 - (3) Was adequate price competition obtained for the subcontract, or its absence justified?
 - (4) Did the contractor adequately assess its subcontractor's alternate offers?
 - (5) Does the contractor have a sound basis for selecting and determining the responsibility of the subcontractor?
 - (6) Has the contractor performed adequate price or cost analysis of the subcontract?
 - (7) Is the proposed subcontract type appropriate for the risks involved and consistent with current policy?

- (8) Has the contractor adequately and reasonably translated prime contract technical requirements into subcontract requirements?
 - (9) Is the proposed subcontractor on the list of debarred, suspended, and ineligible contractors?
 - (10) Has the contractor incorporated terms and conditions contained in the prime contract which are expressly applicable to the subcontract(s)?
- c.** Particularly careful and thorough consideration is necessary when:
- (1) the prime contractor's purchasing system or performance is inadequate;
 - (2) close working relationships or ownership affiliation between the prime and subcontractor may preclude free competition or result in higher prices;
 - (3) subcontracts are proposed on a noncompetitive basis, at prices that appear unreasonable, or at prices higher than those offered the judiciary in comparable circumstances; or
 - (4) subcontracts are proposed on other than a fixed-price basis.
- d. Clauses**
- (1) [Clause 7-75](#), "Subcontracts" is included in solicitations and contracts when contemplating:
 - (a) a cost-reimbursement contract;
 - (b) a letter contract that exceeds the judiciary's small purchase threshold;
 - (c) a fixed-price contract that exceeds the judiciary's small purchase threshold under which unpriced contract actions (including unpriced modifications or unpriced delivery orders) are anticipated;
 - (d) a time-and-materials contract that exceeds the judiciary's small purchase threshold; or
 - (e) a labor-hour contract that exceeds the judiciary's small purchase threshold.

The CO will appropriately fill in the clause's blank spaces;.
 - (2) [Clause 7-80](#), "Competition in Subcontracting" is included in solicitations and contracts when the contract amount is expected to exceed the judiciary's small purchase threshold, unless:
 - (a) a firm-fixed-price contract, awarded on the basis of adequate price competition or whose prices are set by law or regulation, is contemplated or
 - (b) a time-and-materials, labor-hour, or architect-engineer contract is contemplated.

Part 7.5. Contract Performance

7.5.1. Contract Performance

- a. Postaward Orientation** Postaward orientation is conducted by the CO. It is optional and is normally conducted in cases of complex service contracts. It is a planned and structured discussion between judiciary and contractor representatives that focuses on:

- (1) introducing judiciary and contractor representatives;
 - (2) ensuring the understanding of the technical aspects of the contract;
 - (3) identifying and resolving oversight issues;
 - (4) preventing problems;
 - (5) averting misunderstandings;
 - (6) establishing a methodology to solve problems that may occur later; and
 - (7) reaching agreement on communication issues.
- b.** The CO decides whether postaward orientation is necessary. The CO must consider the:
- (1) nature and extent of any preaward survey or other previous discussions with the contractor;
 - (2) procurement type, value, and complexity;
 - (3) procurement history of the required products or services;
 - (4) requirements for spare parts and related equipment;
 - (5) urgency of the delivery schedule and relationship of the products or services to critical programs;
 - (6) length of the planned production cycle;
 - (7) extent of subcontracting;
 - (8) contractor's performance history and experience with the products or services;
 - (9) safety precautions required for hazardous materials or operations; and
 - (10) financing arrangements contemplated.
- c.** When a postaward orientation is conducted, it must be held promptly after award. The CO must prepare an agenda before the orientation and summarize by memorandum the actual topics covered in the orientation session. The CO and the contractor, and, whenever possible, all principal parties must attend any post-award conference (for example, COTRs, project officers, program managers, and other appropriate subject matter experts)
- d.** A postaward orientation may not be used to change the contract. However, any changes identified in a postaward orientation, determined by the CO to be necessary, must be made by the CO in a contract modification.

7.5.2. Performance Record Keeping

- a.** Maintenance of complete records on contract performance is essential in monitoring contractor performance.
- b.** The contractor must maintain records for three years after final payment on the contract. [Clause 7-85](#), "Examination of Records" is included in all solicitations and contracts.
- c.** The CO and COTR both maintain records on each procurement assigned to them. Records must be maintained by the CO in a separate official procurement file (see [7.1.1.](#)) and by the COTR in a contract work file (see [7.2.4.h.](#)).

7.5.3. Performance Monitoring

- a. Performance monitoring involves those contract administration activities that COs, COTRs, and support personnel use to ensure that products and services received conform to the procurement's quality, quantity, and other specific requirements.
- b. **Judiciary Policy on Performance Monitoring** Judiciary policy requires that the CO ensure that:
 - (1) procured products or services meet contract requirements and are delivered/performed in accordance with contract delivery schedules;
 - (2) procedures for assuring that these contract requirements are met and performed before acceptance of products or services under the procurement; and
 - (3) no procurement precludes the judiciary from performing inspection.
- c. **Monitor Actions of COTR and other Support Personnel** The CO is responsible for the actions of all other personnel involved in the administration of the contract. The CO must instruct judiciary officials not to require the contractor to do anything that is not specified in the procurement.
- d. When a contract is signed, it is the intent of both parties to perform their respective obligations. Poor performance or late deliveries may cause costly delays in the program that the contract supports. The judiciary monitors contract performance closely to ensure that required end items are delivered on time. Monitoring and inspection supports many objectives, including those to:
 - (1) identify potential delinquencies;
 - (2) isolate specific performance problems;
 - (3) support contractor requests;
 - (4) point out the need for judiciary assistance;
 - (5) reveal actual or anticipated default; and
 - (6) identify judiciary-caused delays.
- e. **Review of Contractor Deliverables** Review of contractor deliveries is an important method of enforcing contract requirements and contract terms which require submission and written approval and thus must be strictly enforced. The CO will ensure that contractor deliveries are disapproved only for failure to meet a material requirement of the procurement. If a contractor delivery indicates that the procurement specifications are inadequate, the CO must determine the appropriate specifications with the assistance of technical personnel and modify the contract to reflect those revised specifications.
- f. COs and their representatives will approve, conditionally approve, or disapprove contractor deliveries promptly and in accordance with any time limits set forth in the procurement. Disapprovals and conditional approvals will clearly indicate what the contractor must do to comply with the contract requirements. Approval of late deliveries or deliveries of less than conforming products or services may constitute relaxation of contract performance or delivery requirements. When such relaxation occurs for reasons other than conditions caused by the judiciary, they constitute changes to the procurement that require the negotiation of consideration. See [7.6.3](#) for remedies.

Part 7.6. Quality Assurance

7.6.1. General The CO is responsible for ensuring that products and services received under each contract conform to the quality and quantity requirements of the contract, including inspection, acceptance, warranty, and any other measures associated with quality assurance.

7.6.2. Contract Remedies Contract remedies are forms of relief that the judiciary can pursue to compensate for contractors' nonperformance or noncompliance with a contract term or condition. These forms of relief can be provided by clauses or from basic rights provided in government contract law and, occasionally, in commercial contract law.

7.6.3. Types of Remedies

- a.** The judiciary has several methods at its disposal to remedy a given situation without resorting to terminating the contract. Remedies include:
- (1) rejecting nonconforming products and services;
 - (2) invoking written warranties;
 - (3) invoking implied warranties;
 - (4) proving the existence of latent defects, fraud, or gross mistakes amounting to fraud;
 - (5) imposing liquidated damages; and
 - (6) modifying contracts to relax or delete requirements provided that consideration is obtained.
- b.** All proposed application of remedies involving a cure notice or show cause letter must be reviewed by the PE. The PE may seek the advice of OGC.

7.6.4. Including Liquidated Damages

- a.** When the contract includes a liquidated damages clause, assessment of liquidated damages must be reasonable and considered in light of contract requirements and done on a case-by-case basis. Any rate amount established without reference to probable actual damages may be interpreted as punitive and thus unenforceable.
- b. All Evidence is Documented** The CO must document any evidence of the contractor's failure to deliver the products or perform the services within the time specified in the procurement. This documentation will focus on the:
- (1) stage of completion;
 - (2) probable amount of damages sustained by the judiciary;
 - (3) reason and excusability for a delay; and
 - (4) contractor's ability to complete the contract.
- c. The Amount Due is Computed** When assessment of liquidated damages is appropriate, the CO withholds payment based on an accurate computation of the amount due. The

actual computation will depend, on the specific amount or specific formula in the contract.

- d. The Assessment is Discussed with the Contractor** After the CO has determined the judiciary is entitled to assess liquidated damages, the CO must discuss the situation with the contractor. Prior to the actual assessment of liquidated damages, the CO will advise the contractor of the:
 - (1) judiciary's intention to assess liquidated damages unless the contractor provides evidence to the judiciary by a specified date that such an assessment would be improper;
 - (2) basis or bases for the judiciary's assessment of these damages; and
 - (3) amount of the planned liquidated damages assessment, detailing the reasons for any reduction in a specified amount stated in the contract.
- e. Preparation and Issuance of Liquidated Damages Notice** A liquidated damages notice must indicate:
 - (1) the reason for assessing the damages provided in the clause;
 - (2) the dollar amount of the damages; and
 - (3) any steps the contractor may be able to take to avoid further assessment of liquidated damages.
- f. The Contractor's Reply is Obtained and Analyzed** The CO does not have discretion to waive liquidated damages unless one of the following applies. The contractor:
 - (1) documents a reasonable case for an excusable delay;
 - (2) claims impossibility of performance; or
 - (3) claims the work is substantially complete.
- g.** Liquidated damages are generally not appropriate after the work can be considered "substantially complete." Substantial completion occurs on the day the product is ready for use in the manner intended by the judiciary at the place required by the contract.
- h. Remedies** Based on the evidence, the CO needs to decide to either:
 - (1) forego assessing liquidated damages;
 - (2) assess a reduced amount; or
 - (3) assess maximum allowable liquidated damages.

7.6.5. Nonconforming Products or Services

- a.** Products or services that do not conform to the terms of the procurement must be rejected before acceptance. After a product or service has been accepted, it cannot be rejected later, except for:
 - (1) latent defects;
 - (2) fraud; and
 - (3) gross mistakes amounting to fraud.
- b.** Prior to acceptance the CO must reject the products or services when the nonconformance adversely affects safety, health, reliability, durability, performance, or any other basic objective of the specification.

- c.** COs must normally reject products or services not conforming in all respects to contract requirements. COs must discourage the repeated delivery of nonconforming products or services, including those with only minor nonconformance. In such cases, the CO must take appropriate action, such as rejection and documentation of the contractor's performance record.
- d.** Contractors may be given an opportunity to correct or replace nonconforming products or services.
- e.** Unless the CO specifies otherwise, correction or replacement must be at no additional cost to the judiciary.
- f.** The judiciary reserves the right to charge the contractor the cost of reinspection and retesting needed because of prior rejection.
- g.** The CO may require the contractor to correct or replace any products or to reperform the services that fail to comply with the requirements of the contract.

 - (1) *For Products* The CO may reject defective products which do not conform to the contract requirements and require replacement or correction of the defects; acquire replacement products from another source and charge the contractor for any costs incurred by the judiciary; or accept the products at a reduced price. Any remedy such as replacement, correction, or reimbursement for re-procurement will be determined by the CO. Corrected or replaced products may not be tendered again unless the former tender and the requirement for correction or replacement are disclosed. If the contractor fails to proceed with reasonable promptness to perform replacement or correction, and if it can be performed within a ceiling price, the CO may by contract, or otherwise, remove, replace, or correct the products and charge the cost to the contractor; or terminate the contract for default. (See [Clause 2-5A](#) "Inspection of Products".)
 - (2) *For Services* The CO may require the contractor to perform the services again in conformity with the requirements, at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the CO may require the contractor to take necessary action to ensure that future performance conforms to contract requirements; and reduce the contract price to reflect the reduced value of the services performed. If the contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the CO may by contract or otherwise, perform the services and charge to the contractor any cost incurred by the judiciary that is directly related to the performance of such service; or terminate the contract for default. (See [Clause 2-5B](#) "Inspection of Services".)
- h.** The CO will consider the following when making a determination whether nonconforming items will be accepted:

 - (1) information regarding the nature and extent of the nonconformance including the procurement specifications and degree to which the nonconforming item departs from the specifications;
 - (2) advice of technical personnel that the product/service is safe and will perform the intended purpose;

- (3) a request from the contractor for acceptance of the products or services; and
 - (4) the procurement adjustment considered appropriate, including any adjustment offered by the contractor.
- i.** Before making a decision to accept nonconforming items, the CO will obtain the written concurrence of the requesting office.
- j. Acceptance of Minor Nonconformance** The CO can accept a product or service when the basis for the nonconformance is minor. The CO will consult with technical personnel as necessary in making this determination. Generally, a minor nonconformance does not adversely affect:
- (1) safety;
 - (2) health;
 - (3) reliability;
 - (4) durability;
 - (5) performance;
 - (6) interchangeability of parts or assemblies;
 - (7) weight (if a procurement requirement);
 - (8) appearance (if a procurement requirement); or
 - (9) any other basic requirement of the procurement.
- k.** The CO may accept minor nonconformities without receiving consideration from the contractor when the savings realized by the contractor by not conforming does not exceed the administrative cost to the judiciary for processing a formal modification. In all other instances, consideration must be obtained.
- l.** When the value of the deviation exceeds the cost of administrative processing, the CO must issue a formal contract modification specifying appropriate consideration for accepting the nonconforming deliverable. A downward price adjustment is the most common form of consideration, though consideration may take many other forms, such as additional quantities of items, or accelerated deliveries.
- m. Substantial Nonconformance** The CO may not accept products or services whose nonconformance is substantial and adversely affects satisfaction of a basic procurement requirement, unless acceptance is clearly in the judiciary's interest. The CO's determination to accept the products or services must be in writing and must be based on:
- (1) information on the nature and extent of the nonconformance;
 - (2) advice of the technical activity that products or services are safe and will perform the intended purpose;
 - (3) the contractor's request for acceptance of the products or service;
 - (4) a recommendation for acceptance by the intended user, with supporting rationale; and
 - (5) appropriate monetary or other consideration.
- n. Consideration for Acceptance of Defective Performance** When nonconforming products or services are accepted, and the CO determines consideration is due the judiciary, the CO must modify the contract to provide for an equitable price adjustment or other consideration unless:

- (1) it appears that the savings to the contractor in providing the nonconforming products or performing the nonconforming services exceeds the cost to the judiciary of processing and enforcing a modification; or
- (2) the judiciary's interests otherwise require a contract modification.
- o. Notice of Rejection** Contractors must be given prompt written notice of rejection, including the reasons for rejection when:
 - (1) the products or services have been rejected at a place other than the contractor's facility;
 - (2) the contractor persists in offering nonconforming products or services for acceptance; or
 - (3) delivery or performance was late without excusable cause.
- p.** A rejection notice does not extend the delivery period. The contractor is still required to provide products and services which conform to the contract's delivery schedule.
- q.** A contractor may respond to a notice of rejection by submitting:
 - (1) an offer to correct the work;
 - (2) an offer to provide a downward price adjustment for acceptance; or
 - (3) an offer to analyze and negotiate a revised delivery schedule for a conforming product with consideration.
- r.** Before any decision is transmitted to the contractor, the CO must obtain the review of the PE.

7.6.6. Acceptance

- a.** Acceptance constitutes acknowledgment that products or services conform with quality, quantity, and packaging requirements set forth in the procurement.
- b.** Acceptance may take place before delivery, at delivery, or after delivery, depending on the procurement's requirements.
- c.** Products and services must not ordinarily be accepted before completion of judiciary inspection and other quality assurance actions.
- d.** Acceptance must be evidenced by execution of an acceptance certificate on an inspection form, receiving report, or commercial shipping document or packing list.
- e. Clauses**
 - (1) [Clause 7-95](#), "Contractor Inspection Requirements" is included in solicitations RFQs, contracts, and purchase orders for products or services when the procurement amount is expected to be at or below the judiciary's small purchase threshold and inclusion of the clause is necessary to ensure an explicit understanding of the contractor's inspection responsibilities.
 - (2) [Clause 7-100A](#), "Limitation of Liability (Products)" is included in all solicitations and contracts in excess of the judiciary's small purchase threshold requiring delivery of products.

- (3) [Clause 7-100B](#), “Limitation of Liability (Services)” is included in all solicitations and contracts in excess of the judiciary’s small purchase threshold requiring performance of services.

7.6.7. Responsibility for Acceptance Product or service acceptance must be specified in the contract and is the responsibility of the CO. When this responsibility is redelegated to a COTR or another judiciary employee, acceptance by that person is binding on the judiciary.

7.6.8. Place of Acceptance Each procurement must specify the time and place of acceptance. Procurements providing for judiciary inspection at source (i.e., contractor’s place of business) ordinarily provide for acceptance at source; those providing for inspection at destination (i.e., judiciary’s facilities) ordinarily provide for acceptance at destination. Products accepted at a place other than destination may not be reinspected at destination for acceptance purposes, but must be examined for quantity, damage in transit, and possible substitution or fraud.

7.6.9. Certificate of Conformance

- a. At the CO's discretion, a contractor certificate of conformance may be substituted for judiciary inspection, whether acceptance is at source or destination. Acceptance based on such a certificate may be in the judiciary’s interest when:
 - (1) only small losses will be incurred in the event of a defect; or
 - (2) the contractor's reputation or past performance suggests that the products or services furnished will be acceptable, and any defective work will be replaced, corrected, or repaired without contest.
- b. [Clause 7-105](#), “Certificate of Conformance” is included in solicitations RFQs, contracts, and purchase orders for products or services when one or more of the following conditions apply:
 - (1) acceptance on the basis of a contractor's certificate of conformance is in the judiciary's interest;
 - (2) small losses would be incurred in the event of a defect; or
 - (3) because of the contractor's reputation or past performance, it is likely that the products or services furnished will be acceptable and any defective work would be replaced, corrected, or repaired without contest. In no case must the judiciary's right to inspect products under the inspection provisions of the procurement be prejudiced.

7.6.10. Transfer of Title and Risk of Loss

- a. Title to products passes to the judiciary upon formal acceptance, regardless of when or where the judiciary takes physical possession, unless the procurement specifically provides for earlier passage of title.
- b. Unless the procurement specifically provides otherwise, risk of loss or damage to products remains with the contractor until:
 - (1) delivery of the products to a carrier if transportation is F.o.b. origin; or
 - (2) acceptance by the judiciary or delivery to the judiciary at the destination specified in the procurement, whichever is later, if transportation is F.o.b. destination.

7.6.11. Implementing Express Warranties

- a. An express warranty is a written promise or affirmation given by a contractor to the judiciary regarding the nature, usefulness, or conditions of the products or performance of services furnished under the procurement.
- b. Written warranties can limit the judiciary's risk when relying upon the contractor's own inspection methods to ensure the quality of the requirement.
- c. Express warranties are the contractor's way of assuring the judiciary the product or service:
 - (1) is free from defects in workmanship; and
 - (2) will conform to the requirements of the procurement.
- d. Express warranties must:
 - (1) state the duration of the warranty; and
 - (2) specify a period during which notice of any defect must be given to the contractor.
- e. The CO must accurately determine the contractor's responsibilities and the judiciary's rights under the terms and conditions of the warranty and must verify that the warranty does not erode nor limit any of the judiciary's rights conferred elsewhere in the procurement. Warranties may provide alternate remedies such as:
 - (1) repair the defect;
 - (2) replace the item;
 - (3) reperform the service;
 - (4) make an equitable adjustment; or
 - (5) pay for repairs, replacements, or reperformance when the judiciary has obtained the products or services from other sources

7.6.12. Fraud, Gross Mistake, or Latent Defects

- a. The judiciary's acceptance of contractor products and services is final unless:
 - (1) the defect is latent;
 - (2) there is evidence of fraud; or
 - (3) there is evidence of a gross mistake amounting to fraud.
- b. For a defect to be latent it must:

- (1) not be susceptible to discovery using inspection methods that are reasonable under the circumstances; and
- (2) be in existence at the time of acceptance.
- c. The contractor is responsible for latent defects discovered at any time after final acceptance. There is no expiration of liability for a latent defect, but the extent of its liability is prorated over the useful life of the item.
- d. **Determining Fraud or Gross Mistake Amounting to Fraud** The only difference between fraud and gross mistake is intent. To prove a gross mistake, the judiciary need only prove that the mistake was truly irrisponsible.
- e. Proving fraud requires a showing that the misrepresentation or concealment of fact was made with the intent to mislead.
- f. A finding of facts for fraud must show evidence of:
 - (1) a misrepresentation of fact (actual or implied), or a concealment of material fact;
 - (2) contractor knowledge of the fact concealed or misrepresented;
 - (3) an intent to mislead the judiciary into relying on its misrepresentation or concealment; and
 - (4) judiciary injury suffered as a result of the concealment or misrepresentation.
- g. The contractor can be forced to repair or replace the product or reperform the service at its own cost any time after acceptance when fraud is proven. The judiciary can avail itself of all other remedies, including termination for default.

7.6.13. Bankruptcy

- a. Once a contractor declares bankruptcy, the right of the judiciary to take unilateral action with respect to the contractor is limited. COs need to monitor the financial strength of the contractor to anticipate possible problems that could arise in this area and take prompt action to protect the interests of the judiciary upon notification of a contractor's bankruptcy.
- b. **Procedures** Upon notification that a contractor is in bankruptcy proceedings, the CO must:
 - (1) furnish the notice of bankruptcy to the PE with a copy to the PLO (in courts and FPDOs);
 - (2) determine the amount of any claims which the judiciary may have against the contractor on any procurements which have not been closed out;
 - (3) take actions necessary to protect the judiciary's financial interests;
 - (4) safeguard judiciary property; and
 - (5) furnish pertinent procurement information to the PE.
- c. **Consultation with Office of General Counsel** The PE will consult with OGC as necessary prior to taking any action regarding the contractor's bankruptcy proceedings.
- d. **Clause** [Clause 7-110](#), "Bankruptcy" is included in all solicitations and contracts exceeding the judiciary's small purchase threshold.

Part 7.7. Payments

7.7.1. General

- a. Payments fall into two general categories:
 - (1) delivery payment - a payment made once delivery has been made and the product or service has been accepted;
 - (2) partial payment - a partial payment is a method of payment based on acceptance of a particular portion of the procurement deliverables.
- b. Partial payments can assist contractors to participate in judiciary procurements with minimal or no contract financing. Partial payments are a method of payment, not a method of contract financing. When delivery or performance is authorized in installments or when a number of items of work are called for by the contract, payment of a portion of the price may be made before the entire work is completely delivered or performed. Schedule of payments must be negotiated and incorporated into the contract. A payment should reflect the complete value of the deliverable (product, report, etc.) or a time frame of a delivered service (i.e. monthly), so that if the contract is terminated the CO will know the value of the payments for finished work, as well as the value of the terminated work. Partial payments are not based on amounts which have been expended by the contractor.
- c. The judiciary has limited authority to make advance or pre-payments. See [JP3 Subpart 2.2.11](#), Contract Financing.
- d. Nonpayment and delays in payment have harmful effects on contractors, especially small businesses. COs and financial personnel must ensure that payments legitimately due are made promptly. If a dispute arises regarding the contractor's entitlement to payment, the CO must pay the contractor any amount not in dispute, except for withholding as allowed under [7.7.4](#).
- e. If partial payments are specified in the payment provisions of the procurement, the CO will generally approve requests for partial payment upon partial delivery of products or services that fulfill procurement requirements. When the procurement does not provide unit prices, the CO may determine an appropriate formula for payment.
- f. Requests for payment under cost-reimbursement type contract must be reviewed and approved for payment by the CO, with the assistance of technical personnel, to determine that such requests comply with the requirements for allowability, allocability, and reasonableness (see [4.7](#)).
- g. In addition to commercial advance payment (see [2.2.11](#)), the judiciary may make payment in advance for certain publication charges and when making payment to other federal agencies. See [5.5, Interagency Agreements \(IAs\) and Memoranda of Understanding \(MOUs\) for Obtaining Products and Services](#).

7.7.2. Invoices

- a. Payment will be made only after receipt of an invoice.

- b. **Submission** Invoices must be sent to the paying office specified in the procurement. A copy is sent to the CO, if required by the procurement. Invoices sent to any other person or office are not considered properly submitted. Invoices submitted before performance or delivery are in violation of the certification provision of the Invoices clause.
- c. [Clause 7-125](#), “Invoices” is included in all solicitations and contracts unless another “Invoices” clause is appropriate. The CO will include a schedule of payments in the contract. For experts and consultant services, then the clause with its Alternate I must be included in solicitations and contracts.

7.7.3. Payment

- a. **Means of Payment** Payments may be made by check or electronic funds transfer (if available), as requested by the contractor and approved in writing by the CO.
- b. **Time of Payment** As a matter of judiciary policy, payment must be made as close as possible to, but not later than, the 30th calendar day after receipt of an invoice or product/service acceptance, whichever occurs later.
- c. **Payment of Interest** The Prompt Payment Act of 1982 is not applicable to the judiciary. [Clause 7-130](#), “Interest (Prompt Payment)” is included in all solicitations and contracts.
- d. **Final Payment** Final payment may be made after acceptance of the product or service. However, final payment may not be made under any contract involving retainage, payment or performance guarantees, until the CO receives a release from the contractor discharging any further obligations under the contract. Contract closeout may not be finalized until all delivery and payment issues are settled.
- e. **Clauses**
 - (1) [Clause 7-135](#), “Payments” When a fixed-price products or services contract is contemplated, then this clause must be included in solicitations and contracts, unless another “Payments” clause is appropriate (i.e., [Clause 5-1](#), “Payments under Personal and Professional Services Contracts”). When the CO uses a “Payments” clause and an “Inspection” clause is not included in the contract, then payment means acceptance.
 - (2) [Clause 7-140](#), “Discounts for Prompt Payment” is included in solicitations and contracts when a fixed-price products or services procurement is contemplated.
 - (3) [Clause 7-145](#), “Government Purchase Card” is included in solicitations and contracts when the CO determines that a purchase card can be used to make payments on the contract.
 - (4) [Clause 7-150](#), “Extras” is included in solicitations and contracts when a fixed-price product, service, or a transportation procurement is contemplated.
 - (5) [Clause 7-155](#), “Certification of Final Indirect Costs” is incorporated into all solicitations and contracts which provide for establishment of final indirect cost rates.

7.7.4. Withholding Payments

- a. The CO may refuse to pay a contractor, may suspend payments until resolution is received on an issue, may disallow a cost, or may withhold payments otherwise due, in whole or in part, when:
 - (1) the contract provides for withholding for cost plus fixed fee or incentive fee contracts when retainage is authorized withholding is in accordance with the applicable fee clause;
 - (2) in cost reimbursement contracts, elements of the amount invoiced by the contractor are not allowable (see [4.7.1.](#)), allocable (see [4.7.3.](#)), or reasonable (see [4.7.2.](#));
 - (3) the contractor has been overpaid or otherwise owes the judiciary money as a result of the contractor's actions or inactions under the contract;
 - (4) the contractor owes the judiciary money for reasons unrelated to the procurement under which payment will be withheld; or
 - (5) as a result of judicial action or applicable law, parties other than the contractor have made claims against the judiciary, or have not waived rights exercisable against the judiciary.
- b. Nonpayment may be damaging to a contractor's business and may jeopardize performance. Therefore, the CO must carefully consider the reasons for withholding or refusing payment and process disputes regarding payment expeditiously.
- c. The CO must notify the contractor of any intended withholding and must provide an opportunity for the contractor to object. If time permits, notice must be in writing.
- d. **Clause [Clause 7-160](#)**, "Limitation on Withholding of Payments" is included in solicitations and contracts when a products procurement, service procurement, time-and-materials contract, or labor-hour contract is contemplated that specifies two or more circumstances authorizing the temporary withholding of amounts otherwise payable to the contractor for products delivered or services performed.

7.7.5. Disallowing Costs

- a. At any time during the performance of a contract, the CO may issue the contractor a written notice of intent to disallow specified costs incurred or planned. However, before issuing the notice, the CO must make a reasonable effort to reach a satisfactory settlement through discussions with the contractor.
- b. If the contractor disagrees with the deduction from current payments, the contractor may:
 - (1) request in writing that the CO consider whether the unreimbursed costs must be paid and discuss the matter with the contractor; and/or
 - (2) file a claim under [Clause 7-235](#), "Disputes."
- c. **Third-Party Claims** The judiciary may be subject to claims by third parties for compensation otherwise due a contractor. When a claim is filed with the CO, the PE must be notified immediately.
- d. **Withholding Payment Under Clauses** Some contract clauses, such as [Clause 2-75](#), "Liquidated Damages" provide for withholding payment in certain circumstances. In

addition, some clauses provide for withholding a percentage or portion of payments otherwise due to induce continued acceptable performance. The CO must strictly enforce such clauses and maintain a complete record of the amounts withheld under any clause, the basis for withholding, and the disposition of funds withheld.

e. Clauses

- (1) [Clause 7-165](#), “Penalties for Unallowable Costs” is included in all solicitations and contracts over \$500,000, except fixed-price contracts without cost incentives.
- (2) [Clause 7-170](#), “Notice of Intent to Disallow Costs” is included in solicitations and contracts when a cost-reimbursement contract or a fixed-price incentive contract is contemplated.

7.7.6. Reserved

7.7.7. Assignment of Claims

- a.** A contractor may assign monies coming due to a single bank, other financial institution or other party approved by the PE, with the written approval of the CO. Any other attempted assignment may be treated as a breach of contract.
- b. Approval** COs may approve in writing any authorized assignment that does not jeopardize contract performance.
- c. Assignments by Law** This part does not govern assignments ordered by a court or by operation of law. COs must notify the PE, who will consult with OGC, in such cases.
- d. Clauses**
 - (1) [Clause 7-175](#), “Assignment of Claims” is included in solicitations and contracts expected to exceed the judiciary’s small purchase threshold unless the procurement will prohibit the assignment of claims.
 - (2) [Clause 7-180](#), “Prohibition of Assignment of Claims” is included in solicitations and contracts for which a determination has been made that the prohibition of assignment of claims is in the judiciary's interest.
- e. Assignments**
 - (1) Assignments by corporations shall be:
 - (a) executed by an authorized representative;
 - (b) attested by the secretary or the assistant secretary of the corporation; and
 - (c) impressed with the corporate seal or accompanied by a true copy of the resolution of the corporation’s board of directors authorizing the signing representative to execute the assignment.
 - (2) Assignment by a partnership may be signed by one partner, if the assignment is accompanied by adequate evidence that the signer is a general partner of the partnership and is authorized to execute assignments on behalf of the partnership.
 - (3) Assignments by an individual shall be signed by that individual and the signature acknowledged before a notary public or other person authorized to administer oaths.

- f. Filing** The assignee shall file the notice of assignment and copy of the instrument of assignment with:
- (1) the CO,
 - (2) the surety on any bond applicable to the contract, and
 - (3) the disbursing officer designated in the contract to make payment.
- The assignee shall forward to each party, specified above, an original and three copies of the notice of assignment together with one true copy of the instrument of assignment. The true copy shall be a certified duplicate or photostat copy of the original assignment.
- g. Format for the Notice of Assignment** [Exhibit 7-3](#) is a suggested format for use by an assignee in providing the notice of assignment.

Part 7.8. Contract Modifications

7.8.1. Policy

- a.** Only COs are authorized to sign contract modifications on behalf of the judiciary. Other judiciary personnel may not:
- (1) sign contract modifications;
 - (2) act in such a manner as to cause the contractor to believe that they have authority to bind the judiciary;
 - (3) direct or encourage the contractor to perform work that must be the subject of a contract modification but has not yet been executed; or,
 - (4) accept products and/or services that are the result of a contract modification that has not been executed.
- b.** Contract modifications, including changes that can be issued unilaterally, will be priced before their execution, if doing so can be done without adversely affecting the interest of the judiciary. If a significant price increase could result from a contract modification and time does not permit negotiation of a price, at least a maximum cost ceiling must be established.
- c.** If an unpriced contract modification is issued, the CO must justify, in writing, the reasons for the issuance of the unpriced modification.
- d.** The CO cannot execute a contract modification, including a change order, if doing so will cause an increase in the funding level of the contract without having first obtained a certification of the availability of funds. The certification must be based on the anticipated cost/price or the anticipated maximum cost/price. If the actual cost/price exceeds the certification of the availability of funds, then additional funds must be requested before executing the modification (also see [7.8.4.](#)).
- e.** Modifications may be:
- (1) initiated by either party;
 - (2) changed within the scope bilaterally;
 - (3) a unilateral change (such as an administrative change of the funds certification);
 - (4) new work within the scope of the contract;

- (5) outside the scope. However, this requires either competition or a justification for other than full and open competition.
- f. The contractor may request a contract modification. Examples of reasons for the change are when it is:
 - (1) beyond the contractor's control (excusable delay, stop work order issued, constructive change, settlement for contract termination for convenience);
 - (2) due to action by the contractor (name changed, consideration offered for nonexcusable delay, novation agreement); and
 - (3) required by the contract (i.e. economic price adjustment, price redeterminations, Department of Labor wage rate increases for an exercised option).
- g. When submitting such requests, the contractor must provide all necessary documentation as required by the CO. The CO must include the contractor's DUNS number in the name and address block of the modification document. The CO will review the request and its documentation, process a modification, or make a determination that the change is not warranted.

7.8.2. Types of Modifications

Modifications are of the following types:

- a. **Bilateral modification within the scope of the contract**
 - (1) A bilateral modification (also known as a supplemental agreement) is a modification that is signed by both the contractor and the CO. A bilateral modification is the preferred type of modification for accomplishing a change. Bilateral modifications are used to:
 - (a) change the contract in accordance with the changes clause;
 - (b) make negotiated equitable adjustments resulting from the issuance of a change order;
 - (c) reflect other agreements of the parties modifying contract terms;
 - (d) definitize a letter contract; or
 - (e) approve changes required by the contract, such as economic price adjustments.
 - (2) Most supplemental agreements involve negotiation of price and other terms, usually involving tasks that are similar to award of the basic contract. A bilateral agreement is used when:
 - (a) the change has an effect on the substantive rights of either party;
 - (b) there is sufficient time to negotiate a supplemental agreement; or
 - (c) there is no basis in the contract's terms for issuing a unilateral modification.
- b. **Unilateral modification within the scope of the contract**
 - (1) A unilateral modification is a modification that is signed only by the CO as permitted within the operation of an existing contract clause. Unilateral modifications are of three basic types:
 - (a) *Administrative Changes* These are changes that are minor in nature and do not materially affect contract performance. Examples include:

- 1) correction of a fund citation;
 - 2) addition of a zip code on a delivery address;
 - 3) designation of change in COTR or other contract administrators;
 - 4) novation agreements; and
 - 5) name-change agreements.
- (b) *Change Orders* This term refers to the actual issuance of a change authorized by [Clause 7-185](#), “Changes.” A change order is a written order, signed by the CO, directing the contractor to make a change, without the contractor’s consent, within the general scope of the contract, including:
- 1) changes to the drawings, designs, or specifications, when the products to be furnished are to be specially manufactured for the judiciary in accordance with the drawings, designs, or specifications;
 - 2) method of shipment or packing;
 - 3) and place of delivery (e.g., changing the delivery address from one state to another).

A change order is the least preferred method of changing a contract. A supplemental agreement is the preferred method (see [7.8.2.a.](#), Bilateral). The Changes clause is cited as the authority for the modification. Change orders must be used only when there is not enough time to negotiate with the contractor and/or the change must be put into effect immediately. Under the terms of the change order, the contractor is required to submit its offer for an equitable adjustment within 30 days (also see [7.8.7.](#), Changes).

- (2) **Changes authorized by other contract clauses** Although these are not termed change orders, they can be issued unilaterally. Examples are the issuance of a stop work order, termination notice, or exercise of an option. [Clause 7-185](#) “Changes” authorizes changes within the scope of the procurement and within the conditions specified in the clause (see also [7.8.3.a.](#) and [7.8.7.](#)).
- (3) The CO will select a unilateral modification when:
 - (a) the change has no effect on the substantive rights of the contractor or the judiciary;
 - (b) the change can be made unilaterally under a specific contract term (e.g., Stop Work, Termination or Option clauses);
 - (c) the contractor’s agreement with the change is not required; or
 - (d) in the case of a change order, the time required to negotiate a bilateral agreement would cause a delay that would adversely affect the judiciary’s interest.

7.8.3. Notification of Contract Changes

- a.** Under the “Changes” clause, when a contractor considers that any written or oral order (including direction, interpretation, instruction, or determination) from the CO, or another judiciary representative, constitutes a change in the contract, the contractor must notify the CO in writing that the contractor regards the order as a change order. The CO must then evaluate the order and:
 - (1) confirm that it is a change,
 - (a) direct the mode of further delivery or performance;
 - (b) plan for its funding; and
 - (c) issue a formal change order;
 - (2) countermand the alleged change; or
 - (3) notify the contractor that no change is considered to have been ordered.
- b.** The CO must determine that any contract change, initiated by either the judiciary or the contractor, is “within the scope” of the contract. Factors indicating “within scope” changes are:
 - (1) the function of the product or service has not changed;
 - (2) the basic contract purpose has not changed;
 - (3) the dollar magnitude of the change is proportionate to the price of the contract;
 - (4) competitive factors of the solicitation are the same; and
 - (5) specification or statement of work changes are not extensive.
- c.** The CO must answer the following questions when determining whether a requested change is “within scope:”
 - (1) Does the changed work represent what both parties reasonably contemplated at the time of award?
 - (2) Is the changed work essentially the same as the agreement?
 - (3) Is the nature of the requirement altered by the change?
 - (4) Would this type of change normally be expected for this kind of requirement (sophisticated, complex requirements)?
- d.** If the CO determines that the contemplated action is not in scope, the change must be regarded as a cardinal change (see [7.8.7.c.](#)), or new work (possibly subject to further competition).

7.8.4. Availability of Funds

- a.** The CO may not execute a modification that causes or will cause an increase in funds without having first obtained a certification of funds availability, except for modifications to contracts that:
 - (1) are conditioned on availability of funds; or
 - (2) contain a limitation of cost or funds clause.
- b.** In both instances, however, the CO must first obtain either a certification of funds conditioned on availability of funds or a memo from a funding official signifying intent to fund the requirement.
- c.** A certification of funds availability must be based on the negotiated price. Modifications executed before agreement on price may be based on the best available estimate.

7.8.5. Exercise of Options

- a.** Options provide the judiciary with firm prices for additional quantities or periods of performance, but only for a specific period of time. That time period may extend beyond the basic contract period and must be identified in the basic contract. The judiciary is under no legal obligation to exercise an option and the contractor has no recourse against the judiciary when an option is not exercised.
- b.** The option clause will normally require that the CO provide advanced notification of any intent to exercise an option at a specified period before the option would take effect. The CO will normally be required to provide notice 60 days before the contract expires (or within another stated timeframe in the clause), or at a specified time in advance of the required delivery of additional quantities, or the judiciary will lose its unilateral right to exercise the option. This notification does not bind the judiciary to exercise the option. Every option will state a date before which the CO may exercise an option. The modification is generally signed 30 days prior to the expiration of the contract.
- c.** Options must be exercised exactly as they are stated in the contract. The CO may not change quantities, for instance, unless the option itself authorizes the specific change. Options are generally exercised unilaterally by the CO.
- d.** Before exercising an option, the CO must place a determination in the official contract file. This written determination must show that:
 - (1) the judiciary has a need for the products or services covered by the option;
 - (2) exercise of the option is the most advantageous alternative, price and other factors considered ("other factors" includes any need for continuity of operations and potential costs to the judiciary of disrupting operations);
 - (3) the option exercise complies with the terms of the contract; and
 - (4) funds are available (or will be available).
- e.** A determination that the option price is the most advantageous must be based on one of the following:
 - (1) an informal investigation of prices, or other examination of the market, indicates clearly that a better price than that offered by the option cannot be obtained;
 - (2) the time between the award of the contract containing the option and the exercise of the option is so short that it indicates the option price is the lowest price obtainable under the conditions;
 - (3) consideration of such factors as market stability and a comparison of the time since award with the usual duration of contracts for such products and services; or
 - (4) a new solicitation would fail to produce a better price than that offered by the option.
- f.** If the contract provides for economic price adjustment, the effect of such adjustment on prices under the option must be determined when considering whether or not to exercise the option.
- g.** When an option is to be exercised, the CO must:
 - (1) make a written determination that the option may properly be exercised in accordance with the availability of funds (see [7.8.4.](#));

- (2) give written advanced notification of intent to the contractor within the time period specified in the contract; and
- (3) give the contractor written notification of the exercise of the option by executing a modification, citing the option clause as authority for the purchase.

7.8.6. Correction of Mistakes

- a. A contract may be modified to correct or mitigate the effect of a mistake such as the following:
 - (1) a mistake, ambiguity, or unclear expression in a written contract of the agreement as both parties understood it;
 - (2) a contractor's mistake so obvious that it was or must have been apparent to the CO; and
 - (3) a mutual mistake as to a material fact.
- b. A claim of mistake asserted by the contractor after award is a claim subject to the procedures of [Clause 7-235](#), "Disputes." A decision to deny, in whole or in part, a claim of mistake asserted after award is a final decision under the clause.

7.8.7. Changes

- a. The "Changes" clause permits the CO to make unilateral changes, as specified in the clause, within the general scope of the contract. These changes are accomplished by issuing written change orders (see [7.8.2.b.\(1\)\(b\)](#), Change Orders).
- b. **Constructive Change** A constructive change is an implied change. It occurs when judiciary officials, without CO authority, change the contract via verbal or written action. Constructive changes are considered unauthorized commitments under the Changes clause of the contract. See [1.5., Ratification](#), for procedures concerning ratifying unauthorized acts.
- c. **Cardinal Changes** Changes outside the scope of the contract represent "new work" and are described as "cardinal changes." The contractor is not obligated to make the change.
- d. Under a change order, the contractor must continue performance of the contract as changed, except that in cost reimbursement or incrementally funded contracts the contractor is not obligated to continue performance or incur costs beyond the amount incrementally funded, or limits established in [Clause 4-85](#), "Limitation of Cost" or [Clause 4-90](#), "Limitation of Funds."
- e. **Clauses**
 - (1) [Clause 7-185](#), "Changes" is included in all solicitations and contracts
 - (2) [Clause 7-190](#), "Change Order Accounting" is included in solicitations and contracts for products and contracts of significant technical complexity, if numerous changes are anticipated.

7.8.8. Equitable Adjustments

- a. Change orders are not priced before performance. They usually require two documents - the change order and a supplemental agreement reflecting a resulting equitable adjustment.
 - (1) If an equitable adjustment in the price or delivery terms, or both, can be agreed upon in advance, only a supplemental agreement need be issued.
 - (2) If the change order has no effect on price or delivery, no equitable adjustment is needed and there will be no related supplemental agreement.
 - (3) Administrative changes (such as a change in an accounting citation) and changes issued pursuant to a clause giving the judiciary an unilateral right to make a change (such as an option clause) require only one document, signed only by the CO.
- b. COs must promptly negotiate equitable adjustments resulting from change orders and follow up when claims for equitable adjustment are not received within 30 days after the change order.
- c. Before negotiating an equitable adjustment, the CO must ensure that a price and cost analysis, as appropriate, is accomplished to also consider the contractor's segregable costs of the change. If additional funds are required as a result of the change, the funds must be available before the supplemental agreement accomplishing the equitable adjustment is executed.
- d. To avoid controversies that may result from a supplemental agreement making an equitable adjustment, the CO must ensure:
 - (1) that all elements of the equitable adjustment have been presented and resolved; and
 - (2) a release is included in the supplemental agreement.
- e. **Equitable Adjustments for Delays** The contractor bears the risk of schedule and cost effects for delays it causes or for delays within its control. Generally, the contractor is excused from nonperformance due to delays caused by factors for which neither the contractor nor the judiciary is responsible. However, the contractor must bear the cost impact of such delays. The judiciary is responsible for the schedule and cost effects of delays it causes, delays that are under its control, or delays for which it has agreed to compensate the contractor.
- f. **Excusable Delays**
 - (1) A contractor may be granted an extension of the delivery or performance schedule for an excusable delay.
 - (2) A contractor's failure to perform may be considered an excusable delay when it arises out of either of the following types of causes:
 - (a) causes beyond the control and without the negligence of the contractor - including acts of God or the public enemy; acts of the judiciary in its sovereign capacity or the judiciary in its contractual capacity; and fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; or
 - (b) a subcontractor default due to causes beyond the control and without the fault or negligence of both the contractor and the subcontractor, unless the

products or services were obtainable from other sources in time to permit the contractor to meet the delivery schedule.

- (3) [Clause 7-195](#), “Excusable Delays” is included in all solicitations and contracts for products and services, when a cost-reimbursement contract or firm-fixed price procurement is contemplated. The CO must also insert the clause in time-and-materials contracts and labor-hour contracts.

g. Compensable Delays A contractor may be granted an extension of the contract delivery or performance schedule, a price adjustment, or both, as the CO deems appropriate, when an unreasonable delay in performance is caused by the judiciary or is under its control, or when it has agreed to pay the contractor for the delay. Situations that may entitle the contractor to an equitable adjustment (schedule, cost, or both) include:

- (1) delay in issuing the notice to proceed;
- (2) delay in availability of the site;
- (3) differing site conditions;
- (4) actual or constructive changes or delays;
- (5) delay in providing funding;
- (6) delay in inspections;
- (7) delay in issuing changes;
- (8) delay in providing judiciary-furnished equipment; and
- (9) failure of performance of other judiciary contractors.

h. The contractor has the burden of proof in establishing the basis for the equitable adjustment required to overcome the delay.

i. Concurrent Causes When a delay is attributable to both the judiciary and the contractor, a delivery or performance schedule adjustment must not normally be granted for a period of delay caused at least in part by actions or failures on the part of the contractor. Damages may not be assessed against the contractor in such situations.

j. Solicitation Provisions and Clauses

- (1) [Clause 7-200](#), “Judiciary Delay of Work” is included in solicitations and contracts when a procurement is contemplated for products. The clause may also be used when a fixed-price procurement is contemplated for services.
- (2) [Clause 7-205](#), “Payment for Judiciary Holidays” is included in all solicitations and contracts when a time-and materials or labor-hour procurement is contemplated.
- (3) [Clause 7-210](#), “Payment for Emergency Closures” is included in all solicitations and contracts.

7.8.9. Acceleration of Performance

a. The judiciary has the right to require accelerated performance under [Clause 7-185](#), “Changes.” However, acceleration can be very costly. Therefore, this right must be exercised only when required to maintain the operational capability of the judiciary or when the CO otherwise determines acceleration is necessary.

- b. COs must document the specific facts that require acceleration of performance and the estimated impact on price. Whenever possible, the CO must negotiate acceleration actions as supplemental agreements, rather than by issuance of change orders.
- c. COs must be alert to constructive acceleration situations. Constructive acceleration occurs when the judiciary does not agree to a delivery or performance schedule extension to which the contractor is entitled, or is later determined to be entitled. This has the effect of causing the contractor to accelerate performance. Such acceleration may form the basis for a claim against the judiciary for an increase in price.

7.8.10. Novation and Change of Name Agreements

- a. **Novation Policy** The judiciary generally prohibits the transfer of judiciary contracts from the contractor to a third party by contract novation (see [Exhibit 7-1](#)). All contemplated novation agreements must be reviewed by the PE, who will consult with OGC. However, when it is in its interest, the judiciary may recognize a third party as the successor in interest when the third party's interest arises out of the transfer of:
 - (1) all the contractor's assets; or
 - (2) the entire portion of the assets involved in performing the contract.
- b. Situations, in which novation may be permitted, include but are not limited to:
 - (1) sale of the contractor's assets with a provision for assuming liabilities;
 - (2) transfer of assets as part of a merger or corporate consolidation; and
 - (3) incorporation of a proprietorship or partnership, or formation of a partnership.
- c. When a contractor asks the judiciary to recognize a successor in interest, the contractor must submit to the CO three signed copies of the proposed novation agreement and one copy each, as applicable, of the following:
 - (1) the document describing the proposed transaction, e.g., purchase/sale agreement or memorandum of understanding;
 - (2) a list of all affected contracts between the transferor and the judiciary, as of the date of sale or transfer of assets, showing for each, as of that date, the:
 - (a) contract number and type;
 - (b) name and address of the CO;
 - (c) total dollar value, as amended; and
 - (d) approximate remaining unpaid balance;
 - (3) evidence of the transferee's capability to perform; and
 - (4) any other relevant information requested by the CO.
- d. Except as provided in paragraph e (below), the contractor must submit to the CO one copy of each of the following applicable documents as the documents become available:
 - (1) an authenticated copy of the instrument effecting the transfer of assets; e.g., bill of sale, certificate of merger, contract, deed, agreement, or court decree;
 - (2) a certified copy of each resolution of the corporate parties' boards of directors authorizing the transfer of assets;

- (3) a certified copy of the minutes of each corporate party's stockholder meeting necessary to approve the transfer of assets;
 - (4) an authenticated copy of the transferee's certificate and articles of incorporation, if a corporation was formed for the purpose of receiving the assets involved in performing the judiciary contracts;
 - (5) the opinion of legal counsel for the transferor and transferee stating that the transfer was properly effected under applicable law and the effective date of transfer;
 - (6) balance sheets of the transferor and transferee as of the dates immediately before and after the transfer of assets, audited by independent accountants;
 - (7) evidence that any security clearance requirements have been met; and
 - (8) the consent of sureties on all contracts listed under [7.8.10.c.\(2\)](#) of this section if bonds are required, or a statement from the transferor that none are required.
- e.** If the judiciary has acquired the documents during its participation in the pre-merger or pre-contract review process, or the judiciary's interests are adequately protected with an alternative formulation of the information, the CO may modify the list of documents to be submitted by the contractor.
- f.** When recognizing that a successor in interest to a judiciary contract is consistent with the judiciary's interest, the CO will execute a novation agreement with the transferor and the transferee. It will ordinarily provide in part that:
- (1) the transferee assumes all the transferor's obligations under the contract;
 - (2) the transferor waives all rights under the contract against the judiciary;
 - (3) the transferor guarantees performance of the contract by the transferee (a satisfactory performance bond may be accepted instead of the guarantee); and
 - (4) nothing in the agreement will relieve the transferor or transferee from compliance with any federal law.
- g.** The CO will use the Novation Agreement format (see [Exhibit 7-1](#)) when the transferor and transferee are corporations and all the transferor's assets are transferred. This format may be adapted to fit specific cases.
- h.** Before concurring in a contract novation, the CO must determine that the successor in interest is a responsible contractor (see [3.3.1.](#)) and obtain PE concurrence.
- i.** When it is not in the judiciary's interest to concur in a contract novation, the original contractor remains responsible for contract performance and the contract may be terminated for default for failure to perform.
- j.** The agreement must be signed by:
- (1) the contractor (transferor);
 - (2) the successor in interest (transferee); and
 - (3) the judiciary by which, among other things, the transferor guarantees performance of the contract, the transferee assumes all obligations under the contract, and the judiciary recognizes the transfer of the contract and related assets.
- k.** The CO is responsible for:

- (1) determining, in consultation with the PE, who will consult with OGC, whether to permit contract novation; and
 - (2) processing and signing novation and change-of-name agreements (see [Exhibit 7-1](#)).
- l. Clause [Clause 7-215](#), “Notification of Ownership Changes”** is included in all solicitations and contracts.
- m. Change of Name Agreement** If only a change of the contractor’s name is involved and the government’s and contractor’s rights and obligations remain unaffected, the parties shall execute an agreement to reflect the name change. The contractor shall forward to the responsible contracting officer three signed copies of the Change-of-Name Agreement, and one copy each of the following:
- (1) the document effecting the name change, authenticated by a proper official of the state having jurisdiction;
 - (2) the opinion of the contractor’s legal counsel stating that the change of name was properly effected under applicable law and showing the effective date;
 - (3) a list of all affected contracts and purchase orders remaining unsettled between the contractor and the government, showing for each the contract number and type, and name and address of the contracting office. The contracting officer may request the total dollar value as modified and the remaining unpaid balance for each contract.
- n.** The CO is responsible for:
- (1) determining whether to recognize the contract change of name;
 - (2) processing and signing change-of-name agreements (see [Exhibit 7-2](#)); and
 - (3) processing and signing the contract modification specifying that the name has been changed using the following language:
“The purpose of this modification is to incorporate the attached Change-of-Name Agreement between the contractor and the judiciary. This contract is hereby modified by substituting the name (contractor’s previous name) for the name (contractor’s changed name) wherever it appears in the contract. All other terms and conditions remain unchanged.”
- o.** The CO may accept a vendor’s change of name or novation agreement from another federal government agency.

Part 7.9. Claims and Disputes

7.9.1. Policy

- a.** It is the policy of the judiciary to resolve contractual issues by mutual agreement at the level of the CO. The CO must consider holding informal discussions between the parties to resolve differences before issuing a final decision on a claim.
- b.** A contract dispute means a written claim, demand or assertion by a contracting party for:
 - (1) the payment of money in a sum certain;

- (2) the adjustment or interpretation of contract terms; or
 - (3) other specific relief arising under or relating to the contract.
 - (4) A dispute also includes a termination for convenience settlement proposal; and
 - (5) any request for an equitable adjustment, which is denied.
- c. Claim Initiation**
- (1) The contract dispute must be submitted in writing to the CO. A contract dispute must be filed within 12 months of its accrual unless superseded by a different time period as specified in the contract's terms and conditions. The CO must document the contract file with evidence of the date of receipt of any submission that the CO deems to be a claim.
 - (2) The dispute must contain a detailed statement of the legal and factual basis of the dispute with any accompanying documents to support the claim.
 - (3) The claimant must specify the specific relief as provided in paragraph **b.(1)-(5)** above.
 - (4) If the CO requires additional information the CO will promptly request the claimant to provide such information.
 - (5) The contractor must proceed with performance of the contract pending resolution of the dispute.

7.9.2. Decisions and Appeal

- a. Claim Settlement** COs are authorized to decide or settle all disputes under the Disputes clause. The CO must issue a written decision on any contractor claim against the judiciary within 60 days of receipt of all the requested information from the vendor. If the CO can not render a determination within 60 days, the CO will notify the vendor of the date on which a determination will be made. The determination of the CO will be considered the final determination of the judiciary.
- b.** The claim may be denied when the CO determines that the contractor is unable to support any part of the claim and there is evidence that the inability is attributable to either misrepresentation of fact or fraud on the contractor's part.
- c.** When a claim by or against a contractor cannot be resolved by agreement and a decision under [Clause 7-235](#), "Disputes" is necessary, the CO must:
 - (1) review the facts pertinent to the claim;
 - (2) obtain assistance from the PE, who will consult with OGC and other advisors; and
 - (3) issue a final decision in writing. The decision must include:
 - (a) a description of the claim or dispute with references to the pertinent contract provisions;
 - (b) a statement of the factual areas of agreement and disagreement; and
 - (c) a statement of the CO's decision with supporting rationale.
 - (d) The CO's final decision must contain the following paragraph:
"This is the final decision of the contracting officer pursuant to the clause of your contract entitled Disputes.

Contractors may appeal this decision to a court of competent jurisdiction."

- d. The CO must furnish a copy of the decision to the contractor by certified mail, return receipt requested, or by another method that provides evidence of receipt.
- e. If the settlement agreement requires a modification to the contract, it is executed on [Standard Form 30 \(Amendment of Solicitation/Modification of Contract\)](#). The modification must include the following statement:
 - “This modification is intended to and does constitute a full and final settlement and disposition of all matters relating to the claim dated (*insert date*) and is a full release, accord and satisfaction of any and all claims, demands or causes of action that the contractor has against the judiciary arising out of or related to this claim.”
- f. **Appeal** Contractors may appeal this decision to a court of competent jurisdiction. The contractor must comply with the final determination of the CO unless such determination is overturned by a court of competent jurisdiction. If the contractor fails to continue contract performance while the claim is being settled or fails to comply with the final determination of the CO, the CO may terminate the contract for default or impose other available remedies.

Part 7.10. Contract Termination

7.10.1. General

- a. Contracts may be terminated for default or convenience only when such action is in the interest of the judiciary. If applicable, the CO may also consider a no-cost termination of the contract. The potentially high price to pay for a wrongful termination requires the CO to carefully review the clauses and surrounding circumstances prior to making a decision to recommend termination.
- b. **Applicability** This section applies to contracts that contain clauses permitting termination for the convenience of the judiciary or for contractor default. It establishes uniform procedures for the complete or partial termination of such contracts.
- c. The provisions of this section must be used by the CO as a guide in evaluating settlement of a subcontract terminated for the convenience of a contractor whenever the settlement could be the basis of a contractor claim for reimbursement by the judiciary.
- d. **Review and Approval** The PE must review and approve, in writing, all proposed contract terminations whether for convenience or default.

7.10.2. Notice of Termination

- a. The CO may terminate contracts only by written notice to the contractor. Notice must be by certified mail, return receipt requested.
- b. The notice must state:

- (1) the type of termination contemplated and the contract clause authorizing the termination;
 - (2) the effective date of termination;
 - (3) the extent of the termination and, if a partial termination, the portion of the contract to be continued; and
 - (4) any special instructions.
- c. Distribution** When the termination notice is sent to the contractor, the CO must distribute the notice to any known assignee, guarantor, or surety of the contractor.
- d. Amendment** The CO may amend a termination notice to:
- (1) correct nonsubstantive mistakes in the notice;
 - (2) add supplemental data or instructions;
 - (3) rescind the notice if the items of work terminated have been completed or shipped before the contractor receives the notice; and/or
 - (4) reinstate the terminated portion of a contract.
- e. Reinstatement** The CO may, with the consent of the contractor, reinstate the terminated portion of a contract in whole or in part by amending the notice of termination when:
- (1) circumstances clearly indicate a requirement for the terminated items; or
 - (2) reinstatement is otherwise advantageous to the judiciary.

7.10.3. Termination for Convenience

- a. General** Termination for convenience is appropriate when the judiciary no longer requires the contracted products or services.
- b. Applicability** The provisions of this part apply to all contracts containing [Clause 7-220](#), “Termination for Convenience of the Judiciary (Fixed Price)” or [Clause 7-225](#), “Termination (Cost-Reimbursement).”
- c.** The CO may settle contracts terminated for convenience by:
- (1) negotiated agreement;
 - (2) CO determination;
 - (3) costing vouchers, if the contract is a cost-reimbursement contract; or
 - (4) a combination of these methods.
- d.** When possible, the CO must negotiate a fair and prompt settlement with the contractor in accordance with the applicable clause and within the appropriate allocable, allowable, and reasonable amounts (see [Chapter 4](#)).
- e. Contractor's Duties** After receiving a termination notice and, except as otherwise directed by the CO, the contractor must comply with the clause and the termination notice, which generally require the contractor to:
- (1) stop work immediately on the terminated portion of the contract and stop placing subcontracts under that portion;
 - (2) terminate all subcontracts related to the terminated portion of the contract;
 - (3) immediately advise the CO of any special circumstances precluding the stoppage of work;

- (4) perform the continued portion of the contract, if any, and promptly submit any request for an equitable adjustment of price with respect to the continued portion, supported by evidence of any increase in the cost;
 - (5) take necessary actions to protect and preserve property in which the judiciary has or may acquire an interest, and, as directed by the CO:
 - (a) deliver the property to the judiciary; or
 - (b) otherwise dispose of it;
 - (6) promptly notify the CO in writing of any legal proceedings growing out of a subcontract or other commitment related to the terminated portion of the contract;
 - (7) settle outstanding liabilities and claims arising out of subcontract terminations, with prior written approval or ratification as required by the CO;
 - (8) promptly submit a settlement offer, supported by appropriate schedules; and
 - (9) dispose of any termination inventory, as the CO directs or authorizes.
- f. Settlement of Subcontractor Claims**
- (1) **Subcontractor Rights** A subcontractor has no contractual rights against the judiciary. This is known as privity of contract. However, the subcontractor may have rights against the prime contractor or the immediate subcontractor with which it has contracted. Upon termination of a judiciary contract, or a change that necessitates subcontract termination, the contractor is responsible for prompt settlement of the termination claims of all their immediate subcontractors. The subcontractors have responsibility for settlement of any of their next lower tier subcontractors.
 - (2) **Prime Contractor Rights and Obligations** The termination clauses provide that, upon contract termination, the contractor must, except as otherwise directed by the CO, terminate all subcontracts to the extent that they relate to performance of the work terminated.
- g.** The reasonableness of the contractor's settlement with a subcontractor must be measured by the aggregate amount that would be due under an equivalent judiciary termination clause. The CO may allow reimbursement in excess of that amount only in unusual cases, and then only when satisfied that the subcontract terms were negotiated in good faith and did not unreasonably increase the subcontractor's rights.
- h. Delay in Settlement of Subcontractor Claims** When a contractor's inability to reach settlement with a subcontractor delays the settlement of the judiciary contract, the CO may settle with the contractor for all amounts except the subcontractor settlement offer, and reserve judiciary and contractor rights as to the subcontractor settlement offer.
- i. Assistance in Subcontract Settlements** In unusual cases, the CO may determine that it is in the interest of the judiciary to offer to assist the contractor in the settlement of a particular subcontract. The judiciary, the contractor, and the subcontractor may then enter into an agreement covering settlement of the subcontract. In such case, the subcontractor must be paid through the contractor as part of the overall settlement.
- j. Direct Settlement by the Judiciary** [Clause 7-220](#), "Termination for Convenience (Fixed Price)" clause gives the judiciary the right, but not the obligation, to settle and pay any

claims arising out of subcontract terminations. Direct settlements with subcontractors are not encouraged, since the judiciary contractor is obligated to settle and pay subcontractor termination claims. However, when the CO determines that it is in the interest of the judiciary to settle a subcontractor claim directly, the CO may, after notifying the contractor, direct the assignment of all contractor rights to the judiciary, and settle the subcontractor claim using the termination procedures for settlement of judiciary contracts. An example in which the interest of the judiciary would be served is when a subcontractor is the sole source of a product and it appears that a delay by the contractor in settling the subcontractor's claim will jeopardize the subcontractor's financial position.

k. Clauses

- (1) [Clause 7-220](#), “Termination for Convenience of the Judiciary (Fixed-Price)” is included in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is expected to be over the judiciary’s small purchase threshold, except in contracts for architect-engineer services.
- (2) [Clause 7-223](#), “Termination for Convenience of the Judiciary (Short Form)” This clause is included in solicitations and contracts when the contract is expected to be at or less than the judiciary’s small purchase threshold, except when the contracting officer has determined that another termination for convenience clause is appropriate (i.e., [Clause 3-3](#) for small purchases, [Clause 5-70](#) for architect and engineer contracts, or [Clause 7-220](#) for situations when a CO believes the longer form is more appropriate, or [Clause 7-225](#) for cost reimbursement contracts).
- (3) [Clause 7-225](#), “Termination for Convenience (Cost-Reimbursement)” is included in solicitations and contracts when a cost-reimbursement contract is contemplated. For time-and-material and labor-hour contracts, use Alternate I.

7.10.4. Failure to Make Timely Delivery

- a.** When a contractor fails to make timely delivery, the CO has a reasonable time after the delivery date to determine whether the contract must be terminated for default. When the contractor is continuing performance of the contract, a reasonable time for the CO to make a decision is 30 working days. Delay beyond that date may result in a waiver of the right of the judiciary to terminate for default.
- b.** When the CO determines that termination for default is proper, the CO must issue a termination notice at once, following the procedures in [7.10.6](#). No demand for adequate assurances must be issued. However, the CO may allow the contractor to assert any alleged excusable delay.
- c.** If CO delay in issuing a notice of termination for default results in a waiver of that right, a new delivery date must be established by bilateral or unilateral modification of the contract. The new delivery date must be reasonable considering all the circumstances of contract performance. When the new date is established, the right to terminate for default is reinstated.

- d. Notice of Impending Termination - Causes Other Than Failure to Make Timely Delivery** When the CO makes a preliminary determination that termination for default is appropriate in cases other than failure to make timely delivery, the CO must, if practicable, notify the contractor in writing of the possibility of termination. This notice (a “show cause” letter) may:
- (1) call the contractor's attention to its liabilities in the event that the contract is terminated for default;
 - (2) request the contractor to show cause why the contract must not be terminated for default;
 - (3) state that failure of the contractor to explain why the contract must not be terminated may be taken as an admission that no valid explanation exists; and/or
 - (4) when appropriate, invite the contractor to discuss the matter at a conference.
- e. Demand for Adequate Assurance for Causes Other Than Failure to Make Timely Delivery** A written “cure notice” must be issued when the CO determines that the contractor is failing to make satisfactory progress to a degree that this failure endangers contract performance, or determines that some other failure, under the contract or otherwise (other than failure to make timely delivery) is cause for concern.
- (1) The demand must specify the failure and give the contractor ten days (or longer, if necessary) to assure the judiciary of steps that will be taken to cure the failure.
 - (2) When the time remaining in the contract delivery schedule does not permit a response period of ten days or longer, a demand may be made part of the notice described in [7.10.6](#).

7.10.5. Issuing a Delinquency Notice

- a.** Contractors must be notified of the possibility of being terminated for failing to perform its contractual obligations. Notification will take one of two forms: Cure Notice and Show Cause letter.
- b.** Cure Notice is used when:
- (1) the contractor has failed to make progress and contract performance is endangered; or
 - (2) at least ten days remain for contract performance and correction of the problem can reasonably be expected to take place within the time remaining.
- c.** At a minimum, a Cure Notice must:
- (1) specifically state the failure endangering performance as it relates to the corresponding requirement in the contract;
 - (2) allow the contractor at least ten days to “cure” the failure;
 - (3) be in writing and sufficient to support a default termination; and
 - (4) The “Cure Notice” must be in the following format:

Cure Notice

You are notified that the judiciary considers your _____(*contracting officer specifies the contractor's failure or failures*) a condition that is endangering performance of the contract. Therefore, unless this condition

is cured within ten days after receipt of this notice (*or the CO inserts any longer time that may be considered reasonably necessary*), the judiciary may terminate for default under the terms and conditions of the _____ (*insert clause title*) clause of this contract.

- d. After a Cure Notice has been issued, the contract cannot be terminated until the ten day period (or other specified time) has elapsed unless there is evidence of wrongful conduct, failure to cure the problem, or repudiation by the contractor.
- e. (1) A Show Cause notice is used after a Cure Notice time elapses or when there is insufficient time remaining in the contract delivery schedule for the contractor to cure or correct the delinquency. Prior to being issued, a Show Cause notice must be approved in writing by the PE. Usually a Show Cause notice is issued when there is less than ten days remaining. However, it can be used at any time when it is determined there is an “insufficient amount of time left.” s beyond its control.
- (2) At a minimum, a Show Cause notice must:
 - (a) request the contractor to show cause why the contract must not be terminated for default;
 - (b) inform the contractor that failure to explain the cause of the deficiency may be taken as admission that no valid explanation exists;
 - (c) invite the contractor to discuss the matter at a conference, when appropriate; and
 - (d) inform the contractor of its liabilities in the event of contract default.
- (3) A “Show Cause” notice must be in the following format:

Show Cause Notice

Since you have failed to _____ (*insert “perform Contract No. _____ within the time required by its terms”, or “cure the conditions endangering performance under Contract No. _____ as described to you in the judiciary’ s letter of _____ (date),”* the judiciary is considering terminating the contract under the provisions for default of this contract. Pending a final decision in this matter, it will be necessary to determine whether your failure to perform arose from causes beyond your control and without fault of negligence on your part. Accordingly, you are given the opportunity to present, in writing, any facts bearing on the question to _____ (*insert the name and complete address of the CO*), within ten days after receipt of this notice. Your failure to present any excuses within this time may be considered as an admission that none exist. Your attention is invited to the respective rights of the contractor and the judiciary and the liabilities that may be invoked if a decision is made to terminate for default.

Any assistance given to you on this contract or any acceptance by the judiciary of delinquent products or services will be solely for the purpose of mitigating damages, and it is not the intention of the judiciary to

condone any delinquency or to waive any right the judiciary has under the contract.

- f. Evaluate Contractor's Response** A contractor's response to delinquency notices can take several forms:
- (1) **Cure Notice Response** A contractor is not necessarily required to respond to a Cure Notice since the contractor is told to correct the problem before the contract becomes delinquent. Often, however, the contractor will respond in writing with its detailed plans to cure performance. Such a response does not absolve the contractor of actually curing the delinquency within the period specified in the cure notice. However, unless the problem is actually cured, the judiciary, upon expiration of the delivery period, has the option of issuing either a Show Cause or termination notice.
 - (2) **Show Cause Notice Response** If the CO chooses to issue a Show Cause (either with or without a prior Cure Notice), the contractor has ten days to respond.
 - (3) **Actions after Evaluation** Depending on the response the CO receives, action may be taken to:
 - (a) defer termination action;
 - (b) modify the contract; or
 - (c) begin default proceedings (see [7.10.7.](#)), as required. The PE must review and approve all proposed terminations for default.

7.10.6. Termination for Default Notice

- a. Unless it is determined that the nonperformance will be cured, immediately upon determination that termination is proper under [7.10.](#), or upon expiration of the ten day, or longer period allowed by a notice, the CO may issue a notice of termination for default.
- b. When a demand for adequate assurance has been issued, the notice of termination must be coordinated with the PE, who will consult with OGC before issuance.
- c. The notice of termination for default must meet all the general requirements set forth in [7.10.2.](#) as well as:
 - (1) set forth the contract number and date;
 - (2) describe the acts or omissions constituting the default;
 - (3) state that the contractor's right to proceed with performance of the contract (or a specified portion of the contract) is terminated;
 - (4) state that the products or services terminated may be procured against the contractor's account, and that the contractor will be held liable for any excess repurchase costs;
 - (5) state that the judiciary reserves all rights and remedies provided by law or under contract, in addition to charging excess costs; and
 - (6) inform the contractor that the termination is subject to [Clause 7-235](#), "Disputes."

- d. When the CO has determined that the failure to perform is not excusable, the termination notice must also state that it reflects that decision, and that the contractor has the right to appeal as specified in [Clause 7-235](#), “Disputes.”
- e. The CO must make the same distribution of the termination notice as was made of the contract, and any surety must be furnished a copy and asked to advise whether it desires to arrange for completion of the work.
- f. The CO must notify the payment office to withhold further payments under the terminated contract.
- g. **Procedure in Lieu of Termination for Default** When the CO determines that the contractor's failure to perform arose from causes beyond its control and without its fault or negligence, the CO may not terminate the contract for default. When it is in the interest of the judiciary to do so, the CO may, in lieu of termination for default:
 - (1) terminate the contract for convenience;
 - (2) permit the contractor, its surety, or its guarantor to continue performance of the contract under a revised delivery schedule;
 - (3) permit the contractor to continue performance of the contract by means of a subcontract or other business arrangement with an acceptable third party, if the rights of the judiciary are adequately preserved; or
 - (4) execute a no-cost termination settlement agreement (or terminate on notice if allowed under the contract), if the requirement for the products and services specified in the contract no longer exists and the contractor is not liable to the judiciary for damages, as provided below.
- h. **Determination Following Termination Notice** When the CO is unable to determine, before issuing the notice of termination, whether the contractor's failure to perform arose from causes beyond its control and without its fault or negligence, the CO must make a written decision on that point as soon as practicable after issuing the notice. This decision must be delivered promptly to the contractor, with a notification of the right to appeal as specified in [Clause 7-235](#), “Disputes.”
- i. **Contracting Officer Memorandum** When a contract is terminated for default, the CO must prepare for the contract file a memorandum that fully explains the action taken. This memorandum must be submitted to the PE for written concurrence.

7.10.7. Termination for Default

- a. Termination for default is the exercise of the judiciary’s contractual right to completely or partially terminate a contract by reason of the contractor's actual or anticipated failure to perform its contractual obligations. When the CO has the right to terminate a contract for default, the total undelivered contract quantity, whether delinquent or not, may be terminated for default.
- b. If the contractor can establish that its failure to perform arose out of causes beyond its control and without its fault or negligence, the default termination clause provides that a termination for default will be deemed a termination for the convenience of the judiciary, and the rights and obligations of the parties will be governed accordingly.

- c. The CO must take all reasonable steps to mitigate liquidated damages. If the contract contains a liquidated damages clause and the CO is considering terminating the contract for default, the CO must seek expeditiously to obtain performance by the contractor or terminate the contract.
- d. When the CO determines in writing that the products or services are still required and that reinstatement is advantageous to the judiciary, the CO may reinstate the terminated portion of a contract, but only with the contractor's written consent.
- e. **Judiciary Rights and Obligations** Under the Termination for Default clause, the judiciary has the right, subject to the notice requirements of the clause, to terminate all or any part of a contract without regard to severability of contract obligations when the contractor fails to:
 - (1) complete any material requirement of the contract within the time specified in the contract (including any extensions);
 - (2) make progress to a degree that this failure endangers performance of the contract;
 - (3) perform any other contract provision; or
 - (4) give adequate assurances of performance.
- f. The judiciary is not liable for the contractor's costs on undelivered work and is entitled to repayment of any advance payments for undelivered work.
- g. The CO may direct the contractor to transfer title and deliver to the judiciary completed products and manufacturing materials. The completed products and manufacturing materials may be acquired for use in continuing the terminated contract work or for use under another contract.
- h. Subject to the provisions of [7.10.8.b.\(4\)](#), the judiciary must pay the contractor the contract price for any products completed and delivered, and the amount agreed upon by the CO and the contractor for any manufacturing materials acquired by the judiciary.
- i. The judiciary must be protected from failure to make provision for the judiciary's potential liability to laborers and material suppliers for lien rights. The CO must take one or more of the following measures before making the payment referred to in the section above:
 - (1) ascertain whether the payment bonds, if any, furnished by the contractor are adequate to satisfy all claims, or whether it is feasible to obtain similar bonds to cover outstanding liens;
 - (2) require the contractor to furnish appropriate statements from laborers and material suppliers disclaiming any lien rights they may have in the products and materials;
 - (3) obtain appropriate agreement between the judiciary, the contractor, and any claimants to ensure release of the judiciary from any potential liability to the contractor or claimants;
 - (4) withhold from the amount otherwise due for the products or materials an amount the CO determines necessary to protect the judiciary's interest, in accordance with [7.7.4.](#); or
 - (5) take any other action that is appropriate in view of the contractor's degree of solvency and other circumstances.

- j. The contractor is liable to the judiciary for any excess costs the judiciary incurs in acquiring products and services similar to those terminated for default, and any other damages, whether or not the repurchase is made.
- k. **Determination of Appropriateness** When a default termination is being considered, the CO must ensure that termination for default rather than for convenience is appropriate. The CO must consult with program officials, technical personnel, and the PE, and will consider the following factors:
 - (1) the specific failure of the contractor and, unless time does not permit, the excuses for the failure;
 - (2) the availability of the products or services from other sources;
 - (3) the urgency of the need for the products or services, and whether or not they can be obtained sooner from sources other than the delinquent contractor;
 - (4) the degree to which the contractor is essential to the judiciary, and the effect of a termination for default on the contractor's capability as a supplier under other contracts;
 - (5) the effect of a termination for default on the ability of the contractor to liquidate progress payments; and
 - (6) any other pertinent facts and circumstances.
- l. **Surety Notification and Arrangements** When a termination for default appears imminent, the CO must send a written notification of that fact (not an actual notice of default) to any surety, at both its main and local offices (see [6.2](#)).
- m. If requested by the surety, and agreed to by the contractor and any assignees, arrangements may be made to have future checks mailed to the contractor in care of the surety. In this case, the contractor must forward a written request to the designated disbursing officer, specifically directing a change in address for mailing of checks.
- n. **Clauses**
 - (1) [Clause 7-230](#), "Termination for Default (Fixed-Price - Products and Services)" is included in solicitations and contracts when a fixed-price procurement is contemplated and the contract amount is expected to exceed the judiciary's small purchase threshold.
 - (2) [Clause 7-235](#), "Disputes" is included in all solicitations and contracts.

7.10.8. Remedies and Damages

- a. **Remedies** On rightful rejection or justifiable revocation of acceptance, the judiciary has a security interest in products delivered under the contract for any payments and expenses reasonably incurred in inspection, receipt, transportation, care, and custody.
- b. **Repurchase Against Contractor's Account**
 - (1) When products or services are still required after termination for default, the CO may repurchase the same or similar products or services against the contractor's account as soon as practicable. The repurchase must be at a reasonable price, considering the quality required by the judiciary and the time within which the

- products or services are required. Whenever practicable, the CO must make necessary repurchase decisions before issuing the termination notice.
- (2) The CO may repurchase a quantity larger than the quantity terminated for default when needed, but the defaulting contractor may be charged for no more than the terminated quantity (including any variations in quantity permitted by the terminated contract).
 - (3) If the repurchase is for a quantity not larger than the terminated quantity, the CO may use any terms and contract methods deemed appropriate for the repurchase, following normal written approval or deviation procedures. If the repurchase is for a quantity larger than the terminated quantity, the entire quantity must be treated as a new purchase, adhering to all applicable procedures.
 - (4) If repurchase is made at a price higher than the price of the terminated products or services, the CO must, after final payment of the repurchase contract, make a written demand on the contractor for the excess amount, taking into account any increases or decreases in cost due to transportation charges, discounts, and other factors.

c. Damages

- (1) **Default** If a contract is terminated for default or if a procedure in lieu of termination for default is followed, the CO must ascertain and demand any damages to which the judiciary may be entitled. These damages are in addition to any excess repurchase cost.
- (2) When the CO has accepted defective products, the judiciary may recover as damages for any nonconformity the loss resulting in the ordinary course of events from the contractor's breach as determined in any reasonable manner.
- (3) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the products or services accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

7.10.9. Incidental and Consequential Damages

- a. Incidental Damages** may be chargeable against the contract. Incidental damages include those resulting from the contractor's breach, include expenses reasonably incurred in inspection, receipt, transportation, and care and custody of products rightfully rejected; any commercially reasonable charges; expenses in connection with repurchase; and any other reasonable expense incident to the delay or other breach.
- b. Consequential Damages** may be chargeable against the contract. Consequential damages include those resulting from the contractor's breach and include:
 - (1) any loss resulting from general or particular requirements and needs of which the contractor at the time of contracting had reason to know and which could not reasonably be prevented; and
 - (2) injury to person or property proximately resulting from any breach of warranty.

- c. **Deduction of Damages from the Price** The CO, on notifying the contractor, may deduct all or any part of the damages resulting from any breach of the contract, or from late delivery or delay not subject to liquidated damages, from any part of the price still due.
- d. **Damages for Non-delivery or Repudiation** The measure of damages for non-delivery or repudiation by the contractor when repurchase is not possible is the difference between the market price at the time when the CO learned of the breach and the price, together with any incidental and consequential damages, but less expenses as a consequence of the contractor's breach.
- e. Market price is to be determined as of the place of acceptance or, in cases of rejection after arrival or revocation of acceptance, as the place of arrival.

Part 7.11. Contract Closeout

7.11.1. Closeout of Contract Files

- a. Contract closeout refers to the procedure of verifying that all administrative matters have been concluded on a contract that is physically complete. That is, the contractor has delivered the required products or performed the required services and the judiciary has inspected and accepted the products or services.
- b. Standard times for closing out a contract vary depending on the contract type:
 - (1) files for orders using small purchase procedures must be considered closed after receipt of property or services when the CO receives evidence of final payment;
 - (2) files for firm-fixed-price contracts, other than those using small purchase procedures, must be closed within six months after the date on which the CO receives evidence of physical completion;
 - (3) files for contracts requiring settlement of indirect cost rates must be closed within 36 months of the month in which the CO receives evidence of physical completion;
 - (4) Files for all other contracts must be closed within 20 months of the month in which the CO receives evidence of physical completion;
 - (5) when closing out the contract files at [7.11.1.](#), the CO must use the closeout procedures at [7.11.2.](#) However, these closeout actions may be modified to reflect the extent of administration that has been performed; and
 - (6) a contract file must not be closed if:
 - (a) the contract is in litigation or under appeal;
 - (b) all termination actions have not been completed; or
 - (c) warranties or guarantees provided under the contract are still in effect.
- c. **Physically Completed Contracts**
 - (1) Except as provided in paragraph (2) below, a contract is physically complete when one of two events has occurred:

- (a) all required products or services have been delivered or performed; inspected and accepted; and all existing options have been exercised or have expired; or
- (b) a contract termination notice has been issued to the contractor.
- (2) Facilities contracts and rental, use, and storage agreements are considered to be physically completed when:
 - (a) the judiciary has given the contractor a notice of complete contract termination; or
 - (b) the contract period has expired.

7.11.2. Contract Closeout Procedures

- a. The CO is responsible for initiating administrative closeout of the contract after receiving evidence of its physical completion. At the outset of this process, the CO must review the contract funds status and determine whether or not there are payments to be made, claims to be settled, or excess funds to be deobligated. When complete, the administrative closeout procedures must ensure that, as appropriate:
 - (1) there is no outstanding value engineering change offer;
 - (2) a property clearance is received;
 - (3) all interim or disallowed costs are settled;
 - (4) a price revision is completed;
 - (5) subcontracts are settled by the prime contractor;
 - (6) all indirect cost rates are settled;
 - (7) the termination is settled;
 - (8) contractor's closing statement is completed;
 - (9) contractor's final invoice has been submitted;
 - (10) a contract funds review is completed;
 - (11) excess funds are deobligated; and
 - (12) a bilateral modification has been completed to effect the final closeout with the contractor's statement of release as follows:

“This modification is intended to and does constitute a full and final settlement and disposition of all matters relating to this contract (including all of its modifications) and is a full release, accord and satisfaction of any and all claims, demands or causes of action that the contractor has against the judiciary arising out of or related to this contract.”
- b. When the actions in the above section have been completed, the CO administering the contract must ensure that a contract completion statement, containing the following information, is prepared:
 - (1) contract administration office name and address (if different from the purchasing office);
 - (2) purchasing office name and address;
 - (3) contract number;
 - (4) last modification number;

- (5) last order number;
 - (6) contractor name and address;
 - (7) dollar amount of excess funds, if any;
 - (8) voucher number and date, if final payment has been made;
 - (9) invoice number and date, if the final written approved invoice has been forwarded to a disbursing office and the status of the payment is unknown;
 - (10) a statement that all required contract administration actions have been fully and satisfactorily accomplished;
 - (11) name and signature of the CO; and
 - (12) date.
- c.** When the statement is completed, the CO must ensure that:
- (1) the signed statement is placed in the purchasing office contract file; and
 - (2) a signed copy is placed in the appropriate contract administration file if administration is performed by a contract administration office.
- d. Storage, Handling, and Disposal of Contract Files** The process used to create and store records must record and reproduce the document, including signatures and other written and graphic images completely, accurately, and clearly. Data transfer, storage, and retrieval procedures must protect the data from alteration. Unless law or other regulations require signed documents to be kept, they may be destroyed after the responsible judiciary official verifies that record copies on alternate media and copies reproduced from the record copy are accurate, complete, and clear representations of the originals. See [7.1.1](#) for contents of contract files and [7.11.3](#) for destruction of records after closeout.

7.11.3. Disposition of Contract Files

- a.** Contract files, requisitions, and purchase/delivery/task orders, including correspondence and related papers pertaining to award, administration, receipt, inspection, acceptance, claims, disputes and payment must be destroyed using the following instructions:
- (1) transactions that use small purchase procedures; destroy three years after final payment, or until the judiciary audit, whichever is later; and
 - (2) transactions that use other than small purchase procedures; destroy six years and three months after final payment, or until the judiciary audit, whichever is later.
- b.** Solicited and Unsolicited Offers:
- (1) successful offers - destroy with related contract files; and
 - (2) solicited and unsolicited unsuccessful offers:
 - (a) relating to awards below the small purchases threshold; destroy one year after date of award or final payment, whichever is later;
 - (b) relating to transactions above the judiciary's small purchase threshold; destroy with related contract case files;
 - (c) relating to unsuccessful offers whereby no award is made, destroy one year after final decision of not awarding.

- c.** Formal solicitations of offers to provide products or services may be canceled prior to award of a contract. The files include presolicitation documentation on the requirement, any offers that were opened prior to the cancellation, documentation on any judiciary action up to the time of cancellation, and evidence of the cancellation.

 - (1) Canceled solicitation files must be destroyed five years after date of cancellation;
and
 - (2) unopened offers must be returned to the offeror.

Exhibit 7-1 Novation Agreement

The _____ (i.e. ABC Corporation (Transferor)), a corporation duly organized and existing under the laws of _____ [insert State] with its principal office in _____ [insert city]; the _____ (i.e. XYZ Corporation (Transferee) 0, [if appropriate add "formerly known as the EFG Corporation"]) a corporation duly organized and existing under the laws of _____ [insert State] with its principal office in _____ [insert city]; and the United States Of America (judiciary) enter into this Agreement as of _____ [insert the date transfer of assets became effective under applicable State law].

(a) The parties agree to the following facts:

- (1) The judiciary, represented by various contracting officers has entered into certain contracts with the Transferor, namely: _____ [insert contract or purchase order identifications]; [~~or delete "namely" and insert "as shown in the attached list marked `Exhibit A' and incorporated in this Agreement by reference."~~]. The term "the contracts," as used in this Agreement, means the above contracts and purchase orders and all other contracts and purchase orders, including all modifications, made between the judiciary and the Transferor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the judiciary or the Transferor has any remaining rights, duties, or obligations under these contracts and purchase orders). Included in the term "the contracts" are also all modifications made under the terms and conditions of these contracts and purchase orders between the judiciary and the Transferee, on or after the effective date of this Agreement.
- (2) As of _____, 20____, the Transferor has transferred to the Transferee all the assets of the Transferor by virtue of a _____ [insert term descriptive of the legal transaction involved] between the Transferor and the Transferee.
- (3) The Transferee has acquired all the assets of the Transferor by virtue of the above transfer.
- (4) The Transferee has assumed all obligations and liabilities of the Transferor under the contracts by virtue of the above transfer.
- (5) The Transferee is in a position to fully perform all obligations that may exist under the contracts.
- (6) It is consistent with the judiciary's interest to recognize the Transferee as the successor party to the contracts.
- (7) Evidence of the above transfer has been filed with the judiciary. [*When a change of name is also involved; e.g., a prior or concurrent change of the Transferee's name, an appropriate statement must be inserted (see example in paragraph (8) of this Agreement)*].
- (8) A certificate dated _____, 20____, signed by the Secretary of State of _____ [insert State], to the effect that the corporate name of _____ (EFG Corporation) was changed to _____ (XYZ Corporation) on _____, 20____, has been filed with the judiciary.

(b) In consideration of these facts, the parties agree that by this Agreement:

- (1) The Transferor confirms the transfer to the Transferee, and waives any claims and rights against the judiciary that it now has or may have in the future in connection with the contracts.
- (2) The Transferee agrees to be bound by and to perform each contract in accordance with the conditions contained in the contracts. The Transferee also assumes all obligations and liabilities of, and all claims against, the Transferor under the contracts as if the Transferee were the original party to the contracts.
- (3) The Transferee ratifies all previous actions taken by the Transferor with respect to the contracts, with the same force and effect as if the action had been taken by the Transferee.
- (4) The judiciary recognizes the Transferee as the Transferor's successor in interest in and to the contracts. The Transferee by this Agreement becomes entitled to all rights, titles, and interests of the Transferor in and to the contracts as if the Transferee were the original party to the contracts. Following the effective date of this Agreement, the term "Contractor," as used in the contracts, must refer to the Transferee.
- (5) Except as expressly provided in this Agreement, nothing in it must be construed as a waiver of any rights of the judiciary against the Transferor.
- (6) All payments and reimbursements previously made by the judiciary to the Transferor, and all other

previous actions taken by the judiciary under the contracts, must be considered to have discharged those parts of the judiciary's obligations under the contracts. All payments and reimbursements made by the judiciary after the date of this Agreement in the name of or to the Transferor must have the same force and effect as if made to the Transferee, and must constitute a complete discharge of the judiciary's obligations under the contracts, to the extent of the amounts paid or reimbursed.

- (7) The Transferor and the Transferee agree that the judiciary is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer or this Agreement, other than those that the judiciary in the absence of this transfer or Agreement would have been obligated to pay or reimburse under the terms of the contracts.
- (8) The Transferor guarantees payment of all liabilities and the performance of all obligations that the Transferee:
 - (i) assumes under this Agreement; or
 - (ii) may undertake in the future if these contracts be modified under their terms and conditions. The Transferor waives notice of, and consents to, any such future modifications.
- (9) The contracts must remain in full force and effect, except as modified by this Agreement. Each party has executed this Agreement as of the day and year first above written.

Judiciary,
By _____
Title _____
_____(ABC Corporation),

By _____
Title _____
[Corporate Seal]
_____XYZ Corporation,

By _____
Title _____
[Corporate Seal]
Certificate

I, _____, certify that I am the Secretary of _____(ABC Corporation), that _____, who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand and the seal of this corporation this day of _____ 20 ____.

By _____
[Corporate Seal]
Certificate

I, _____, certify that I am the Secretary of _____(XYZ Corporation), that _____, who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand and the seal of this corporation this day of _____ 20 ____.

By _____
[Corporate Seal]

Exhibit 7-2 Change-of-Name Agreement

The _____ (i.e. ABC Corporation) (*contractor*), a corporation duly organized and existing under the laws of _____ [*insert State*], and the United States Of America (*judiciary*), enter into this Agreement as of _____ [*insert date when the change of name became effective under applicable State law*].

(a) The parties agree to the following facts:

- (1) The judiciary, represented by various contracting officers has entered into certain contracts and purchase orders with the _____ (i.e.. XYZ Corporation), namely: _____ [*insert contract or purchase order identifications*]; [*or delete "namely" and insert "as shown in the attached list marked "Exhibit A" and incorporated in this Agreement by reference."*]. The term "the contracts," as used in this Agreement, means the above contracts and purchase orders and all other contracts and purchase orders, including all modifications, made by the judiciary and the contractor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the judiciary or the contractor has any remaining rights, duties, or obligations under these contracts and purchase orders).
- (2) The _____ (XYZ Corporation), by an amendment to its certificate of incorporation, dated _____ 20____, has changed its corporate name to _____ (ABC Corporation).
- (3) This amendment accomplishes a change of corporate name only and all rights and obligations of the judiciary and of the contractor under the contracts are unaffected by this change.
- (4) Documentary evidence of this change of corporate name has been filed with the judiciary.

(b) In consideration of these facts, the parties agree that:

- (1) the contracts covered by this Agreement are amended by substituting the name _____ ("ABC Corporation") for the name _____ ("XYZ Corporation") wherever it appears in the contracts; and
- (2) each party has executed this Agreement as of the day and year first above written.

Judiciary,

By _____

Title _____

_____ ABC Corporation,

By _____

Title _____

[Corporate Seal]

Certificate

I, _____, certify that I am the Secretary of _____ (ABC Corporation); that _____, who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand and the seal of this corporation this _____ day of _____ 20____.

By _____

[Corporate Seal]

**Exhibit 7-3
Notice of Assignment**

To: _____
(name and address of the addressees specified in 7.7.7.f(1), (2), and (3))

This has reference to contract number _____ dated _____, entered into between _____
*(contractor's name and address) and _____ (judiciary organization: Administrative Office of the
US Courts, court unit, or federal public defender organization, and address),*
for _____ *(Describe nature of the contract).*

Moneys due or to become due under the contract described above have been assigned to the undersigned.

A true copy of the instrument of assignment executed by the contractor on _____ *(date)*, is attached to the original notice.

Payments due, or to become due, under this contract should be made to the undersigned assignee.

Please return to the undersigned the three enclosed copies of this notice with appropriate notations showing the date and hour of receipt, and signed by the person acknowledging receipt on behalf of the addressee.

Very truly yours,

(Name of Assignee)

By _____
(Signature of Signing Officer)

(Title of Signing Officer)

(Address of Assignee)

ACKNOWLEDGMENT

Receipt is acknowledged of the above notice and of a copy of the instrument of assignment.

They were received _____ *(time - include a.m. or p.m.)* on _____ *(Date)*.

(Signature)

(Title)

On behalf of _____

(Name of addressee of this notice)

JP3 GLOSSARY OF TERMS

This is a collection of terms which are either used in the *JP3* or by procurement professionals. Not all terms will appear in the *JP3*, but may be used in other procurement documents or in discussions with procurement individuals.

“Acceptance” - also referred to as acceptance of work - the act of an authorized representative by which the judiciary, for itself or as an agent of another, assumes ownership of existing identified products tendered or approves specific services rendered as partial or complete performance of the contract. Also referred to as acceptance of offer - In contract law, the act accepting an offer (e.g. awarding a contract based on an offer under a request for proposals).

“Acceptance Period” - the number of calendar days available to the judiciary for awarding a contract from the date specified in the solicitation for receipt of offers.

“Acceptance Procedures” - the process followed by judiciary personnel during acceptance of a product or service.

“Acquisition” - see “Procurement.” The term “acquisition” generally only refers to contracts. “Procurement” is a more comprehensive term which involves other contractual instruments such as purchase orders, delivery or task orders, contracts, etc. Therefore, the judiciary uses the term “procurement.”

“Acquisition Life-Cycle” - see “Procurement Life-Cycle.”

“Acquisition Planning” - see “Procurement Planning.”

“Adequate Price Competition” - this exists when two or more responsible offerors, competing independently, submit reasonable priced offers that satisfy the judiciary’s expressed requirement . Any finding that the price is unreasonable must be supported by a statement of the facts. If there was a reasonable expectation (based on market research or other assessment) that two or more responsible offerors, competing independently, would submit priced offers in response to the solicitation’s expressed requirement, even though only one offer is received from a responsible offeror and if 1. based on the offer received, the contracting officer can reasonably conclude that the offer was submitted with the expectation of competition, e.g., circumstances indicate that a. the offeror believed that at least one other offeror was capable of submitting a meaningful offer; and b. the offeror had no reason to believe that other potential offerors did not intend to submit an offer; or 2. the determination that the proposed price is based on adequate price competition, is reasonable. Price analysis must clearly demonstrate that the proposed price is reasonable in comparison with current or recent prices for the same or similar items, adjusted to reflect changes in market conditions, economic conditions, quantities, or terms and conditions under contracts that resulted from adequate price competition.

“Administrative Change”- a unilateral contract modification, in writing, that does not affect the substantive rights of the parties (e.g., a change in the paying office or the appropriation data).

“Advertisement” - any single message prepared for placement in communication media, regardless of the number of placements.

“Advertising Material” - material designed to acquaint the judiciary with a prospective contractor’s present products, services, or potential capabilities, or designed to stimulate the government’s interest in buying such products or services.

“Affiliates” - contractors so related that one either directly or indirectly controls or has the power to control the other, or a third party controls or has the power to control both.

“Aggregate” - the whole considered with respect to all its parts, i.e. the contract with all its modifications.

“Amendment” - a change in a solicitation prior to contract award.

“Analysis of Trade-Off” - the process of identifying and analyzing feasible qualities that satisfy or exceed requirement for judiciary requirements. See also “Trade-Off.”

“Annual Bond or Annual Offer Guarantee” - a single bond or offer guarantee in place of separate bonds or guarantees to secure all of an offeror's or contractor's obligations under offers submitted or contracts entered into during a specific fiscal year.

“Anti-Deficiency Act” - requires that no officer or employee of the government may create or authorize an obligation in excess of the funds available, or in advance of appropriations unless otherwise authorized by law.

“Appropriated and Decentralized Funds” - see Exhibit 1-1, “Restrictions on Purchases with Appropriated and Decentralized Funds”

“As Written” - any worded or numbered expression which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information. Also referred to as “in writing.”

“Base Year” or “Base Period” - the initial contract term during which the judiciary will procure a specific product and/or service.

“Basic Quantities” - the quantity of a product or service that the judiciary will procure. See also “Optional Quantities.”

“Best and Final Offer (BAFO)” - a final opportunity for offerors in the competitive range to revise offers.

“Best Value” - the expected outcome of a procurement that, in the judiciary's estimation, provides the greatest overall benefit in response to the requirement.

“Bid” - this term is not used, since the sealed bid process is not applicable to the judiciary. See “offer” or “solicitation.”

“Bid Bond” - see “offer bond”.

“Bid Sample” - see “offer sample.”

“Bidder” - this term is not used, since the sealed bid process is not applicable to the judiciary. See “offeror.”

“Bilateral” - the equal agreement of both sides, the contractor and contracting officer, and accomplished by signature of both parties.

“Bilateral Modification” - a contract modification that is signed by the contractor and the contracting officer. Bilateral modifications are used to a. make negotiated equitable adjustments resulting from the issuance of a change order; b. definitize letter contract; and c. reflect other agreements of the parties modifying the terms of contracts.

“Boiler Plate” - a pre-approved format which must be used as it is presented as opposed to a “shell” document which allows for fill in information.

“Bona Fide Needs Rule” - provides that a fiscal year appropriation may be obligated only to meet a legitimate or bona fide need arising in the fiscal year for which the appropriation was made. See Exhibit 1-1.

“Bond” - a written instrument executed by an offeror or contractor (the “principal”), and a second party (the “surety”), to assure fulfillment of the principal’s obligations to a third party (the judiciary), identified in the bond. If the principal’s obligations are not met, the bond assures payment to the extent stipulated, of any loss sustained by the obligee.

“Brand-name” - a product description when only one brand-name will satisfy the requirement. A brand-name description limits competition to only those sources able to provide the particular brand-name. Since competition is limited, an other than full and open competition justification must be processed and approved prior to making the purchase.

“Brand-name or Equal” - a product description which includes a brand-name followed by the phrase “or equal.” This means that the particular brand-name will satisfy the requirement, but an “equal” product also will be considered.

“Budget Considerations” - budget rules and issues which need to be considered during planning. See Exhibit 1-1.

“Cancellation” - cancel is to annul or invalidate. This is used as in cancellation of a solicitation (prior to award) or the cancellation of a contract (within a contractually specified time) of the total requirements of all remaining program years of a multi-year contract. Cancellation results

when the contracting officer, a. notifies the contractor that the judiciary no longer needs the requirement, b. notifies the contractor of non-availability of funds for contract performance for any subsequent program year; or c. fails to notify the contractor that funds are available for performance of the succeeding program year requirement.

“Change-of-Name Agreement” - a legal instrument executed by the contractor and the judiciary that recognizes the legal change of name of the contractor without disturbing the original contractual rights and obligations of the parties. A change-of-name agreement involves only a change of the contractor's name. The rights and obligations of the parties remain unaffected. The agreement must be executed by the contracting officer and the contractor modifying all existing contracts between the parties to reflect the change of name. See also “novation agreement” when more is involved than just changing the name.

“Change Order” - a written order signed by the contracting officer, directing the contractor to make a change that the Changes clause authorizes the contracting officer to order without the contractor's consent.

“Change Within Scope” - a change allowed within the area covered by the procurement.

“Claim” - a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under contract clause that provides for the relief sought by the claimant. When a claim is in dispute refer to the language of the contract.

“Clarification” - limited communication with an offeror for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in an offer.

“Clause” - see “Contract Clause.”

“CO” - see “Contracting Officer.”

“Codes of Conduct” - see “Standards of Conduct.”

“Commercial Item” -any item, other than real property, that is of a type customarily used for non-governmental purposes and that: - has been sold, leased, or licensed to the general public; or has been offered for sale, lease, or license to the general public. The term also includes installation services, maintenance services, repair services, and other services if—

- (i) Such services are procured for support of a commercial item, regardless of whether such services are provided by the same source or at the same time as the item; and
- (ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

“Commercial Item” also includes services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions, such as commercial training. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed or a specific outcome to be achieved. For purposes of these services—

- (i) “Catalog price” means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and
- (ii) “Market prices” means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

“**Commercial Item Offer**” - an offer of a commercial off-the-shelf item that the vendor wishes to see introduced in the governments’ supply system as an alternate or a replacement for an existing product. This term does not include innovative or unique configurations or uses of commercial items that are being offered for further development and that may be submitted as an unsolicited offer. The term also includes an offer of commercial services as described under the definition of commercial item.

“**Commercial Use Agreements**” - requests by contractors for procurement and contracting officials to sign agreement to terms and conditions not specified in the procurement or contractual document.

“**Compensation**” - a payment or reimbursement whether monetary or otherwise.

“**Competition Threshold**” - for the judiciary see 3.4.2a and *Guide* Part B. For GSA federal supply schedules and other federal agency contracts refer to those agency contracts or their regulations.

“**Competitive Procedures**” - the procedures under which the judiciary enters into a contract pursuant to full and open competition.

“**Competitive Range**” - the offerors selected who have a reasonable chance of being awarded a contract after offer evaluation, based on total cost and other factors stated in the solicitation. The competitive range is established for the purpose of conducting oral or written discussions with these offerors and for requesting best and final offers.

“**Compliance**” - meeting all technical, contractual, and price/cost requirements of a solicitation. A synonym for conformance.

“**Component**” - any item supplied to the judiciary as a part of an end item or of another component.

“Composite Rating” - the combined representation of an offer’s technical merit after considering all evaluation factors, significant sub-factors, and their relative importance.

“Computer” - a device capable of accepting data, performing prescribed operations on the data, and supplying the results of those operations. It includes any device that operates on (1) discrete data by performing arithmetic and logic processes on the data or (2) analog data by performing physical processes on the data.

“Computer Data Base” - a collection of data in a form capable of being processed and operated on by a computer.

“Computer Program” - instructions or statements including, but not limited to, source code, object code, and algorithms, in computer usable form, that cause a computer to perform specified operations. Computer programs may be machine-dependent or machine-independent, and may be general or specific in purpose.

“Computer Software” - computer programs, computer data bases, and their documentation.

“Computer Software Documentation” - information, including computer listings and printouts in human-readable form, that (1) documents the design or detail of computer software, (2) explains its capabilities, or (3) provides operating instructions for using it.

“Conflict of Interest” - because of other activities or relationships, with other person’s, a person or organization is unable or potentially unable to render impartial assistance or advice to the judiciary, the person’s or organization’s objectivity in performing the contract work is or might be otherwise impaired, or a person or organization has an unfair competitive advantage.

“Conformance” - meeting all technical, contractual, and price/cost requirements of a solicitation. A synonym for compliance.

“Consent of Surety” - an acknowledgment by a surety that its bond continues to apply to the contract as modified.

“Consideration” - in contract law, consideration is something of value. It may be money, an act, or a promise. It is one of the key elements required to have a binding contract.

“Construction” - construction, alteration, or repair of any public building or public work in the United States.

“Construction Contract” - any contract for construction.

“Construction Work” - the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other on-site functions incidental to the actual construction.

“Construction Alteration, or Repair” - all types of work done on a particular building or work at the site thereof, including without limitation, altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, products, or equipment on the site of the building or work by persons employed by the contractor or subcontractor.

“Constructive Change” - a government action or inaction that constitutes an unauthorized modification of contract requirements. The contracting officer may be required to follow ratification procedures, prior to considering formalization of the modification. This must be avoided.

“Consultant” - a person who serves primarily as an adviser to an officer or instrumentality of the government, as distinguished from an officer or employee who carries out the judiciary’s duties and responsibilities. A consultant provides views or opinions on problems or questions presented by the judiciary, but neither performs nor supervises performance of operating functions. Generally, a consultant has a high degree of broad administrative, professional, or technical knowledge or experience which must make the advice distinctively valuable to the judiciary.

“Consultant Conflict of Interest” - see “Conflict of Interest.”

“Continued Portion of the Contract” - the portion of a partially terminated contract that the contractor must continue to perform.

“Contract” - a mutually binding legal relationship obligating the seller to furnish the products or services and the buyer to pay for them. It is any understanding that can be legally enforced, formed by two or more parties who promise to perform or to refrain from performing some act. For purposes of judiciary procurement, a contract exists when there is a bilateral agreement; a unilateral order (such as a purchase order) by the judiciary that becomes effective upon performance by the other party; or a binding order under an agreement. A contract includes all types of commitments that obligate the judiciary to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; delivery orders or task orders, issued under Blanket Purchase Agreements (BPAs); orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements.

“Contract Action” - an action resulting in a contract, including contract modifications for additional products or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

“Contract Administration” - management of a contract to ensure that the judiciary receives the products and services specified within established costs and schedules.

“Contract Administration File” - file which contains the documentation supporting all actions reflecting the basis for and the performance of contract administration responsibilities. Included are the copy of the contract and all modifications, together with official record copies of supporting documents executed by the contract administration office.

“Contract Administration Office” - an office that performs assigned post-award functions related to the administration of contracts. At the AO it is referred to as the Contract Administration Branch (CAB).

“Contract Administrator” - an individual who acts as an agent for the contracting officer in administration matters. The contracting officer is the signature authority for any administration actions.

“Contract Clause” - a term or condition used in solicitations and contracts and applying before and after contract award.

“Contract Closeout” - action taken to close the contract and dispose of the contract file after receipt of evidence of physical contract completion.

“Contract Date” - the effective date of a contract or modification.

“Contract Elements” - to be legally enforceable, a contract must include the following: an offer, an acceptance, consideration, execution by competent parties, legality of purpose, and clear terms and conditions.

“Contract Modification” - also referred to as a modification. Any written change in the terms of a contract. See “modification.”

“Contract Option”- see “Option.”

“Contract Price” - the award price of a contract. The total amount of a contract for the term of the contract (excluding options, if any).

“Contract Specialist” - an individual who assists the contracting officer and completes procurement actions up to the point of signature. The actual final approval and signature is accomplished by a certified contracting officer.

“Contracting”- purchasing, renting, leasing, or otherwise obtaining products or services from non-federal sources. Contracting includes description (but not determination) of products and services required, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration. It does not include making grants or cooperative agreements.

“Contracting Action” - an action resulting in a contract, including contract modifications for additional products or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the contract Changes clause, or funding and other administrative changes.

“Contracting by Negotiation” - contracting through the use of offers and discussions. The procedure includes the receipt of offers, permits bargaining, and usually affords offerors an opportunity to revise their offers before award of a contract.

“Contracting Office” - an office that awards or executes a contract for products or services and performs post-award functions not assigned to a contract administration office. Any contracting office that the procurement is transferred to, such as another division of the judiciary.

“Contracting Officer (CO)” - a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. A single contracting officer may be responsible for duties in any or all of these areas. A person who has direct purchasing authority or has been delegated purchasing authority. The CO is the only judiciary employee who is delegated authority to legally commit the judiciary to the purchase of products and services. The judiciary COs are delegated authority under the Contracting Officers’ Certification Program (COCP). (See *Guide*, Volume 1, Chapter 8, Part B.)

“Contracting Officers’ Certification Program (COCP)” - the judiciary’s program for certifying contracting officers. See Volume 1, Chapter 8, Part B of the *Guide*.

“Contracting Officer’s Representative (COR)” - an individual to whom the CO delegates certain contract administration responsibilities. At the judiciary the designation is referred to as COTR. See “Contracting Officer’s Technical Representative (COTR).”

“Contracting Officer’s Technical Representative (COTR)” - an individual to whom the CO delegates certain contract administration responsibilities, usually related to technical acceptance issues. The CO makes the delegation in writing with a copy furnished to the contractor. The designation does not include any authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract.

“Contractor” - any individual or other legal entity that directly or indirectly (e.g. through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a judiciary contract, including a contract for carriage under government or commercial bills of lading, or conducts business or reasonably may be expected to conduct business, with the judiciary as an agent or representative of another contractor,

“Contractor-Acquired Property” - property acquired or otherwise provided by the contractor for performing a contract and to which the judiciary has title.

“Contractor Offer Information” - any of the following information submitted to the judiciary as part of or in connection with an offer to enter into a judiciary procurement contract, if that information has not been previously disclosed publicly:

- (1) cost or pricing data;
- (2) indirect costs and direct labor rates;
- (3) proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation; and
- (4) information marked by the contractor as “contractor offer information,” in accordance with applicable law or regulation.

“Contribution” - a concept, suggestion, or idea presented to the government for its use with no indication that the source intends to devote any further effort to it on the government’s behalf.

“Cost” - the amount of money (estimated before award, actual after award) incurred for performance in accordance with contract terms and conditions.

“Cost Analysis” - the review and evaluation of the separate cost elements and proposed profit of an offeror's or contractor's cost or pricing data -- and the judgmental factors applied in projecting from the data to the estimated costs to form an opinion on the degree to which the proposed costs represent what the contract will probably cost, assuming reasonable economy and efficiency.

“Cost Analyst” - see Cost/Price Analyst.

“Cost Evaluation Panel (CEP)” - the individuals responsible, during the source selection process, for performing the total cost evaluation of offers submitted in response to a solicitation.

“Cost or Pricing Data” - all facts as of the time of price agreement that prudent buyers and sellers would reasonably expect to significantly affect price negotiations. Cost or pricing data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projection, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include such factors as:

- (1) supplier quotations;
- (2) nonrecurring costs;
- (3) information on changes in production methods and in production or purchasing volume;
- (4) data supporting projections of business prospects and objectives and related operating costs;
- (5) unit-cost trends such as those associated with labor efficiency;
- (6) make-or-buy decisions;
- (7) estimated resources to attain business goals;
- (8) information on management decisions that could have a significant bearing on costs; and

(9) historical actual costs for the same or similar items.

“Cost Realism” - measuring the degree to which estimated or projected costs will represent actual costs of contract performance.

“Cost-Reimbursable Contract” - a contract which provides for payment of allowable incurred costs to the extent prescribed in the contract.

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

“Day” - for purposes of the notification process, means calendar day. When it is designated as a “working day” or “business day,” then the period will include any day which is not a Saturday, Sunday, or legal holiday.

“Debarment” - an action taken by a debaring official to exclude a contractor from government contracting and government-approved subcontracting for a reasonable, specified period.

“Debarred” - excluded from government contracting and government-approved subcontracting for a reasonable, specified period of time commensurate with the seriousness of the offense or failure, or the inadequacy of performance.

“Debriefing” - discussions with a losing offeror about the strengths and weaknesses of its offer as compared to the award criteria.

“Decentralized Funds” - (see “Appropriated and Decentralized Funds.”)

“Defect” - any condition or characteristic in any products or services furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

“Deficiency” - any part of an offer that fails to satisfy the judiciary’s requirements.

“Delegated Procurement Level” - the COCP Level of the contracting officer which describes the authority which is delegated to that contracting officer.

“Delegation Level” - see “Delegated Procurement Level.”

“Delegation of Procurement Authority” - authority to contract for judiciary products and services.

“Delivery Order” - an order for products placed against an established contract or with government sources.

“Delivery Schedule” - specifics in the procurement for the delivery mode, where and when the product is to be delivered.

“Descriptive Literature” - information furnished by offerors as a part of their offers to describe the products offered, such as cuts, illustrations, drawings, and brochures, that shows the characteristics or construction of a product or explains its operation. The term includes only information required to determine acceptability of the product. It excludes other information such as that furnished in connection with the qualifications of an offeror or for use in operating or maintaining equipment.

“Designated Transition Procurement Official” - an individual who is assigned the contracting officer duties during the transition program as specified in the *Guide*.

“Desirable Items/Features” - items or features that may represent value to the judiciary, but are not mandatory for an offer to be in compliance with a solicitation.

“Deviation” - a request for a change from the prescribed procedures. In order to be effective, the deviation must be approved on a signed waiver from the PE.

“Director” - refers to the Director of the Administrative Office of the United States Courts.

“Discussion” - any oral or written communication between the judiciary and an offeror (other than communications conducted for the purpose of verification) that is initiated by the judiciary and involves information essential for determining the acceptability of an offer or provides the offeror an opportunity to revise its offer.

“Discount for Prompt Payment” - an invoice payment reduction voluntarily offered by the contractor, in conjunction with the, Discounts for Prompt Payment clause, if payment is made by the judiciary prior to the due date. The due date is calculated from the date of the contractor’s invoice. If the contractor has not placed a date on the invoice, the due date is calculated from the date the designated billing office receives a proper invoice, provided the judiciary annotates such invoice with the date of receipt at the time of receipt. When the discount date falls on a Saturday, Sunday or legal holiday when judiciary offices are closed and judiciary business is not expected to be conducted, payment may be made on the following business day and a discount may be taken.

“Discussions” - oral or written communications between the judiciary and an offeror that involve information essential for determining the acceptability of an offer and provide an offeror an opportunity to revise or modify its offer. In negotiations it occurs after establishment of the competitive range that may, at the contracting officer’s discretion, result in the offeror being allowed to revise its proposal. See also “Best and Final Offer (BAFO).”

“Dunn and Bradstreet Universal Numbering System” - a numbering system applied by Dunn and Bradstreet to identify business entities.

“DUNS” - see “Dunn and Bradstreet Universal Numbering System.”

“Effective Competition” - see “Adequate Price Competition.”

“Ethics” - see “Procurement Integrity and Ethics”.

“Evaluated Optional Items/Features” - items/features that must be offered and evaluated, but which the judiciary may acquire at its option at a date later than contract award.

“Evaluation Criteria” - see “evaluation factors”.

“Evaluation Factors” - the standards by which the value of an offer is assessed. The aspects of an offer are evaluated quantitatively or qualitatively to arrive at an integrated assessment as to which offer can provide the best solution to meet the judiciary’s requirements as described in the solicitation. The terms “evaluation factors” and “evaluation criteria” are used interchangeably. See 2.1.7f.

“Evaluation Panel” - a panel of requirement activity individuals, usually with technical knowledge and experience, to rate the offers using the evaluation criteria specified in the solicitation. See 2.1.7e.

“Excess Property” - any personal property under the control of the judiciary that is determined to be not required for its needs and for the discharge of its responsibilities.

“Execution” - the final consummation of a contract action including all formalities (e.g., signature and any necessary approvals) needed to complete the action.

“Expert” - a person with excellent qualifications and a high degree of attainment in a professional, scientific, technical, or other field. An expert’s knowledge and mastery of the practices, problems, methods and techniques of a field of activity or of a specialized field are clearly superior to those usually possessed by ordinarily competent persons in that activity. An expert usually is regarded as an authority or as a practitioner of unusual competence and skill by other persons in the profession, occupation, or activity.

“Fair and Reasonable Price” - a price based on reasonable costs under normal competitive conditions and not on lowest possible cost.

“Fair Market Price” - see “Fair and Reasonable Price.”

“FedBizOpps” - a daily publication that lists the government’s proposed contract actions, contract awards, subcontracting leads, sales, surplus property and foreign business opportunities. See also “Government-wide Point of Entry (GPE)” and <http://www.fedbizopps.gov>.

“Federal Supply Schedule (FSS)” - publications issued by the General Services Administration (GSA) schedule contracting office containing the information for placing delivery or task orders

under indefinite delivery contracts (including requirements contracts) established with commercial firms to obtain commonly used commercial products and services associated with volume buying. Ordering officers issue delivery or task orders directly to the schedule contractors. Also see "GSA Advantage!".

"Fee" - the portion of total remuneration to a contractor over and above allowable costs. Also called profit.

"Fidelity Bond" - a bond to assure the faithful performance of an employee's duties to his or her employer and the employer's clients. The bond is used to cover losses such as employee thefts or embezzlements.

"Firm Fixed-Price Contract" - a contract that provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. Also see "Fixed-Price Contract."

"Firmware" - hardware-embedded and hardware-oriented programming that is used for machine control, error recovery, mathematical functions, applications programs, and the like, including firmware furnished with a computer, commercially available proprietary firmware acquired separately, and all related vendor documentation and manuals.

"Fixed-Price Contract" - a contract which provides for a firm price, or in appropriate cases, an adjustable price.

"F.o.b." - (Free on Board) - used in conjunction with a physical point to determine- (1) the responsibility and basis for payment of freight charges; and (2) unless otherwise agreed, the point where title for goods passes to the buyer or consignee.

"F.o.b. destination (Free on Board at destination)" - delivery, free of expense to the judiciary, to a destination specified in the purchase document, i.e., the seller or consignor delivers the goods on seller's or consignor's conveyance at destination. Cost of shipping and risk of loss are borne by the seller or consignor.

"F.o.b. origin (Free on Board at origin)" - the seller or consignor places the goods on the conveyance by which they are to be transported. The judiciary pays for the pick-up, transportation, and delivery to the required destination. Cost of shipping and risk of loss are borne by the judiciary.

"Form, Fit, and Function Data" - data relating to an item component, or process that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements; except that for computer software, it means data identifying origin, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulas, and machine-level flow charts of the computer software.

“Formal Source Selection” - a structured, compartmented process that uses a source selection panel for evaluating offers and selecting the source(s) for contract award. The source selection panel is frequently structured to include at least three individuals to accomplish offer evaluation, comparative analysis of the offers, and source selection. The source selection authority is at a management level above that of the contracting officer.

“Fraud” - acts of fraud or corruption or attempts to defraud the government or to corrupt its agents; which constitute a cause for debarment or suspension; and which violate the False Claims Act.

“Freedom of Information Act” - does not apply to the judiciary. However, as a matter of policy, and to the extent that it is in the best interest of the judiciary, procurement documents that would be released under FOIA may be released upon request.

“Full and Open Competition” - all responsible sources are permitted to compete for a procurement.

“Functional Requirement” - a requirement in which the judiciary describes functions to be performed and offerors propose appropriate solutions.

“General Accounting Office (GAO) Protest” - a procurement protest made to the General Accounting Office. Also see “Judiciary Protest.”

“General Wage Determination” - contains prevailing wage rates for the types of service designated in the determination, and is used in contracts performed within a specified geographical area. General wage determination contain no expiration date and remain valid until modified, superseded, or canceled by a notice in the Federal Register by the Department of Labor. Once incorporated in a contract, a general wage determination normally remains effective for the term of the contract. When options are exercised an updated wage determination must be requested from the Department of Labor and modified into the contract.

“Gifts” - see “Gratuities or Gifts.”

“Go/No-Go Standard” - a standard of comparison defined so that proposals either satisfy an evaluation factor completely or fail to meet it.

“Government” - also referred to as entity of the government. Any entity of the legislative or judicial branch, any executive agency, military department, government corporation, or independent establishment, the U.S. Postal Service, or any non-appropriated-fund instrumentality of the Armed Forces.

“Government-Wide Point of Entry (GPE)” - a daily publication that lists the government’s proposed contract actions, contract awards, subcontracting leads, sales, surplus property and foreign business opportunities. See also “FedBizOpps”.

“Gratuities or Gifts” - items of value given to judiciary employees.

“GSA Advantage!” - an on-line shopping service that enables purchasing offices to search product information, review delivery options, place orders directly with contractors and pay contractors for orders using the purchase card. The service may be accessed through the GSA Federal Supply Service Home Page (<http://www.fss.gsa.gov>).

“GSA Competition Threshold” - the threshold whereby GSA contract actions must be competed (\$2,500).

“Guide”- when used in the *JP3*, this refers to Volume 1, Chapter 8 of the *Guide to Judiciary Policies and Procedures*. This is a fully integrated set of high-level policies, procedures, and statutory requirements that provides a framework of general guidance for procurement in the judiciary.

“In Writing” - see “as written.”

“Incumbent Contractor” - current contractor on an ongoing contractual requirement program.

“Ineligible” - excluded from contracting and subcontracting under statutes, executive orders, or regulations of government agencies, such as the Davis-Bacon Act, the Service Contract Act, and the Walsh-Healey Public Contracts Act.

“Information Technology” - any equipment, or interconnected system(s) or subsystems(s) of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by an entity. The term includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.

“Inherently Governmental Function”- a function that is so intimately related to the public interest as to mandate performance by government employees. An inherently governmental function includes activities that require either the exercise of discretion in applying government authority (i.e., the act of governing), or the making of value judgments related to government monetary transactions and entitlements, and in making decisions for the government.

“Inspection” - examining and testing products or services (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether they conform to contract requirements.

“Insurance” - a contract that provides that, for a stipulated consideration, one party undertakes to indemnify another against loss, damage, or liability arising from an unknown or contingent event.

“Integrity” - see “Procurement Integrity and Ethics”.

“Interested Party” - a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract. For the purpose of filing a protest, an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by failure to award a contract.

“Invitation for Bid (IFB)” - this term is not used in the judiciary, because it refers to sealed bidding procedures. Outside the judiciary, it is a contracting officer’s invitation to vendors to respond with a bid..

"Invoice" - a contractor's bill or written request for payment under the contract for products delivered or services performed. Also see “Proper Invoice.”

“Invoice Payment” - a judiciary disbursement of monies to a contractor under a contract or other authorization for products or services accepted by the judiciary. This includes payments for partial deliveries that have been accepted by the judiciary and final cost or fee payments where amounts owed have been settled between the judiciary and the contractor.

“Javits-Wagner-O’Day Act (JWOD)” - requires the judiciary to purchase products or services on the Procurement List, at prices established by the Committee, from JWOD participating nonprofit agencies if they are available within the period required. Also “National Industries for the Blind (NIB)” and “NISH”.

“JIT Funds” - See “Judiciary Information Technology Funds.”

“J-Net” - the judiciary’s intranet. Changes to the *JP3* and other procurement procedures will be posted on the J-Net. It’s location is <http://jnet.ao.dcn/>

“JP3” - see Judiciary Procurement Program Procedures

“JP3 Change Request Format” - a standard format for recommending changes to the *JP3*.

“Judiciary” - the judicial branch of government. A system of courts of law and the judges of those courts. For the purposes of the *JP3*, those elements which are covered by this guidance are listed in the *Guide*, Volume 1, Chapter 8.

“Judiciary-Furnished Property” - property in the possession of, or directly acquired by, the judiciary and subsequently made available to the contractor. It includes materials or other property to contractors in performance of their contracts when doing so will result in significant economies, standardization, expedited production, or when it is otherwise in the judiciary's interest.

Judiciary Information Technology (JIT) Funds - see Exhibit 1-1, “The Bona Fide Needs Rule”, paragraph c.

“Judiciary Procurement Program Procedures(JP3)” - an operations manual containing a fully integrated set of specific and detailed procedures to be used as a reference document by judiciary procurement personnel.

“Judiciary Property” - all property owned by or leased to the judiciary or acquired by the judiciary under the terms of the contract. It includes both judiciary-furnished property and contractor-acquired property. See also “judiciary-furnished property.”

“Judiciary Protest” - a procurement protest made to the contracting office. Also see “General Accounting Office (GAO) protest.

“Judiciary Purchase Card Program” - a purchase card, similar in nature to a commercial credit card, issued to authorized judiciary personnel to use to acquire and to pay for products and services. See *Guide*, Volume 1, Chapter 8, Part B for Contracting Officers’ Certification Program (COCP) as it relates to purchase card authorized use. Also see Procurement Manual entitled “Judiciary Purchase Card Program Manual.”

“Judiciary’s Small Purchase Threshold” - a limitation specifying that open market purchases must not exceed. The limit is specified in the *Guide to Judiciary Policies and Procedures*, Volume 1, Chapter 8, Part B.

“Labor-Hour Contract” - a variation of the time-and-materials contract, differing only in that materials are not supplied by the contractor.

“Late Offer” - an offer received in the office designated in the RFP, RFQ, or RFI after the exact time set for receipt.

“Leasing” - also referred to as rent or hire. Procurement from private or commercial sources other than by purchase.

“Limited Rights” - the rights of the judiciary in limited rights data, as set forth in a Limited Rights Notice if included in a data rights clause of the contract.

“Limited Rights Data” - data, other than computer software, developed at private expense.

“Liquidated Damages” - a contractual remedy which may be used when there are delays in contract delivery or performance and when such delays are solely attributable to the contractor.

“List of Parties Excluded From Federal Procurement and Non-procurement Programs” - a list compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about parties, debarred, suspended, or voluntarily excluded under the Non-procurement Common Rule, those proposed for debarment, and determined to be ineligible.

"Market Research" - collecting and analyzing information about capabilities within the market to satisfy judiciary needs.

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

"Minor Nonconformance" - a nonconformance that is not likely to materially reduce the usability of the products or services for their intended purpose, or is a departure from established standards having little bearing on the effective use or operation of the products or services.

"Modification" - a written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity or other provisions of an existing contract whether made unilaterally under a provision in the contract or bilaterally by the parties to the contract. It includes such bilateral actions as supplemental agreements, and such unilateral actions as change orders, administrative changes, notice of termination, and exercise of options.

"Must" - This is imperative.

"National Industries for the Blind (NIB)" - nonprofit agency designated to represent people who are blind in government contracting under the Javits-Wagner-O'Day Act.

"Negotiation" - an exchange, in either a competitive or sole source environment, between the judiciary and offerors, that are undertaking with the intent of allowing the offeror to revise its proposal. The discussion between the contracting officer and the offeror will determine final terms, conditions, prices, etc. acceptable to both parties.

"NISH" - nonprofit agency designated to represent participating nonprofit agencies serving people with sever disabilities other than blindness in government contracting under the Javits-Wagner-O'Day Act.

"No-Cost Settlement" - a termination settlement at no cost to the judiciary or the contract.

"No Year Funds" - see Exhibit 1-1, "The Bona Fide Needs Rule" paragraph c.

"Noncompetitive Open Market Threshold" - see "Open Market Small Purchase Threshold With or Without Competition."

"Nonconforming Products or Services" - products or services that do not conform in all respects to contract requirements.

"Nonpersonal Services Contract" - a contract under which the personnel rendering the services are not subject, either by the contract's term or the manner of its administration, to the

supervision and control usually prevailing in relationships between the judiciary and its employees.

“Nonseverable services” – services which constitute a specific, entire job with a defined end-product that cannot feasibly be subdivided for separate performance in each fiscal year, essentially a single undertaking which, by its nature, cannot be separated for performance in separate fiscal years. Contracts for nonseverable services should be financed entirely out of the appropriation current at the time of award, notwithstanding that performance may extend into future years. Examples of nonseverable services are studies, reports, overhaul of an engine, painting a building, etc.

“Novation Agreement” - a legal instrument executed by the contractor (transferor); successor in interest (transferee); or government; by which, among other things, the transferor guarantees delivery or performance of the contract, the transferee assumes all obligations under the contract, and the government recognizes the transfer of the contract and related assets. A novation agreement involves recognizing a third party as the successor in interest when the third party’s interest arises out of the transfer of all of the contractor’s assets, or the entire portion of the assets involved in performing the contract.

“Offer” - a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. A response to a request for quotations is a “quote” not an “offer.” (Also see request for information, request for proposals, and request for quotations.) An offer may be made in response to a solicitation or may be unsolicited. (See also “solicitation” and “quote”.)

“Offer Bond” - a bond given to serve as an offer guarantee in connection with an individual offer or with offers submitted during a specific fiscal year.

“Offer Evaluation” - an integrated assessment, using total cost and other evaluation factors and standards, of each offeror’s ability to satisfy the requirements of a solicitation. It is the process of examining each proposal against the requirements of the solicitation and rating its response to each factor identified in the solicitation based on an assessment of merit and/or compliance with established requirements.

“Offer Guarantee” - a firm commitment, such as a offer bond, a postal money order, a certified check, a cashier’s check, an irrevocable letter of credit, or certain bonds or notes of the United States, accompanying an offer as assurance that the offeror will, upon acceptance of the offer, execute required contractual documents and promptly provide necessary bonds.

“Offer Sample” - a sample to be furnished by an offeror with its offer to show the characteristics of the product offered.

“Offeror” - any person who has submitted an offer. An offeror is one who is offering a product or service for a price.

“Office of General Counsel (OGC)” - a division of the Administrative Office of the United States Courts which provides legal advice and opinions.

“OGC” - see “Office of General Counsel.”

“Open Market” - pricing received which is not specific to any contractual agreement, i.e. not on a GSA schedule, a judiciary wide contract, or a contract from another federal agency.

“Open Market Small Purchase Threshold With or Without Competition” - the judiciary has established an open market small purchase threshold of \$5,000. Open market purchases for \$5,000 or less may be made without obtaining competitive quotations when the contracting officer determines the price to be reasonable.

“Option”- a unilateral right in a contract by which, for a specified time, the government may elect to purchase additional products or services called for by the contract, or may elect to extend the term of the contract.

“Optional Quantities” - quantities in addition to basic quantities that the judiciary may acquire at its option.

“Optional Periods” - time beyond the base period during which the judiciary may acquire products or services at its option.

“Oral Presentation” - a meeting at which an offeror presents information to evaluators and the contracting officer that validates its offer.

“Organizational Conflict of Interest” - see “Conflict of Interest.”

“Outlying Area” - means:

- (1) Commonwealths
 - (i) Puerto Rico;
 - (ii) the Northern Mariana Islands;
- (2) Territories
 - (i) American Samoa;
 - (ii) Guam;
 - (iii) U.S. Virgin Islands; and
- (3) Minor outlying islands
 - (i) Baker Island
 - (ii) Howland Island
 - (iii) Jarvis Island
 - (iv) Johnston Atoll
 - (v) Kingman Reef
 - (vi) Midway Islands
 - (vii) Navassa Island
 - (viii) Palmyra Atoll

(ix) Wake Atoll

“Partial Payments” - payments for accepted products and services that are only a part of the contract requirements are authorized under law. Although partial payments generally are treated as a method of a payment and not as a method of contract financing, using partial payments can assist contractors to participate in judiciary contracts without, or with minimal, contract financing.

“Past Performance” - a contractor’s performance evaluations. It is relevant information, for future source selection purposes, regarding a contractor’s actions under previously awarded contracts. It includes, for example, the contractor’s record of conforming to contract requirements and to standards of good workmanship; the contractor’s record of forecasting and controlling costs; the contractor’s adherence to contract schedules, including the administrative aspects of performance; the contractor’s history of reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the contractor’s business-like concern for the interest of its customer.

“Patent Infringement Bond” - a bond given as security for a contractor's obligations under a patent clause.

“Payment” - is an essential contract element - consideration. It satisfies the judiciary’s obligation to compensate the contractor according to the terms of the contract.

“Payment Bond” - a bond which assures payments as required by law to all persons supplying labor or material in the prosecution of the work provided for in the contract.

“PE” - see “Procurement Executive, PMD.”

“Penal Amount” - the amount of money specified in a bond as the maximum payment for which the surety is obligated or the amount of security required to be pledged to the judiciary in lieu of a corporate or individual surety for the bond.

“Penal Sum” see “penal amount.”

“Performance-Based Contracting” - structuring all aspects of a procurement around the purpose of the work to be performed with the contract requirements set forth in clear, specific, and objective terms which contain measurable outcomes. This is as opposed to either the manner by which the work is to be performed or broad and imprecise statements of work.

“Performance Bond” - a bond which secures performance and fulfillment of the contractor’s obligations under the contract.

“Performance Measures” - standards by which a contractor’s work can be measured.

“Performance Schedule” - specifics in the procurement for the delivery mode, where and when the service is to be performed.

“Personal Services Contract” - a contract that, by its express terms or as administered, makes the contractor personnel appear to be, in effect, government employees. The judiciary uses this type of contract very cautiously.

“PLO” - see “Procurement Liaison Officer.”

“PMD” - see Procurement Management Division, Administrative Office of the US Courts.

“PO” - see “Purchasing Officer.”

“Post-Award Conference” - a meeting of judiciary and contractor representatives after award of a contract and prior to commencement of work to discuss significant elements of administering the contract including any unusual or significant contract requirements (e.g., labor clause requirements).

“Post-Award Letter” - a letter or other written form of post-award orientation. It must identify the judiciary representative responsible for administering the contract and cite any unusual or significant contract requirements.

“Post-Award Orientation” - a post-award conference, letter, or other form of written communication to aid both the judiciary and contractor personnel to achieve a clear and mutual understanding of all contract requirements, and to identify and resolve potential problems.

“Preliminary Meeting” - a meeting to prepare judiciary representatives for a post-award conference. Purposes include: establish an understanding of conference roles and responsibilities; develop a conference agenda, form a unified judiciary team, and identify any unusual or significant contract requirements.

“Price” - cost plus any fee or profit applicable to the contract type; the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit. The amount paid for a product or service.

“Price Analysis” - the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.

“Price Analyst” - see Cost/Price Analyst.

“Price-Related Factors” - elements that are quantified and used with price to determine the most advantageous offer for the judiciary. They include: a. foreseeable costs or delays to the judiciary resulting from such factors as differences in inspection, locations of products, and transportation; b. changes made, or requested by the offeror, in any of the provisions of the RFQ, if the change does not constitute grounds for offer rejection; c. advantages or

disadvantages to the judiciary that might result from making more than one award; d. federal, state, and local taxes which are not exempted.

“Prime Contractor” - a firm which is the responsible contractor under a contract, but who has portions of the products or services provided by one or more sub-contractors.

"Procurement" - all stages involved in the process of procuring products or services, beginning with the determination of a need for products or services and ending with contract completion or closeout. It involves the procuring by purchase order, delivery order, task order, or contract of products or services with appropriated funds, by and for the use of the judiciary, through purchase or lease, whether the products or services are already in existence or must be created, developed, demonstrated, and evaluated. Procurement begins at the point when judiciary needs are established and includes the description of requirements to satisfy judiciary needs, solicitation and selection of sources, award, financing, performance, administration, and those technical and management functions directly related to the process of fulfilling judiciary needs by procurement.

“Procurement Action” - see “Procurement Activity.”

“Procurement Activity” - action taken which leads to an award of a procurement or administration of an existing procurement.

“Procurement Agent” - an individual who acts as an agent for the contracting officer. The contracting officer is the final signature authority for any actions.

“Procurement Authority” - delegated authority as a certified contracting officer to process procurements. See *Guide*, Volume 1, Chapter 8, Part B.

“Procurement Executive, PMD (PE)”- the individual appointed, who is responsible for management direction of the procurement system, including implementation of the unique judiciary procurement procedures.

“Procurement Integrity and Ethics” - statutory and ethical standards to ensure procurements are conducted fairly and without prejudice.

“Procurement Liaison Officer (PLO)” - a delegated official in the court unit or FPDO, who has procurement oversight authority.

“Procurement Life-Cycle” - the period covering all procurement-related activities. The life-cycle begins when agency needs are established and ends with disposal of the products.

“Procurement Management Division (PMD)” - division of the Administrative Office of the US Courts responsible for procurement in the judiciary.

“Procurement Officer (PO)” - (as used in the interim transition period for a person who is not a certified contracting officer) a person designated by the chief judge or federal public defender to conduct procurement activities during the transition to the Contracting Officers Certification Program. During the transition period, the procurement officer is the same as a contracting officer. (See “Contracting Officer.”)

“Procurement Official” - includes any individual who has participated personally and substantially in the conduct of a procurement. The classes of employees listed in Chapter 1 are considered procurement officials depending on the circumstances prevailing in a given case. (See also “Designated Transition Procurement Official.”)

“Procurement Planning” - the process by which the efforts of all personnel responsible for significant aspects of a procurement are coordinated and integrated in a comprehensive plan to fulfill needs of the judiciary in a timely manner and at a reasonable cost. It includes developing the overall strategy for managing the procurement. See Chapter 2 for the benefits of procurement planning.

“Procurement Sensitive Information” - information prepared or developed by the judiciary for use in conducting a procurement. It must not be released or disclosed to anyone outside of those having an official procurement need to know. The disclosure of this information to a competing offeror may jeopardize the integrity or successful completion of the procurement. Inappropriately released documents may prejudice or bias the award, or otherwise adversely impact a competitive procurement.

“Procurement Sensitive Information Legend” - “This document contains procurement sensitive information related to the conduct of a federal agency procurement, the disclosure of which is restricted by the Office of Federal Procurement Policy Act (41 USC 423). The unauthorized disclosure of such information may subject both the disclosor and the recipient of the information to contractual, civil and/or criminal penalties as provided by law. Do not copy enclosed materials.”

“Procurement Strategy” - the set of decisions that determines how products or services will be procured, including contracting methods.

“Procurement Team” - judiciary members of the procurement team including representatives of the requesting office and purchasing office.

“Product Descriptions” - are usually described by a common generic description of the item. However, they are not as qualitative or quantitative as a specification and usually describe the end-product in terms of performance or standard commercial name (e.g., "copier").

“Products” - all property and rights or interest in property of any kind except real property, i.e. ownership.

“Professional Services” - services provided by an individual whose position requires a license or certification, such as a doctor or a certified public accountant.

“Program Manager (PM)” - the key management official who represents the program office in formulating requirements and managing pre-solicitation activities. In some organizations the program manager or another management official is designated as the procurement manager for a specific procurement.

“Proper Invoice” - a bill or written request for payment which meets the minimum standards specified in the terms and conditions contained in the contract for invoice submission. See also “Invoice.”

“Property” - see “Judiciary Property” or “Contractor-Acquired Property.”

“Proposal” - except as it is used in “request for proposal,” this term is not applicable to the judiciary. The term “offer” is used instead. See “offer.”

“Proprietary” - information owned by an individual or corporation.

“Proprietary Information” - information in an offer or otherwise submitted to the judiciary by an offeror in response to a solicitation or during the conduct of a procurement that has been marked as proprietary information in accordance with applicable laws and regulations.

“Protest”- a written objection by an interested party to any of the following: a. a solicitation or other request for offers for a contract for the procurement of products or services; b. an award or proposed award of a contract; c. a cancellation of the solicitation or other request; or d. a termination or cancellation of an award of the contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.

“Protest After Award” - a protest filed after contract award.

“Protest Before Award” - a protest filed before contract award.

“Provision” - see “Solicitation Provision.”

“Purchasing Office” - an organizational element, comprised of one or more contracting officers, responsible for the purchase of products, services and equipment, real property, design and construction and related services, and mail transportation.

“Purchase Order” - an offer by the government to buy products or services, including construction and research and development, upon specified terms and conditions, using small purchase procedures.

“Quality Assurance” - the various functions, including inspection, performed by the judiciary to determine whether a contractor has fulfilled the contract obligations pertaining to quality and quantity.

“Quality Requirements” - specific requirements communicated in the procurement to the contractor which will be compared to the delivery of the product or performance of the service and used to evaluate if the contractor met the quality required.

“Quotation” - see “Quote.”

“Quote” - a response to a request for quotation (RFQ) which provides a statement of current prices. It is informational and, unlike an offer, cannot be accepted by the judiciary to form a binding contract. However, the quotation may be used as a basis for a government offer in the form of a purchase order.

“Quoter” - any person who submitted a quote.

“Ratification” - the act of approving an unauthorized commitment by an official who has the authority to do so. The approval of an unauthorized commitment or act results in the act being given effect as if originally authorized. It is not a desirable method of procurement, because it is not in accordance with the judiciary’s policies and procedures, and may result in punitive action against the person(s) who committed the unauthorized act.

“Rating” - the application of a scale of words, colors, numbers, signs, or other indicators to denote the degree to which the proposal has met the standard for a technical evaluation factor.

“Rating Systems” - a rating system suitable for evaluating offers.

“Real Property” - means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or plant equipment.

“Reasonableness” - a cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business.

“Receiving Report” - written evidence that indicates government acceptance of products delivered or services performed.

“Release of Information” - procurement documents released upon request, after determining it is proper to release them.

“Request for Information (RFI)” - an announcement publicly requesting industry comment on draft specifications or solicitations for products or services.

“Request for Proposals (RFP)” - a solicitation used to communicate the judiciary’s requirements and request vendors submit offers for products or services. Vendors may use the term "proposals" interchangeably with the term “offers.”

“Request for Quotations (RFQ)” - a solicitation for quotes. Commonly used under small purchase procedures. Responses to an RFQ are referred to as “quotes” or "quotations," not offers.

“Requesting Office” - refers to the organization with the bona fide need and which has initiated the procurement or contracting request.

“Responsibility” - a determination that a prospective contractor meets the following standards; adequate financial resources to perform a contract or the ability to obtain them; ability to comply with a delivery schedule, taking other business commitments into consideration; a satisfactory performance record on other contracts; a satisfactory record of integrity and business ethics; the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them; the necessary technical equipment and facilities or the ability to obtain them; otherwise qualified and eligible to receive an award under applicable laws and regulations.

“Responsible Prospective Contractor” - a contractor that meets the criteria for responsibility and is not otherwise debarred. See “Responsibility.”

“Responsible Source” - see “Responsible Prospective Contractor.”

“Responsive Offeror” - an offeror whose offer conforms to the solicitation.

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

“Restricted Rights” - the rights of the judiciary in restricted computer software, as set forth in a Restricted Rights Notice included in a computer software rights clause of the contract, or as otherwise may be included or incorporated in the contract.

“RFP” - see “Request for Proposal.”

“RFQ” - see “Request for Quotation.”

“Scope” - the area covered by a given activity or subject.

“Selection” - the selection of an offeror for contract award, with or without discussion of offers, or for final negotiations leading to contract award following discussion of offers.

“Service” - the performance of identifiable tasks.

“Service Contract” - a contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish a product. A service contract may be either nonpersonal or personal contract. It can also cover services performed by either professional or nonprofessional personnel whether on an individual or organizational basis. Some of the areas in which service contracts are found include the following: a. maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or modification of products, systems, or equipment; b. routine recurring maintenance of real property; c. housekeeping and base services; d. advisory and assistance services; e. operation of judiciary-owned equipment facilities, and systems; f. communications services; g. architect-engineering; h. transportation and related services; and i. research and development.

“Service Contract Act” - the Service Contract Act of 1965, as amended. It requires that service contracts over \$2,500 contain mandatory provisions regarding minimum wages and fringe benefits, safe and sanitary working conditions, notification to employees of the minimum allowable compensation, and equivalent federal employee classifications and wage rates.

“Service Employee” - any person engaged in the performance of a service contract other than any person employed in a bona fide executive, administrative, or professional capacity. The term includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

“Severable services” - services that are continuing and recurring in nature, and that can be separated into components that independently meet a separate and ongoing need of the government. Common examples are court reporters, court interpreters, local area network and help desk support services, etc. To the extent that a need for a specific portion of a continuing service arises in a subsequent fiscal year, that portion is severable and chargeable to appropriations available in the subsequent FY. Generally, severable services must be charged to the fiscal year(s) in which they are rendered. However, the judiciary has authority to enter into one-year severable service contracts, beginning at any time during the fiscal year and extending into the next fiscal year, and to obligate the total amount of the contract to the appropriation current at the time of the award, provided that performance commences within the same fiscal year as the award.

“Shall” - an order, promise, or obligation.

“Shell” - a pre-approved format which allows for fill in information as opposed to a “boiler plate” which must be used as it is presented.

“Signature or Signed” - the discrete, verifiable symbol of an individual which, when affixed to a writing with the knowledge and consent of the individual, indicates a present intention to authenticate the writing. This includes electronic symbols as electronic signatures.

“Small Purchase” - a purchase made using less strict contract forms and procedures. Small purchases involve the use of a purchase order, rather than a contract. This procurement has a

monetary restriction. See the “Judiciary’s Small Purchase Threshold”, 3.4.1c and *Guide to Judiciary Policies and Procedures*, Volume 1, Chapter 8, Part B.

“Small Purchase Threshold” - see “Judiciary’s Small Purchase Threshold.”

"Sole Source Procurement"- a contract for the purchase of products or services that is entered into or proposed to be entered into by the judiciary after soliciting and negotiating with only one source.

"Solicitation" - an official judiciary request for offers or quotes. It’s a document sent to prospective contractors by the judiciary, requesting submission of an offer, quote, or information. It is also the process of issuing a document requesting submission of an offer, quote, or information and obtaining responses. A solicitation in the judiciary is either a "Request for Proposals (RFP)" or a “Request for Quote (RFQ)”.

“Solicitation List” - a contracting officer’s list of potential sources of products and services.

"Solicitation Provision" - term or condition used only in solicitations and applying only before contract award. (See Appendix B.)

“Source” - a potential supplier of products or services to the judiciary including public corporations, private companies, and non-profit organizations.

“Source Selection” - the process of identifying which offeror(s) will receive a contract in a competitive negotiated procurement. It’s the process of choosing the offeror whose offer is most advantageous to the judiciary, total cost and other factors considered when compared with the solicitation’s criteria.

“Source Selection Authority(SSA)” - the government official in charge of selecting the source. This title is most often used when the selection process is formal, and the official is someone other than the contracting officer.

“Source Selection Information” - any of the following information prepared or developed for use by the judiciary for the purpose of evaluating an offer the disclosure of which to a competing offeror would jeopardize the integrity or successful completion of the procurement and which is required by statute, regulation, or order to be secured in a source selection file or other facility to prevent disclosure:

- (1) offer prices submitted in response to a judiciary solicitation for offers, or lists of those offer prices before award;
- (2) proposed costs or prices submitted in response to a judiciary solicitation, or lists of those proposed costs or prices;
- (3) source selection plans;
- (4) technical evaluation plans;
- (5) technical evaluations of offers;
- (6) cost or price evaluations of offers;

- (7) competitive range determinations that identify offers that have a reasonable chance of being selected for award of a contract;
- (8) rankings of offers or competitors;
- (9) reports and evaluations of source selection panels, boards, or advisory councils; and
- (10) other information marked as “source selection information” based on a case-by-case determination by the contracting officer that its disclosure would jeopardize the integrity or successful completion of the judiciary procurement to which the information relates.

“Source Selection Panel” - the entity responsible for proposal evaluation in a negotiated competitive acquisition. It is usually organized into technical and cost teams.

“Source Selection Plan (SSP)” - the plan established prior to solicitation releases to guide the source selection process. It's the document that explains how offerors will be solicited and evaluated in order to make the selection decision. It contains such information as evaluation factors and sub-factors, evaluation standards, evaluation methodology, evaluators' responsibilities, and final selection procedures. It is the judiciary's statement to itself about how it intends to procure what it needs when contracting including basis for a best value decision; source selection organization; proposal evaluation criteria; and evaluation procedures. The contracting officer's plan to solicit offers, will include decisions such as technically acceptable/lowest price or best buy source selection. It is developed with assistance of the evaluation panel, requesting office, and other advisors as needed.

“Specification” - a description of the essential technical requirements for a material, product, or service. Specifications usually include the product's qualitative and quantitative design, function, or performance requirements and the factors used to determine whether those contract requirements have been met.

“Standards” - the criteria for determining the effectiveness of the procurement by measuring the performance of the various elements.

“Statement of Work (SOW)” - a detailed and complete description of requirements prepared for inclusion in a solicitation. SOW is used to describe the service to be performed rather than an end-product. SOWs may contain specifications or other descriptions of requirements. SOWs are usually used in contracts for services or research and development. SOW is a document that defines service contract requirements in clear, concise language identifying specific work to be accomplished. It must be individually tailored to consider the period of performance, deliverable items, if any, and the desired degree of performance. In the case of task order contracts, the statement of work for the basic contract need only define the scope of the overall contract. Individual task orders must define specific task requirements.

“Statute” - a law enacted by a legislature.

“Statutory” - enacted, regulated, or authorized by statute.

“Subcontract” - any contract to furnish products or services for the performance of a prime contract or higher-tier subcontract. It includes but is not limited to purchase orders and modifications of purchase orders.

“Subcontractor” - any firm that furnishes products or services to or for a prime contractor or higher-tier subcontractor. The CO’s communication must be to the prime contractor, who will, when applicable, communicate to the subcontractor. No direct communication is accomplished from the CO to the subcontractor. The prime contractor is the primary firm responsible for the contract’s delivery or performance.

“Sub-factor” - a segment, usually more focused or detailed, of an evaluation factor.

“Supplemental Agreement” - a contract modification that is accomplished by the mutual action by signature of both contract parties.

“Surety” - an individual or corporation legally liable for another's debt, default, or failure to satisfy a contractual obligation.

“Suspended” - see “Suspension.”

“Suspension” - a disqualification from contracting and subcontracting for a temporary period because a contractor is suspected upon adequate evidence of engaging in criminal, fraudulent, or other seriously improper conduct.

“Task Order” - an order for services placed against an established contract or with government sources.

“Tax ID Number” - a business number or an individual’s social security number to be used to identify the business or individual for tax purposes.

“Taxpayer Identification Number (TIN)”- the number required by the IRS to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

“Technical” - has a broad connotation and includes, among other things, the engineering approach, special manufacturing processes, and special testing techniques.

“Technically Acceptable Lowest Price” - used when there is a cost or price competition between offers.

“Technical Analysis” – the review, examination and evaluation of an offer by personnel having specialized knowledge, skills, experience, or capability in engineering, science, management, or other personnel having specialized knowledge of the proposed types and quantities of materials, labor, processes, and other factors set forth in the offer(s) in order to determine the need for and

reasonableness of the proposed resources and efforts, assuming reasonable economy and efficiency.

“Technical Data” - recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer software documentation) relating to products procured by the judiciary. Such term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration.

“Technical Direction” - an interpretation of SOW requirements provided by a representative of the CO. Representatives of the COO have no authority to alter SOW. The SOW can only be altered through use of a contract modification signed by the CO.

“Technical Evaluation Panel (TEP)” - the individuals responsible, during the source selection process, for performing the evaluation of technical offers submitted in a response to a solicitation.

“Technical Leveling” - helping an offeror bring its proposal up to the level of other proposals. This is to be avoided as it adversely effects the competition.

“Technical Transfusion” - disclosing technical information from one or more offerors’ offers that allows competing offerors to improve their proposals. This is to be avoided as it adversely affects the competition.

“Termination for Convenience” - the CO may terminate performance of work under the contract in whole or, occasionally, in part, if the CO determines that a termination is in the judiciary’s interest.

“Termination for Default” - the exercise of the judiciary’s contractual right to completely or partially terminate a contract because of the contractor’s actual or anticipated failure to perform its contractual obligations.

“Time and Materials Contract” - a contract type which provides payment for contractor’s time spent on a task and reimburses the contractor for materials used for the task.

“TIN” - See “Tax ID Number.”

“Total Cost” - all projected judiciary costs over the product life as a result of implementing an offeror’s offered approach. In addition to the contract prices or costs, other elements, such as support and in-house costs over the product life for installing, operating, and disposing of the products are included in total cost.

“Trade Off” - a term applied during best value evaluation to justify the increase cost of a more desirable quality which meets or exceeds the judiciary’s needs.

“Transition Procurement Official” - see “Designated Transition Procurement Official.”

“Unacceptable Offer” - an offer which does not represent a reasonable initial effort to address the essential requirements of the solicitation, clearly demonstrates that the offeror does not understand the solicitation’s requirement, contains such substantial deficiencies or omissions that sufficient correction or improvement to consider the proposal acceptable would require virtually an entirely new proposal, or contains major technical or business deficiencies, omissions, or out-of-line costs which discussions with the offeror could not reasonably be expected to cure.

“Unauthorized Commitment” - an agreement that is not binding solely because the judiciary representative who made it lacked the procurement authority to enter into that agreement on behalf of the judiciary. See also “Ratification.” (See Exhibit 1-2 for report.)

“Uniform Contract Format (UCF)” - the format required for preparation of a solicitation. (See Appendix A)

“Unilateral” - signed by the contracting officer only.

“Unilateral Modification” - a contract modification that is signed only by the contracting officer. Unilateral modifications are used, for example, to: a. make administrative changes; b. issue change orders; c. make changes authorized by clauses other than a changes clause (e.g., Property clause, Options clause, Suspension of Work clause, etc.); and d. issue termination notices.

“Unlimited Rights” - The right of the judiciary in technical data and computer software to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform and display publicly, in any manner and for any purpose, and to have or permit others to do so.

“Unsuccessful Offer” - an offer which did not result in a procurement award.

“Vendor” - a term commonly used for source.

“Wage Determination” - a determination of minimum wages or fringe benefits made under the Service Contract Act applicable to the employment in a given locality of one or more classes of service employees. Also see “General Wage Determination.”

“Waiver” - a document signed by the PE authorizing a deviation from the prescribed procedures.

“Walsh-Healey Public Contracts Act” - requires that (unless exempted), all contracts subject to the Act and entered into by any instrumentality of the United States, or by the District of Columbia, for the manufacture or furnishing of materials, products, articles, and equipment in any amount exceeding \$10,000, must include or incorporate by reference the stipulations required by the Act pertaining to such matters as minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions.

“Warranty” - a promise or affirmation given by a contractor to the government regarding the nature, usefulness, or condition of the products or performance of services furnished under the contract.

“Weighting” - the technique that assigns percentage or numerical values to evaluation factors and significant sub-factors.

“Within the Scope” - the area covered by the procurement.

“Work Statement” - See “Statement of Work.”

“Working Days” - excludes weekends and U.S. federal holidays.

“Written” - see “As Written.”

Appendix A Uniform Contract Format

Section 1 General Instructions

A.1.1 Applicability

This appendix establishes requirements for solicitations of offers for products and services, except solicitations using small purchase procedures.

A.1.2 The aim of the solicitation process is to communicate the judiciary's needs to prospective offerors providing for an efficient and fair competition so that the judiciary's needs can be satisfied in a timely fashion and at reasonable costs. Early notice of the judiciary's intent to procure products and services benefits the judiciary by giving potential offerors sufficient time to prepare their offers and exercise their business judgement. The first required step in the process is the issuance of a procurement notice that gives advance notice that offers will be requested. Thereafter, offers and information, are solicited through the issuance of a document called the request for proposal (RFP). RFPs must be prepared using the Uniform Contract Format.

Section 2 Uniform Contract Format

A.2.1 Format

The contract provisions in Parts I, II, and III of the Uniform Contract Format (UCF) will constitute a complete contract except for the prices or costs and fee in Part B. The offeror must fill out Part B when the offer is submitted. Solicitations for basic contracts, as well as solicitations on existing contracts must be in the following order:

Part I – The Schedule

Section	Description
A -	Solicitation/Contract Form
B -	Products or Services and Prices/Costs
C -	Description/Specifications/Statement of Work
D -	Packaging and Marking
E -	Inspection and Acceptance
F -	Deliveries or Performance
G -	Contract Administration Data
H -	Special Contract Requirements

Part II - Contract Clauses

Section	Description
I -	Contract Clauses

Part III - List of Documents, Exhibits, and Other Attachments

J -	List of Attachments
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Part IV – Representations and Instructions

K -	Representations and Certifications, and Other Statements of Offerors
L -	Instructions, Conditions, and Notice to Offerors
M -	Evaluation Factors for Award

Once a contract has been awarded, sections A-K of the solicitation will become a part of the basic contract, while sections L & M will not be part of the resulting contract, but will remain in the pre-award documentation.

A.2.2 Contents of the Solicitation

Section A Solicitation/Contract Form Section A contains Standard Form (SF) 33, Solicitation, Offer, and Award which must be used as the cover sheet for the RFP and may constitute Section A of the contract. If an offer from SF 33 leads to further changes, the resulting contract must be prepared as a bilateral document on SF 26, Award/Contract. The most important information in these forms is the time by which the offer must be submitted and the requirement for signature by an authorized representative of the contractor. Standard Forms 26 and 33 may be obtained via the internet at: [http://contacts.gsa.gov/webforms.nsf/\(formslist\)?openform&count=1000&category=Standard+Forms&expandview](http://contacts.gsa.gov/webforms.nsf/(formslist)?openform&count=1000&category=Standard+Forms&expandview). A listing of the forms may be accessed by clicking on standard (SF) forms in the top right portion of the web page, then selecting the SF form number, and then the version for the document.

Section B Products or Services and Prices/Costs Section B gives potential offerors a summary description of the contract requirements and provides a place for offerors to submit their proposed prices. A brief description of the products or services is included; e.g., item number, national stock number/part number if

applicable, nouns, nomenclature, and quantities. This also includes incidental deliverables such as manuals and reports.

Section C Description/Specifications/Statement of Work Section C contains the detailed description of the products to be delivered or the work to be performed under the contract. Any description, specifications, or statement of work needed in addition to Section B will be included

Section D Packaging and Marking Section D provides packaging, packing, preservation, and marking requirements, if any.

Section E Inspection and Acceptance Section E includes inspection, acceptance, quality assurance, and reliability requirements.

Section F Deliveries or Performance Section F specifies the time, place, and method of delivery or performance. Solicitations specifying shipment Free-on-Board (F.o.b.) origin must state that offers will be evaluated on the basis of the proposed price plus proposed transportation costs from point of origin to the designated destination.

Section G Contract Administration Data Section G will include any required accounting and appropriation data and any required contract administration information, such as whether individual task orders will be issued against the contract, or instructions other than those on the solicitation form. It will also include a statement that the offeror must provide the payment address in the offer, if it is different from that shown for the offeror.

Section H Special Contract Requirements Section H contains any special contract requirements that are not in other sections, including clauses that are specially written for the procurement. This section will alert offerors to specially written clauses that must be given close attention.

Section I Contract Clauses Section I contains most of the standard clauses for the proposed contract. The CO must include the clauses required by law and any additional clauses expected to be included in any resulting contract, if these clauses are not required in any other section of the uniform contract format.

Section J List of Attachments Section J contains a list of all attachments and exhibits to the contract are included here. The CO must list the title, date, and number of pages for each attached document, exhibit, and other attachment. Cross-references to material in other sections may be inserted, as appropriate.

Section K Representations, Certifications, and Other Statements of Offerors Section K contains solicitation provisions that require representations, certifications, or the submission of other information by offerors.

Section L Instructions, Conditions, Notices to Offerors Section L contains solicitation provisions and other information and instructions not required elsewhere to guide offerors or respondents in preparing offers or responses to requests for information. Prospective offerors or respondents may be instructed to submit offers or information in a specific format or severable parts to facilitate evaluation. The instructions may specify further organization of offer or response parts, such as:

- (1) administrative;
- (2) management;
- (3) technical;
- (4) past performance; and
- (5) cost or pricing data or information other than cost or pricing data.

Section M Evaluation Factors for Award Section M contains all evaluation factors, including price or cost, and any significant subfactors that will be considered in making award. The CO will include the relative importance of the evaluation factors and subfactors, and their relation to price or cost. Numerical weights or scoring systems, which may be used to rank offers, need not be disclosed in solicitations. Any minimum requirements should be described which may apply to particular evaluation factors or subfactors. Any judiciary costs or charges other than proposed prices to be considered in the evaluation of offers should be identified.

JP3 SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Appendix B - Solicitation Provisions and Contract Clauses

B.1.1. Applicability

This Appendix sets forth general provisions and clauses to be included in solicitations and contracts for products and services. Applicable provisions and clauses must be included in Sections A through M of the solicitation and Sections A through K of the contract, following the Uniform Contract Format prescribed in Appendix A, A.2.1.

B.1.2. Numbering of Provisions and Clauses

Provisions and clauses are numbered with the prefix “JP3 Clause” or “JP3 Provision” followed by the chapter or appendix prescribing their use in the JP3. Thus JP3 Clause 1-1 is in Chapter 1, JP3 Provision 2-1 is in Chapter 2, and JP3 Provision B-1 is prescribed in this Appendix B.

Beneath each clause or provision title are instructions as to where in the JP3 the prescription for the usage of that clause or provision is located and into which section (A through M) of the Uniform Contract Format the provision or clause is to be inserted. The prescription will indicate the circumstances for use of the provision or clause, i.e., “JP3 Clause X-X is to be inserted in all solicitations and contracts.” When the contracting officer determines that a clause or provision is applicable to the procurement in accordance with its prescription, it will be inserted into the indicated section of the solicitation or contract.

The Appendix B Matrix is a document to assist COs in locating clauses, provisions, their prescription(s), the applicable UCF section, whether it can be included by reference or must be included in full text, and for which type of contract the clause or provision is appropriate.

B.2.1. Solicitation Provisions and Contract Clauses Prescribed in Appendix B.

A “solicitation provision” is a term or condition used only in solicitations and applying only before award. A “clause” is a term or condition used in solicitations and contracts and applying both before and after award.

- (a) **Provision B-1**, “*Solicitation Provisions Incorporated by Reference*” is included in all solicitations to incorporate provisions by reference.
- (b) **Clause B-5**, “*Clauses Incorporated by Reference*,” is included in all solicitations and contracts to incorporate clauses by reference.

- | (c) **Provision B-10**, “Alterations in Solicitation,” is included in all solicitations to revise or supplement, as necessary, other parts of the solicitation that apply to the solicitation phase only, except for any provision authorized for use with a deviation.
- | (d) **Clause B-15**, “Alterations in Contract,” is included in all solicitations and contracts to revise or supplement, as necessary, other parts of the contract, or parts of the solicitation that apply to the contract phase, except for any clause authorized for use with a deviation.
- | (e) **Clause B-20**, “Computer Generated Forms,” is included in all solicitations and contracts that require the contractor to submit data on standard or optional forms prescribed by this manual.

JP3 Provision B-1, Solicitation Provisions Incorporated by Reference

As prescribed in Section B.2.1.(a), the contracting officer will insert this provision in Section L.

Solicitation Provisions Incorporated by Reference (AUG 2004)

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the contracting officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this address:

<http://www.uscourts.gov/procurement/clauses.htm>

(end)

JP3 Clause B-5, Clauses Incorporated by Reference

As prescribed in Section B.2.1.(b), the contracting officer will insert this clause in Section I.

Clauses Incorporated by Reference (OCT 2006)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the contracting officer will make their full text available. Also, the full text of a clause may be accessed electronically at this address:

<http://www.uscourts.gov/procurement/clauses.htm>

(end)

JP3 Provision B-10, Alterations in Solicitation

As prescribed in Section B.2.1.(c), the contracting officer will insert this provision in Section L.

Alterations in Solicitation (JAN 2003)

Portions of this solicitation are altered as follows:

(end)

JP3 Clause B-15, Alterations in Contract

As prescribed in Section B.2.1.(d), the contracting officer will insert this clause in Section I.

Alterations in Contract (JAN 2003)

Portions of this contract are altered as follows:

(end)

JP3 Clause B-20, Computer Generated Forms

As prescribed in Section B.2.1.(e), the contracting officer will insert this clause in Section I.

Computer Generated Forms (JAN 2003)

- (a) Any data required to be submitted on a standard or optional form may be submitted on a computer generated version of the form, provided there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the standard or optional form number and edition date.
- (b) Unless prohibited by the contracting officer, any data required to be submitted on a judiciary unique form may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the judiciary form number and edition date.
- (c) If the contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

(end)

JP3 Clause 1-1, Employment by the Government

As prescribed in 1.4.2.d. the contracting officer will insert this clause in Section H.

Employment by the Government (JAN 2003)

- (a) The contractor covenants that throughout the term of this contract no contractor employee who performs services under this contract will be an officer or employee of the government of the United States.
- (b) If the contractor be an individual, the contractor covenants that throughout the term of this contract the individual will not be or become an officer or employee of the government of the United States. If during the term of contract the contractor intends to become an officer or employee of the government, the contractor shall advise the contracting officer in writing of such intentions so appropriate measures may be taken.
- (c) If the contractor be other than an individual, the contractor covenants that throughout the term of this contract no partner, principal, officer, stockholder, or other person having a financial interest in the contractor or the ability to control the contractor, directly or indirectly, will be or become an officer or employee of the government of the United States. The status of a stockholder as an officer or employee of the government of the United States will not constitute a violation of this subsection if the stock of the contractor is traded publicly over the counter or on a regional or national stock exchange.
- (d) For purposes of subsection (c), a business or partnership interest or stock owned by a spouse, child, or parent of an officer or employee of the government of the United States shall be deemed to be owned by such officer or employee.
- (e) The violation of any subsection of this section will constitute a material breach for which the judiciary may seek any and all remedies under the contract, including termination.

(end)

JP3 Clause 1-5, Conflict of Interest

As prescribed in 1.4.2.d. and 5.2.1.o.(1) insert this clause in Section I.

Conflict of Interest (AUG 2004)

- (a) The contractor specifically agrees that there is no conflict of interest arising from the services to be provided under this agreement. The contractor further agrees that no employee, principal, or affiliate is in any such conflict.
- (b) Work under this contract may create a future conflict of interest that could prohibit the contractor from competing for, or being awarded future judiciary contracts. The following examples illustrate situations in which questions concerning potential conflicts of interest may arise:

- (1) *Unequal access to information* - access to internal judiciary business information as part of the performance of a contract that could provide the contractor a competitive advantage in a later competition for another judiciary contract. Such an advantage could easily be perceived as unfair by a competing vendor who is not given similar access to the relevant information.
 - (2) *Competitive advantage* - the contractor, under a prior or existing contract, participates in defining or preparing the requirements or documents that are involved in a subsequent procurement where the contractor may be a competitor. This includes, but is not limited to, defining the requirements, preparing an alternatives analysis, drafting the statement of work or specifications, or developing the evaluation criteria.
 - (3) *Impaired objectivity* - the contractor is required to assess or evaluate products or services produced or performed by the contractor or one of its business divisions, subsidiaries, or affiliates, or any entity with which it has a significant financial relationship. The contractor's ability to render impartial advice could be undermined by the contractor's financial or other business relationship with the entity being evaluated.
- (c) The contractor agrees to immediately notify the contracting officer, in writing, if an actual or potential conflict of interest arises, including any of the above and if a non-judiciary client requests or receives any professional advice, representation, or assistance regarding the judiciary.
 - (d) The judiciary reserves the right to preclude a contractor from participating in a procurement, refuse to permit the contractor to undertake any conflicting agreements with non-judiciary clients, or terminate this contract without cost to the judiciary in the event the contracting officer determines a conflict of interest exists and cannot be avoided or mitigated.

(end)

JP3 Clause 1-10, Gratuities or Gifts

As prescribed in 1.4.4.e., the contracting officer will insert this clause in Section I.

Gratuities or Gifts (JAN 2003)

The judiciary may terminate this contract for default if, after investigation, the contracting officer determines that the contractor, its agent or other representative:

- (1) offered or gave a gratuity or gift to an officer or employee of the judiciary; and
- (2) intended by the gratuity or gift to obtain a contract or favorable treatment under a contract.

(end)

JP3 Clause 1-15, Disclosure of Contractor Information to the Public

As prescribed in 1.6.1.h., the contracting officer will include this clause in Section I.

Disclosure of Contractor Information to the Public (AUG 2004)

- (a) The judiciary reserves the right to disclose information provided by the contractor, in response to a request by a member of the general public. Upon receipt of a written request, the judiciary will disclose information which would constitute public records in an agency covered by the Freedom of Information Act. In the event the requested information consists of or includes commercial or financial information, including unit prices, the contractor shall be notified of the request and provided with an opportunity to comment.
- (b) The contractor will thereafter be notified as to whether the information requested will be released. The contractor understands and agrees that unit and/or aggregate prices contained in the contract may be subject to disclosure without consent.

(end)

JP3 Provision 2-1, Request for Information or Solicitation for Planning Purposes

As prescribed in 2.1.6.c., the contracting officer will insert this provision in Section L.

Request for Information or Solicitation for Planning Purposes (JAN 2003)

The judiciary does not intend to award a contract on the basis of this solicitation or to otherwise pay for the information solicited.

- (1) Although "offer" and "offeror" are used in this Request for Information, your response will be treated as information only. It will not be used as an offer.
- (2) This solicitation is issued for the purpose of:
[state purpose]_____

(end)

JP3 Clause 2-5A, Inspection of Products

As prescribed in 2.2.1.e.(1) or (3), the contracting officer will insert this clause in Section E.

Inspection of Products (JAN 2003)

- (a) The contractor shall use and maintain a written inspection or quality control system acceptable to the judiciary for the products under this contract. The contractor shall tender to the judiciary for acceptance only products which have been inspected in accordance with the acceptable inspection system and have been found by the contractor to be in conformity with contract requirements. As part of the system, the contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the judiciary during contract performance and for at least three years after acceptance. The judiciary has the right to evaluate the acceptability and effectiveness of the contractor's inspection system before award and during contract performance. This evaluation may be used to determine the extent of judiciary inspection and testing, but this does not waive its right to inspect and test all items. The right of review, whether exercised or not, does not relieve the contractor of the obligations under the contract. As a minimum, the contractor's inspection/quality control system shall reflect controls and record keeping in the following functional areas:
 - (1) receiving inspection;
 - (2) in-process inspection;
 - (3) final inspection and test (including packaging);
 - (4) calibration of inspection or test equipment; and
 - (5) control or disposition of nonconforming material.

- (b) The judiciary has the right to inspect and test all products provided under this contract, to the extent practicable, at all times and places, including the period of manufacture, and in any event before acceptance. The judiciary will perform inspections and tests in a manner that will not unduly delay the work. The judiciary assumes no contractual obligation to perform any inspection and test for the benefit of the contractor unless specifically set forth elsewhere in this contract.
- (c) If requested by the judiciary, the contractor shall provide, without charge, all reasonable facilities and assistance to the judiciary inspectors. If the judiciary performs inspections or tests on the premises of the contractor or a subcontractor, the contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (d) The judiciary may require the contractor to correct or replace any products that fail to comply with the requirements of this contract. The judiciary may reject defective products which do not conform to the contract requirements and:
 - (1) require replacement or correction of the defects;
 - (2) acquire replacement products from another source, and charge the contractor for any costs incurred by the judiciary; or
 - (3) accept the products at a reduced price.
- (e) Any remedy such as replacement, correction, or reimbursement for re-procurement will be determined by the contracting officer. Corrected or replaced products may not be tendered again unless the former tender and the requirement for correction or replacement are disclosed. If the contractor fails to proceed with reasonable promptness to perform replacement or correction, and if it can be performed within a ceiling price, the judiciary may:
 - (1) by contract, or otherwise, remove, replace, or correct the products and charge the cost to the contractor; or
 - (2) terminate this contract for default.
- (f) The contracting officer may negotiate a deduction for consideration from the contract for reimbursement to the judiciary for any costs incurred for:
 - (1) the total time, including round-trip travel time, lost by judiciary representatives when the contractor is not ready for inspection at the time inspection and testing is requested by the judiciary; and
 - (2) the total time, including round-trip travel time, required by judiciary representatives for reinspection and retesting necessitated by rejection.
 - (3) Charges other than these, for any retesting caused by rejection, will be computed as the actual laboratory cost obtained from the National Bureau of Standards or other testing laboratory.

(end)

JP3 Clause 2-5B, Inspection of Services

As prescribed in 2.2.1.e.(2) or (3), the contracting officer will insert this clause in Section E.

Inspection of Services (AUG 2004)

- (a) The contractor shall provide to the judiciary for acceptance only services which conform to the contract requirements. As part of the inspection system, the contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the judiciary during contract performance and for at least three years after acceptance. The judiciary has the right to evaluate the acceptability and effectiveness of the contractor's inspection system before award and during contract performance. This evaluation may be used to determine the extent of judiciary inspection and testing, but this does not waive its right to inspect and test all services. The right of review, whether exercised or not, does not relieve the contractor of the obligations under the contract.
- (b) The judiciary has the right to inspect and test all services provided under this contract, to the extent practicable, at all times and places during the term of the contract. The judiciary will perform inspections and tests in a manner that will not unduly delay the work.
- (c) If requested by the judiciary, the contractor shall provide, without charge, all reasonable facilities and assistance to the judiciary inspectors. If the judiciary performs inspections or tests on the premises of the contractor or a subcontractor, the contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (d) If any of the services do not conform with contract requirements, the judiciary may require the contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the judiciary may:
 - (1) require the contractor to take necessary action to ensure that future performance conforms to contract requirements; and
 - (2) reduce the contract price to reflect the reduced value of the services performed.
- (e) If the contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the judiciary may:
 - (1) by contract or otherwise, perform the services and charge to the contractor any cost incurred by the judiciary that is directly related to the performance of such service; or
 - (2) terminate the contract for default.

(end)

JP3 Clause 2-10, Responsibility of Products

As prescribed in 2.2.1.e.(4), the contracting officer will include this clause in Section E.

Responsibility of Products (JAN 2003)

- (a) Title to products furnished under this contract shall pass to the judiciary upon formal acceptance, regardless of when or where the judiciary takes physical possession, unless the contract specifically provides for earlier passage of title.
- (b) Unless the contract specifically provides otherwise, risk of loss of or damage to products shall remain with the contractor until, and shall pass to the judiciary upon:
 - (1) delivery of the products to a carrier, if transportation is F.o.b. origin; or
 - (2) acceptance by the judiciary or delivery of the products to the judiciary at the destination specified in the contract whichever is later, if transportation is f.o.b. destination.
- (c) Paragraph (b) of this clause shall not apply to products that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such non-conforming products remains with the contractor until cure or acceptance. After cure or acceptance, paragraph (b) of this clause shall apply.
- (d) Under paragraph (b) of this clause, the contractor shall not be liable for loss of or damage to products caused by the negligence of officers, agents, or employees of the judiciary acting within the scope of their employment.
(end)

JP3 Provision 2-15, Warranty Information

As prescribed in 2.2.3.d.(1), the contracting officer will include this provision in Section L.

Warranty Information (JAN 2003)

Offerors are encouraged to submit information on any standard commercial warranties provided for offered products. The judiciary will consider these warranties in determining the most advantageous offer, to the extent provided in the evaluation factors.
(end)

JP3 Clause 2-20A, Incorporation of Warranty

As prescribed in 2.2.3.d.(2)(a), the contracting officer will include this clause in Section I.

Incorporation of Warranty (JAN 2003)

Notwithstanding the contractor's standard commercial warranty, if offered and accepted by the judiciary, any dispute thereunder will be resolved under the Disputes clause of this contract, notwithstanding any disputes procedure that may be specified in the warranty.
(end)

JP3 Clause 2-20B, Contractor Warranty

As prescribed in 2.2.3.d.(2)(b), the contracting officer include this clause in Section I.

Contractor Warranty (JAN 2003)

- (a) The contractor warrants that all products furnished under this contract, including packaging and markings, will be free from defects in material or workmanship and will conform with the specifications and all other requirements of this contract.
- (b) The contracting officer will give written notice to the contractor of any breach of warranty and either:
 - (1) require the prompt correction or replacement of any defective or nonconforming products; or
 - (2) retain them, reducing the contract price by an amount equitable under the circumstances.
- (c) When return for correction or replacement is required, the contractor is responsible for all costs of transportation and for risk of loss in transit. If the contractor fails or refuses to correct or replace the defective or nonconforming products, the contracting officer may correct or replace them with similar products and charge the contractor for any cost to the judiciary. In addition, the contracting officer may dispose of the nonconforming products, with reimbursement from the contractor or from the proceeds for excess costs. Any products corrected or furnished in replacement are subject to this clause.
- (d) The rights and remedies of the judiciary provided in this clause are in addition to, and do not limit, any rights afforded to the judiciary by any other clause of the contract.

(end)

JP3 Clause 2-20C, Warranty of Services

As prescribed in 2.2.3.d.(2)(c), the contracting officer will include this clause in Section I.

Warranty of Services (JAN 2003)

- (a) Definition. "Acceptance," as used in this clause, means the act of an authorized representative of the judiciary by which the judiciary assumes for itself, or as an agent of another, approves specific services, as partial or complete performance of the contract.
- (b) Notwithstanding inspection and acceptance by the judiciary or any provision concerning the conclusiveness thereof, the contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The contracting officer will give written notice of any defect or nonconformance to the contractor [contracting officer will insert the specific period of time in which notice will be given to the contractor; e.g., "within 30 days from the date of acceptance by the judiciary"; within 1000 hours of use by the judiciary;" or other specified event whose occurrence will terminate the period of notice, or combination of any applicable events or period of time]. This notice will state either
 - (1) that the contractor shall correct or re-perform any defective or nonconforming services; or

- (2) that the judiciary does not require correction or re-performance.
- (c) If the contractor is required to correct or re-perform, it shall be at no cost to the judiciary, and any services corrected or re-performed by the contractor shall be subject to this clause to the same extent as work initially performed. If the contractor fails or refuses to correct or re-perform, the contracting officer may, by contract or otherwise, correct or replace with similar services and charge to the contractor the cost occasioned to the judiciary thereby, or make an equitable adjustment in the contract price.
- (d) If the judiciary does not require correction or re-performance, the contracting officer will make an equitable adjustment in the contract price.

(end)

JP3 Clause 2-25A , Delivery Terms and Contractor's Responsibilities

As prescribed in 2.2.4.b.(1), the contracting officer will include this clause in Section F.

Delivery Terms and Contractor's Responsibilities (JAN 2003)

- (a) The judiciary reserves the right to specify the mode of transportation and routing to be employed.
- (b) **Destination** - If the contract specifies "F.o.b. destination," the following apply:
 - (1) "F.o.b. destination" means delivery to a destination specified in the purchase document by the consignor or seller (unless the contract provides otherwise). This includes within the doors of the specified building, including delivery to specific rooms within the building when specified. The cost of shipping and risk of loss are borne by the seller or consignor. Title to the products passes to the judiciary when deliverables arrive at the contract's stated destination.
 - (2) The contractor shall:
 - (i) pack and mark shipments to comply with contract specifications or, in their absence, prepare shipments in accordance with carrier requirements;
 - (ii) prepare and distribute commercial bills of lading;
 - (iii) deliver the shipment in good order and condition to the point of delivery specified in the contract;
 - (iv) be responsible for loss or damage occurring before receipt at the specified point of delivery;
 - (v) furnish a delivery schedule and designate the mode of delivery;
 - (vi) pay and bear all delivery costs to the specified point of delivery.
- (c) **Origin** - If the contract specifies "F.o.b. origin" the following apply:
 - (1) "F.o.b. origin" means delivery, free of expense to the judiciary to the carrier or shipment facility as follows:
 - (i) delivery on board the indicated type of conveyance of the carrier (or of the judiciary, if specified), to the specified point from which the shipment will be made and from which line haul transportation service (as distinguished from switching, local drayage, or other terminal service) begins;

- (ii) to a U.S. Postal Service facility; or
 - (iii) delivered by the contractor, to any judiciary designated point located within the same commercial zone (as prescribed by the Interstate Commerce Commission) as the F.o.b. point named in the contract.
- (2) The contractor shall:
- (i) pack and mark shipments to comply with contract specifications or, in their absence, prepare the shipment in accordance with carrier requirements and good commercial practices and secure the lowest applicable transportation charge.
 - (ii) order specified carrier equipment when requested by the judiciary. Otherwise, order appropriate carrier equipment not in excess of capacity to accommodate the shipment.
 - (iii) deliver the shipment in good order and condition to the carrier, when loaded by the contractor, load, stow, trim, block, and/or brace shipments as required by the carrier's rules and regulations.
 - (iv) be responsible for loss or damage occurring before delivery to the carrier; and for loss or damage due to improper packing/marking and, when loaded by the contractor, from improper loading, stowing, trimming, blocking, and/or bracing of the shipment;
 - (v) prepare a commercial bill of lading or other transportation receipt, to show:
 - (A) a description of the shipment in terms of the governing freight classification or tariff(or government rate tender) under which the lowest freight rates are applicable;
 - (B) the seals affixed to the conveyance, including the serial number on them, or other identification;
 - (C) the length and capacity of cars or trucks ordered and furnished;
 - (D) other pertinent information required to effect prompt delivery to the consignee, including name delivery address, postal address and ZIP code of consignee, routing, etc.;
 - (E) special instructions or annotations requested by the judiciary for commercial bills of lading (for example, "This shipment is the property of, and the freight charges paid to the carrier will be reimbursed by, the judiciary"); and
 - (F) the signature of carrier's agent and the date the shipment is received by the carrier.
 - (vi) distribute the copies of the bill of lading, or other transportation receipt, as directed by the judiciary.
 - (vii) supply with each invoice a memorandum copy of the bill of lading, clearly indicating the signature of the carrier's agent, date of pickup, and the weight accepted by the carrier. If the weight is determined by the carrier after pickup, it shall be annotated on the memorandum copy of the bill of lading along with the following:

"I certify that the weight information is that obtained from the carrier.

Signed: "

- (3) If the judiciary has not specified otherwise, the contractor shall ship on commercial bills of lading.
- (4) If the judiciary specifies that shipment is to be made on endorsed commercial bills of lading for transportation charges up to \$100, the contractor shall be required to prepay all transportation charges, not to exceed \$100, per shipment.
- (5) The contractor shall annotate the commercial bill of lading as follows: "Property of the United States Judiciary".
- (6) The actual transportation costs, not to exceed \$100 per shipment, will be added to the contractor's invoice as a separate item. The costs shall be based on the lowest published rate on file with the Interstate Commerce Commission or any state regulatory body. They shall be supported by freight or express receipts marked "prepaid."

(end)

JP3 Clause 2-25B, Commercial Bill of Lading Notations

As prescribed in 2.2.4.b.(2), the contracting officer will include this clause in Section F.

Commercial Bill of Lading Notations (JAN 2003)

If the contracting officer authorizes products to be shipped on a commercial bill of lading and the contractor will be reimbursed these transportation costs as direct allowable costs, the contractor shall ensure before shipment is made that the commercial shipping documents are annotated as follows:

“Transportation is for the judiciary _____ [name of the specific court unit or federal public defender organization] and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and will be reimbursed by, the judiciary.

(end)

JP3 Clause 2-30A, Time of Delivery

As prescribed in 2.2.4.h.(1), the contracting officer will include this clause in Section F.

Time of Delivery (JAN 2003)

- (a) The judiciary requires delivery to be made according to the delivery schedule specified in Section F of the contract schedule. The judiciary will evaluate offerors' proposed delivery schedules to determine the offer with the most advantageous delivery time to the judiciary. Offers that propose delivery that will not clearly fall within the required delivery period will be deemed unacceptable. The judiciary reserves the right to award on

the basis of either the required delivery schedule or the proposed delivery schedule when an offeror proposes an earlier delivery schedule than required. If the offeror proposes no other delivery schedule, the required delivery schedule will apply.

- (b) The required delivery schedule may be stated in terms of days after the effective date of the contract award or specific dates.

(end)

JP3 Clause 2-30B, Desired And Required Time Of Delivery

As prescribed in 2.2.4.h.(2), the contracting officer will include this clause in Section F and fill in the tables.

Desired And Required Time Of Delivery (JAN 2003)

- (a) The judiciary desires delivery to be made according to the following schedule:

Desired Delivery Schedule		
(Contracting Officer insert specific details)		
Item No.	Quantity	Within applicable specified time frame (i.e. number of calendar days after award, after contract start date, or after a specified date, etc.)

If the offeror is unable to meet the desired delivery schedule, it may, without prejudicing evaluation of its offer, propose a delivery schedule below. However, the offeror's proposed delivery schedule shall not extend the delivery period beyond the time for delivery in the judiciary's required delivery schedule as follows:

Required Delivery Schedule		
(Contracting Officer insert specific details)		
Item No.	Quantity	Within applicable specified time frame (i.e. number of calendar days after award, after contract start date, or after a specified date, etc.)

Offers that propose delivery of a quantity under such terms or conditions that delivery will not clearly fall within the applicable required delivery period specified above, will be considered non-responsive and rejected. If the offeror proposes no other delivery schedule, the desired delivery schedule above will apply.

Offeror's Proposed Delivery Schedule		
(Offeror insert specific details)		
Item No.	Quantity	Within applicable specified time frame (i.e. number of calendar days after award, after contract start date, or after a specified date, etc.)

- (b) Attention is directed to the Contract Award provision of the solicitation that provides that a written award or acceptance of offer mailed or otherwise furnished to the successful offeror results in a binding contract. The judiciary will mail or otherwise furnish to the offeror an award or notice of award not later than the day the award is dated. Therefore, the offeror shall compute the time available for performance beginning with the actual date of award, rather than the date the written notice of award is received from the contracting officer through the ordinary mails. However, the judiciary will evaluate an

offer that proposes delivery based on the contractor's date of receipt of the contract or notice of award by adding (1) five calendar days for delivery of the award through the ordinary mails, or (1) one working day if the solicitation states that the contract or notice of award will be transmitted electronically. (The term "working day" excludes weekends and U.S. federal holidays.) If, as so computed, the offered delivery date is later than the required delivery date, the offer will be considered non-responsive and rejected.

(end)

JP3 Clause 2-35 F.o.b. Destination, Within Judiciary's Premises

As prescribed in 2.2.4.h.(3), the contracting officer will include this clause in Section F.

F.o.b. Destination, Within Judiciary's Premises (JAN 2003)

- (a) The term "F.o.b. destination, within judiciary's premises," as used in this clause, means free of expense to the judiciary delivered and laid down within the doors of the judiciary's premises, including delivery to specific rooms within a building if so specified.
- (b) The contractor shall:
 - (1) (i) pack and mark the shipment to comply with contract specifications; or
 - (ii) in the absence of specifications, prepare the shipment in conformance with carrier requirements;
 - (2) prepare and distribute commercial bills of lading;
 - (3) deliver the shipment in good order and condition to the point of delivery specified in the contract;
 - (4) be responsible for any loss of and/or damage to the products occurring before receipt of the shipment by the judiciary at the delivery point specified in the contract;
 - (5) furnish a delivery schedule and designate the mode of delivering carrier; and
 - (6) pay and bear all charges to the specified point of delivery.

(end)

JP3 Clause 2-40A , Variation in Quantity

As prescribed in 2.2.4.i.(1)(a), the contracting officer will include this clause in Section F.

Variation in Quantity (JAN 2003)

- (a) A variation in the quantity of any item called for by this contract will not be accepted unless the variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified in paragraph (b) of this clause.
- (b) The permissible variation shall be limited to:

___ Percent increase [contracting officer insert percentage]
 ___ Percent decrease [contracting officer insert percentage]
 This increase or decrease shall apply to _____.*

* *Contracting officer will insert in the blank the designation(s) to which the percentages apply, such as-*

- (1) *The total contract quantity;*
- (2) *Item 1 only;*
- (3) *Each quantity specified in the delivery schedule;*
- (4) *The total item quantity for each destination; or*
- (5) *The total quantity of each item without regard to destination.*

(end)

Clause 2-40B, Delivery of Excess Quantities

As prescribed in 2.2.4.i.(1)(b), the contracting officer will include this clause in Section F.

Delivery of Excess Quantities (JAN 2003)

The contractor is responsible for the delivery of each item quantity within allowable variations, if any. If the contractor delivers, and the judiciary receives, quantities of any item in excess of the quantity called for (after considering any allowable variation in quantity), such excess quantities will be treated as being delivered for the convenience of the contractor. The judiciary may retain such excess quantities up to \$250 in value without compensating the contractor therefore, and the contractor waives all right, title, or interests therein. Quantities in excess of \$250 will, at the option of the judiciary, either be returned at the contractor's expense or retained and paid for by the judiciary at the contract unit price.

(end)

JP3 Clause 2-45, Packaging and Marking

As prescribed in 2.2.4.i.(2), the contracting officer will include this clause in Section D.

Packaging and Marking (AUG 2004)

- (a) Unless otherwise specified, preservation, packaging, and marking for all items delivered hereunder shall be in accordance with commercial practice and adequate to insure acceptance by common carrier and safe arrival at destination. The contractor shall place the contract number and delivery order number, or purchase order, as applicable, on or adjacent to the exterior shipping label or include them on the internal packing slip. For

any magnetic media provided, the contractor shall provide extra markings for protection against exposure to magnetic fields or temperature extremes.

- (b) All documentation, reports, and other deliverables shall be clearly marked with the project title, contract number, and delivery order number (when applicable). Unless otherwise specified, all items shall be packaged and packed in accordance with normal commercial practices – e.g., if magnetic media is involved, extra marking shall be considered for protection against exposure to magnetic fields or temperature.

(end)

JP3 Clause 2-50, Continuity of Services

As prescribed in 2.2.4.i.(3), the contracting officer will include this clause in Section I.

Continuity of Services (JAN 2003)

- (a) The contractor recognizes that the services under this contract are vital to the judiciary and shall be continued without interruption and that, upon contract expiration, a successor, either the judiciary or another contractor, may continue them. The contractor agrees to:
- (1) furnish phase-in training, and
 - (2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- (b) The contractor shall, upon the contracting officer's written notice:
- (1) furnish phase-in, phase-out services for up to 90 days after this contract expires, and
 - (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and will be subject to the contracting officer's written approval. The contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.
- (c) The contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.
- (d) The contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

(end)

JP3 Clause 2-55, Privacy or Security Safeguards

As prescribed in 2.2.4.i.(4), the contracting officer will include this clause in Section I.

Privacy or Security Safeguards (JAN 2003)

- (a) The contractor shall not publish or disclose in any manner, without the contracting officer's written consent, the details of any safeguards either designed or developed by the contractor under this contract or otherwise provided by the judiciary.
- (b) To the extent required to carry out a program of inspection to safeguard against threats and hazards to the security, integrity, and confidentiality of judiciary data, the contractor shall afford the judiciary access to the contractor's facilities, installations, technical capabilities, operations, documentation, records, and databases.
- (c) If new or unanticipated threats or hazards are discovered by either the judiciary or the contractor, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party.

(end)

JP3 Clause 2-60, Stop-Work Order

As prescribed in 2.2.4.i.(5), the contracting officer will include this clause in Section F.

Stop-Work Order (JAN 2003)

- (a) The contracting officer may, at any time, by written order to the contractor, require the contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the contractor, and for any further period to which the parties may agree. The order will be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the contractor, or within any extension of that period to which the parties shall have agreed, the contracting officer will either:
 - (1) Cancel the stop-work order; or
 - (2) Terminate the work covered by the order as provided in the default, or the Termination for Convenience, clause of this contract.
- (b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the contractor shall resume work. The contracting officer will make an equitable adjustment in the delivery schedule or contract price, or both, and the contract will be modified, in writing, accordingly, if:
 - (1) The stop-work order results in an increase in the time required for, or in the contractor's cost properly allocable to, the performance of any part of this contract; and

- (2) The contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the contracting officer decides the facts justify the action, the contracting officer may receive and act upon the claim submitted at any time before final payment under this contract.
 - (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the judiciary, the contracting officer will allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
 - (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the contracting officer will allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.
- (end)

JP3 Clause 2-65, Key Personnel

As prescribed in 2.2.4.i.(6) and 5.2.1.o.(2)., the contracting officer will include this clause in Section H.

Key Personnel (AUG 2004)

- (a) Individuals identified below as key personnel and accepted for this contract are expected to remain dedicated to this contract. However, in the event that it becomes necessary for the contractor to replace any of the individuals designated as key personnel, the contractor shall request such substitutions in accordance with this clause. Substitution of key personnel will be considered under the following circumstances only:
 - (1) All substitutes shall have qualifications at least equal to those of the person being replaced.
 - (2) All appointments of key personnel shall be approved in writing by the contracting officer, and no substitutions of such personnel shall be made without the advance written approval of the contracting officer.
 - (3) Except as provided in paragraph (4) of this clause, at least 30 days (60 days if security clearance is required) in advance of the proposed substitution, all proposed substitutions of key personnel shall be submitted in writing to the contracting officer, including the information required in paragraph (5) of this provision.
 - (4) The following identifies the requirements for situations where individuals proposed as key personnel become unavailable because of sudden illness, death or termination of employment. The contractor shall within 5 work days after the event, notify the contracting officer in writing of such unavailability. If the event happens after award, the contracting officer will determine if there is an immediate need for a temporary substitute and a continuing requirement for a permanent substitute for the key personnel position. The contracting officer will promptly inform the contractor of this determination. If the contracting officer

- specifies that a temporary substitute is required, the contractor shall as soon as is practical identify who will be performing the work as a temporary substitute. The temporary substitute will then start performance on a date mutually acceptable to the contracting officer and the contractor. Within 15 work days following the event, if the contracting officer specifies that a permanent substitute is required, the contractor shall submit, in writing, for the contracting officer's approval, the information required in (5) and (6) below, for a proposed permanent substitute for the unavailable individual. The approval process will be the same as (7) below.
- (5) Request for substitution of key personnel shall provide a detailed explanation of the circumstances necessitating substitution, a resume of the proposed substitute, and any other information requested by the contracting officer to make a determination as to the appropriateness of the proposed substitute's qualifications. All resumes shall be signed by the proposed substitute and his/her formal (per company accepted organizational chart) direct supervisor or higher authority.
- (6) As a minimum (or as otherwise specified in the solicitation), resumes shall include the following:
- (a) name of person;
 - (b) functional responsibility;
 - (c) education (including, in reverse chronological order, colleges and/or technical schools attended (with dates), degree(s)/certification(s) received, major field(s) of study, and approximate number of total class hours);
 - (d) citizenship status;
 - (e) experience including, in reverse chronological order for up to ten years, area(s) or work in which a person is qualified, company and title of position, approximate starting and ending dates (month/year), concise descriptions of experience for each position held including specific experience related to the requirements of this contract; and
 - (f) certification that the information contained in the resume is correct and accurate (signature of key person and date signed, and signature of the supervisor or higher authority and date signed will be accepted as certification).
- (7) The contracting officer will promptly notify the contractor in writing of his/her approval or disapproval of all requests for substitution of key personnel. All disapprovals will require re-submission of another proposed substitution within 15 days by the contractor.

The following individuals are designated as key personnel under this contract:

(end)

JP3 Provision 2-70, Site Visit

As prescribed in 2.2.4.i.(7), the contracting officer will insert this provision in Section L.

Site Visit (JAN 2003)

Offerors or quoters are urged and expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event will failure to inspect the site constitute grounds for a claim after contract award.

(end)

JP3 Clause 2-75, Liquidated Damages

As prescribed in 2.2.5.g., the contracting officer will include this clause in Section F. The contracting officer will insert the estimated amount in the blank.

Liquidated Damages (JAN 2003)

- (a) If the contractor fails to complete delivery of the products, or performance of the services within the time specified in this contract, or any extension, the contractor shall, in place of actual damages, pay to the judiciary _____ (contracting officer insert amount) for liquidated damages as agreed for each calendar day of delay.
- (b) Alternatively, if completion of delivery or performance is delayed beyond the contract dates, the judiciary may, at its sole discretion, terminate this contract in whole or in part under the Termination for Default clause, and the contractor shall be liable for the agreed liquidated damages accruing until the time the judiciary may reasonably obtain delivery or performance of similar products or services. The liquidated damages will be in addition to excess costs of re-procurement.
- (c) The contractor will not be charged with liquidated damages when the delay in completion of delivery or performance arises out of causes beyond the control and without the fault or negligence of the contractor.

(end)

JP3 Clause 2-80, Judiciary Property

As prescribed in 2.2.6., the contracting officer will include this clause in Section I.

Judiciary Property (JAN 2003)

- (a) Title to judiciary property provided under this contract remains in the judiciary. The contractor may use the judiciary property only in connection with this contract. The contractor shall secure judiciary property and maintain adequate property control records in accordance with sound industrial practice and shall make them available for judiciary inspection at all reasonable times.
- (b) Upon delivery of judiciary property to the contractor, the contractor assumes the risk and responsibility for its loss or damage, except:
 - (1) for reasonable wear and tear;
 - (2) to the extent property is consumed in performing the contract; or
 - (3) as otherwise provided in the contract.
- (c) Upon completing this contract, the contractor shall follow the contracting officer's instructions regarding the disposition of all judiciary property not consumed in performing this contract or previously delivered to the judiciary. The contractor shall prepare for shipment, deliver F.o.b. origin, or dispose of the judiciary property, as directed or authorized by the contracting officer. The net proceeds of any such disposal will be credited to the contract price or will be paid to the judiciary as directed by the contracting officer.
- (d) The items of property are listed in an inventory of items attached to this contract and the contractor shall notify the judiciary on any required adjustments.

(end)

JP3 Provision 2-85A, Evaluation Inclusive of Options

As prescribed in 2.2.7.1.(1)(a), the contracting officer will include this provision in Section M of the solicitation.

Evaluation Inclusive of Options (JAN 2003)

- (a) The judiciary will evaluate offers for purposes of award by adding the total price for all options to the total price for the basic requirement. Evaluation of options does not obligate the judiciary to exercise the option(s).
- (b) Any offer that is materially unbalanced as to prices for basic and option quantities may be rejected. An unbalanced offer is one that is based on prices significantly less than cost for some work and prices that are significantly overstated for other work.

(end)

JP3 Provision 2-85B, Evaluation Exclusive of Options

As prescribed in 2.2.7.l.(1)(b), the contracting officer will include this provision in Section M of the solicitation.

Evaluation Exclusive of Options (JAN 2003)

The judiciary will evaluate offers for award purposes by including only the price for the basic requirement; i.e., options will not be included in the evaluation for award purposes.
(end)

JP3 Provision 2-85C, Evaluation of Options Exercised at Time of Contract Award

As prescribed in 2.2.7.l.(1)(c), the contracting officer will include this provision in Section M of the solicitation.

Evaluation of Options Exercised at Time of Contract Award (JAN 2003)

Except when it is determined not to be in the judiciary's best interests, the judiciary will evaluate the total price for the basic requirement together with any option(s) exercised at the time of award.
(end)

JP3 Clause 2-90A, Option for Increased Quantity

As prescribed in 2.2.7.l.(2)(a), the contracting officer will include this clause in Section I.

Option for Increased Quantity (JAN 2003)

The judiciary may increase the quantity of products called for in this contract by requiring the delivery of the numbered line item identified in the schedule as an option item, in the quantity and at the price set forth in the schedule. The contracting officer may exercise this option, at any time within the period specified in the schedule, by giving written notice to the contractor. Delivery of the items added by the exercise of this option will continue immediately after, and at the same rate as, delivery of like items called for under this contract, unless the parties otherwise agree.
(end)

Clause 2-90B, Option for Increased Quantity - Separately Priced Line Item

As prescribed in 2.2.7.l.(2)(b), the contracting officer will include this clause in Section I.

Option for Increased Quantity - Separately Priced Line Item (JAN 2003)

The judiciary may require the delivery of the numbered line item, identified in the schedule as an option item, in the quantity and at the price stated in the schedule. The contracting officer may exercise the option by written notice to the contractor within [insert in the clause the period of time in which the contracting officer has to exercise the option]. Delivery of added items shall continue at the same rate that like items are called for under the contract, unless the parties otherwise agree.

(end)

Clause 2-90C, Option to Extend Services

As prescribed in 2.2.7.1.(2)(c), the contracting officer will include this clause in Section I.

Option to Extend Services (JAN 2003)

The judiciary may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The contracting officer may exercise the option by written notice to the contractor within _____ calendar days prior to the then current expiration date of this contract [insert the period of time within which the contracting officer may exercise the option].

(end)

Clause 2-90D, Option to Extend the Term of the Contract

As prescribed in 2.2.7.1.(2)(d), the contracting officer will include this clause in Section I.

Option to Extend the Term of the Contract (JAN 2003)

- (a) The judiciary may extend the term of this contract by written notice to the contractor within _____ calendar days prior to the then current expiration date of this contract [insert the period of time within which the contracting officer may exercise the option]; provided that the judiciary gives the contractor a preliminary written notice of its intent to extend at least _____ calendar days [60 days unless a different number of days is inserted] before the contract expires. The preliminary notice does not commit the judiciary to an extension.
- (b) If the judiciary exercises this option, the extended contract shall be considered to include this option clause.
- (c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed _____ (months) (years).

(end)

JP3 Clause 2-95, Material Requirements

As prescribed in 2.3.2.b., the contracting officer will include this clause in Section I.

Material Requirements (JAN 2003)

- (a) As used in this clause:
- (1) "new" means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; *provided* that the products meet contract requirements, including but not limited to, performance, reliability, and life expectancy.
 - (2) "reconditioned" means restored to the original normal operating condition by readjustments and material replacement.
 - (3) "recovered material" means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.
 - (4) "re-manufactured" means factory rebuilt to original specifications.
 - (5) "virgin material" means:
 - (i) previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or
 - (ii) any undeveloped resource that is, or with new technology will become, a source of raw materials.
- (b) Unless this contract otherwise requires virgin material or products composed of or manufactured from virgin material, the contractor shall provide products that are new, reconditioned, or re-manufactured, as defined in this clause.
- (c) An offer to provide unused former government surplus property shall include a complete description of the material, the quantity, the name of the government agency from which acquired, and the date of procurement.
- (d) An offer to provide used, reconditioned, or re-manufactured products shall include a detailed description of such products and shall be submitted to the contracting officer for written approval.
- (e) Used, reconditioned, or re-manufactured products, or unused former government surplus property, may be used in performance if the contractor has proposed the use of such products, and the contracting officer has authorized their use.

(end)

JP3 Provision 2-100, Brand Name or Equal

As prescribed in 2.3.4.b.(3), the contracting officer will include this clause in Section L.

Brand Name or Equal (JAN 2003)

- (a) One or more items called for by this solicitation have been identified in the schedule by a brand-name-or-equal product description. Offers offering equal products will be considered for award if these products are clearly identified and are determined by the judiciary to contain all of the essential characteristics of the brand-name products referenced in the solicitation.
- (b) Unless the offeror clearly indicates in the offer that the offer is for an equal product, the offer will be considered as offering a brand-name product referenced in the solicitation.
- (c) If the offeror proposes to furnish an equal product, the brand name and model or catalog number, if any, of the product to be furnished shall be inserted in the space provided in the solicitation. The evaluation of offers and the determination as to equality of the product offered will be based on information furnished by the offeror or identified in the offer, as well as other information reasonably available to the purchasing activity. The purchasing activity is not responsible for locating or obtaining any information not identified in the offer and reasonably available to the purchasing activity. Accordingly, to ensure that sufficient information is available, the offeror shall furnish as a part of the offer:
 - (1) all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the purchasing activity to establish exactly what the offeror proposes to furnish and to determine whether the product offered meets the requirements of the solicitation; or
 - (2) specific references to information previously furnished or to information otherwise available to the purchasing activity to permit a determination as to equality of the product offered.
 - (3) If the offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, the offeror shall:
 - (i) Include in the offer a clear description of the proposed modifications; and
 - (ii) Clearly mark any descriptive material to show the proposed modifications.

(end)

JP3 Provision 2-105, Economic Purchase Quantity-Products

As prescribed in 2.3.4.c.(1), the contracting officer will include this clause in Section K.

Economic Purchase Quantity-Products (JAN 2003)

- (a) Offerors are invited to state an opinion on whether the quantity(ies) of products on which offers or quotes are requested in this solicitation is (are) economically advantageous to the judiciary

- (b) Each offeror who believes that procurements in different quantities would be more advantageous is invited to recommend an economic purchase quantity. If different quantities are recommended, a total and a unit price shall be quoted for applicable items. An economic purchase quantity is that quantity at which a significant price break occurs. If there are significant price breaks at different quantity points, this information is desired as well.

Offeror’s Recommendations

Item	Quantity	Price Quotation	Total

- (c) The information requested in this provision is being solicited to avoid procurements in disadvantageous quantities and to assist the judiciary in developing a database for future procurements of these items. However, the judiciary reserves the right to amend or cancel the solicitation and re-solicit with respect to any individual item in the event quotations received and the judiciary's requirements indicate that different quantities shall be acquired.

(end)

JP3 Clause 2-110, Option to Purchase Equipment

| *As prescribed in 2.2.8.d.(5) and 2.3.4.c.(2), the contracting officer will include this clause in Section I.*

Option to Purchase Equipment (JAN 2003)

- (a) The judiciary may purchase the equipment provided on a lease or rental basis under this contract. The contracting officer may exercise this option only by providing a unilateral modification to the contractor. The effective date of the purchase will be specified in the unilateral modification and may be any time during the period of the contract, including any extensions thereto.
- (b) Except for final payment and transfer of title to the judiciary, the lease or rental portion of the contract becomes complete and lease or rental charges shall be discontinued on the day immediately preceding the effective date of purchase specified in the unilateral modification required in paragraph (a) of this clause.
- (c) The purchase conversion cost of the equipment shall be computed as of the effective date specified in the unilateral modification required in paragraph (a) of this clause, on the basis of the purchase price set forth in the contract, minus the total purchase option

credits accumulated during the period of lease or rental, calculated by the formula contained elsewhere in this contract.

- (d) The accumulated purchase option credits available to determine the purchase conversion cost will also include any credits accrued during a period of lease or rental of the equipment under any previous judiciary contract if the equipment has been on continuous lease or rental. The movement of equipment from one site to another site shall be "continuous rental."

(end)

JP3 2-115 Terms for Commercial Advance Payment of Purchases

As prescribed in 2.2.10.f.(6), the Contracting Officer will include this clause in Section I.

Terms for Commercial Advance Payment of Purchases (October 2006)

- (a) *Contractor entitlement to advance payment.* The Contractor may request, and the Government may authorize, payment in advance when: the payment requested is properly due in accordance with this contract; the products or services due under the contract will be delivered or performed in accordance with the contract; and there has been no impairment or diminution of the Government's security under this contract.
- (b) *Special terms regarding termination for default.* If this contract is terminated for default, the Contractor shall, on demand, repay to the Government the amount of unliquidated advance payments. The Government shall be liable for no payment except as provided by JP3 7-230, Termination for Default – Fixed Price Products and Services.
- (c) *Security for Advance Payment.* The Contractor must provide adequate security prior to any authorization for advance payment. In the event the Contractor fails to provide adequate security, as required by this clause, no advance payment shall be made under this contract. The Contracting Officer may determine that the Contractor's financial condition provides adequate security. If the Contracting Officer does not consider the Contractor's financial condition to provide adequate security, the Contractor must provide an irrevocable letter of credit from a federally insured financial institution in an amount equal to the advance payment requested. If, at any time, the Contracting Officer determines that the security provided by the Contractor is insufficient, the Contractor shall promptly provide such additional security as the Contracting Officer determines necessary. In the event the Contractor fails to provide such additional security, the Contracting Officer may collect or liquidate such security that has been provided and suspend further payments to the Contractor; and the Contractor shall repay to the Government the amount of unliquidated advance payments as the Contracting Officer at his sole discretion deems repayable.
- (d) *Reservation of rights.*
- (1) No payment or other action by the Government under this clause shall—

- (i) Excuse the Contractor from performance of obligations under this contract; or
 - (ii) Constitute a waiver of any of the rights or remedies of the parties under the contract.
- (2) The Government's rights and remedies under this clause—
- (i) Shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract; and
 - (ii) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.
- (e) *Limitation on frequency of financing payments.* Contractor financing payments shall be provided no more frequently than monthly.
- (f) *Dates for payment.* A payment under this clause is a contract financing payment and not subject to the interest penalty provisions of the Prompt Payment Act.
- (g) *Restrictions on novation.* While any advance payments made under this contract remain outstanding with respect to performance (i.e., the Judiciary has not received all of the performance which has been paid in advance), the Contractor shall not substantially change the management, ownership, or control of the corporation without the prior written consent of the CO.
- (h) *Prohibition against assignment.* The Contractor shall not assign this contract, any interest therein, or any claim under the contract to any party.
- (end)

Alternate I - *add the following paragraph to the basic clause in contracts for photocopy equipment maintenance agreements which authorize advance payment*

(i) Any advance payment authorized by this contract is not inclusive of excess copy charges which may be incurred. These charges shall be invoiced in arrears, either at the end of the twelve month period of performance or when the cumulative amount of such charges reaches \$500.00, whichever occurs first.

(end)

JP3 2-120 Submission of Invoice

As prescribed in 2.2.10.f.(6), the Contracting Officer will include this clause in Section G.

Submission of Invoice (October 2006)

Upon satisfactory completion of the first month of performance under this contract and approval by the Contracting Officer, the contractor may invoice and receive payment for a maximum of twelve months of performance.

(end)

JP3 2-125 Security for Advance Payment

As prescribed in 2.2.10.f.(6), the Contracting Officer will include this clause in Section I.

Security for Advance Payment (October 2006)

The Contractor's financial condition has been accepted as adequate security for advance payments under this contract. Should the Contracting Officer determine that the Contractor's financial condition has changed to such an extent that it can no longer be considered adequate security, the contracting officer may exercise the Government's rights to require other security under paragraph (c), Security for Government Financing, of the clause at JP3 2-115, Terms for Commercial Advance Payment of Purchases.

(end)

JP3 Clause 3-1, Contractor Use of Mandatory Sources of Products or Services

As prescribed in 3.1.2.(g), the contracting officer will insert this clause in Section I.

Contractor Use of Mandatory Sources of Products or Services (JAN 2003)

- (a) Certain products or services to be provided under this contract for use by the judiciary are required by law to be obtained from the Committee for Purchase from People Who Are Blind or Severely Disabled (Committee) under Javits-Wagner-O'Day Act (JWOD) (41 U.S.C. § 48)). Additionally, certain of these products are available from the Defense Logistics Agency (DLA), the General Services Administration (GSA), or the Department of Veterans Affairs (VA). The contractor shall obtain mandatory products or services to be provided for judiciary use under this contract from the specific sources indicated in the contract schedule.
- (b) The contractor shall immediately notify the contracting officer if a mandatory source is unable to provide the products or services by the time required, or if the quality of products or services provided by the mandatory source is unsatisfactory. The contractor shall not purchase the products or services from other sources until the contracting officer has notified the contractor that the Committee or a JWOD central nonprofit agency has authorized purchase from other sources.
- (c) Price and delivery information for the mandatory products is available from the contracting officer for the products obtained through the DLA/GSA/VA distribution facilities. For mandatory products or services that are not available from DLA/GSA/VA sources, price and delivery information is available from the appropriate central nonprofit agency. Payments will be made directly to the source making delivery. Points of contact for JWOD central nonprofit agencies are:

National Industries for the Blind (NIB)
1901 North Beauregard Street, Suite 200
Alexandria, VA 22311-1705
(703) 998-0770

NISH
2235 Cedar Lane
Vienna, VA 22182-5200
(703) 560-6800

(end)

JP3 Clause 3-3, “Provisions, Clauses, Terms and Conditions - Small Purchases”

As prescribed in 3.1.5.f.(4) and 3.4.8.a.(3), and when applicable, the contracting officer must include this clause in small purchase requests for quotation (RFQs) and purchase orders.

Provisions, Clauses, Terms and Conditions - Small Purchases (OCT 2006)

- (a) The following Judiciary Procurement Program Procedures (*JP3*) provisions are incorporated by reference into the request for quotations (RFQ):
- (1) *JP3* Provision 3-90, "Late Submissions, Modifications and Withdrawal of Offers" (JAN 2003)
 - (2) *JP3* Provision, 7-60, "Judiciary Furnished Property or Services" (JAN 2003)
- (b) The contractor shall comply with the following Judiciary Procurement Program Procedures (*JP3*) clauses incorporated by reference:
- (1) *JP3* Clause 2-60, "Stop Work Order" (JAN 2003)
 - (2) *JP3* Clause 3-205, "Protest After Award" (JAN 2003)
 - (3) *JP3* Clause 7-20, "Security Requirements" (JAN 2003)
 - (4) *JP3* Clause 7-30, "Public Use of the Name of the Federal Judiciary" (JAN 2003)
 - (5) *JP3* Clause 7-35, "Disclosure or Use of Information" (AUG 2004)
 - (6) *JP3* Clause 7-85, "Examination of Records" (JAN 2003)
 - (7) *JP3* Clause 7-130, "Interest (Prompt Payment)" (JAN 2003)
 - (8) *JP3* Clause 7-135, "Payments" (JAN 2003) (Payment means acceptance by the inclusion of this clause.)
 - (9) *JP3* Clause 7-140, "Discounts for Prompt Payment" (JAN 2003)
 - (10) *JP3* Clause 7-150, "Extras" (JAN 2003)
 - (11) *JP3* Clause 7-185, "Changes" (JAN 2003)
 - (12) *JP3* Clause 7-200, "Judiciary Delay of Work" (JAN 2003) (Applies for products and fixed-price services.)
 - (13) *JP3* Clause 7-210, "Payment for Emergency Closures" (AUG 2004)
 - (14) *JP3* Clause 7-235, "Disputes" (JAN 2003)
- (c) The contractor shall comply with the following *JP3* clauses, incorporated by reference, unless the circumstances do not apply:
- (1) *JP3* Clause B-20, "Computer Generated Forms" (JAN 2003) (Applies when the contractor is required to submit data on standard or optional forms.)
 - (2) *JP3* Clause 6-60, "Rights in Data - General" (AUG 2004) (Applies if data will be produced, furnished, or acquired under the purchase order.)
 - (3) *JP3* Clause 7-145, "Government Purchase Card" (JAN 2003) (Applies when the CO determines that the purchase card can be used to make payments.)
 - (4) *JP3* Clause 2-115, "Terms for Commercial Advance Payment of Purchases" (OCT 2006) (Applies if advance payment will be authorized.)
 - (5) *JP3* Clause 2-115, Alt I (Applies if advance payment is authorized for photocopy equipment maintenance.)
 - (6) The following apply to products only:
 - a) *JP3* Clause, 2-25A, "Delivery Terms and Contractor's Responsibilities" (JAN 2003) (Purchase order will specify whether delivery is expected at destination or origin.)

- b) JP3 Clause, 2-45, “Packaging and Marking” (AUG 2004) (Applies to fixed-price products or for a service involving furnishing of products.)
 - c) JP3 Clause, 3-155, Walsh-Healey Public Contracts Act (JAN 2003) (Applies to product procurements over \$10,000 for manufacturing or furnishing products)
- (7) The following apply to services only:
- a) JP3 Clause 1-1, “Employment by the Government” (JAN 2003)
 - b) JP3 Clause 1-5, “Conflict of Interest” (AUG 2004)
 - c) JP3 Clause 3-160, “Service Contract Act of 1965, as amended” (JAN 2003) (Applies if the purchase order amount is over \$2,500 and will require the use of service employees.)
 - d) JP3 Clause 3-170, “Statement of Equivalent Rates for Federal Hires” (JAN 2003) (Applies if the purchase order amount is more than \$2,500 and will require the use of service employees. In the RFQ, the CO will state the employee class and the monetary wage-fringe benefits.)
 - e) JP3 Clause 7-40, “Judiciary-Contractor Relationship” (JAN 2003) (Applies to services when not involving judiciary information technology funds.)
 - f) JP3 Clause 7-65, “Protection of Judiciary Buildings, Equipment and Vegetation” (JAN 2003) (Applies when services are performed at a judiciary installation.)
 - g) JP3 Clause 7-205, “Payment for Judiciary Holidays” (JAN 2003) (Applies to time-and-materials or labor-hour contracts.)
- (d) Inspection/Acceptance The contractor shall tender for acceptance only those products and/or services that conform to the requirements of this contract. The judiciary reserves the right to inspect or test any products or services that have been tendered for acceptance. The judiciary may require repair or replacement of nonconforming products or re-performance of nonconforming services at no increase in contract price. The judiciary must exercise its post-acceptance rights:
- (1) within a reasonable period of time after the defect was discovered or should have been discovered; and
 - (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.
- (e) Excusable delays The contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The contractor shall notify the contracting officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and

shall promptly give written notice to the contracting officer of the cessation of such occurrence.

- (f) Termination for the judiciary's convenience The judiciary reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the contractor can demonstrate to the satisfaction of the judiciary, using its standard record keeping system, have resulted from the termination. The contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the judiciary any right to audit the contractor's records. The contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.
- (g) Termination for cause The judiciary may terminate this contract, or any part hereof, for cause in the event of any default by the contractor, or if the contractor fails to comply with any contract terms and conditions, or fails to provide the judiciary, upon request, with adequate assurances of future performance. In the event of termination for cause, the judiciary shall not be liable to the contractor for any amount for products or services not accepted, and the contractor shall be liable to the judiciary for any and all rights and remedies provided by law. If it is determined that the judiciary improperly terminated this contract for default, such termination shall be deemed a termination for convenience.
- (h) Warranty The contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(end)

JP3 Provision 3-5, Taxpayer Identification

As prescribed in 3.5.1.c.(1), the contracting officer will insert this provision in Section K.

Taxpayer Identification (JAN 2003)

- (a) *Definitions*

“Common parent,” as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its federal income tax returns on a consolidated basis, and of which the offeror is a member.

“Taxpayer Identification (TIN),” as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a social security number or an employer identification number.
- (b) All offerors shall submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d),

reporting requirements of 26 U.S.C. 6041, 6041A and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

- (c) The TIN may be used by the government to collect and report on any delinquent amounts arising out of the offeror's relationship with the government (31 U.S.C. 7701(c)(3). If the resulting contract is subject to payment recording requirements, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.
- (d) *Taxpayer Identification Number (TIN):*

- TIN has been applied for.
- TIN is not required, because: _____

- Offeror is a nonresident alien, foreign corporation or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;
- Offeror is an agency or instrumentality of a foreign government;
- Offeror is an agency or instrumentality of the federal government.

- (e) *Type of organization:*

- sole proprietorship;
- partnership;
- corporate entity (not tax-exempt);
- corporate entity (tax-exempt);
- government entity (federal, state or local);
- foreign government;
- international organization per-26 CFR 1.6049-4;
- other _____.

- (f) *Common parent*

- Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.
Name and TIN of common parent
Name _____
TIN _____

(end)

JP3 Provision 3-10, Data Universal Numbering System (DUNS) Number

As prescribed in 3.5.1.c.(2), the contracting officer will insert this clause in Section L.

Data Universal Numbering System (DUNS) Number (JAN 2003)

- (a) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" followed by the DUNS number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number is a nine-digit number assigned by Dun and Bradstreet Information Services.
- (b) If the offeror does not have a DUNS number, it shall contact Dun and Bradstreet directly to obtain one. A DUNS number will be provided immediately by telephone at no charge to the offeror. For information on obtaining a DUNS number, the offeror, if located within the United States, shall call Dun and Bradstreet at 1-800-333-0505. The offeror shall be prepared to provide the following information:
 - (1) company name;
 - (2) company address;
 - (3) company telephone number;
 - (4) line of business;
 - (5) chief executive officer/key manager;
 - (6) date the company was started;
 - (7) number of people employed by the company; and
 - (8) company affiliation.
- (c) Offerors located outside the United States may obtain the location and phone number of the local Dun and Bradstreet Information Services office from the Internet home page at <http://www.customerservice@dnb.com>. If an offeror is unable to locate a local service center, it may send an e-mail to Dun and Bradstreet at globalinfo@mail.dnb.com.

(end)

JP3 Provision 3-15, Place of Performance

As prescribed in 3.5.1.c.(3) the contracting officer will insert this provision in Section K.

Place of Performance (JAN 2003)

If the judiciary intends or the offeror proposes, in the performance of any contract resulting from this solicitation, to use one or more facilities located at addresses different from the offeror's address as indicated in this offer, the offeror shall include in its offer a statement referencing this provision and identifying those facilities by street address, city, country, state, and ZIP code, and the name and address of the operators of those facilities if other than the offeror.

(end)

JP3 Provision 3-20, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters

As prescribed in 3.5.1.c.(4), the contracting officer will insert this provision in Section K.

Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters (JAN 2003)

- (a) (1) The offeror certifies, to the best of its knowledge and belief, that:
- (i) the offeror and/or any of its principals:
 - (A) are ___ are not ___ presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal agency;
 - (B) have ___ have not ___, within the three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;
 - (C) are ___ are not ___ presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision; and
 - ii. The offeror ___ has ___ has not ___, within a three-year period preceding this offer, had one or more contracts terminated for default by any federal agency.
- (2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).
- (3) This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Section 1001, Title 18, United States Code.
- (b) The offeror shall provide immediate written notice to the contracting officer if, at any time prior to contract award, the offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the offeror's responsibility. Failure of the offeror to furnish a certification or provide such additional information as requested by the contracting officer may render the offeror nonresponsible.
- (d) Nothing contained in the foregoing will be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of

this provision. The knowledge and information of an offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

- (e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the offeror knowingly rendered an erroneous certification, in addition to other remedies available to the judiciary, the contracting officer may terminate the contract resulting from this solicitation for default.

(end)

JP3 Clause 3-25, Protecting the Judiciary's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment

As prescribed in 3.5.1.c.(5), the contracting officer will insert this clause in Section I.

Protecting the Judiciary's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (JAN 2003)

- (a) The government suspends or debar contractors to protect the government's interests (including the judiciary). The contractor shall not enter into any subcontract in excess of \$25,000 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 \$25,000, 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.
- (c) A corporate officer or a designee of the contractor shall notify the contracting officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment. The notice shall include the following:
- (1) the name of the subcontractor;
 - (2) the contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs;
 - (3) the compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs; and
 - (4) the systems and procedures the contractor has established to ensure that it is fully protecting the judiciary's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(end)

JP3 Provision 3-30, Certificate of Independent Price Determination

As prescribed in 3.5.1.c.(6), the contracting officer will insert this provision in Section K. If the solicitation is a Request for Quotations, the terms “quotation” and “quoter” may be substituted for “offer” and “offeror”.

Certificate of Independent Price Determination (JAN 2003)

- (a) The offeror certifies that:
- (1) the prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement, with any other offeror or with any competitor relating to:
 - (A) those prices;
 - (B) the intention to submit an offer; or
 - (C) the methods or factors used to calculate the prices offered.
 - (2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or contract award unless otherwise required by law; and
 - (3) no attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.
- (b) Each signature on the offer is considered to be a certification by the signatory that the signatory:
- (1) is the person in the offeror's organization responsible for determining the prices in this offer, and that the signatory has not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; or
 - (2)
 - (i) has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision _____ (*insert full name of person(s) in the offeror's organization responsible for determining the prices in this offer, and the title of his or her position in the offeror's organization*);
 - (ii) as an authorized agent, does certify that the principals named in subdivision (b)(2)(i) of this provision; have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; and
 - (iii) as an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision.
- (c) If the offeror deletes or modifies paragraph (a)(2) of this provision, the offeror shall furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure

(end)

JP3 Clause 3-35, Covenant Against Contingent Fees

As prescribed in 3.5.1.c.(7), the contracting officer will insert this clause in Section I.

Covenant Against Contingent Fees (JAN 2003)

- (a) The contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the judiciary will have the right to annul or terminate this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.
- (b) *Definitions*
- "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain judiciary contracts nor holds itself out as being able to obtain any judiciary contract or contracts through improper influence.
- "Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain judiciary contracts nor holds out as being able to obtain any judiciary contract or contracts through improper influence.
- "Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a judiciary contract.
- "Improper influence," as used in this clause, means any influence that induces or tends to induce a judiciary employee or officer to give consideration or to act regarding a judiciary contract on any basis other than the merits of the matter.

(end)

JP3 Clause 3-40, Restrictions on Subcontractor Sales to the Government

As prescribed in 3.5.1.c.(8), the contracting officer will insert this clause in Section I.

Restrictions on Subcontractor Sales to the Government (JAN 2003)

- (a) Except as provided in (b) of this clause, the contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the judiciary of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.
- (b) The prohibition in (a) of this clause does not preclude the contractor from asserting rights that are otherwise authorized by law or regulation.

- (c) The contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed the judiciary's small purchase threshold.

(end)

JP3 Clause 3-45, Anti-Kickback Procedures

As prescribed in 3.5.1.c.(9), the contracting officer will insert this clause in Section I.

Anti-Kickback Procedures (JAN 2003)

(a) *Definitions*

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime contractor, prime contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining products, materials, equipment, or services of any kind.

"Prime contractor" as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime contractor or subcontractor for the purpose of obtaining products, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime contractor, who offers to furnish or furnishes any products, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general products to the prime contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

- (b) The Anti-Kickback Act of 1986 (41 U.S.C. §§ 51-58) (the Act), prohibits any person from:
- (1) providing or attempting to provide or offering to provide any kickback;
 - (2) soliciting, accepting, or attempting to accept any kickback; or

- (3) including, directly or indirectly, the amount of any kickback in the contract price charged by a prime contractor to the United States or in the contract price charged by a subcontractor to a prime contractor or higher tier subcontractor.
 - (c) (1) The contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.
 - (2) When the contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting office, the head of the contracting office if it does not have an inspector general, or the Department of Justice.
 - (3) The contractor shall cooperate fully with any federal agency investigating a possible violation described in paragraph (b) of this clause.
 - (4) The contracting officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the prime contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The contracting officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the prime contractor shall notify the contracting officer when the monies are withheld.
 - (5) The contractor agrees to incorporate the substance of this clause, including paragraph (c)(5) but excepting paragraph (c)(1), in all subcontracts under this contract which exceed the judiciary's small purchase threshold.
- (end)

JP3 Clause 3-50, Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity

As prescribed in 3.5.1.c.(10), the contracting officer will insert this clause in Section I.

Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (JAN 2003)

- (a) If the judiciary receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. § 423) (the Act), as amended by section 4304 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the judiciary may:
 - (1) cancel the solicitation, if the contract has not yet been awarded or issued; or
 - (2) rescind the contract with respect to which:

- (i) the contractor or someone acting for the contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27(a) or (b) of the Act for the purpose of either:
 - (A) exchanging the information covered by such subsections for anything of value; or
 - (B) obtaining or giving anyone a competitive advantage in the award of a judiciary contract; or
 - (ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act.
- (b) If the judiciary rescinds the contract under paragraph (a) of this clause, the judiciary is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.
 - (c) The rights and remedies of the judiciary specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

(end)

JP3 Clause 3-55, Price or Fee Adjustment for Illegal or Improper Activity

As prescribed in 3.5.1.c.(11), the contracting officer will insert this clause in Section I.

Price or Fee Adjustment for Illegal or Improper Activity (JAN 2003)

- (a) The judiciary, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27(a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. § 423).
- (b) The price or fee reduction referred to in paragraph (a) of this clause will be:
 - (1) for cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;
 - (2) for cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;
 - (3) for cost-plus-award-fee contracts:
 - (i) the base fee established in the contract at the time of contract award;
 - (ii) if no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the contractor for each award fee evaluation period or at each award fee determination point.
 - (4) for fixed-price-incentive contracts, the judiciary may:

- (i) reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or
 - (ii) if an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the contracting officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract will be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price will be the total final contract price.
- (5) for firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the contracting officer from records or documents in existence prior to the date of the contract award.
- (c) The judiciary may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.
- (d) In addition to the remedies in paragraphs (a) and (c) of this clause, the judiciary may terminate this contract for default. The rights and remedies of the judiciary specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(end)

JP3 Provision 3-60, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions

As prescribed in 3.5.1.c.(12), the contracting officer will insert this provision in Section K.

Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (JAN 2003)

- (a) The definitions and prohibitions contained in the clause 3-65 "Limitation on Payments to Influence Certain Federal Transactions," included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.
- (b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989:
 - (1) no federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of the judiciary, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan,

- the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan, or cooperative agreement;
- (2) if any funds other than federal appropriated funds (including profit or fee received under a covered federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of the judiciary, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, a disclosure to the contracting officer; and
 - (3) he or she will include the language certifying this in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of the judiciary's small purchase threshold shall certify and disclose accordingly.
 - (4) submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure to be filed or amended by this provision, will be subject to a civil penalty of not less than \$10,000, and not more than the judiciary's small purchase threshold, for each such failure.
- (end)

JP3 Clause 3-65, Limitation on Payments to Influence Certain Federal Transactions

As prescribed in 3.5.1.c.(13), the contracting officer will insert this clause in Section I.

Limitation on Payments to Influence Certain Federal Transactions (JAN 2003)

(a) *Definitions*

"Covered federal action," as used in this clause, means any of the following federal actions:

- (1) the awarding of any federal contract;
- (2) the making of any federal grant;
- (3) the making of any federal loan;
- (4) the entering into of any cooperative agreement; and
- (5) the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of the judiciary, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered federal action.

"Local government," as used in this clause, means a unit of government in a state and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of judiciary," as used in this clause, includes the following individuals who are employed by the judiciary:

- (1) an individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
- (2) a special government employee, as defined in section 202, Title 18, United States Code;
- (3) an individual who is a member of a federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, state, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other federal law.

"Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the federal Government.

"Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates judiciary consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates judiciary consideration of such person will be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) *Prohibitions*

- (1) Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of the judiciary, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract; the making of any federal grant; the making of any federal loan; the entering into of any cooperative agreement; or the modification of any federal contract, grant, loan, or cooperative agreement.
- (2) The Act also requires contractors to furnish a disclosure if any funds other than federal appropriated funds (including profit or fee received under a covered federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of the judiciary, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a federal contract, grant, loan, or cooperative agreement.
- (3) The prohibitions of the Act do not apply under the following conditions:
 - (i) Judiciary and legislative liaison by own employees.
 - (A) The prohibition on the use of appropriated funds, in paragraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered federal action if the payment is for judiciary and legislative liaison activities not directly related to a covered federal action.
 - (B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by the judiciary or Congress is permitted at any time.
 - (C) The following judiciary and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered federal action:
 - (1) discussing with the judiciary the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.
 - (2) technical discussions and other activities regarding the application or adaptation of the person's products or services for the judiciary's use.
 - (D) The following judiciary and legislative liaison activities are permitted where they are prior to formal solicitation of any covered federal action:
 - (1) providing any information not specifically requested but necessary for the judiciary to make an informed decision about initiation of a covered federal action;

- (2) technical discussions regarding the preparation of an unsolicited offer prior to its official submission; and
 - (3) capability presentations by persons seeking awards from the judiciary pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.
- (E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.
- (ii) *Professional and technical services*
- (A) The prohibition on the use of appropriated funds, in paragraph (b)(1) of this clause, does not apply in the case of:
- (1) a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered federal action or an extension, continuation, renewal, amendment, or modification of a covered federal action, if payment is for professional or technical services rendered in the preparation, submission, or negotiation of any offer or application for that federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that federal action.
 - (2) any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered federal action or an extension, continuation, renewal, amendment, or modification of a covered federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any offer, or application for that federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that federal action. Persons other than officers or employees of a person requesting or receiving a covered federal action include consultants and trade associations.
- (B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" will be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying an offer by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying

their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's offer, but generally advocate one offer over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of an offer are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered federal action.

- (C) Requirements imposed by or pursuant to law as a condition for receiving a covered federal award include those required by law or regulation and any other requirements in the actual award documents.
- (D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.

(c) *Disclosure*

- (1) The contractor who requests or receives from an agency a federal contract shall file with that agency a disclosure, if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered federal action), which would be prohibited under paragraph (b)(1) of this clause, if paid for with appropriated funds.
- (2) The contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure previously filed by such person under paragraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes:
 - (i) a cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action; or
 - (ii) a change in the person(s) or individual(s) influencing or attempting to influence a covered federal action; or
 - (iii) a change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered federal action.
- (3) The contractor shall require the submission of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding the judiciary's small purchase threshold under the federal contract.

- (4) All subcontractor disclosures (but not certifications) shall be forwarded from tier to tier until received by the prime contractor. The prime contractor shall submit all disclosures to the contracting officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding contractor.
- (d) *Agreement* The contractor agrees not to make any payment prohibited by this clause.
- (e) *Penalties*
- (1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure to be filed or amended by paragraph (b) of this clause will be subject to civil penalties as provided for by 31 U.S.C. § 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
- (2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.
- (f) *Cost allowability* Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(end)

JP3 Provision 3-70, Determination of Responsibility

As prescribed in 3.5.1.c.(14), the contracting officer will insert this provision in Section M.

Determination of Responsibility (JAN 2003)

A determination of responsibility will be made on the apparent successful offeror prior to contract award. If the prospective contractor is found non-responsible, that offeror will be rejected and will receive no further consideration for award. In the event a contractor is rejected based on a determination of non-responsibility, a determination will be made on the next apparent successful offeror.

(end)

JP3 Provision 3-75, Limited Criminal Background Suitability Check

As prescribed in 3.5.1.c.(15), the contracting officer will insert this clause in Section H.

Limited Criminal Background Suitability Check (JAN 2003)

All vendor employees working on-site at court facilities will be required to complete GSA Form 176, Statement of Personal History, in order that a limited criminal background suitability check may be performed. No vendor employee will be granted

access for work at court facilities if they have been convicted of a felony without the specific approval of the Clerk.

(end)

JP3 Provision 3-80, Submission of Offers

As prescribed in 3.5.1.c.(16), the contracting officer will insert this provision in Section L.

Submission of Offers (JAN 2003)

- (a) Offers and offer modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means):
 - (1) addressed to the office specified in the solicitation; and
 - (2) showing the time and date specified for receipt, the solicitation number, and the name and address of the offeror.
- (b) Offerors using commercial carrier services shall ensure that the offer is addressed and marked on the outermost envelope or wrapper as prescribed in paragraphs (a)(1) and (2) of this provision when delivered to the office specified in the solicitation.
- (c) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified or withdrawn by written or telegraphic notice.
- (d) Facsimile offers, modifications, or withdrawals, will not be considered unless authorized by the solicitation.
- (e) Offers submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

(end)

JP3 Provision 3-85, Explanation to Prospective Offerors

As prescribed in 3.5.1.c.(17), the contracting officer will insert this provision in Section L.

Explanation to Prospective Offerors (AUG 2004)

Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc. shall submit such questions in writing only to the contracting officer soon enough to allow a reply to reach all prospective offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given by the contracting officer to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment to the solicitation, if that information is deemed by the contracting officer to be necessary in submitting offers or if, in the judgment of the contracting officer, the lack of it would be prejudicial to any other prospective offerors. The offeror is instructed specifically to contact only the contracting officer in connection with any aspect of this procurement prior to contract award. Contact with any other

judiciary official except the contracting officer, or without the contracting officer's express consent, concerning this solicitation may result in disqualification of the offeror from consideration for award.

(end)

JP3 Provision 3-90, Late Submissions, Modifications and Withdrawals of Offers

As prescribed in 3.5.1.c.(18) and 3.5.6.e., the contracting officer will insert this provision in Section L.

Late Submissions, Modifications, and Withdrawals of Offers (JAN 2003)

- (a) Offerors are responsible for submitting offers, and any modifications or withdrawals, so as to reach the judiciary office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated judiciary office on the date that offers are due.
- (b) (1) Any offer, modification, or withdrawal received at the judiciary office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the contracting officer determines that accepting the late offer would not unduly delay the procurement; and:
 - (i) if it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the judiciary infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or
 - (ii) there is acceptable evidence to establish that it was received at the judiciary installation designated for receipt of offers and was under the judiciary's control prior to the time set for receipt of offers.
- (2) However, a late modification of an otherwise successful offer that makes its terms more favorable to the judiciary, will be considered at any time it is received and may be accepted.
- (c) Acceptable evidence to establish the time of receipt at the judiciary installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of judiciary personnel.
- (d) If an emergency or unanticipated event interrupts normal judiciary processes so that offers cannot be received at the judiciary 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.
- (e) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. If the solicitation authorizes facsimile offers, offers may be

withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in Provision 3-115, "Facsimile Offers." An offer may be withdrawn in person by an offeror or its authorized representative, if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.

(end)

JP3 Provision 3-95, Preparation of Offers

As prescribed in 3.5.1.c.(19), the contracting officer will insert this provision in Section L.

Preparation of Offers (JAN 2003)

- (a) Offerors are expected to examine the drawings, specifications, schedule and all provisions and instructions. Failure to do so will be at the offeror's risk.
- (b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the offer and print or type its name on the offer and each continuation sheet on which it makes an entry. Erasures or other changes shall be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the purchasing office.
- (c) For each item in the offer, the offeror shall:
 - (1) show the unit price/cost, including, unless otherwise specified, packaging, packing, and preservation; and
 - (2) enter the extended price/cost for the quantity of each item offered in the "amount" column of the schedule.

In case of discrepancy between a unit price/cost and an extended price/cost, the unit price/cost will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.
- (d) Offers for products or services other than those specified will not be considered unless authorized by the solicitation.
- (e) Offerors shall state a definite time for delivery of products or for performance of services, unless otherwise specified in the solicitation.
- (f) Time, if stated as a number of days, will include Saturdays, Sundays, and federal holidays.

(end)

JP3 Provision 3-100, Instructions to Offerors

As prescribed in 3.5.1.c.(20) and 3.5.13.a., the contracting officer will insert this provision in Section L.

Instructions to Offerors (JAN 2003)

- (a) *Definitions* As used in this provision:
- "Discussions" are negotiations that occur after establishment of the competitive range that may, at the contracting officer's discretion, result in the offeror being allowed to revise its offer.
- In writing, "writing," or "written" means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.
- "Offer modification" is a change made to an offer before the solicitation's closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.
- "Offer revision" is a change to an offer made after the solicitation closing date, at the request of or as allowed by a contracting officer as the result of negotiations.
- "Time," if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period will include the next working day.
- (b) *Amendments to solicitations* If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).
- (c) *Submission, modification, revision, and withdrawal of offers*
- (1) Unless other methods (e.g., electronic commerce or facsimile) are permitted in the solicitation, offers and modifications to offers shall be submitted in paper media in sealed envelopes or packages (i) addressed to the office specified in the solicitation, and (ii) showing the time and date specified for receipt, the solicitation number, and the name and address of the offeror. Offerors using commercial carriers shall ensure that the offer is marked on the outermost wrapper with the information in paragraphs (c)(1)(i) and (c)(1)(ii) of this provision.
 - (2) The first page of the offer shall show:
 - (i) the solicitation number;
 - (ii) the name, address, and telephone and facsimile numbers of the offeror (and electronic address if available);
 - (iii) a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;
 - (iv) names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons authorized to negotiate on the offeror's behalf with the judiciary in connection with this solicitation; and
 - (v) name, title, and signature of person authorized to sign the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

- (3) *Submission, modification, revision, and withdrawal of offers*
- (i) Offerors are responsible for submitting offers, and any modifications or revisions, so as to reach the judiciary office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated judiciary office on the date that offer or revision is due.
 - (ii) (A) Any offer, modification, or revision received at the judiciary office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the contracting officer determines it's in the judiciary's best interest, the contracting officer determines that accepting the late offer would not unduly delay the procurement, and:
 - (1) if it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the judiciary infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or
 - (2) there is acceptable evidence to establish that it was received at the judiciary installation designated for receipt of offers and was under the judiciary's control prior to the time set for receipt of offers; or
 - (3) it is the only offer received.
 - (ii) (B) However, a late modification of an otherwise successful offer that makes its terms more favorable to the judiciary, will be considered at any time it is received and may be accepted.
 - (iii) Acceptable evidence to establish the time of receipt at the judiciary installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of judiciary personnel.
 - (iv) If an emergency or unanticipated event interrupts normal judiciary processes so that offers cannot be received at the office designated for receipt of offers by the exact time specified in the solicitation, and urgent judiciary requirements preclude amendment of the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal judiciary processes resume.
 - (v) Offers may be withdrawn by written notice received at any time before award. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the JP3 Provision, "Facsimile Offers". Offers may be withdrawn in person by an offeror or an authorized representative, if

- the identity of the person requesting withdrawal is established and the person signs a receipt for the offer before award.
- (4) Unless otherwise specified in the solicitation, the offeror may propose to provide any item or combination of items.
 - (5) Offerors shall submit offers in response to this solicitation in English and in U.S. dollars.
 - (6) Offerors may submit modifications to their offers at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.
 - (7) Offerors may submit revised offers only if requested or allowed by the contracting officer.
 - (8) Offers may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the contracting officer.
- (d) *Offer expiration date* Offers in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet (unless a different period is proposed by the offeror).
- (e) *Restriction on disclosure and use of data* Offerors that include in their offers data that they do not want disclosed to the public for any purpose, or used by the judiciary except for evaluation purposes, shall:
- (1) mark the title page with the following legend:

This offer includes data that shall not be disclosed outside the judiciary and shall not be duplicated, used, or disclosed-in whole or in part-for any purpose other than to evaluate this offer. If, however, a contract is awarded to this offeror as a result of-or in connection with-the submission of this data, the judiciary shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the judiciary's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [*insert numbers or other identification of sheets*]; and
 - (2) mark each sheet of data it wishes to restrict with the following legend:

Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this offer.
- (f) *Contract award*
- (1) The judiciary intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose offer(s) represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.
 - (2) The judiciary may reject any or all offers if such action is in the judiciary's interest.
 - (3) The judiciary may waive informalities and minor irregularities in offers received.
 - (4) The judiciary intends to evaluate offers and award a contract without discussions with offerors (except clarifications). Therefore, the offeror's initial offer shall

contain the offeror's best terms from a cost or price and technical standpoint. The judiciary reserves the right to conduct discussions if the contracting officer later determines them to be necessary. If the contracting officer determines that the number of offers that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the contracting officer may limit the number of offers in the competitive range to the greatest number that will permit an efficient competition among the most highly rated offers.

- (5) The judiciary reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the offer.
- (6) The judiciary reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the judiciary's best interest to do so.
- (7) Exchanges with offerors after receipt of an offer do not constitute a rejection or counteroffer by the judiciary.
- (8) The judiciary may determine that an offer is unacceptable if the prices proposed are materially unbalanced between line items or sub-line items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. An offer may be rejected if the contracting officer determines that the lack of balance poses an unacceptable risk to the judiciary.
- (9) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.
- (10) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time specified in the offer shall result in a binding contract without further action by either party.
- (11) The judiciary may disclose the following information in postaward debriefings to other offerors:
 - (i) the overall evaluated cost or price and technical rating of the successful offeror;
 - (ii) the overall ranking of all offerors, when any ranking was developed by the judiciary during source selection;
 - (iii) a summary of the rationale for award; and
 - (iv) for procurements of commercial items, the make and model of the item to be delivered by the successful offeror.

Alternate I - *Substitute the following paragraph for paragraph (f)(4) of the basic provision if the judiciary intends to make award after discussions with offerors within the competitive range.*

- (f)(4) The judiciary intends to evaluate offers and award a contract after conducting discussions with offerors whose offers have been determined to be within the competitive range. If

the contracting officer determines that the number of offers that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the contracting officer may limit the number of offers in the competitive range to the greatest number that will permit an efficient competition among the most highly rated offers. Therefore, the offeror's initial offer shall contain the offeror's best terms from a price and technical standpoint.

Alternate II *Add a paragraph (c)(9) to the basic clause, if the judiciary would be willing to accept alternate offers.*

- (c)(9) Offerors may submit offers that depart from stated requirements. Such offers shall clearly identify why the acceptance of the offer would be advantageous to the judiciary. Any deviations from the terms and conditions of the solicitation, as well as the comparative advantage to the judiciary, shall be clearly identified and explicitly defined. The judiciary reserves the right to amend the solicitation to allow all offerors an opportunity to submit revised offers based on the revised requirements.

(end)

JP3 Clause 3-105, Audit and Records - Negotiation

As prescribed in 3.5.1.c.(21), the contracting officer will insert this clause in Section I.

Audit and Records - Negotiation (JAN 2003)

- (a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) *Examination of costs* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price re-determinable contract, or any combination of these, the contractor shall maintain and the contracting officer, or an authorized representative of the contracting officer, will have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination will include inspection at all reasonable times of the contractor's plants, or parts of them, engaged in performing the contract.
- (c) *Cost or pricing data* If the contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the contracting officer, or an authorized representative of the contracting officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, will have the right to examine and audit all of the contractor's records, including computations and projections, related to:
- (1) the offer for the contract, subcontract, or modification;
 - (2) the discussions conducted on the offer(s), including those related to negotiating;
 - (3) pricing of the contract, subcontract, or modification; or

- (4) performance of the contract, subcontract or modification.
 - (d) *Comptroller General*
 - (1) The Comptroller General of the United States, or an authorized representative, will have access to and the right to examine any of the contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.
 - (2) This paragraph may not be construed to require the contractor or subcontractor to create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
 - (e) *Reports* If the contractor is required to furnish cost, funding, or performance reports, the contracting officer or an authorized representative of the contracting officer will have the right to examine and audit the supporting records and materials, for the purpose of evaluating:
 - (1) the effectiveness of the contractor's policies and procedures to produce data compatible with the objectives of these reports; and
 - (2) the data reported.
 - (f) *Availability* The contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any shorter or longer period required by statute or by other clauses of this contract. In addition:
 - (1) if this contract is completely or partially terminated, the contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and
 - (2) the contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.
 - (g) The contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the judiciary's small purchase threshold, and:
 - (1) that are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-re-determinable type or any combination of these;
 - (2) for which cost or pricing data are required; or
 - (3) that require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.
 - (h) The clause may be altered only as necessary to identify properly the contracting parties and the contracting officer under the judiciary prime contract.
- (end)

JP3 Provision 3-115, Facsimile Offers

As prescribed in 3.5.1.c.(22), the contracting officer will insert this provision in Section L.

Facsimile Offers (JAN 2003)

- (a) *Definition* "Facsimile offer," as used in this provision, means an offer, revision or modification of an offer, or withdrawal of an offer that is transmitted to and received by the judiciary via facsimile machine.
- (b) Offerors may submit facsimile offers as responses to this solicitation. Facsimile offers are subject to the same rules as paper offers.
- (c) The telephone number of receiving facsimile equipment is: [*insert telephone number*].
- (d) If any portion of a facsimile offer received by the contracting officer is unreadable to the degree that conformance to the essential requirements of the solicitation cannot be ascertained from the document:
 - (1) the contracting officer immediately will notify the offeror and permit the offeror to resubmit the offer;
 - (2) the method and time for re-submission will be prescribed by the contracting officer after consultation with the offeror; and
 - (3) the re-submission will be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness, provided the offeror complies with the time and format requirements for re-submission prescribed by the contracting officer.
- (e) The judiciary reserves the right to make award solely on the facsimile offer. However, if requested to do so by the contracting officer, the apparently successful offeror promptly shall submit the complete original signed offer.

(end)

JP3 Clause 3-120, Order of Precedence

As prescribed in 3.5.1.c.(23), the contracting officer will insert this clause in Section I.

Order of Precedence (JAN 2003)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) the schedule (excluding the specifications);
- (2) representations and other instructions;
- (3) the solicitation/contract provisions and clauses;
- (4) other documents, exhibits, and attachments;
- (5) the specifications.

(end)

JP3 Provision 3-125, Acknowledgment of Solicitation Amendments

As prescribed in 3.5.1.c.(24), the contracting officer will insert this provision in Section L.

Acknowledgment of Solicitation Amendments (JAN 2003)

- (a) Offerors shall acknowledge receipt of any amendment to this solicitation by:
 - (1) signing and returning the amendment;
 - (2) identifying the amendment number and date in the space provided for this purpose on the solicitation form; or
 - (3) letter or telegram.
- (b) Acknowledgments of amendments are subject to the Late Submissions, Modifications and Withdrawals of Offers provision of the solicitation. Offers lacking acknowledgment of an amendment affecting price, quantity, quality, or delivery may be rejected.
(end)

JP3 Provision 3-130, Authorized Negotiators

As prescribed in 3.5.1.c.(25) the contracting officer will insert this provision in Section K.

Authorized Negotiators (JAN 2003)

The offeror represents that the following persons are authorized to negotiate on its behalf with the judiciary in connection with this solicitation (*offeror lists names, titles, and telephone numbers of the authorized negotiators*).

Name: _____
 Titles: _____
 Telephone: _____
 Fax: _____
 Email: _____

(end)

JP3 Provision 3-135, Single or Multiple Awards

As prescribed in 3.5.1.c.(26), the contracting officer will insert this provision in Section L.

Single or Multiple Awards (JAN 2003)

The judiciary may elect to award a single contract or to award multiple contracts for the same or similar products or services to two or more sources under this solicitation.

(end)

JP3 Clause 3-140, Notice to the Judiciary of Labor Disputes

As prescribed in Section 3.5.1.c.(27), the contracting officer will insert this clause in Section I.

Notice to the Judiciary of Labor Disputes (JAN 2003)

If the contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the contractor shall immediately give notice, including all relevant information, to the contracting officer.
(end)

JP3 Clause 3-145, Payment for Overtime Premiums

As prescribed in 3.5.1.c.(28), the contracting officer will insert this clause in Section I.

Payment for Overtime Premiums (JAN 2003)

- (a) The use of overtime is authorized under this contract if the overtime premium does not exceed * _____ or the overtime premium is paid for work:
- (1) necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;
 - (2) by indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;
 - (3) to perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or
 - (4) that will result in lower overall costs to the judiciary.
- (b) Any requests for estimated overtime premiums that exceed the amount specified above shall include all estimated overtime for contract completion and shall:
- (1) identify the work unit; e.g., department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the contracting officer to evaluate the necessity for the overtime;
 - (2) demonstrate the effect that denial of the request will have on the contract delivery or performance schedule;
 - (3) identify the extent to which approval of overtime would affect the performance or payments in connection with other judiciary contracts, together with identification of each affected contract; and
 - (4) provide reasons why the required work cannot be performed by using multishift operations or by employing additional personnel.

* Insert either "zero" or the dollar amount agreed to during negotiations. The inserted figure does not apply to the exceptions in paragraph (a)(1) through (a)(4) of the clause.

(end)

JP3 Clause 3-150, Contract Work Hours and Safety Standards Act - Overtime Compensation

As prescribed in 3.5.1.c.(29), the contracting officer will insert this clause in Section I.

Contract Work Hours and Safety Standards Act - Overtime Compensation (JAN 2003)

- (a) *Overtime requirements* No contractor or subcontractor employing laborers or mechanics will require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and ½ times the basic rate of pay for each hour worked over 40 hours.
- (b) *Violation; liability for unpaid wages; liquidated damages* The responsible contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the contractor and subcontractor are liable for liquidated damages payable to the judiciary. The contracting officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards Act.
- (c) *Withholding for unpaid wages and liquidated damages* The contracting officer will withhold from payments due under the contract sufficient funds required to satisfy any contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy contractor or subcontractor liabilities, the contracting officer will withhold payments from other federal or federally assisted contracts held by the same contractor that are subject to the Contract Work Hours and Safety Standards Act.
- (d) *Payrolls and basic records*
 - (1) The contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the judiciary until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.
 - (2) The contractor and its subcontractors shall allow authorized representatives of the contracting officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The contractor or subcontractor also shall allow authorized representatives of the contracting officer

or Department of Labor to interview employees in the workplace during working hours.

- (e) *Subcontracts* The contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts exceeding the judiciary's small purchase threshold and require subcontractors to include these provisions in any lower tier subcontracts. The contractor shall be responsible for compliance by any subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.
(end)

JP3 Clause 3-155, Walsh-Healey Public Contracts Act

As prescribed in 3.5.1.c.(30), the contracting officer will insert this clause in Section I.

Walsh-Healey Public Contracts Act (JAN 2003)

If this contract is for the manufacture or furnishing of materials, products, articles or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. §§ 35-45), the following terms and conditions apply:

- (1) all stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect;
- (2) all employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2).

(end)

JP3 Clause 3-160, Service Contract Act of 1965, as Amended

As prescribed in 3.4.4.g. and 3.5.1.c.(31), the contracting officer will insert this clause in Section I.

Service Contract Act of 1965, as Amended (JAN 2003)

- (a) *Definitions*
 "Act", as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351, *et seq.*).
 "Contractor", as used in this clause or in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Judiciary Prime Contractor."
 "Service employee", as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of

Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

- (b) *Applicability* This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4).
- (c) *Compensation*
 - (1) Each service employee employed in the performance of this contract by the contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or an authorized representative, as specified in any wage determination attached to this contract.
 - (2)
 - (i) If a wage determination is attached to this contract, the contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e. appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).
 - (ii) The conforming procedure shall be initiated by the contractor prior to the performance of contract work by the unlisted class of employees. The contractor shall submit a written report of the proposed conforming action, including information regarding the agreement or disagreement of the employees' authorized representative or, the employees themselves, shall be submitted by the contractor to the contracting officer no later than 30 days after the unlisted class of employees performs any contract work. The contracting officer will review the proposed action and promptly submit a report of it, including the contractor's information, together with the contracting officer's recommendation and all pertinent information, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the contracting officer within 30 days of receipt that additional time is necessary.
 - (iii) The final determination of the conformance action by the Wage and Hour Division will be transmitted to the contracting officer, who will promptly notify the contractor of the action taken. Each affected employee shall be furnished by the contractor with a written copy of such determination, or it shall be posted as a part of the wage determination.
 - (iv) (A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination

cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of conformable wage rate(s) is the concept that a pay relationship shall be maintained between job classifications based on the skill required and the duties performed.

- (B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract that are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the contractor shall advise the contracting officer of the action taken, but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.
- (C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.
- (v) The wage rate and fringe benefits finally determined under this paragraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work will be a violation of the Act and this contract.

- (vi) Upon discovery of failure to comply with paragraph (c)(2) of this clause, the Wage and Hour Division will make a final determination of conformed classification, wage rate, and/or fringe benefits which will be retroactive to the date the class of employees commenced contract work..
- (3) *Adjustment of compensation* If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract, will be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.
- (d) *Obligation to furnish fringe benefits* The contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under paragraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments only in accordance with Subpart D of 29 CFR Part 4.
- (e) *Minimum Wage* In the absence of a minimum-wage attachment for this contract, neither the contractor nor any subcontractor under this contract shall pay any person performing work under the contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause will relieve the contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.
- (f) *Successor contracts* If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality, and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of a minimum wage attachment for this contract setting forth such collective bargained agreement wage rates and fringe benefits, neither the contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not the employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement.

No contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in section 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations. Where it is found in accordance with the review procedures in 29 CFR 4.10 and/or 4.11 that some or all of the wages and/or fringe benefits in a predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the

locality, and/or that the collective bargaining agreement applicable to service employees under the predecessor contract was not entered into as a result of arm's-length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

- (g) *Notification to employees* The contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to the contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the work site. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.
- (h) *Safe and sanitary working conditions* The contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the contractor or subcontractor that are unsanitary, hazardous or dangerous to the health or safety of service employees. The contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.
- (i) *Records*
 - (1) The contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:
 - (i) for each employee subject to the Act:
 - (A) name, address, and social security number;
 - (B) correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefit, and total daily and weekly compensation;
 - (C) daily and weekly hours worked by each employee; and
 - (D) any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.
 - (ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

- (iii) Any list of the predecessor contractor's employees which had been furnished to the contractor as prescribed by paragraph (n) of this clause.
 - (2) The contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.
 - (3) Failure to make and maintain or to make available these records for inspection and transcription will be a violation of the regulations and this contract, and in the case of failure to produce these records, the contracting officer, upon direction of the Department of Labor and notification to the contractor, will take action to cause suspension of any further payment or advance of funds until the violation ceases.
 - (4) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the work site during normal working hours.
- (j) *Pay Periods* The contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semimonthly.
- (k) *Withholding of payments and termination of contract* The contracting officer will withhold or cause to be withheld from the judiciary prime contractor under this or any other judiciary contract with the prime contractor such sums as an appropriate official of the Department of Labor requests or the contracting officer decides may be necessary to pay underpaid employees employed by the contractor or subcontractor. In the event of failure to pay employees subject to the Act all or part of the wages or fringe benefits due under the Act, the contracting officer may, after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the judiciary may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost.
- (l) *Subcontracts* The contractor agrees to insert this clause in all subcontracts subject to the Act.
- (m) *Collective bargaining agreements applicable to service employees* If wages to be paid or fringe benefits to be furnished any service employees employed by the judiciary prime contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the judiciary prime contractor shall report such fact to the contracting officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in

- the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.
- (n) *Seniority list* Not less than ten days prior to completion of any contract being performed at a judiciary facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a contractor (predecessor) or successor (29 CFR 4.173), the incumbent prime contractor shall furnish the contracting officer a certified list of the names of all service employees on the contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor contractors of each such service employee. The contracting officer will turn over such list to the successor contractor at the commencement of the succeeding contract.
 - (o) *Rulings and interpretations* Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.
 - (p)
 - (1) *Contractor's certification* By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the contractor's firm is a person or firm ineligible to be awarded judiciary contracts by virtue of the sanctions imposed pursuant to section 5 of the Act.
 - (2) No part of this contract will be subcontracted to any person or firm ineligible for award of a judiciary contract pursuant to section 5 of the Act.
 - (3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
 - (q) *Variations, tolerances, and exemptions involving employment* Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Public Law 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of judiciary business:
 - (1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, or physical or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).
 - (2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of

- sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two Acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).
- (3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR parts 525 and 528.
- (r) *Apprentices* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a state, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in a written approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the contractor as to its entire workforce under the registered program.
- (s) *Tips* An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations 29 CFR, part 31. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision:
- (1) the employer shall inform tipped employees about this tip credit allowance before the credit is used;
 - (2) the employees shall be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);
 - (3) the employer shall be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through a combination of direct wages and tip credit; and
 - (4) the use of such tip credit shall have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.
- (t) *Disputes concerning labor standards* The U.S. Department of Labor has set forth in 29 CFR parts 4,6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause

include disputes between the contractor (or any of its subcontractors) and the contracting office, the U.S. Department of Labor, or the employees or their representatives.
(end)

JP3 Clause 3-170, Statement of Equivalent Rates for Federal Hires

As prescribed in 3.5.1.c.(32), the contracting officer will insert this clause in Section I.

Statement of Equivalent Rates for Federal Hires (JAN 2003)

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the judiciary subject to the provisions of 5 U.S.C. § 5341 or 5332.

*This Statement is for Information Only:
It is not a Wage Determination*

Employee Class	Monetary Wage-Fringe Benefits
_____	_____
_____	_____
_____	_____
	(end)

JP3 Clause 3-175, Fair Labor Standards Act and Service Contract Act - Price Adjustment (Multiple Year and Option Contracts)

As prescribed in 3.5.1.c.(33) and 4.1.14(3), the contracting officer will insert this clause in Section I.

Fair Labor Standards Act and Service Contract Act - Price Adjustment (Multiple Year and Option Contracts) (JAN 2003)

- (a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to collective bargaining agreements.
- (b) The contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.
- (c) The wage determination, issued under the Service Contract Act of 1965, as amended, (41 U.S.C. 351, et seq.), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current on the anniversary date of a multiple year contract or the beginning of each renewal option period, will apply to this

- contract. If no such determination has been made applicable to this contract, then the federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 206) current on the anniversary date of a multiple year contract or the beginning of each renewal option period, will apply to this contract.
- (d) The contract price or contract unit price labor rates will be adjusted to reflect the contractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the contractor as a result of:
- (1) the Department of Labor wage determination applicable on the anniversary date of the multiple year contract, or at the beginning of the renewal option period. For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The contractor chose to pay \$4.10. The new wage determination increases the minimum rate to \$4.50 per hour. Even if the contractor voluntarily increases the rate to \$4.75 per hour, the allowable price adjustment is \$.40 per hour;
 - (2) an increased or decreased wage determination otherwise applied to the contract by operation of law; or
 - (3) an amendment to the Fair Labor Standards Act of 1938 that is enacted after award of this contract, affects the minimum wage, and becomes applicable to this contract under law.
- (e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profit.
- (f) The contractor shall notify the contracting officer of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by the contracting officer. The contractor shall promptly notify the contracting officer of any decrease under this clause, but nothing in the clause will preclude the judiciary from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records, that the contracting officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates will be modified in writing. The contractor will continue performance pending agreement on or determination of any such adjustment and its effective date.
- (g) The contracting officer or an authorized representative will have access to and the right to examine any directly pertinent books, documents, papers and records of the contractor until the expiration of 3 years after final payment under the contract.
- (end)

JP3 Clause 3-180, Fair Labor Standards Act and Service Contract Act - Price Adjustment

As prescribed in 3.5.1.c.(34), the contracting officer will insert this clause in Section I.

Fair Labor Standards Act and Service Contract Act - Price Adjustment (JAN 2003)

- (a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to contractor collective bargaining agreements.
- (b) The contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.
- (c) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the contractor in wages and fringe benefits to the extent that these increases or decreases are made to comply with:
 - (1) an increased or decreased wage determination applied to this contract by operation of law; or
 - (2) an amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.
- (d) Any such adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and to the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance; it will not otherwise include any amount for general and administrative costs, overhead, or profit.
- (e) The contractor shall notify the contracting officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the contracting officer in writing. The contractor shall promptly notify the contracting officer of any decrease under this clause, but nothing in the clause will preclude the judiciary from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that the contracting officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates will be modified in writing. The contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.
- (f) The contracting officer or an authorized representative will, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor.

(end)

JP3 Provision 3-185, Evaluation of Compensation for Professional Employees

As prescribed in 3.5.1.c.(35), the contracting officer will insert this provision in Section L.

Evaluation of Compensation for Professional Employees (JAN 2003)

- (a) Recompensation of service contracts may in some cases result in lowering the compensation (salaries and fringe benefits) paid or furnished professional employees. This lowering can be detrimental in obtaining the quality of professional services needed for adequate contract performance. It is therefore in the judiciary's best interest that professional employees, as defined in 29 CFR 541, be properly and fairly compensated. As part of their offers, offerors will submit a total compensation plan setting forth salaries and fringe benefits proposed for the professional employees who will work under the contract. The judiciary will evaluate the plan to assure that it reflects a sound management approach and understanding of the contract requirements. This evaluation will include an assessment of the offeror's ability to provide uninterrupted high-quality work. The professional compensation proposed will be considered in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure.
- (b) The compensation levels proposed shall reflect a clear understanding of work to be performed and shall indicate the capability of the proposed compensation structure to obtain and keep suitably qualified personnel to meet mission objectives. The salary rates or ranges shall take into account differences in skills, the complexity of various disciplines, and professional job difficulty. Additionally, offers envisioning compensation levels lower than those of predecessor contractors for the same work will be evaluated on the basis of maintaining program continuity, uninterrupted high-quality work, and availability of required competent professional service employees. Offerors are cautioned that lowered compensation for essentially the same professional work may indicate lack of sound management judgment and lack of understanding of the requirement.
- (c) The judiciary is concerned with the quality and stability of the work force to be employed on this contract. Professional compensation that is unrealistically low or not in reasonable relationship to the various job categories, since it may impair the contractor's ability to attract and retain competent professional service employees, may be viewed as evidence of failure to comprehend the complexity of the contract requirements.
- (d) Failure to comply with these provisions may constitute sufficient cause to justify rejection of an offer.

(end)

JP3 Clause 3-190, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA)

As prescribed in 3.5.1.c.(36), the contracting officer will insert this clause in Section I.

**SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA)
(JAN 2003)**

An SCA wage determination applicable to this work has been requested from the U.S. Department of Labor. If an SCA wage determination is not incorporated herein, the offerors shall consider the economic terms of the collective bargaining agreement (CBA) between the incumbent contractor _____ and the _____ (union). If the economic terms of the collective bargaining agreement or the collective bargaining agreement itself is not attached to the solicitation, copies can be obtained from the contracting officer. Pursuant to Department of Labor Regulation, 29 CFR 4.1b and paragraph (g) of JP3 Clause 3-160, "Service Contract Act of 1965, as amended", the economic terms of that agreement will apply to the contract resulting from this solicitation, notwithstanding the absence of a wage determination reflecting such terms, unless it is determined that the agreement was not the result of arm's length negotiations or that after a hearing pursuant to section 4(c) of the Act, the economic terms of the agreement are substantially at variance with the wages prevailing in the area.

(end)

JP3 Provision 3-195, Exemption from Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain Information Technology, Scientific and Medical and/or Office and Business Equipment-Contractor Certification

As prescribed in 3.5.1.c.(37), the contracting officer will insert this provision in Section K.

Exemption from Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain Information Technology, Scientific and Medical and/or Office and Business Equipment-Contractor Certification (JAN 2003)

- (a) The following certification shall be checked:

CERTIFICATION

The offeror certifies [] does not certify [] that:

- (1) the items of equipment to be serviced under this contract are commercial items which are used regularly for other than judiciary purposes, and are sold or traded by the contractor in substantial quantities to the general public in the course of normal business operations;
- (2) the contract services are furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, and/or repair of certain information technology, scientific and medical and/or office and business equipment. An "established catalog price" is a price (including discount price) recorded in a catalog, price list, schedule, or other verifiable and established record that is regularly maintained by the manufacturer or the contractor and is either published or otherwise available for inspection by customers. An "established market price" is a current price, established in the course of ordinary and usual trade between buyers and sellers free to bargain,

- which can be substantiated by data from sources independent of the manufacturer or contractor; and
- (3) the contractor utilizes the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the contractor uses for equivalent employees servicing the same equipment of commercial customers.
- (b) If a negative certification is made and a Service Contract Act wage determination is not attached to the solicitation, the contractor shall notify the contracting officer as soon as possible.
- (c) Failure to execute the certification in paragraph (a) of this clause or to contact the contracting officer as required in paragraph (b) of this clause may render the offer non-responsive.

(end)

JP3 Clause 3-200, Service Contract Act - Place of Performance Unknown

As prescribed in 3.5.1.c.(38), the contracting officer will insert this clause in Section I.

Service Contract Act - Place of Performance Unknown (JAN 2003)

- (a) This contract is subject to the Service Contract Act, and the place of performance was unknown when the solicitation was issued. In addition to places or areas identified in wage determinations, if any, attached to the solicitation, wage determinations have also been requested for the following: _____ [*insert places or areas*]. The contracting officer will request wage determinations for additional places or areas of performance if asked to do so in writing by _____ [*insert time and date*].
- (b) Offerors who intend to perform in a place or area of performance for which a wage determination has not been attached or requested may nevertheless submit offers. However, a wage determination will be requested and incorporated in the resultant contract retroactive to the date of contract award, and there will be no adjustment in the contract price.

(end)

JP3 Clause 3-205, Protest after Award

As prescribed in 3.5.1.c.(39), the contracting officer will insert this clause in Section I.

Protest after Award (JAN 2003)

- (a) Upon receipt of a notice of protest or a determination that a protest is likely, the contracting officer may, by written order to the contractor, direct the contractor to stop performance of the work called for by this contract. The order will be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the contractor shall immediately comply with its terms and take all reasonable steps to

minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the contracting officer will either:

- (1) cancel the stop-work order; or
 - (2) terminate the work covered by the order as provided in the Default, or the Termination clause of this contract.
- (b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the contractor shall resume work. The contracting officer will make an equitable adjustment in the delivery schedule or contract price, or both, and the contract will be modified, in writing, accordingly, if:
- (1) the stop-work order results in an increase in the time required for, or in the contractor's cost properly allocable to, the performance of any part of this contract; and
 - (2) the contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; *provided*, that if the contracting officer decides the facts justify the action, the contracting officer may receive and act upon an offer at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the judiciary, the contracting officer will allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the contracting officer will allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.
- (e) The judiciary's rights to terminate this contract at any time are not affected by action taken under this clause.
- (f) If, as the result of the contractor's intentional or negligent misstatement, misrepresentation, or mis-certification, a protest related to this contract is sustained, and the judiciary pays costs, the judiciary may require the contractor to reimburse the judiciary the amount of such costs. In addition to any other remedy available, the judiciary may collect this debt by offsetting the amount against any payment due the contractor under any contract between the contractor and the judiciary.

(end)

JP3 Provision 3-210, Protests

| *As prescribed in 3.5.1.c.(40), the contracting officer will insert this provision in Section L.*

Protests (AUG 2004)

- | (a) The protestor has a choice of protest forums. It is the policy of the judiciary to encourage parties first to seek resolution of disputes with the contracting officer. If the dispute cannot be resolved with the contracting officer, then it is the policy of the judiciary to encourage parties to seek a judiciary resolution of disputes with the Administrative

Office of the United States Courts. However, if a party files a formal protest with an external forum on a solicitation on which it has filed a protest with the judiciary, the judiciary protest will be dismissed.

- (b) Judiciary protests will be considered only if submitted in accordance with the following time limits and procedures:
- (1) any protest shall be filed in writing with the contracting officer designated in the solicitation for resolution of the protest. It shall identify the solicitation or contract protested and set forth a complete statement of the alleged defects or grounds that make the solicitation terms or the award or proposed award defective. Mere statement of intent to file a protest is not a protest.
 - (2) a protest shall be filed not later than ten (10) calendar days after the basis of the protest is known, or should have been known. A protest based on alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of offers, shall be filed prior to the closing date for receipt of offers. The judiciary, in its discretion, may consider the merits of any protest which is not timely filed. The office hours of the Administrative Office are 8:30 a.m. to 5:00 p.m., eastern time. Time for filing a document expires at 5:00 p.m., eastern time, on the last day on which such filing may be made.
 - (3) the protest shall include the following information:
 - (i) name, address, and fax and telephone numbers of the protester or its representative;
 - (ii) solicitation or contract number;
 - (iii) detailed statement of the legal and factual grounds for the protest, to include a description of resulting alleged prejudice to the protester;
 - (iv) copies of relevant documents;
 - (v) request for a ruling by the judiciary;
 - (vi) statement as to the form of relief requested;
 - (vii) all information establishing that the protester is an interested party for the purpose of filing a protest; and
 - (viii) all information establishing the timeliness of the protest.
 - (c) Protests that are filed directly with the judiciary, and copies of any protests that are filed with an external forum, will be served on the contracting officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from _____.
[contracting officer designate the official or location where a protest may be served on the contracting officer.]
 - (d) The copy of any protest shall be received in the office designated above within one day of filing a protest with an external forum.

(end)

JP3 Provision 4-1, Type of Contract

As prescribed in 4.1.2.b., the contracting officer will insert this provision in Section L

Type of Contract (JAN 2003)

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

(end)

JP3 Clause 4-5, Ordering

As prescribed in 4.1.5.i.(1)(a), the contracting officer will insert this clause in Section I.

Ordering (AUG 2004)

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

(end)

JP3 Clause 4-10, Order Limitations

As prescribed in 4.1.5.i.(1)(b), the contracting officer will insert this clause in Section I.

Order Limitations (JAN 2003)

- (a) *Minimum order* When the judiciary requires products or services covered by this contract in an amount less than _____ (*contracting officer insert minimum dollar amount or*

- quantity*), the judiciary is not obligated to purchase, nor is the contractor obligated to furnish, those products or services under this contract.
- (b) *Maximum order* The contractor is not obligated to honor:
- (1) any order for a single item in excess of _____ (*contracting officer insert maximum dollar amount or quantity*);
 - (2) any order for a combination of items in excess of _____ (*contracting officer insert maximum dollar amount or quantity*); or
 - (3) a series of orders from the same ordering office in the course of _____ days (*contracting officer specify*) that together call for quantities exceeding the limitations stated in subparagraph (b)(1) or (b)(2) above.
- (c) If this is a requirements contract, (i.e. includes the “Requirements” clause JP3 Clause 4-20) the judiciary is not required to order a part of any one requirement from the contractor if that requirement exceeds the maximum-order limitations stated in paragraph (b) above.
- (d) Notwithstanding paragraphs (b) and (c) of this section, the contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within _____ days (*contracting officer specify*) after issuance, with written notice stating the contractor’s intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the judiciary may acquire the products or services from another source.

(end)

JP3 Clause 4-15 - RESERVED

JP3 Clause 4-20, Requirements

As prescribed in 4.1.5.i.(3), the contracting officer will insert this clause in Section I.

Requirements (JAN 2003)

- (a) This is an indefinite-delivery requirements contract for the products or services specified, and effective for the period stated in the schedule. The quantities of products or services specified in the schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the judiciary's requirements do not result in orders in the quantities described as “estimated” or “maximum” in the schedule, that fact will not constitute the basis for an equitable price adjustment.
- (b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the contractor shall furnish to the judiciary all products or services specified in the schedule and called for by orders issued in accordance with the Ordering clause.

- (c) Except as this contract otherwise provides, the judiciary will order from the contractor all the products or services specified in the schedule that are required to be purchased by the activity or activities specified in the schedule.
- (d) The judiciary is not required to purchase from the contractor requirements in excess of any limit on total orders under this contract.
- (e) If the judiciary urgently requires delivery or performance of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the contractor will not accept an order providing for the accelerated delivery, the judiciary may acquire the urgently required products or services from another source. In the event that the contractor accepts such an order for accelerated delivery, such accelerated delivery shall not constitute the basis for an equitable price adjustment.
- (f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the contractor within the time specified in the order. The contract will govern the contractor's and judiciary's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period.

(end)

JP3 Clause 4-25, Indefinite Quantity

As prescribed in 4.1.5.i.(4), the contracting officer will insert this clause in Section I.

Indefinite Quantity (JAN 2003)

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

(end)

JP3 Clause 4-30, Payment (Time-and-Materials and Labor-Hour Contracts)

As prescribed in 4.1.7.d., the contracting officer will insert this clause in Section I.

Payment (Time-and-Materials and Labor-Hour Contracts) (OCT 2006)

The judiciary will pay the contractor as follows upon submission of invoices or vouchers approved in writing by the contracting officer:

- (a) *Hourly rate*
- (1) The amounts will be computed by multiplying the appropriate hourly rates prescribed in the schedule by the number of direct labor hours performed. The rates will include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour will be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals if approved in writing by the contracting officer). The contractor will substantiate vouchers by evidence of actual payment and by individual daily job time cards, or other substantiation approved in writing by the contracting officer. Promptly after receipt of each substantiated voucher, the judiciary will, except as otherwise provided in this contract, and subject to the terms of paragraph (e) of this section, pay the voucher as approved in writing by the contracting officer.
 - (2) Unless otherwise prescribed in the schedule, the contracting officer will withhold five percent of the amounts due under this paragraph (a), but the total amount withheld may not exceed \$50,000. The amounts withheld will be retained until the execution and delivery of a release by the contractor as provided in paragraph (f) of this section.
 - (3) Unless the schedule prescribes otherwise, the hourly rates in the schedule will not be varied by virtue of the contractor having performed work on an overtime basis. If no overtime rates are provided in the schedule and overtime work is approved in writing in advance by the contracting officer, overtime rates may be negotiated. Failure to agree upon these overtime rates will be treated as a dispute under the Disputes clause of this contract. If the schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime has been approved in writing in advance by the contracting officer.
- (b) *Materials and subcontracts*
- (1) The contracting officer will determine allowable costs of direct materials. Direct materials, as used in this clause, are those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product.
 - (2) The contractor may include reasonable and allocable material handling costs in the charge for material to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when

- appropriate, general and administrative expense allocated to direct materials in accordance with the contractor's usual accounting practices.
- (3) The judiciary will reimburse the contractor for products and services purchased directly for the contract only when payments of cash, checks, or other forms of payment have been made for such purchased products or services.
- (4) (i) The judiciary will reimburse the contractor for costs of subcontracts that are authorized under the Subcontracts clause of this contract, provided, that the costs are consistent with subparagraph (b)(5) of this clause.
- (ii) The judiciary will limit reimbursable costs in connection with subcontracts to the amounts paid for products and services purchased directly for the contract only when the contractor has made or will make payments of cash, checks, or other forms of payment to the subcontractor:
- (A) in accordance with the terms and conditions of a subcontract or invoice; and
- (B) ordinarily prior to the submission of the contractor's next payment request to the judiciary.
- (iii) The judiciary will not reimburse the contractor for any costs arising from the letting, administration, or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under paragraph (a)(1) of this clause.
- (5) To the extent possible, the contractor shall:
- (i) obtain materials at the most advantageous prices available, with due regard to securing prompt delivery of satisfactory materials; and
- (ii) take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the contractor shall promptly notify the contracting officer and give the reasons. The contractor shall give credit to the judiciary for cash and trade discounts, rebates, scrap, allowances, credits, salvage, commissions, and other amounts that have accrued to the benefit of the contractor, or would have accrued except for the fault or neglect of the contractor. The contractor shall not deduct from gross costs the benefits lost without fault or neglect on the part of the contractor or lost through fault of the judiciary.
- (c) *Total cost* It is estimated that the total cost to the judiciary for the performance of this contract shall not exceed the ceiling price set forth in the schedule, and the contractor agrees to use its best efforts to perform the work specified in the schedule and all obligations under this contract within such ceiling price. If at any time the contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing the contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the schedule, the contractor shall notify the contracting officer, giving a revised estimate of the total price to the judiciary for performing this contract with supporting reasons and

documentation. If at any time during performing this contract, the contractor has reason to believe that the total price for this contract will be substantially greater or less than the then stated ceiling price, the contractor shall so notify the contracting officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performing this contract, the judiciary has reason to believe that the work to be required in performing this contract will be substantially greater or less than the then stated ceiling price, the contracting officer will advise the contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

- (d) *Ceiling price* The judiciary will not be obligated to pay the contractor any amount in excess of the ceiling price in the schedule, and the contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the schedule, unless and until the contracting officer will have notified the contractor in writing that the ceiling price has been increased, and will have specified in the notice a revised ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the schedule has been increased, any hours expended or material costs incurred by the contractor in excess of the ceiling price before the increase will be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.
- (e) *Audit* At any time or times before final payment under this contract the contracting officer may request audit of the invoices or vouchers and substantiating material. Each payment previously made will be subject to reduction to the extent of amounts, on preceding invoices or vouchers, that are found by the contracting officer not to have been properly payable and will also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and written approval of the voucher or invoice designated by the contractor as the “completion voucher” or “completion invoice” and substantiating material, and upon compliance by the contractor with any required release and all other terms of this contract, the judiciary will promptly pay any balance due the contractor. The completion invoice or voucher, and substantiating material, shall be submitted by the contractor as promptly as practicable following completion of the work under this contract, but in no event later than one year (or such longer period as the contracting officer may approve in writing) from the date of completion.
- (f) *Assignment* The contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the judiciary, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:
- (1) specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the contractor;
 - (2) claims, together with reasonable incidental expenses, based upon the liabilities of the contractor to third parties arising out of performing this contract, that are not

- known to the contractor on the date of the execution of the release, and of which the contractor gives notice in writing to the contracting officer not more than 6 years after the date of the release or the date of any notice to the contractor that the judiciary is prepared to make final payment, whichever is earlier;
- (3) claims for reimbursement of costs (other than expenses of the contractor by reason of its indemnification of the judiciary against patent liability), including reasonable incidental expenses, incurred by the contractor under the terms of this contract relating to patents.
- (g) *Refunds* The contractor agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the contractor or any assignee, that arise under the materials portion of this contract and for which the contractor has received reimbursement, shall be paid by the contractor to the judiciary. The contractor and each assignee, under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, an assignment to the judiciary of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to the contracting officer.
- (h) *Interim payments*
- (1) Interim payments made prior to the final payment under the contract are contract financing payments. The judiciary is not subject to any interest penalty and contract financing payments are also not subject to any interest penalty.
- (2) The designated payment office may make interim payments for contract financing after the designated billing office receives a proper payment request. In the event that the judiciary requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.
- (end)

JP3 Clause 4-35, Execution and Commencement of Work (Letter Contract)

As prescribed in 4.1.9.h.(1), the contracting officer will insert this clause in Section I.

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

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

(end)

JP3 Clause 4-40, Limitation of Judiciary Liability (Letter Contract)

As prescribed in 4.1.9.h.(2), the contracting officer will insert this clause in Section I.

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

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

JP3 Clause 4-45, Contract Definitization

As prescribed in 4.1.9.f and 4.1.9.h(3), the contracting officer will insert this clause in Section I.

Contract Definitization (JAN 2003)

- (a) A _____ (*contracting officer inserts type of contract*) definitive contract is contemplated. The contractor agrees to begin promptly negotiating with the contracting officer the terms of a definitive contract that will include:
 - (1) all judiciary clauses required on the date of execution of the letter contract;
 - (2) all clauses required by law on the date of execution of the definitive contract; and
 - (3) any other mutually agreeable clauses, terms, and conditions. The contractor agrees to submit a _____ (*insert specific type of offer; e.g., fixed-price or cost-and-fee*) offer and cost or pricing data supporting its offer.
- (b) The schedule for definitizing this contract is (*insert target date for definitization of the contract and dates for submission of offer, beginning of negotiations, and, if appropriate, submission of make-or-buy and subcontracting plans and cost or pricing data*):
 - (1) Definitization target date _____
 - (2) Offer submission date _____
 - (3) Beginning of negotiations date _____
 - (4) Other appropriate dates _____
- (c) If agreement on a definitive contract to supersede this letter contract is not reached by the target date in paragraph (b) of this section, or within any extension of it granted by the contracting officer, the contracting officer may, with the prior written approval of the judiciary Procurement Executive, determine a reasonable price or fee, subject to contractor appeal as provided in the Disputes clause. In any event, the contractor shall proceed with completion of the contract, subject only to the Limitation of Judiciary Liability clause.
 - (1) After the contracting officer's determination of price or fee, the contract will be governed by:

- (i) all judiciary required clauses on the date of execution of this letter contract for either fixed-price or cost-reimbursement contracts as determined by the contracting officer under this paragraph (c);
 - (ii) all clauses required by law as of the date of the contracting officer's determination; and
 - (iii) any other clauses, terms, and conditions mutually agreed upon.
- (2) To the extent consistent with paragraph (c)(1) of this section, all clauses, terms, and conditions included in this letter contract will continue in effect, except those that by their nature apply only to a letter contract.
- (d) The definitive contract resulting from this letter contract will include a negotiated _____ (*contracting officer inserts "firm fixed price" or "total estimated reimbursable cost"*) in no event to exceed \$ _____ (*contracting officer inserts the proposed amount upon which the award was based*).
- (end)

JP3 Clause 4-50, Payment of Allowable Costs before Definitization

As prescribed in 4.1.9.h.(4), the contracting officer will insert this clause in Section I.

Payment of Allowable Costs before Definitization (JAN 2003)

- (a) *Reimbursement rate* Pending the placing of the definitized contract referred to in this letter contract, the judiciary will promptly reimburse the contractor for all allowable costs under the contract at the following rates:
- (1) one hundred percent of written approved costs representing financing payments to subcontractors under fixed-price subcontracts, provided that the judiciary's payments to the contractor will not exceed 80 percent of the allowable costs of those subcontracts;
 - (2) one hundred percent of written approved costs representing cost-reimbursement subcontracts, provided, that the judiciary's payments to the contractor will not exceed 85 percent of the allowable costs of those subcontracts;
 - (3) eighty-five percent of all other written approved costs.
- (b) *Limitation of reimbursement* To determine the amounts payable to the contractor under this letter contract, the contracting officer will determine allowable costs. The total reimbursement made under this paragraph will not exceed 85 percent of the maximum amount of the judiciary's liability, as stated in this contract.
- (c) *Invoicing* Payments will be made promptly to the contractor when requested as work progresses, but not more often than once each month (or more often if approved in writing by the contracting officer). The contractor may submit to an authorized representative of the contracting officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable costs incurred by the contractor in performance of this contract.

- (d) *Allowable costs* For the purpose of determining allowable costs, the term “costs” includes:
- (1) those recorded costs that result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for products or services purchased directly for the contract;
 - (2) when the contractor is not delinquent in payment of costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid for:
 - (i) products and services purchased directly for the contract, provided payments will be made:
 - (A) in accordance with the terms and conditions of a subcontract or invoice; and
 - (B) ordinarily prior to the submission of the contractor’s next payment request to the judiciary;
 - (ii) materials issued from the contractor's stores inventory and placed in the production process for use on the contract;
 - (iii) direct labor;
 - (iv) direct travel;
 - (v) other direct in-house costs; and
 - (vi) properly allocable and allowable indirect costs, as shown on the records maintained by the contractor for purposes of obtaining reimbursement under judiciary contracts; and
 - (3) the amount of financing payments that the contractor has paid by cash, check, or other forms of payment to subcontractors.
- (e) *Audit* At any time before final payment, the contracting officer may have the contractor's invoices or vouchers and statements of cost audited. Any payment may be:
- (1) reduced by any amounts found by the contracting officer not to constitute allowable costs; or
 - (2) adjusted for prior overpayments or under payments made on preceding invoices or vouchers.

(end)

JP3 Clause 4-55, Economic Price Adjustment - Standard Products

As prescribed in 4.1.12.j. and 4.1.14.l(2), the contracting officer will insert this clause in Section I. The clause may be modified by increasing the 10 percent limit on aggregate increases specified in paragraph (c)(1), upon written approval by the Procurement Executive, PMD.

Economic Price Adjustment-Standard Products (JAN 2003)

- (a) The contractor warrants that the unit price stated in the schedule for _____ [*offeror inserts schedule line item number*] is not in excess of the contractor's applicable established price in effect on the contract date for like quantities of the same item. The

term "unit price" excludes any part of the price directly resulting from requirements for preservation, packaging, or packing beyond standard commercial practice. The term "established price" means a price that:

- (1) is an established catalog or market price for a commercial item sold in substantial quantities to the general public; and
 - (2) is the net price after applying any standard trade discounts offered by the contractor.
- (b) The contractor shall promptly notify the contracting officer of the amount and effective date of each decrease in any applicable established price. Each corresponding contract unit price will be decreased by the same percentage that the established price is decreased. The decrease will apply to those items delivered on and after the effective date of the decrease in the contractor's established price, and this contract will be modified accordingly.
- (c) If the contractor's applicable established price is increased after the contract date, the corresponding contract unit price will be increased, upon the contractor's written request to the contracting officer, by the same percentage that the established price is increased, and the contract will be modified accordingly, subject to the following limitations:
- (1) the aggregate of the increases in any contract unit price under this clause will not exceed 10 percent of the original contract unit price;
 - (2) the increased contract unit price will be effective:
 - (i) on the effective date of the increase in the applicable established price if the contracting officer receives the contractor's written request within 10 days thereafter; or
 - (ii) if the written request is received later, on the date the contracting officer receives the request;
 - (3) the increased contract unit price will not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price, unless failure to deliver before that date results from causes beyond the control and without the fault or negligence of the contractor, within the meaning of the Default clause.
 - (4) no modification increasing a contract unit price will be executed under this paragraph (c) until the contracting officer verifies the increase in the applicable established price;
 - (5) within 30 days after receipt of the contractor's written request, the contracting officer may cancel, without liability to either party, any undelivered portion of the contract items affected by the requested increase.
- (d) During the time allowed for the cancellation provided for in paragraph (c)(5) of this clause, and thereafter if there is no cancellation, the contractor shall continue deliveries according to the contract delivery schedule, and the contractor will pay for such deliveries at the contract unit price, increased to the extent provided by paragraph (c) of this clause.

(end)

JP3 Clause 4-60, Allowable Cost and Payment

As prescribed in 4.1.13.h.(1), the contracting officer will insert this clause in Section I.

Allowable Cost and Payment (JAN 2003)

- (a) *Invoicing* The judiciary will make payments to the contractor when requested as work progresses, but not more than monthly, in amounts determined to be allowable by the contracting officer. The contractor shall submit an invoice or voucher to the address specified in the schedule, supported by a statement of claimed allowable costs of performing this contract, in such form and detail as the contracting officer may require.
- (b) *Reimbursing costs*
- (1) For the purpose of reimbursing allowable costs, the term “costs” includes only:
- (i) those recorded costs that, at the time of the request for reimbursement, the contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;
 - (ii) when the contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for:
 - (A) products and services purchased directly for the contract and associated financing payments to subcontractors, provided payments will be made:
 - (1) in accordance with the terms and conditions of a subcontract or invoice; and
 - (2) ordinarily prior to the submission of the contractor’s next payment request to the judiciary;
 - (B) materials issued from the contractor’s inventory and placed in the production process for use on the contract;
 - (C) direct labor;
 - (D) direct travel;
 - (E) other direct in-house costs; and
 - (F) Properly allocable and allowable indirect costs, as shown in the records maintained by the contractor for purposes of obtaining reimbursement under judiciary contracts; and
 - (iii) The amount of progress payments that have been paid by cash, check, or other forms of payment to subcontractors.
- (2) Accrued costs of contractor contributions under employee pension plans will be excluded until actually paid unless:
- (i) the contractor’s practice is to make contributions to the retirement fund quarterly or more frequently; and
 - (ii) the contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining

- unpaid will be excluded from the contractor's indirect costs for payment purposes).
- (3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (e) of this clause, allowable indirect costs under this contract will be obtained by applying indirect cost rates established in accordance with paragraph (c) of this clause.
 - (4) Any statements in specifications or other documents incorporated by reference in this contract designating performance of services or furnishing of materials at the contractor's expense or at no cost to the judiciary will be disregarded for purposes of cost reimbursement under this clause.
- (c) *Final indirect cost rates*
- (1) Final annual indirect cost rates and the appropriate bases will be established in accordance with JP3 Chapter 4 in effect for the period covered by the indirect cost rate offer.
 - (2)
 - (i) The contractor shall submit an adequate final indirect cost rate offer to the contracting officer and auditor within 90 days after the end of each of its fiscal years, or by a later date approved in writing by the contracting officer. The contractor shall support the cost data and specify the contract and/or subcontract to which the rates apply.
 - (ii) The proposed rates shall be based on the contractor's actual cost experience for that period. The contracting officer or contracting officer's representative and the contractor will establish the final indirect cost rates as promptly as practical after receipt of the contractor's offer.
 - (3) The contractor and the contracting officer will execute a written understanding setting forth the final indirect cost rates. The understanding will specify:
 - (i) the agreed-upon final annual indirect cost rates;
 - (ii) the bases to which the rates apply;
 - (iii) the periods for which the rates apply;
 - (iv) any specific indirect cost items treated as direct costs in the settlement; and
 - (v) the affected contract an/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding will not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.
 - (4) Failure by the parties to agree on a final annual indirect cost rate will be a dispute within the meaning of the Disputes clause.
 - (5) Within 120 days (or a period approved in writing by the contracting officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

- (6) (i) If the contractor fails to submit a completion invoice or voucher within the time specified in paragraph (c)(5) of this clause, the contracting officer may:
 - (A) determine the amounts due to the contractor under the contract; and
 - (B) record this determination in a unilateral modification to the contract.
 - (ii) The determination constitutes the final decision of the contracting officer in accordance with the Disputes clause.
- (d) *Billing rates* Until final annual indirect cost rates are established for any period, the judiciary will reimburse the contractor at billing rates established by the contracting officer subject to adjustment when the final rates are established. These billing rates:
 - (1) will be the anticipated final rates; and
 - (2) may be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.
- (e) *Audit* At any time or times before final payment, the contracting officer may have the contractor's invoices or vouchers and statements of cost audited. Any payment may be:
 - (1) reduced by amounts found by the contracting officer not to constitute allowable costs; or
 - (2) adjusted for prior overpayments or under-payments.
- (f) *Final payment*
 - (1) Upon written approval of a completion invoice or voucher, submitted by the contractor in accordance with paragraph (c)(5) of this clause, and upon the contractor's compliance with all terms of this contract, the judiciary will promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
 - (2) The contractor shall pay to the judiciary any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the contractor has been reimbursed by the judiciary. Reasonable expenses incurred by the contractor for securing refunds, rebates, credits, or other amounts are allowable costs if approved in writing by the contracting officer. Before final payment under this contract, the contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver:
 - (i) an assignment to the judiciary, in form and substance satisfactory to the contracting officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the contractor has been reimbursed by the judiciary under this contract; and
 - (ii) a release discharging the judiciary, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except:

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

JP3 Clause 4-65, Fixed Fee

As prescribed in 4.1.13.h.(2), the contracting officer will insert this clause in Section I.

Fixed Fee (JAN 2003)

- (a) The judiciary will pay the contractor for performing this contract the fixed fee specified in the schedule.
 - (b) Payment of the fixed fee will be made as specified in the schedule; provided that after payment of 85 percent of the fixed fee, the contracting officer may withhold further payment of fee until a reserve is set aside in an amount that the contracting officer considers necessary to protect the judiciary's interest. This reserve will not exceed 15 percent of the total fixed fee or the judiciary's small purchase threshold, whichever is less. The contracting officer will release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate offer covering the year of physical completion of this contract, provided the contractor has satisfied all other contract terms and conditions, and is not delinquent in submitting final vouchers on prior years' settlements. The contracting officer may release up to 90 percent of the fee withheld under this contract based on the contractor's past performance related to the submission and settlement of final indirect cost rate offers.
- (end)

JP3 Clause 4-70, Incentive Fee

As prescribed in 4.1.13.h.(3), the contracting officer will insert this clause in Section I.

Incentive Fee (JAN 2003)

- (a) *General* The judiciary will pay the contractor for performing this contract a fee determined as provided in the contract.
- (b) *Target cost and target fee* The target cost and target fee specified in the schedule are subject to adjustment if the contract is modified in accordance with paragraph (d) of this clause.
 - (1) “Target cost” as used in this contract, means the estimated cost of this contract as initially negotiated, adjusted in accordance with paragraph (d) of this clause.
 - (2) “Target fee” as used in this contract, means the fee initially negotiated on the assumption that this contract would be performed for a cost equal to the estimated cost initially negotiated, adjusted in accordance with paragraph (d) of this clause.
- (c) *Withholding of payment* Normally, the judiciary will pay the fee to the contractor as specified in the schedule. However, when the contracting officer considers that performance or cost indicates that the contractor will not achieve target, the judiciary will pay on the basis of an appropriate lesser fee. When the contractor demonstrates that performance or cost clearly indicates that the contractor will earn a fee significantly above the target fee, the judiciary may, at the sole discretion of the contracting officer, pay on the basis of an appropriate higher fee. After payment of 85 percent of the applicable fee, the contracting officer may withhold further payment of fee until a reserve is set aside in an amount that the contracting officer considers necessary to protect the judiciary's interest. This reserve will not exceed 15 percent of the applicable fee or the judiciary's small purchase threshold, whichever is less. The contracting officer will release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate offer covering the year of physical completion of this contract, provided the contractor has satisfied all other contract terms and conditions, and is not delinquent in submitting final vouchers on prior years' settlements. The contracting officer may release up to 90 percent of the fee withholds under this contract based on the contractor's past performance related to the submission and settlement of final indirect cost rate offers.
- (d) *Equitable adjustments* When the work under this contract is increased or decreased by a contract modification or when any equitable adjustment in the target cost is authorized under any other clause, equitable adjustments in the target cost, target fee, minimum fee, and maximum fee, as appropriate, will be stated in a supplemental agreement to this contract.
- (e) *Fee payable*
 - (1) The fee payable under this contract will be the target fee increased by ____ cents (*contracting officer inserts contractor's participation*) for every dollar that the total allowable cost is less than the target cost or decreased by ____ cents (*contracting officer inserts contractor's participation*) for every dollar that the total allowable cost exceeds the target cost. In no event will the fee be greater than ____ percent or less than ____ percent (*contracting officer inserts percentages*) of the target cost.
 - (2) The fee will be subject to adjustment, to the extent provided in paragraph (d) of this clause, and within the minimum and maximum fee limitations in paragraph

- (e)(1) of this clause, when the total allowable cost is increased or decreased as a consequence of:
- (i) payments made under assignments; or
 - (ii) claims excepted from the release required by paragraph (f)(2) of the Allowable Cost and Payment clause.
- (3) If this contract is terminated in its entirety, the portion of the target fee payable will not be subject to an increase or decrease as provided in this paragraph. The termination will be accomplished in accordance with other applicable clauses of this contract.
- (4) For the purpose of fee adjustment, “total allowable cost” does not include allowable costs arising out of:
- (i) any of the causes covered by the Excusable Delays clause, to the extent that they are beyond the control and without the fault or negligence of the contractor or any subcontractor;
 - (ii) the taking effect, after negotiating the target cost, of a statute, court decision, written ruling, or regulation that results in the contractor's being required to pay or bear the burden of any tax or duty or rate increase in a tax or duty;
 - (iii) any direct cost attributed to the contractor's involvement in litigation as required by the contracting officer pursuant to a clause of this contract, including furnishing evidence and information requested pursuant to the Notice and Assistance Regarding Patent and Copyright Infringement clause;
 - (iv) the purchase and maintenance of additional insurance not in the target cost and required by the contracting officer, or claims for reimbursement for liabilities to third persons pursuant to the Insurance Liability to third Persons clause;
 - (v) any claim, loss, or damage resulting from a risk for which the contractor has been relieved of liability by the Judicial Property clause; or
 - (vi) any claim, loss, or damage resulting from a risk defined in the contract as unusually hazardous or as a nuclear risk and against which the judiciary has expressly agreed to indemnify the contractor.
- (5) All other allowable costs are included in “total allowable cost” for fee adjustment in accordance with this paragraph (e), unless otherwise specifically provided in this contract.
- (f) *Contract modification* The total allowable cost and the adjusted fee determined as provided in this clause will be evidenced by a modification to this contract signed by the contractor and contracting officer.
- (g) *Inconsistencies* In the event of any language inconsistencies between this clause and provisioning documents or judiciary options under this contract, compensation for spare parts or other products and services ordered under such documents will be determined in accordance with this clause.

(end)

JP3 Clause 4-75, Cost Contract - No Fee

As prescribed in 4.1.13.h.(4), the contracting officer will insert this clause in Section I.

Cost Contract - No Fee (JAN 2003)

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

JP3 Clause 4-80, Cost-Sharing Contract - No Fee

As prescribed in 4.1.13.h.(5), the contracting officer will insert this clause in Section I.

Cost-Sharing Contract - No Fee (JAN 2003)

- (a) The judiciary will not pay the contractor a fee for performing this contract.
 - (b) After paying the contractor 80 percent of the judiciary's share of the total estimated cost of performance shown in the schedule, the contracting officer may withhold further payment of allowable cost until a reserve is set aside in an amount that the contracting officer considers necessary to protect the judiciary's interest. This reserve will not exceed whichever is less:
 - (1) one percent of the judiciary's share of the total estimated cost shown in the schedule, or
 - (2) \$10,000 for nonprofit organizations, or
 - (3) \$100,000 for all other organizations.
- (end)

JP3 Clause 4-85, Limitation of Cost

As prescribed in 4.1.13.h.(6), the contracting officer will insert this clause in Section I.

Limitation of Cost (JAN 2003)

- (a) The parties estimate that performance of this contract, exclusive of any fee, will not cost the judiciary more than (1) the estimated cost specified in the schedule, or, (2) if this is a

- cost-sharing contract, the judiciary's share of the estimated cost specified in the schedule. The contractor agrees to use its best efforts to perform the work specified in the schedule and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract includes both the judiciary's and the contractor's share of the cost.
- (b) The contractor shall notify the contracting officer in writing whenever it has reason to believe that:
 - (1) the costs the contractor expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the schedule; or
 - (2) the total cost for the performance of this contract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.
 - (c) As part of the notification, the contractor shall provide the contracting officer a revised estimate of the total cost of performing this contract.
 - (d) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause:
 - (1) the judiciary is not obligated to reimburse the contractor for costs incurred in excess of (i) the estimated cost specified in the schedule, or (ii) if this is a cost-sharing contract, the estimated cost to the judiciary specified in the schedule; and
 - (2) the contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of the estimated cost or otherwise incur costs in excess of the estimated cost specified in the schedule, until the contracting officer (i) , notifies the contractor in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this contract. If this is a cost-sharing contract, the increase will be allocated in accordance with the formula specified in the schedule.
 - (e) No notice, communication, or representation in any other form other than that specified in paragraph (d)(2) of this clause, or from any person other than the contracting officer, will affect this contract's estimated cost to the judiciary. In the absence of the specified notice, the judiciary is not obligated to reimburse the contractor for any costs in excess of the estimated cost or, if this is a cost-sharing contract, for any costs in excess of the estimated cost to the judiciary specified in the schedule, whether those excess costs were incurred during the course of the contract or as a result of termination.
 - (f) If the estimated cost specified in the schedule is increased, any costs the contractor incurs before the increase that are in excess of the previously estimated cost will be allowable to the same extent as if incurred afterwards, unless the contracting officer issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.
 - (g) Change orders will not be considered an authorization to exceed the estimated cost to the judiciary specified in the schedule, unless they contain a statement increasing the estimated cost.

- (h) If this contract is terminated or the estimated cost is not increased, the judiciary and the contractor will negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.
- (end)

JP3 Clause 4-90, Limitation of Funds

As prescribed in 4.1.13.h.(7), the contracting officer will insert this clause in Section I.

Limitation of Funds (JAN 2003)

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

- may specify a later date in its request, and the contracting officer may terminate this contract on that later date.
- (f) Except as required by other provisions of this contract specifically citing and stated to be an exception to this clause,:
- (1) the judiciary is not obligated to reimburse the contractor for costs incurred in excess of the total amount allotted by the judiciary to this contract; and
 - (2) the contractor is not obligated to continue performance under this contract (including actions under the contract's Termination clause of this contract) or otherwise incur costs in excess of:
 - (i) the amount then allotted to the contract by the judiciary or;
 - (ii) if this is a cost-sharing contract, the amount then allotted by the judiciary to the contract plus the contractor's corresponding share, until the contracting officer notifies the contractor in writing that the amount allotted by the judiciary has been increased and specifies an increased amount, which will then constitute the total amount allotted by the judiciary to this contract.
- (g) The estimated cost will be increased to the extent (1) the amount allotted by the judiciary or, (2) if this is a cost-sharing contract, the amount then allotted by the judiciary to the contract plus the contractor's corresponding share, exceeds the estimated cost specified in the schedule. If this is a cost-sharing contract, the increase will be allocated in accordance with the formula specified in the schedule.
- (h) No notice, communication, or representation in any other form other than that specified in paragraph (f)(2) of this clause, or from any person other than the contracting officer, will affect the amount allotted by the judiciary to this contract. In the absence of the specified notice, the judiciary is not obligated to reimburse the contractor for any costs in excess of the total amount allotted by the judiciary to this contract, whether incurred during the course of the contract or as a result of termination.
- (i) When and to the extent that the amount allotted by the judiciary to the contract is increased, any costs the contractor incurs before the increase)that are in excess of:
 - (1) the amount previously allotted by the judiciary or;
 - (2) if this is a cost-sharing contract, the amount previously allotted by the judiciary to the contract plus the contractor's corresponding share, will be allowable to the same extent as if incurred afterward, unless the contracting officer issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.
- (j) Change orders will not be considered an authorization to exceed the amount allotted by the judiciary specified in the schedule, unless they contain a statement increasing the amount allotted.
- (k) Nothing in this clause will affect the right of the judiciary to terminate this contract. If this contract is terminated, the judiciary and the contractor will negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

- (1) If the judiciary does not allot sufficient funds to allow completion of the work, the contractor is entitled to a percentage of the fee specified in the schedule equaling the percentage of completion of the work contemplated by this contract.
(end)

JP3 Clause 4-95, Price Reduction for Defective Cost or Pricing Data

As prescribed in 4.5.5.(1), the contracting officer will insert this clause in Section I.

Price Reduction for Defective Cost or Pricing Data (JAN 2003)

- (a) If any price, including profit or fee, negotiated in connection with this contract, or modification to this contract, or any cost reimbursable under this contract, was increased by any significant amount because:
 - (1) the contractor or subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;
 - (2) a subcontractor or prospective subcontractor furnished the contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or
 - (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract will be modified to reflect the reduction.
- (b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract will be limited to the amount, plus applicable overhead and profit markup, by which:
 - (1) the actual subcontract; or
 - (2) the actual cost to the contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the contractor; provided that the actual subcontract price was not itself affected by defective cost or pricing data).
- (c)
 - (1) If the contracting officer determines under paragraph (a) of this clause that a price or cost reduction shall be made, the contractor agrees not to raise the following matters as a defense:
 - (i) the contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted;
 - (ii) the contracting officer shall have known that the cost or pricing data in issue were defective even though the contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the contracting officer;

- (iii) the contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract; or
 - (iv) the contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (2) (i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the contracting officer based upon the facts will be allowed against the amount of a contract price reduction if:
- (A) the contractor certifies to the contracting officer that, to the best of the contractor's knowledge and belief, the contractor is entitled to the offset in the amount requested; and
 - (B) the contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.
- (ii) An offset will not be allowed if:
- (A) the understated data were known by the contractor to be understated before the "as of date" specified on its Certificate of Current Cost or Pricing Data; or
 - (B) the judiciary proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.
- (d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the contractor shall be liable to and shall pay the United States at the time such overpayment is repaid:
- (1) simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the contractor to the date the judiciary is repaid by the contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of Treasury under 26 U.S.C. 6621(a)(2); and
 - (2) a penalty equal to the amount of the overpayment, if the contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

(end)

JP3 Clause 4-100, Price Reduction for Defective Cost or Pricing Data - Modifications

As prescribed in 4.5.5.(2), the contracting officer will insert this clause in Section I.

Price Reduction for Defective Cost or Pricing Data - Modifications (JAN 2003)

- (a) This clause will become operative only for any modification to this contract involving a pricing adjustment only when a request for cost or pricing data was necessary for the contracting officer to determine price reasonableness.
- (b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because:
 - (1) the contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;
 - (2) a subcontractor or prospective subcontractor furnished the contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or
 - (3) any of these parties furnished data of any description that were not accurate, the price or cost will be reduced accordingly and the contract will be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.
- (c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which:
 - (1) the actual subcontract; or
 - (2) the actual cost to the contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
- (d) (1) If the contracting officer determines under paragraph (b) of this clause that a price or cost reduction shall be made, the contractor agrees not to raise the following matters as a defense:
 - (i) the contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted;
 - (ii) the contracting officer shall have known that the cost or pricing data in issue were defective even though the contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the contracting officer;
 - (iii) the contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract;
 - (iv) the contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

- (2) (i) Except as prohibited by paragraph (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the contracting officer based upon the facts will be allowed against the amount of a contract price reduction if:
 - (A) the contractor certifies to the contracting officer that, to the best of the contractor's knowledge and belief, the contractor is entitled to the offset in the amount requested; and
 - (B) the contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.
- (ii) An offset will not be allowed if:
 - (A) the understated data were known by the contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or
 - (B) the judiciary proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.
- (e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the contractor shall be liable to and shall pay the United States at the time such overpayment is repaid:
 - (1) simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the contractor to the date the judiciary is repaid by the contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. § 6621(a)(2); and
 - (2) a penalty equal to the amount of the overpayment, if the contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

(end)

JP3 Clause 4-105, Integrity of Unit Prices

As prescribed in 4.5.5.(3), the contracting officer will insert this clause in Section I.

Integrity of Unit Prices (JAN 2003)

- (a) Any offer submitted for the negotiation of prices for items of products shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (e.g., manufacturing or procurement costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation

in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.

- (b) When requested by the contracting officer, the offeror/contractor shall also identify those products that it will not manufacture or to which it will not contribute significant value.
- (c) The contractor shall insert the substance of this clause, less paragraph (b), in all subcontracts for other than: procurements at or below the judiciary's small purchase threshold; architect-engineer services; utility services; services where products are not required; commercial items; and petroleum products.

(end)

JP3 Provision 4-110, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data

As prescribed in 4.5.5.(4), the contracting officer will insert this clause in Section L.

Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data (JAN 2003)

- (a) *Exceptions from cost or pricing data*
 - (1) In lieu of submitting cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following paragraphs. The contracting officer may require additional supporting information, but only to the extent necessary to determine whether an exception shall be granted, and whether the price is fair and reasonable.
 - (i) *Identification of the law or regulation establishing the price offered* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.
 - (ii) *Commercial item exception* For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this procurement. Such information may include:
 - (A) for catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the offer is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities;

- (B) for market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market;
 - (C) for items included on an active federal supply service multiple award schedule contract, proof that an exception has been granted for the schedule item.
- (2) The offeror grants the contracting officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or marketplace.
- (b) *Requirements for cost or pricing data* If the offeror is not granted an exception from the requirement to submit cost or pricing data, the following applies:
- (1) the offeror shall prepare and submit cost or pricing data and supporting attachments;
 - (2) as soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data.

Alternate I *The contracting officer may insert this provision if it is reasonably certain that cost or pricing data or information other than cost or pricing data will be required. Replace the text of the basic provision with the following:*

- (a) Submission of cost or pricing data is not required.
- (b) Provide information described below: [*Contracting officer inserts description of the information and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price.*]
(end)

JP3 Clause 4-115, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data-Modifications

As prescribed in 4.5.5.(5), the contracting officer will insert this clause and appropriate Alternate(s) in Section I.

Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data-Modifications (JAN 2003)

- (a) *Exceptions from cost or pricing data*

- (1) In lieu of submitting cost or pricing data for modifications under this contract, the contractor may submit a written request for exception by submitting the information described in the following paragraphs. The contracting officer may require additional supporting information, but only to the extent necessary to determine whether an exception shall be granted, and whether the price is fair and reasonable:
 - (i) *Identification of the law or regulation establishing the price offered* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.
 - (ii) *Information on modifications of contracts or subcontracts for commercial items*
 - (A) If:
 - (1) the original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition or prices set by law or regulation, or was a contract or subcontract for the procurement of a commercial item; and
 - (2) the modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the procurement of a commercial item to a contract or subcontract for the procurement of an item other than a commercial item.
 - (B) For a commercial item exception, the contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include:
 - (1) for catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the offer is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities;

- (2) for market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market;
- (3) for items included on an active federal supply service multiple award schedule contract, proof that an exception has been granted for the schedule item.
- (2) The contractor grants the contracting officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the contractor's determination of the prices to be offered in the catalog or marketplace.
- (b) *Requirements for cost or pricing data* If the contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:
 - (1) the contractor shall submit cost or pricing data and supporting attachments;
 - (2) as soon as practicable after agreement on price, but before award (except for unpriced actions), the contractor shall submit a Certificate of Current Cost or Pricing Data.

Alternate I *The contracting officer may insert this provision if it is reasonably certain that cost or pricing data or information other than cost or pricing data will be required. Replace the text of the basic provision with the following:*

- (a) Submission of cost or pricing data is not required.
- (b) Provide information described below: [*Contracting officer inserts description of the information and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price.*]
(end)

JP3 Provision 4-120, Cost Accounting Standards Notices and Certification

As prescribed in 4.6.2.g.(1), the contracting officer will insert this provision in Section K.

Cost Accounting Standards Notices and Certification (JAN 2003)

Note: This notice does not apply to small businesses or foreign governments. This notice is in three parts, identified by Roman numerals I through III.

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

If the offeror is an educational institution, Part II does not apply unless the contemplated contract will be subject to full or modified CAS coverage pursuant to 48 CFR 9903.201-2(c)(5) or 9903.201-2(c)(6), respectively.

I. DISCLOSURE STATEMENT-COST ACCOUNTING PRACTICES AND CERTIFICATION

- (a) When a contracting officer requires certified cost and pricing data, on an offer resulting from this solicitation will be subject to the requirements of the Cost Accounting Standards Board (48 CFR Chapter 99), except for those contracts which are exempt as specified in 48 CFR 9903.201-1.
- (b) Any offeror submitting an offer which, if accepted, will result in a contract subject to the requirements of 48 CFR Chapter 99 shall, as a condition of contracting, submit a Disclosure Statement as required by 48 CFR 9903.202. When required, the Disclosure Statement shall be submitted as a part of the offer under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this offer. If an applicable Disclosure Statement has already been submitted, the offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

Caution: In the absence of specific regulations or agreement, a practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing offers or accumulating and reporting contract performance cost data.

- (c) Check the appropriate box below:

(1) *Certificate of Concurrent Submission of Disclosure Statement* The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows:

- (i) Original and one copy to the contracting officer

Date of Disclosure Statement: _____

Name and Address of contracting officer where filed:

The offeror further certifies that the practices used in estimating costs in pricing this offer are consistent with the cost accounting practices disclosed in the Disclosure Statement.

(2) *Certificate of Previously Submitted Disclosure Statement* The offeror hereby certifies that the required Disclosure Statement was filed as follows:

Date of Disclosure Statement: _____

Name and Address of contracting officer where filed:

The offeror further certifies that the practices used in estimating costs in pricing this offer are consistent with the cost accounting practices disclosed in the applicable Disclosure Statement.

- (3) *Certificate of Monetary Exemption* The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling \$50 million or more in the cost accounting period immediately preceding the period in which this offer was submitted. The offeror further certifies that if such status changes before an award resulting from this offer, the offeror will advise the contracting officer immediately.
- (4) *Certificate of Interim Exemption* The offeror hereby certifies that (i) the offeror first exceeded the monetary exemption for disclosure, as defined in (3) of this subsection, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with 48 CFR 9903.202-1, the offeror is not yet required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this offer has not been made within 90 days after the end of that period, the offeror will immediately submit a revised certificate to the contracting officer, in the form specified under paragraph (c)(1) or (c)(2) of Part I of this provision, as appropriate, to verify submission of a completed Disclosure Statement.

Caution: Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of \$50 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with offers submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

II. COST ACCOUNTING STANDARDS-ELIGIBILITY FOR MODIFIED CONTRACT COVERAGE

If the offeror is eligible to use the modified provisions of 48 CFR 9903.201-2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below will mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

- The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 48 CFR 9903.201-2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices

clause because during the cost accounting period immediately preceding the period in which this offer was submitted, the offeror received less than \$50 million in awards of CAS-covered prime contracts and subcontracts. The offeror further certifies that if such status changes before an award resulting from this offer, the offeror will advise the contracting officer immediately.

Caution: An offeror may not claim the above eligibility for modified contract coverage if this offer is expected to result in the award of a CAS-covered contract of \$50 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of \$50 million or more.

III. ADDITIONAL COST ACCOUNTING STANDARDS APPLICABLE TO EXISTING CONTRACTS

The offeror shall indicate below whether award of the contemplated contract would, in accordance with paragraph (a)(3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

___ yes
___ no

(end)

JP3 Clause 4-125, Cost Accounting Standards

As prescribed in 4.6.2.g.(2), the contracting officer will insert this clause in Section I.

Cost Accounting Standards (JAN 2003)

- (a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR part 9903 are incorporated herein by reference and the contractor, in connection with this contract, shall:
- (1) *(CAS-covered contracts only)* by submission of a Disclosure Statement, disclose in writing the contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the contractor and which contain a Cost Accounting Standards (CAS) clause. If the contractor has notified the contracting officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the judiciary;

- (2) follow consistently the contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change shall be applied prospectively to this contract and the Disclosure Statement shall be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment will be made in accordance with paragraph (a)(4) or (a)(5) of this clause, as appropriate;
 - (3) comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR part 9904, in effect on the date of award of this contract or, if the contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the contractor's signed certificate of current cost or pricing data. The contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract;
 - (4)
 - (i) agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to paragraph (a)(3) of this clause, the contractor is required to make to the contractor's established cost accounting practices;
 - (ii) negotiate with the contracting officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of paragraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States;
 - (iii) when the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract;
 - (5) agree to an adjustment of the contract price or cost allowance, as appropriate, if the contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment will provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. § 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case will the judiciary recover costs greater than the increased cost to the judiciary, in the aggregate, on the relevant contracts subject to the price adjustment, unless the contractor made a change in its cost accounting practices of which it was aware or shall have been aware at the time of price negotiations and which it failed to disclose to the judiciary.
- (b) If the parties fail to agree whether the contractor or a subcontractor has complied with an applicable CAS in 48 CFR 9904 or a CAS rule or regulation in 48 CFR 9903 and as to

- any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. § 601).
- (c) The contractor shall permit any authorized representatives of the judiciary to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.
 - (d) The contractor shall include in all negotiated subcontracts which the contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause as set forth in JP3 Chapter 4, shall be inserted. This requirement shall apply only to negotiated subcontracts when the contracting officer requires certified cost and pricing data, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(end)

JP3 Clause 4-130, Disclosure and Consistency of Cost Accounting Practices

As prescribed in 4.6.2.g.(3), the contracting officer will insert this clause in Section I.

Disclosure and Consistency of Cost Accounting Practices (JAN 2003)

- (a) The contractor, in connection with this contract, shall:
 - (1) comply with the requirements of 48 CFR 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; 48 CFR 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 48 CFR 9904.405, Accounting for Unallowable Costs; and 48 CFR 9904.406, Cost Accounting Standard - Cost Accounting Period, in effect on the date of award of this contract as indicated in 48 CFR part 9904;
 - (2) (*CAS-covered contracts only*) if it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5. If the contractor has notified the contracting officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the judiciary;
 - (3) (i) follow consistently the contractor's cost accounting practices. A change to such practices may be proposed, however, by either the judiciary or the contractor, and the contractor agrees to negotiate with the contracting officer the terms and conditions under which a change may be made.

- After the terms and conditions under which the change is to be made have been agreed to, the change shall be applied prospectively to this contract, and the Disclosure Statement, if affected, shall be amended accordingly;
- (ii) the contractor shall, when the parties agree to a change to a cost accounting practice and the contracting officer has made the finding required in 48 CFR 9903.201-6(b), that the change is desirable and not detrimental to the interests of the judiciary, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the United States.
- (4) agree to an adjustment of the contract price or cost allowance, as appropriate, if the contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the annual rate of interest established under the Internal Revenue Code of 1986 (26 U.S.C. § 6621), from the time the payment by the United States was made to the time the adjustment is effected.
- (b) If the parties fail to agree whether the contractor has complied with an applicable CAS, rule, or regulation as specified in 48 CFR 9903 and 9904 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. § 601).
 - (c) The contractor shall permit any authorized representatives of the judiciary to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.
 - (d) The contractor shall include in all negotiated subcontracts, which the contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that:
 - (1) if the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in JP3 Chapter 4 shall be inserted;
 - (2) this requirement shall apply only to negotiated subcontracts when the contracting officer requires certified cost and pricing data;
 - (3) the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.
- (end)

JP3 Clause 4-135, Cost Accounting Standards - Educational Institution

As prescribed in 4.6.2.g.(4), the contracting officer will insert this clause in Section I.

Cost Accounting Standards - Educational Institution (JAN 2003)

- (a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR 9903 are incorporated herein by reference and the contractor, in connection with this contract, shall:
- (1) (*CAS-covered contracts only*) if a business unit of an educational institution required to submit a Disclosure Statement, disclose in writing the contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for accumulating and allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the contractor and which contain a Cost Accounting Standards (CAS) clause. If the contractor has notified the contracting officer that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the judiciary;
 - (2) follow consistently the contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change shall be applied prospectively to this contract and the Disclosure Statement, if required, shall be amended accordingly. If an accounting principle change mandated under Office of Management and Budget (OMB) Circular A21, Cost Principles for Educational Institutions, requires that a change in the contractor's cost accounting practices be made after the date of this contract award, the change shall be applied prospectively to this contract and the Disclosure Statement, if required, shall be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with paragraph (a)(4) or (a)(5) of this clause, as appropriate;
 - (3) comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR 9905 in effect on the date of award of this contract or, if the contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the contractor's signed certificate of current cost or pricing data. The contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract;
 - (4)
 - (i) agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to paragraph (a)(3) of this clause, the contractor is required to make to the contractor's established cost accounting practices;
 - (ii) negotiate with the contracting officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of paragraph

- (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States;
 - (iii) when the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) or (a)(4)(iv) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract;
 - (iv) agree to an equitable adjustment as provided in the Changes clause of this contract, if the contract cost is materially affected by an OMB Circular A21 accounting principle amendment which, on becoming effective after the date of contract award, requires the contractor to make a change to the contractor's established cost accounting practices;
- (5) agree to an adjustment of the contract price or cost allowance, as appropriate, if the contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. § 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the judiciary recover costs greater than the increased cost to the judiciary, in the aggregate, on the relevant contracts subject to the price adjustment, unless the contractor made a change in its cost accounting practices of which it was aware or shall have been aware at the time of price negotiations and which it failed to disclose to the judiciary.
- (b) If the parties fail to agree whether the contractor or a subcontractor has complied with an applicable CAS or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. § 601).
 - (c) The contractor shall permit any authorized representatives of the judiciary to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.
 - (d) The contractor shall include in all negotiated subcontracts which the contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS in effect on the subcontractor's award date or, if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, except that:
 - (1) if the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 48 CFR 9903.201-4 shall be inserted;
 - (2) this requirement shall apply only to negotiated subcontracts when the contracting officer requires certified cost and pricing data; and
 - (3) the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(end)

JP3 Clause 4-140, Predetermined Indirect Cost Rates

As prescribed in 4.6.2.g.(5), the contracting officer will insert this clause in Section I.

Predetermined Indirect Cost Rates (JAN 2003)

- (a) Notwithstanding the Allowable Cost and Payment clause of this contract, the allowable indirect costs under this contract shall be obtained by applying predetermined indirect cost rates to bases agreed upon by the parties, as specified below.
- (b)
 - (1) The contractor shall submit an adequate final indirect cost rate offer to the contracting officer and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the contractor and granted in writing by the contracting officer. The contractor shall support its offer with adequate supporting data.
 - (2) The proposed rates shall be based on the contractor's actual cost experience for that period. The appropriate judiciary representative and the contractor shall establish the final indirect cost rates as promptly as practical after receipt of the contractor's offer.
- (c) Allowability of costs and acceptability of cost allocation methods will be determined by the contracting officer.
- (d) Predetermined rate agreements in effect on the date of this contract will be incorporated into the contract schedule. The contracting officer and contractor will negotiate rates for subsequent periods and execute a written indirect cost rate agreement setting forth the results. The agreement will specify:
 - (1) the agreed-upon predetermined indirect cost rates;
 - (2) the bases to which the rates apply;
 - (3) the period for which the rates apply; and
 - (4) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs.The indirect cost rate agreement will not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The agreement is incorporated into this contract upon execution.
- (e) Pending establishment of predetermined indirect cost rates for any fiscal year (or other period agreed to by the parties), the contractor shall be reimbursed either at the rates fixed for the previous fiscal year (or other period) or at billing rates acceptable to the contracting officer, subject to appropriate adjustment when the final rates for that period are established.
- (f) Any failure by the parties to agree on any predetermined indirect cost rates under this clause will not be considered a dispute within the meaning of the Disputes clause. If for any fiscal year (or other period specified in the schedule) the parties fail to agree to

predetermined indirect cost rates, the allowable indirect costs will be obtained by applying final indirect cost rates established in accordance with the Allowable Cost and Payment clause.

- (g) Allowable indirect costs for the period from the beginning of performance until the end of the contractor's fiscal year (or other period specified in the schedule) will be obtained using the predetermined indirect cost rates and the bases shown in the schedule.

(end)

JP3 Clause 4-145, Administration of Cost Accounting Standards

As prescribed in 4.6.2.g.(6), the contracting officer will insert this clause in Section I.

Administration of Cost Accounting Standards (JAN 2003)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the contractor shall take the steps outlined in paragraphs (a) through (g) of this clause:

- (a) Submit to the contracting officer a description of any cost accounting practice change, the total potential impact of the change on contracts containing a CAS clause, and a general dollar magnitude of the change which identifies the potential shift of costs between CAS-covered contracts by contract type (i.e., firm-fixed-price, incentive, cost-plus-fixed fee, etc.) and other contractor business activity. As related to CAS-covered contracts, the analysis shall identify the potential impact on funds of the judiciary as follows:
- (1) for any change in cost accounting practices required in accordance with paragraph (a)(3) and subdivision (a)(4)(i) *JP3* Clause 4-125, "Cost Accounting Standards;" or paragraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of *JP3* Clause 4-135, "Cost Accounting Standards-Educational Institution;" within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring this change;
 - (2) for any change in cost accounting practices proposed in accordance with subdivision (a)(4)(ii) or (iii) of *JP3* Clauses 4-125, "Cost Accounting Standards," and *JP3* Clause 4-135, "Cost Accounting Standards-Educational Institution;" or with paragraph (a)(3) of *JP3* Clause 4-130, "Disclosure and Consistency of Cost Accounting Practices," not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change;
 - (3) for any failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by paragraph (a)(5) at *JP3* Clause 4-125, "Cost Accounting Standards," and *JP3* Clause 4-135, "Cost Accounting Standards-Educational Institution;" or by paragraph (a)(4) at *JP3* Clause 4-130, "Disclosure and Consistency of Cost Accounting Practices)":
 - (i) within 60 days (or such other date as may be mutually agreed to) after the date of agreement with the initial finding of noncompliance, or

- (ii) in the event of contractor disagreement with the initial finding of noncompliance, within 60 days of the date the contractor is notified by the contracting officer of the determination of noncompliance.
- (b) After the contracting officer's determination of materiality, submit a cost impact offer in the form and manner specified by the contracting officer within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) of this clause. The cost impact offer shall be in sufficient detail to permit evaluation, determination, and negotiation of the cost impact upon each separate CAS-covered contract and subcontract.
 - (1) Cost impact offers submitted for changes in cost accounting practices required in accordance with paragraph (a)(3) and subdivision (a)(4)(i) of the *JP3* Clause 4-125, "Cost Accounting Standards;" or paragraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of *JP3* Clause 4-135, "Cost Accounting Standards - Educational Institution;" shall identify the applicable standard or cost principle and all contracts and subcontracts containing the clauses entitled "Cost Accounting Standards" or "Cost Accounting Standards-Educational Institution," which have an award date before the effective date of that standard or cost principle.
 - (2) Cost impact offers submitted for any change in cost accounting practices proposed in accordance with subdivisions (a)(4)(ii) or (iii) of *JP3* Clause "125, Cost Accounting Standards, and *JP3* Clause 4-135, Cost Accounting Standards-Educational Institution;" or with paragraph (a)(3) of the *JP3* Clause 4-130, "Disclosure and Consistency of Cost Accounting Practices;" shall identify all contracts and subcontracts containing *JP3* Clauses 4-125, "Cost Accounting Standards," 4-135, "Cost Accounting Standards-Educational Institution," and 4-130, "Disclosure and Consistency of Cost Accounting Practices."
 - (3) Cost impact offers submitted for failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by paragraph (a)(5) of the *JP3* Clauses at 4-125, "Cost Accounting Standards," and 4-135, "Cost Accounting Standards-Educational Institution;" or by paragraph (a)(4) of the *JP3* Clause at 4-130, "Disclosure and Consistency of Cost Accounting Practices," shall identify the cost impact on each separate CAS covered contract from the date of failure to comply until the noncompliance is corrected.
- (c) If the submissions required by paragraphs (a) and (b) of this clause are not submitted within the specified time, or any extension granted by the contracting officer, an amount not to exceed 10 percent of each subsequent amount determined payable related to the contractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact, may be withheld until such time as the required submission has been provided in the form and manner specified by the contracting officer.
- (d) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with paragraphs (a)(4) and (a)(5) of the *JP3* Clauses 4-125 and 4-135; or with paragraphs (a)(3) or (a)(4) of the "Disclosure and Consistency of Cost Accounting Practices" at *JP3* Clause 4-130.
- (e) For all subcontracts subject to the *JP3* Clauses at 4-120, 4-130, or 4-135:

- (1) so state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used);
 - (2) include the substance of this clause in all negotiated subcontracts; and
 - (3) within 30 days after award of the subcontract, submit the following information to the contractor's contracting officer for transmittal to the contract administration office cognizant of the subcontractor's facility:
 - (i) subcontractor's name and subcontract number;
 - (ii) dollar amount and date of award; and
 - (iii) name of contractor making the award.
- (f) Notify the contracting officer in writing of any adjustments required to subcontracts under this contract and agree to an adjustment, based on them, to this contract price or estimated cost and fee. This notice is due within 30 days after proposed subcontract adjustments are received and shall include a offer for adjusting the higher tier subcontract or the prime contract appropriately.
- (g) For subcontracts containing the *JP3* Clauses 4-125 or 4-135 require the subcontractor to comply with all standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

(end)

JP3 Clause 4-150, Cancellation Under Multi-Year Contracts

As prescribed in 4.1.14.1.(1) insert this clause in Section I of solicitations and contracts.

Cancellation Under Multi-Year Contracts (OCT 2006)

- (a) "Cancellation," as used in this clause, means that the Government is canceling all line items for all products or services in the contract year(s) subsequent to that in which notice of cancellation is provided. Cancellation shall occur by the date or within the time period specified in the contract, unless a later date is agreed to, if the Contracting Officer notifies the Contractor that funds are not available for contract performance for the subsequent contract year(s).
- (b) Except for cancellation under this clause or termination under the Default clause, any reduction by the Contracting Officer in the requirements of this contract shall be considered a termination under the Termination for Convenience of the Government clause.
- (c) If cancellation under this clause occurs, the Contractor will be paid a cancellation charge not over the cancellation ceiling specified in the contract as applicable at the time of cancellation.
- (d) The cancellation charge will cover only –
 - (1) Costs –
 - (i) Incurred by the Contractor and/or subcontractor;

- (ii) Reasonably necessary for performance of the contract; and
 - (iii) That would have been equitably amortized over the entire multi-year contract period but, because of the cancellation, are not so amortized; and
- (2) A reasonable profit or fee on the costs.
- (e) The cancellation charge shall be computed and the claim made for it as if the claim were being made under the Termination for Convenience of the Government clause of this contract. The Contractor shall submit the claim promptly but no later than 1 year from the date –
 - (1) Of notification that funds will not be made available for continued performance; or
 - (2) Specified in the contract by which notification of the availability of additional funds for the next succeeding contract year is required to be issued, whichever is earlier, unless extensions in writing are granted by the Contracting Officer.
- (f) The Contractor's claim may include –
 - (1) Reasonable fixed costs which are applicable to and normally would have been amortized in all products or services which are multi-year requirements;
 - (2) Allocable portions of the costs of facilities acquired or established for the conduct of the work, to the extent that it is impracticable for the Contractor to use the facilities in its commercial work, and if the costs are not charged to the contract through overhead or otherwise depreciated;
 - (3) Costs incurred for the assembly, training, and transportation to and from the job site of a specialized work force; and
 - (4) Costs not amortized solely because the cancellation had precluded anticipated benefits of Contractor or subcontractor learning.
- (g) The claim shall not include –
 - (1) Labor, material, or other expenses incurred by the Contractor or subcontractors for performance of the canceled work;
 - (2) Any cost already paid to the Contractor;
 - (3) Anticipated profit or unearned fee on the canceled work; or
 - (4) For service contracts, the remaining useful commercial life of facilities. "Useful commercial life" means the commercial utility of the facilities rather than their physical life with due consideration given to such factors as location of facilities, their specialized nature, and obsolescence.
- (h) This contract may include an Option clause with the period for exercising the option limited to the date in the contract for notification that funds are available for the next succeeding contract year. If so, the Contractor agrees not to include in option quantities any costs of a startup or fixed nature that have been fully set forth in the contract. The Contractor further agrees that the option quantities will reflect only those variable costs and a reasonable profit or fee necessary to furnish the additional option quantities.
- (i) Quantities added to the original contract through the Option clause of this contract shall be included in the quantity canceled for the purpose of computing allowable cancellation charges.

(end)

JP3 Provision 4-155, Evaluation of Price Proposal – Multi-Year Contract

As prescribed in 4.1.14.1.(4) the contracting officer will insert this clause in Section M.

Evaluation of Price Proposal – Multi-Year Contract (OCT 2006)

In the event that the judiciary determines prior to award that only the first contract year requirements are needed, offers will be evaluated and award made solely on the basis of prices offered on that year’s requirements. The cancellation ceiling shall not be part of the price proposal evaluation.

(end)

JP3 Provision 4-160, Cancellation Period and Ceiling

As prescribed in 4.1.14.1.(5) the contracting officer will insert this clause in Section H.

Cancellation Period and Ceiling (OCT 2006)

The cancellation period referred to in the “Cancellation under Multi-Year Contracts” clause (JP3 2-115) applies to each line item period set forth in Section B, at the quantities as set forth in Section B for each contract year. The cancellation ceilings are set forth below:

<u>Contract Year</u>	<u>Cancellation Period*</u>	<u>Cancellation Ceiling*</u>
Contract Year 2	_____	_____
Contract Year 3	_____	_____
Contract Year 4	_____	_____
Contract Year 5	_____	_____

* To be completed by Offeror

(end)

JP3 Provision 4-165, Price Proposal Instruction – Multi-Year Contract

As prescribed in 4.1.14.1.(6) the contracting officer will insert this clause in Section L.

Price Proposal Instruction – Multi-Year Contract (OCT 2006)

As indicated in Section H, offerors are instructed to provide a separate cancellation ceiling (on either a percentage or dollar basis) for each contract year subject to cancellation. Price proposals must include the rationale and supporting data for each proposed cancellation ceiling. If actual cancellation occurs after contract award, the Contractor will be required to submit a claim with

supporting data which will be subject to negotiation. The amounts established in Section H are merely ceilings.

(end)

JP3 Clause 5-1, Payments under Personal and Professional Services Contracts

As prescribed in 5.1.1.f and 5.2.1.o.(3), insert the following clause in Section I of the solicitation and contract.

Payments under Personal and Professional Services Contracts (AUG 2004)

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

(end)

JP3 Clause 5-5, Non-disclosure (Professional Services)

As prescribed in 5.2.1.o.(4), insert this clause in Section I of the solicitation and contract.

Non-disclosure (Professional Services) (JAN 2003)

The contractor acknowledges that confidential information might be generated or made available during the course of performance of this agreement. In addition to the restrictions on disclosure established under the contractor's code of ethics, the contractor specifically agrees not to disclose any information received or generated under this contract, unless its release is approved in writing by the contracting officer. The contractor further agrees to assert any privilege allowed by law and to defend vigorously judiciary rights to confidentiality.

(end)

JP3 Clause 5-10, Inspection of Professional Service

As prescribed in 5.2.1.o.(5), insert this clause in Section E of the solicitation and contract.

Inspection of Professional Service (JAN 2003)

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

(end)

JP3 Clause 5-20, Records Ownership

As prescribed in 5.2.1.o.(7), insert this clause in Section I of the solicitation and contract.

Records Ownership (JAN 2003)

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

(end)

JP3 Provision 5-25, Identification of Uncompensated Overtime

As prescribed in 5.2.1.o.(8), insert this provision in Section L of the solicitation.

Identification of Uncompensated Overtime (JAN 2003)

- (a) *Definitions* As used in this provision:
"Uncompensated overtime" means the hours worked without additional compensation in excess of an average of 40 hours per week by direct charge employees who are exempt from the Fair Labor Standards Act. Compensated personal absences such as holidays,

vacations, and sick leave shall be included in the normal work week for purposes of computing uncompensated overtime hours.

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

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

(end)

JP3 Clause 5-30, Authorization and Consent

As prescribed in 5.3.7.g.(1) insert this clause in Section I of solicitations and contracts.

Authorization and Consent (JAN 2003)

- (a) The judiciary authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the judiciary under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the contracting officer directing the manner of performance. The entire liability to the judiciary for infringement of a patent of the United States will be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the judiciary assumes liability for all other infringement to the extent of the authorization and consent herein above granted.
- (b) The contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for products or services (including

construction, architect-engineer services, and materials, products, models, samples, and design or testing services expected to exceed the judiciary's small purchase threshold); however, omission of this clause from any subcontract, including those at or below the judiciary's small purchase threshold, does not affect this authorization and consent.

Alternate I *The following is substituted for paragraph (a) of the clause:*

- (a) The judiciary authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.

Alternate II *The following is substituted for paragraph (a) of the clause:*

- (a) The judiciary authorizes and consents to all use and manufacture in the performance of any order at any tier or subcontract at any tier placed under this contract for communication services and facilities for which rates, charges, and tariffs are not established by a judiciary regulatory body, of any invention described in and covered by a United States patent:
 - (1) embodied in the structure or composition of any article the delivery of which is accepted by the judiciary under this contract; or
 - (2) used in machinery, tools, or methods whose use necessarily results from compliance by the contractor or a subcontractor with specifications or written provisions forming a part of this contract or with specific written instructions given by the contracting officer directing the manner of performance.

(end)

JP3 Clause 5-35, Payments Under Fixed-Price Architect-Engineer Contracts

As prescribed in 5.3.7.g.(2), insert this clause in Section I of solicitations and contracts.

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

- (a) Estimates shall be made monthly of the amount and value of the work and services performed by the contractor under this contract which meet the standards of quality established under this contract. The estimates shall be prepared by the contractor and accompanied by any supporting data required by the contracting officer.
- (b) Upon written approval of the estimate by the contracting officer, payment upon properly executed vouchers will be made to the contractor, as soon as practicable, of 90 percent of the written approved amount, less all previous payments; *provided*, that payment may be made in full during any months in which the contracting officer determines that performance has been satisfactory. Also, whenever the contracting officer determines that the work is substantially complete and that the amount retained is in excess of the

- amount adequate for the protection of the judiciary, the contracting officer may release the excess amount to the contractor.
- (c) Upon satisfactory completion by the contractor and acceptance by the contracting officer of the work done by the contractor under the "Statement of Architect-Engineer Services," the contractor will be paid the unpaid balance of any money due for work under the statement, including retained percentages relating to this portion of the work. Upon satisfactory completion and final acceptance of the construction work, the contractor shall be paid any unpaid balance of money due under this contract.
 - (d) Before final payment under the contract, or before settlement upon termination of the contract, and as a condition precedent thereto, the contractor shall execute and deliver to the contracting officer a release of all claims against the judiciary arising under or by virtue of this contract, other than any claims that are specifically excepted by the contractor from the operation of the release in amounts stated in the release.
 - (e) Notwithstanding any other provision in this contract, and specifically paragraph (b) of this clause, progress payments will not exceed 80 percent on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract including contract modifications for additional products or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(end)

JP3 Clause 5-40, RESERVED

JP3 Clause 5-45, Design Within Funding Limitations

As prescribed in 5.3.7.g.(4), insert this clause in Section I of solicitations and contracts. The contracting officer will fill in the dollar amount in (c).

Design Within Funding Limitations (JAN 2003)

- (a) The contractor shall accomplish the design services required under this contract so as to permit the award of a contract, using standard judiciary procedures for the construction of the facilities designed at a price that does not exceed the estimated construction contract price as set forth in paragraph (c) of this clause. When offers for the construction contract are received that exceed the estimated price, the contractor shall perform such redesign and other services as are necessary to permit contract award within the funding limitation. These additional services shall be performed at no increase in the price of this contract. However, the contractor shall not be required to perform such additional services at no cost to the judiciary if the unfavorable offers are the result of conditions beyond its reasonable control.

- (b) The contractor will promptly advise the contracting officer if it finds that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within these limitations. Upon receipt of such information, the contracting officer will review the contractor's revised estimate of construction cost. The judiciary may, if it determines that the estimated construction contract price set forth in this contract is so low that award of a construction contract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth in paragraph (c) of this clause, or the judiciary may adjust such estimated construction contract price. When offers are not solicited or are unreasonably delayed, the judiciary will prepare an estimate of constructing the design submitted and such estimate will be used in lieu of offers to determine compliance with the funding limitation.
- (c) The estimated construction contract price for the project described in this contract is \$_____.

(end)

JP3 Clause 5-50, Responsibility of the Architect-Engineer Contractor

As prescribed in 5.3.7.g.(5), insert this clause in Section I of solicitations and contracts.

Responsibility of the Architect-Engineer Contractor (JAN 2003)

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

(end)

JP3 Clause 5-55, Work Oversight in Architect-Engineer Contracts

As prescribed in 5.3.7.g.(6), insert this clause in Section I of solicitations and contracts.

Work Oversight in Architect-Engineer Contracts (JAN 2003)

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

(end)

JP3 Clause 5-60, Requirements for Registration of Designers

As prescribed in 5.3.7.g.(7), insert this clause in Section I of solicitations and contracts.

Requirements for Registration of Designers (AUG 2004)

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

(end)

JP3 Clause 5-65, Subcontractors and Outside Associates and Consultants (Architect-Engineer Services)

As prescribed in 5.3.7.g.(8), insert this clause in Section I of solicitations and contracts.

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

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

(end)

JP3 Clause 5-70, Termination (Fixed-Price Architect-Engineer)

As prescribed in 5.3.7.g.(9), insert this clause in Section I of solicitations and contracts.

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

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

(end)

JP3 Clause 5-75, Suspensions and Delays

As prescribed in 5.3.7.g.(10), insert this clause in Section F of solicitations and contracts.

Suspensions and Delays (JAN 2003)

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

(end)

JP 3 Clause 6-1, Performance Bond Requirements

As prescribed in 6.1.2.c.(1), insert this clause in Section I of solicitations and contracts. If the penal amount is less than 100 percent of the contract price, the clause will be modified accordingly.

Performance Bond Requirements (JAN 2003)

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

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

As prescribed in 6.1.2.c.(2), alter clause 6-1, by inserting Alternate I as follows. Then insert the altered clause in Section I of solicitations and contracts. If the penal amount is less than 100 percent of the contract price, the clause will be modified accordingly.

Alternate I *Substitute the following paragraphs (b) and (d) for paragraphs (b) and (d) of the basic clause:*

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

JP3 Provision 6-5, Fidelity Bond Requirements

As prescribed in 6.1.4., insert this clause in Section L of the solicitations.

Fidelity Bond Requirements (JAN 2003)

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

(end)

JP3 Provision 6-10, Deposit of Assets Requirements

As prescribed in 6.2.2.e.(1), insert this provision in Section L of the solicitation.

Deposit of Assets Requirements (JAN 2003)

- (a) Any offeror required to submit a surety bond as a result of this solicitation may instead deposit assets in a form acceptable to the judiciary in an amount set forth in the schedule.
- (b) When assets are deposited, the offeror shall execute a bond in a form as specified in this solicitation. Failure to deposit assets acceptable to the judiciary may be cause for termination of the contract for default.

(end)

JP3 Clause 6-15, Deposit of Assets Instead of Surety Bonds

As prescribed in 6.2.2.e.(2), insert this clause in Section I of the solicitation and contract .

Deposit of Assets Instead of Surety Bonds (JAN 2003)

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

(end)

JP3 Clause 6-20, Insurance - Work on a Judiciary Installation

As prescribed in 6.3.2.c.(1), insert this clause in Section I of solicitations and contracts.

Insurance - Work on a Judiciary Installation (JAN 2003)

- (a) The contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the schedule or elsewhere in the contract.
- (b) Before commencing work under this contract, the contractor shall notify the contracting officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the judiciary's interest shall not be effective:
 - (1) for such period as the laws of the state in which this contract is to be performed prescribe; or
 - (2) until 30 days after the insurer or the contractor gives written notice to the contracting officer, whichever period is longer.
- (c) The contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a judiciary installation and shall require subcontractors to provide and maintain the insurance required in the schedule or elsewhere in the contract. The contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the contracting officer upon request.

(end)

JP3 Clause 6-25, Insurance - Liability to Third Persons

As prescribed in 6.3.2.c.(2), insert this clause in Section I of solicitations and contracts.

Insurance - Liability to Third Persons (JAN 2003)

- (a) (1) Except as provided in paragraph (a)(2) of this clause, the contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the contracting officer may require under this contract.
- (2) The contractor may, with the written approval of the contracting officer, maintain a self-insurance program, provided that, with respect to workers' compensation, the contractor is qualified pursuant to statutory authority.
- (3) All insurance required by this paragraph shall be in a form and amount and for those periods as the contracting officer may require or approve and with insurers approved in writing by the contracting officer.
- (b) The contractor agrees to submit for the contracting officer's written approval, to the extent and in the manner required by the contracting officer, any other insurance that is maintained by the contractor in connection with the performance of this contract and for which the contractor seeks reimbursement.
- (c) The contractor shall be reimbursed:
 - (1) for that portion:
 - (i) of the reasonable cost of insurance allocable to this contract; and
 - (ii) required or approved in writing under this clause; and
 - (2) for certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or the limitation of funds clause of this contract. These liabilities shall arise out of the performance of this contract, whether or not caused by the negligence of the contractor or of the contractor's agents, servants, or employees, and shall be represented by final judgments or settlements approved in writing by the judiciary. These liabilities are for:
 - (i) loss of or damage to property (other than property owned, occupied, or used by the contractor, rented to the contractor, or in the care, custody, or control of the contractor); or
 - (ii) death or bodily injury.
- (d) The judiciary's liability under paragraph (c) of this clause is subject to the availability of appropriated funds at the time a contingency occurs. Nothing in this contract will be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.
- (e) The contractor will not be reimbursed for liabilities (and expenses incidental to such liabilities):

- (1) for which the contractor is otherwise responsible under the express terms of any clause specified in the schedule or elsewhere in the contract;
 - (2) for which the contractor has failed to insure or to maintain insurance as required by the contracting officer; or
 - (3) that result from willful misconduct or lack of good faith on the part of any of the contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of:
 - (i) all or substantially all of the contractor's business;
 - (ii) all or substantially all of the contractor's operations at any one plant or separate location in which this contract is being performed; or
 - (iii) a separate and complete major industrial operation in connection with the performance of this contract.
- (f) The provisions of paragraph (e) of this clause will not restrict the right of the contractor to be reimbursed for the cost of insurance maintained by the contractor in connection with the performance of this contract, other than insurance required in accordance with this clause; *provided*, that such cost is allowable under the “Allowable Cost and Payment” clause (JP3 Clause 4-60) of this contract.
- (g) If any suit or action is filed or any claim is made against the contractor, the cost and expense of which may be reimbursable to the contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the contractor shall:
- (1) immediately notify the contracting officer and promptly furnish copies of all pertinent papers received;
 - (2) authorize judiciary representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and
 - (3) authorize judiciary representatives to settle or defend the claim and to represent the contractor in or to take charge of any litigation, if required by the judiciary, when the liability is not insured or covered by bond. The contractor may, at its own expense, be associated with the judiciary representatives in any such claim or litigation.

(end)

JP3 Clause 6-30, Insurance

As prescribed in 6.3.2.c.(3), insert this clause in Section I of solicitations and contracts.

Insurance (JAN 2003)

- (a) The contractor shall carry and maintain, during the entire period of performance under this contract, adequate insurance as follows:

Workman's Compensation and Employee's Liability Insurance Contractors are required to comply with applicable federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy.

Employer's liability coverage of at least \$100,000 per incident is required.

Automobile Liability Insurance The contractor is required to have coverage at a minimum of \$200,000 per person; \$500,000 per occurrence for bodily injury; and \$20,000 per occurrence for property damage.

General Liability Insurance The contractor is required to have coverage at a minimum of \$200,000 per person and \$500,000 per occurrence for death or bodily injury and \$20,000 per occurrence for property damage.

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

- (b) Upon request, the contractor shall provide the following information to the contracting officer prior to beginning performance under this contract: 1) insurance carrier certification of the above minimum amounts, and 2) evidence of a commitment by the insurance carrier to notify the contracting officer in writing of any material change, expiration, or cancellation of any of the insurance policies required hereunder not less than 30 days before such change, expiration or cancellation is effective.
- (c) The maintenance of insurance coverage as required by this clause is a continuing obligation, and the lapse or termination of insurance coverage without replacement coverage being obtained will be grounds for termination for default.

(end)

JP3 Clause 6-35, Errors and Omissions

As prescribed in 6.3.4.e., insert this clause in Section I of solicitations and contracts.

Errors and Omissions (JAN 2003)

- (a) The contractor warrants that it is insured for \$200,000 (unless a different amount is set forth in the schedule) for errors and omissions per claim in an amount in excess of the minimum set forth in the schedule in the performance of this contract.
- (b) Unless the contractor's policy is prepaid, noncancellable, and issued for a period at least equal to the term of this contract on an occurrence basis, the contractor shall have the policy amended to include substantially the following provision:
 "It is a condition of this policy that the company furnish written notice to the _____ (fill in the name of the finance office for the individual court unit, federal public defender organization, or the Administrative Office, whichever required the insurance) 30 days in

advance of the effective date of any reduction in or cancellation of this policy."

- (c) The contractor shall furnish a certificate of insurance or, if required by the contracting officer, true copies of liability policies and manually countersigned endorsements of any changes. Insurance shall be effective, and evidence of acceptable insurance furnished, before beginning performance under this contract. Evidence of renewal shall be furnished not later than five days before a policy expires.

(end)

JP3 Clause 6-40, Federal, State, and Local Taxes

As prescribed in 6.4.3.d.(2) and 6.4.4.(1), insert this clause in Section I of solicitations and contracts.

Federal, State, and Local Taxes (JAN 2003)

- (a) "Contract date" means the effective date of this contract or modification.
"All applicable federal, state, and local taxes and duties," as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.
"After-imposed federal tax," as used in this clause, means any new or increased federal excise tax or duty, or tax that was exempted on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.
"After-relieved federal tax," as used in this clause, means any amount of federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the contractor is not required to pay or bear, or for which the contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.
"Local taxes," as used in this clause, means any taxes that a local governing organization (i.e. city or county) taxing authority is imposing and collecting on the transactions or property covered by this contract.
- (b) The contract price includes all applicable federal, state, and local taxes and duties.
- (c) The contract price shall be increased by the amount of any after-imposed federal tax, provided the contractor warrants in writing that no amount for such newly imposed federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.
- (d) The contract price shall be decreased by the amount of any after-relieved federal tax.

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

(end)

JP3 Clause 6-45, Federal, State, and Local Taxes (Noncompetitive Contract)

As prescribed in 6.4.3.d.(2) and 6.4.4.(2), insert this clause in Section I of solicitations and contracts.

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

- (a) "Contract date," as used in this clause, means the effective date of this contract and, for any modification to this contract, the effective date of the modification.
"All applicable federal, state, and local taxes and duties," as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.
"After-imposed tax," as used in this clause, means any new or increased federal, state, or local tax or duty, or tax that was excluded on the contract date but whose exclusion was later revoked or amount of exemption reduced during the contract period, other than an excepted tax, on the transactions or property covered by this contract that the contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date.
"After-relieved tax," as used in this clause, means any amount of federal, state, or local tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this contract, but which the contractor is not required to pay or bear, or for which the contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.
"Excepted tax," as used in this clause, means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. "Excepted tax" does not include gross income taxes levied on or measured by sales or receipts from sales,

property taxes assessed on completed products covered by this contract, or any tax assessed on the contractor's possession of, interest in, or use of property, title to which is in the judiciary.

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

- (b) Unless otherwise provided in this contract, the contract price includes all applicable federal, state, and local taxes and duties.
- (c) The contract price shall be increased by the amount of any after-imposed tax, or of any tax or duty specifically excluded from the contract price by a term or condition of this contract that the contractor is required to pay or bear, including any interest or penalty, if the contractor states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the contractor's fault, negligence, or failure to follow instructions of the contracting officer.
- (d) The contract price shall be decreased by the amount of any after-relieved tax. The judiciary shall be entitled to interest received by the contractor incident to a refund of taxes to the extent that such interest was earned after the contractor was paid by the judiciary for such taxes. The judiciary is entitled to repayment of any penalty refunded to the contractor to the extent that the penalty was paid by the judiciary.
- (e) The contract price shall be decreased by the amount of any federal, state, or local tax, other than an excepted tax, that was included in the contract price and that the contractor is required to pay or bear, or does not obtain a refund of, through the contractor's fault, negligence, or failure to follow instructions of the contracting officer.
- (f) No adjustment will be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.
- (g) The contractor shall promptly notify the contracting officer of all matters relating to federal, state, and local taxes and duties that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the contracting officer directs. The contract price will be equitably adjusted to cover the costs of action taken by the contractor at the direction of the contracting officer, including any interest, penalty, and reasonable attorneys' fees.
- (h) The judiciary will furnish evidence appropriate to establish exemption from any federal, state, or local tax when:
 - (1) the contractor requests such exemption and states in writing that it applies to a tax excluded from the contract price; and
 - (2) a reasonable basis exists to sustain the exemption.

(end)

JP3 Provision 6-50, Representation of Rights in Data

As prescribed in 6.5.3.a. & b., and 6.5.4.a. insert this provision in Section K of solicitations.

Representation of Rights in Data (JAN 2003)

- (a) The offeror shall complete paragraph (b) of this provision to either state that none of the data qualify as limited rights data or restricted computer software, or identify, to the extent feasible, which of the data qualifies as limited rights data or restricted computer software. Any identification of limited rights data or restricted rights computer software in the offeror's response is not determinative of the status of such data, shall a contract be awarded to the offeror.
- (b) The offeror has reviewed the requirements for the delivery of data or software and states (*offeror checks appropriate block*):
- None of the data proposed for fulfilling such requirements qualifies as limited rights data or restricted computer software.
 - Data proposed for fulfilling such requirements qualify as limited rights data or restricted computer software and are identified as follows:

- (c) These data are submitted with limited rights under this Contract. These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the contractor, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes: _____
(end)

JP3 Clause 6-55, Delivery of Limited Rights and Restricted Computer Software

As prescribed in 6.5.4.e. include this clause in Section I of solicitations and contracts.

Delivery of Limited Rights and Restricted Computer Software (JAN 2003)

To the extent that the contractor has, in its offer, identified pre-existing proprietary data or restricted computer software pursuant to Provision 6-50, "Representation of Rights in Data" of the solicitation, the contracting officer, or a duly authorized representative, until the expiration of three years after final payment of this contract, will have the right to examine any books, records, documents or other data supporting the contractor's claim(s) hereunder. Notwithstanding the contractor's rights and claims of, and the judiciary's agreement to protect, pre-existing proprietary data or software, the judiciary will have unlimited or unrestricted rights without additional contractor compensation, to any data or software identified above, that is:

- (1) obtained independent of this contract;
- (2) in the public domain; or

- (3) determined, subsequent to the effective date of this contract, to not have qualified as pre-existing data or software or a derivative of pre-existing data or software to which the contractor would have such proprietary rights.

(end)

JP3 Clause 6-60, Rights in Data - General

As prescribed in 6.5.1.d., 6.5.5.a. and 6.5.6.(1), insert this clause in Section I of solicitations and contracts.

Rights in Data - General (AUG 2004)

- (a) The government has unlimited rights in:
 - (1) technical data first produced in the performance of this contract (except to the extent that they constitute minor modifications of data that are limited rights data);
 - (2) form, fit, and function data delivered under this contract; except that all form, fit, and function data describing limited rights data shall be delivered with unlimited rights;
 - (3) technical data delivered under this contract that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and
 - (4) all other technical data delivered under this contract, unless provided otherwise.
- (b) The contractor shall have the right to:
 - (1) use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the contractor in the performance of this contract, unless otherwise provided in this clause or expressly set forth in this contract;
 - (2) the contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contains restrictive markings, the contractor shall treat the data in accordance with such markings, unless otherwise specifically authorized in writing by the contracting officer.
- (c) *Copyright*
 - (1) *Data first produced in the performance of this contract* Unless otherwise provided, the contractor may establish, without prior approval of the contracting officer, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings or other similar works. The prior, express, written permission of the contracting officer is required to establish claim to copyright in all other data first produced in the performance of this contract. When claim to copyright is made, the contractor shall affix the applicable copyright notices and acknowledgment of government

sponsorship (including contract number) to the data when such data are delivered to the government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For such copyrighted data, the contractor grants to the government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the government.

- (2) *Data not first produced in the performance of this contract* The contractor shall not, without prior written permission of the contracting officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains a copyright notice, unless the contractor identifies such data to the judiciary and grants to the judiciary, or acquires on its behalf, a license to reproduce, prepare derivative works, distribute copies to the public, and display and perform publicly, by or on behalf of the government.
- (d) *Unauthorized Marking of Data*
- (1) If any technical data delivered under this contract are marked with the notice specified in paragraph (f) below and the use of such a notice is not authorized by this clause, or if the data has any unauthorized restrictive markings, the contracting officer may at any time either return the data or cancel the markings. The contracting officer shall afford the contractor 30 days to provide a written justification to substantiate the propriety of the markings. Failure to timely respond may result in the cancellation of the markings.
- (e) *Omitted or Incorrect Markings*
- (1) Technical data delivered to the judiciary without limited rights notice authorized by paragraph (f) below, or the copyright notice required by paragraph (c) above, will be deemed to have been furnished with unlimited rights, and the judiciary assumes no liability for disclosure outside the judiciary. The contractor may request, within six months after delivery of the data, permission to have notices placed on qualifying data and the contracting officer may agree to do so if the contractor:
- i) acknowledges that the judiciary has no liability with respect to the disclosure, use, or reproduction of any such data made before the addition of the notice.
 - ii) demonstrates that the omission of the notice was inadvertent; and
 - iii) establishes that the use of the proposed notice is authorized.
- (f) *Protection of Limited Rights Data* When technical data are specified to be delivered under this contract and such data qualify as limited rights data, the contractor shall affix the following Limited Rights Notice to the data:

These technical data are submitted with limited rights under contract number _____. These data may be reproduced and used by the

judiciary with the express limitation that they will not be used for purposes other than those specified herein: _____

This notice shall be marked on any reproduction of these data.

(g) *Protection of Restricted Computer Software* When restricted computer software are specified to be delivered under this contract and such software is determined to qualify as restricted computer software, the contractor shall affix the following notice to the data:

- (1) This computer software is submitted with restricted rights under contract number _____. It may ___may not ___be used, reproduced, or disclosed by the judiciary except as provided in paragraph (2) of this Notice or as otherwise expressly stated in the contract.
- (2) This computer software may be:
 - (a) used or copied for use in or with the computer(s) for which it was acquired, including use at any judiciary installation to which such computer(s) may be transferred;
 - (b) used or copied for use in a backup computer if any computer for which it was acquired is inoperative;
 - (c) reproduced for safekeeping (archives) or backup purposes;
 - (d) modified, adapted, or combined with other computer software, *provided* that the modified, combined or adapted portions of the derivative software incorporating restricted computer software are made subject to the same restricted rights;
 - (e) disclosed to and reproduced for use by support service contractors, provided the judiciary makes such disclosure or reproduction subject to the same restricted rights; and
 - (f) used or copied for use in or transferred to a replacement computer.
- (3) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the judiciary, without disclosure prohibitions, with the minimum rights set forth in paragraph (2) of this clause.
- (4) Any other rights or limitations regarding the use, duplication or disclosure of this computer software are to be expressly stated in, or incorporated in, the contract.

- (5) This notice shall be marked on any reproduction of this computer software, in whole or in part.
(end)

JP3 Clause 6-65, Rights in Data - Special Works

As prescribed in 6.5.8.b. insert this clause in Section I of solicitations and contracts

Rights in Data - Special Works (JAN 2003)

(a) *Allocation of Rights*

(1) The government will have:

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

(b) All works first produced in the performance of this contract are the sole property of the judiciary. The contractor agrees not to assert or authorize others to assert any rights or establish any claim of copyright in these works.

(c) *Release and use restrictions* Except as otherwise specifically provided for in this contract, the contractor shall not use for purposes other than the performance of this contract, nor shall the contractor release, reproduce, distribute, or publish, any data or work first produced in the performance of this contract, nor authorize others to do so, without written permission of the contracting officer.

(d) *Indemnity* The contractor shall indemnify the government and its officers, agents, and employees acting for the government against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, proprietary rights, copyrights, or rights of privacy or publicity, arising out of the creation, delivery, publication, or use of any data or works furnished under this contract; or any libelous or other unlawful matter contained in such data or works. The provisions of this paragraph do not apply unless the government provides notice to the contractor as soon as practicable of any claim or suit, affords the contractor an opportunity under applicable laws, rules, or regulations to participate in the defense thereof, and obtains the contractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction; nor do these provisions apply to material furnished to the contractor by the judiciary and incorporated in data or in works to which this clause applies.

(end)

JP3 Clause 6-70, Work for Hire

As prescribed in 5.2.1.o.(9) and 6.5.9.b. insert this clause in Section I of solicitations and contracts.

Work for Hire (JAN 2003)

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

(end)

JP3 Clause 6-75, Rights to Data in an Offer

As prescribed in 6.5.11.b. insert this clause in Section I of solicitations and contracts.

Rights to Data in an Offer (JAN 2003)

Except for data contained on pages_____, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of a notice appearing thereon, the government will have unlimited rights (as defined in the “Rights in Data-General” clause in the contract) in and to the technical data contained in the offer dated _____, upon which this contract is based.

(end)

JP3 Clause 7-1, Contract Administration

As prescribed in 7.2.1.0.a(1), insert this clause in Section G of solicitations and contracts.

Contract Administration (JAN 2003)

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

(end)

JP3 Clause 7-5, Contracting Officer's Technical Representative

As prescribed in 7.2.10.a.(2), insert this clause in Section G of solicitations and contracts.

Contracting Officer's Technical Representative (JAN 2003)

- (a) Upon award, a contracting officer's technical representative (COTR) may be appointed by the contracting officer. The COTR will be responsible for coordinating the technical aspects of this contract and inspecting products/services furnished hereunder; however, the COTR will not be authorized to change any terms and conditions of the resultant contract, including price.
- (b) The COTR, if appointed, may be assigned one or more of the following responsibilities:
 - (1) monitoring the contractor's performance under the contract to ensure compliance with technical requirements of the contract;
 - (2) notifying the contracting officer immediately if performance is not proceeding satisfactorily;
 - (3) ensuring that changes in work under the contract are not initiated before written authorization or modification is issued by the contracting officer;
 - (4) providing the contracting officer a written request and justification for changes;

- (5) providing interpretations relative to the meaning of technical specifications and technical advice relative to contracting officer's written approvals, and
 - (6) providing general technical guidance to the contractor within the scope of the contract and without constituting a change to the contract.
- (end)

JP3 Clause 7-10, Contractor Representative

As prescribed in 7.2.10.a.(3), insert this clause in Section G of solicitations and contracts.

Contractor Representative (JAN 2003)

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

JP3 Clause 7-15, Observance of Regulations/Standards of Conduct

As prescribed in 7.2.10.a.(4), insert this clause in Section I of solicitations and contracts.

Observance of Regulations/Standards of Conduct (JAN 2003)

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

contractor is also responsible for ensuring that its employees do not disturb papers on desks, open desk drawers or cabinets, or use judiciary property (such as, but not limited to, telephones or copiers) except as authorized.

(end)

JP3 Clause 7-20, Security Requirements

As prescribed in 7.2.10.a.(5), insert this clause in Section I of solicitations and contracts.

Security Requirements (JAN 2003)

The contractor shall provide competent personnel to perform the services under this contract. Work shall be performed in accordance with judiciary security requirements, and the best commercial practices without unnecessary delays or interference with the judiciary's mission or functions. Personnel visiting court sites to provide support covered under this contract may be subjected to FBI screening and U.S. Marshal inspection.

(end)

JP3 Clause 7-25, Indemnification

As prescribed in 7.2.10.a.(6), insert this clause in Section I of solicitations and contracts.

Indemnification (AUG 2004)

- (a) The contractor assumes full responsibility for and shall indemnify the judiciary against any and all losses or damage of whatsoever kind and nature to any and all judiciary property, including any equipment, products, accessories, or parts furnished, while in its custody and care for storage, repairs, or service to be performed under the terms of this contract, resulting in whole or in part from the negligent acts or omissions of the contractor, any subcontractor, or any employee, agent or representative of the contractor or subcontractor.
- (b) If due to the fault, negligent acts (whether of commission or omission) and/or dishonesty of the contractor or its employees, any judiciary-owned or controlled property is lost or damaged as a result of the contractor's performance of this contract, the contractor shall be responsible to the judiciary for such loss or damage, and the judiciary, at its option, may, in lieu of requiring reimbursement therefor, require the contractor to replace at its own expense, all property lost or damaged.
- (c) *Hold Harmless and Indemnification Agreement* The contractor shall save and hold harmless and indemnify the judiciary against any and all liability claims and cost of whatsoever kind and nature for injury to or death of any person or persons and for loss or damage to any contractor property or property owned by a third party occurring in connection with or in any way incident to or arising out of the occupancy, use, service,

- operation, or performance of work under the terms of this contract, resulting in whole or in part from the acts or omissions of the contractor, any subcontractor, or any employee, agent, or representative of the contractor or subcontractor.
- (d) The contractor shall indemnify and hold the judiciary, its employees, and others acting on its behalf harmless against any and all loss, liability, or damage arising out of the negligence, failure to act, fraud, embezzlement, or other misconduct by the contractor, its employees, subcontractors, agents, or representatives of the contractor or subcontractor.
- (e) *Judiciary's Right of Recovery* Nothing in the above paragraphs will be considered to preclude the judiciary from receiving the benefits of any insurance/bonds the contractor may carry which provides for the indemnification of any loss or destruction of, or damages to, property in the custody and care of the contractor where such loss, destruction or damage is to judiciary property. The contractor shall do nothing to prejudice the judiciary's right to recover against third parties for any loss, destruction of, or damage to, judiciary property, and upon the request of the contracting officer will, at the judiciary's expense, furnish to the judiciary all reasonable assistance and cooperation (including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the judiciary) in obtaining recovery.
- (f) *Judiciary Liability* The judiciary will not be liable for any injury to the contractor's personnel or damage to the contractor's property unless such injury or damage is due to negligence on the part of the judiciary and is recoverable under the Federal Torts Claims Act, or pursuant to other statutory authority applicable to the judiciary.

(end)

JP3 Clause 7-30, Public Use of the Name of the Federal Judiciary

As prescribed in 7.2.10.a.(7), insert this clause in Section I of solicitations and contracts.

Public Use of the Name of the Federal Judiciary (JAN 2003)

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

(end)

JP3 Clause 7-35, Disclosure or Use of Information

| *As prescribed in 7.2.10.a.(8), insert this clause in Section I of solicitations and contracts.*

| **Disclosure or Use of Information (AUG 2004)**

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

performance of this contract. Nothing herein will preclude the use of any data independently acquired by the contractor without such limitations or prohibit an agreement at no cost to the judiciary between the contractor and the data owner which provides for greater rights to the contractor.

- (f) The judiciary and contractor agree that neither expects the performance under this contract to involve reporting or handling of classified information or materials. Either party shall notify the other promptly in writing if the expectation of that party changes, and shall include in the notice reasons therefore. If there are sealed records, in camera proceedings or grand jury matters, the contractor shall consult with the contracting officer as to the proper safeguarding, security, and secrecy of the original notes and transcript orders.
- (g) The contracting officer will advise the contractor whenever the judiciary places a service order which will require classified information or materials. The contractor will have the right to decline to provide services, in which event such services shall be outside the scope of this contract.
- (h) The contractor shall hold inviolate and in strictest confidence any and all information of an official nature not for inclusion in the document, any information which the presiding judicial official designates as "off the record" and all classified information and material.
- (i) The contractor shall classify, safeguard, and otherwise act with respect to all classified information and material in accordance with applicable law and requirements of the contracting officer. The contractor shall not permit any individual to have or gain access to the classified information or material without written permission of the contracting officer, except as access may be necessary for authorized employees of the contractor to perform services under this contract.
- (j) Notwithstanding any other provision of this contract, the contractor may deliver transcript containing classified material or information only to the judiciary. The contractor shall never sell or deliver such document to a private person without the express written permission of the contracting officer. Notwithstanding any other provision of this contract, the contractor shall never keep a copy of a document containing classified material or information after the delivery of the original to the contracting officer.

(end)

JP3 Clause 7-40, Judiciary - Contractor Relationships

As prescribed in 7.2.10.b., insert this clause in Section I of solicitations and contracts.

Judiciary - Contractor Relationships (JAN 2003)

- (a) The judiciary and the contractor understand and agree that the services to be delivered under this contract by the contractor to the judiciary are non-personal services. The

parties recognize and agree that no employer-employee or master-servant relationships exist or will exist under the contract between the judiciary and the contractor and/or between the judiciary and the contractor's employees. It is therefore, in the best interest of the judiciary to afford the parties a full and complete understanding of their respective obligations.

- (b) The contractor and/or the contractor's personnel under this contract shall not:
- (1) be placed in a position where they are appointed or employed by a federal officer, or are under the supervision, direction, or evaluation of a federal officer;
 - (2) be placed in a staff or policy making position;
 - (3) be placed in a position of command, supervision, administration or control over judiciary personnel or the personnel of other contractors, or become a part of the judiciary organization;
 - (4) be used for the purpose of avoiding manpower ceilings or other personnel rules and regulations.
- (c) *Employee Relationship*
- (1) The services to be performed under this contract do not require the contractor or its employees to exercise personal judgement and discretion on behalf of the judiciary. The contractor's employees will act and exercise personal judgement and discretion on the behalf of the contractor, as directed by the contractor's supervisory personnel, and in accordance with the contract terms and conditions.
 - (2) Rules, regulations, directions, and requirements issued by the judiciary under the judiciary's responsibility for good order, administration, security, and safety are applicable to all personnel physically located on-site, inclusive of contractor personnel who are required under the terms and conditions of this contract to be so located.. This is not to be construed or interpreted to establish any degree of judiciary control which is inconsistent with a non-personal services contract.

(end)

JP3 Clause 7-45, Travel

As prescribed in 7.2.10.c., insert this clause in Section H of solicitations and contracts.

Travel (JAN 2003)

The contractor may propose travel costs based on Judiciary Travel Regulations if travel is allowable and required by the contract. Proposed per diem and automobile expense will be based on Judiciary Travel Regulations (JTR).

(end)

JP3 Clause 7-50, Parking

As prescribed in 7.2.10.d., insert this clause in Section H of solicitations and contracts.

Parking (JAN 2003)

There is no contractor parking available at the Administrative Office (AO). In the event that this contract requires the delivery of equipment or materials to the AO, the contractor shall park delivery vehicles at designated locations within the AO Complex **ONLY WHILE LOADING AND UNLOADING THE VEHICLE**. Arrangements for pick-up and delivery at the AO shall be coordinated with the COTR and made in accordance with building management policies.

(end)

JP3 Clause 7-55, Contractor Use of Judiciary Networks

As prescribed in 7.2.10.e., insert this clause in Section H of solicitations and contracts.

Contractor Use of Judiciary Networks (JAN 2003)

- (a) The judiciary is obligated and committed to ensuring that judiciary property and resources are used appropriately and for the public interest. The judiciary shall confront issues involving contractors and their employees to ensure that judiciary property and resources equating to taxpayer dollars are not wasted or used inappropriately.
- (b) Whenever authorized as a user of judiciary networks, the contractor, subcontractor, teaming partner, and all employees (hereinafter referred to as “entities”), shall **not** perform or participate, directly or indirectly, in any of the following:
 - (1) accessing internet sites which may be inappropriate or reflect poorly on the judiciary: Unless accessing internet sites is case-related, entities shall refrain from creating, downloading, viewing, storing, copying, and transmitting sexually-explicit or sexually-oriented materials which are never appropriate and may be illegal in some cases. Internet sites capture the domain name of all sites accessing them and maintain a record of this information. It could be embarrassing to the judiciary if the judiciary’s domain name were found on the access records of inappropriate sites;
 - (2) logging onto video or audio sites, such as broadcast services or radio stations and downloading music files. This consumes significant disk space on local computers and may be a violation of copyright law. Each of the several thousand video clips downloaded daily can be equal to downloading a 400-page memorandum;
 - (3) using judiciary systems to send or receive e-mails containing greeting cards, political statements, jokes, pictures, chain letters or other unauthorized mass mailings, regardless of the subject matter, and other items of a personal nature;
 - (4) sending large attachments unless required for official business. Video, sound, or other large file attachments consume large amounts of network capacity. E-mail attachments, large files, and executable programs present two problems. First, large attachments consume network capacity and storage space on both national

- and local e-mail servers and desktops, slowing the network down for everyone. Second, executable programs present a risk for infection by computer viruses;
- (5) participating in chat rooms or using “instant messaging” software;
 - (6) checking personal e-mail accounts over the judiciary’s network;
 - (7) using the network connection for personal commercial purposes, private gain, or illegal activities. Unless use is required for official judiciary and contract-related business, all entities shall refrain from using the network connection for commercial purposes (including shopping). It is also inappropriate to use the network connection in support of outside employment activities (including consulting for pay, sales or administration of business transactions, and sales of products or services) or for illegal activities (such as gambling or hacking);
 - (8) using the e-mail or the network connection for offensive activities. It is inappropriate to use e-mail or the internet to access, send, or receive information on, or in support of, activities that are illegal or offensive. Such activities include, but are not limited to, hate speech or material that ridicules or degrades others on the basis of race, creed, religion, color, sex, disability, national origin, or sexual orientation.

(end)

JP3 Provision 7-60, Judiciary-Furnished Property or Services

As prescribed in 7.3.1.c.(1), insert this provision in Section L of solicitations.

Judiciary-Furnished Property or Services (JAN 2003)

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

(end)

JP3 Clause 7-65, Protection of Judiciary Buildings, Equipment, and Vegetation

As prescribed in 7.3.1.c.(2), insert this clause in Section I of solicitations and contracts.

Protection of Judiciary Buildings, Equipment, and Vegetation (JAN 2003)

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

(end)

JP3 Clause 7-70, Judiciary Property Furnished "As Is"

As prescribed in 7.3.1.c.(3), insert this clause in Section I of solicitations and contracts.

Judiciary Property Furnished "As Is" (JAN 2003)

- (a) The judiciary makes no warranty whatsoever with respect to judiciary property furnished "as is," except that the property is in the same condition when placed at the F.o.b. point specified in the solicitation as when inspected by the contractor pursuant to the solicitation or, if not inspected by the contractor, as when last available for inspection under the solicitation.
- (b) The contractor may repair any property made available on an "as is" basis. Such repair will be at the contractor's expense except as otherwise provided in this clause. Such property may be modified at the contractor's expense, but only with the written permission of the contracting officer. Any repair or modification of property furnished "as is" shall not affect the title of the judiciary.
- (c) If there is any change in the condition of judiciary property furnished "as is" from the time inspected or last available for inspection under the solicitation to the time placed on board at the location specified in the solicitation, and such change will adversely affect the contractor, the contractor shall, upon receipt of the property, notify the contracting officer detailing the facts and, as directed by the contracting officer, either (1) return such property at the judiciary's expense or otherwise dispose of the property or (2) effect repairs to return the property to its condition when inspected under the solicitation or, if not inspected, last available for inspection under the solicitation. After completing the directed action and upon written request of the contractor, the contracting officer will equitably adjust any contractual provisions affected by the return, disposition, or repair in accordance with the procedures provided for in the Changes clause of this contract. The foregoing provisions for adjustment are the exclusive remedy available to the contractor, and the judiciary shall not be otherwise liable for any delivery of judiciary property furnished "as is" in a condition other than that in which it was originally offered.
- (d) Except as otherwise provided in this clause, judiciary property furnished "as is" shall be governed by the Judiciary Property clause of this contract.

(end)

JP3 Clause 7-75, Subcontracts

As prescribed in 7.4.1.a. and 7.4.1.d.(1), insert this clause in Section I of solicitations and contracts.

Subcontracts (JAN 2003)

- (a) *Definitions* as used in this clause:

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

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

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

- (b) This clause does not apply to subcontracts for special test equipment.
- (c) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced purchase/delivery/task orders), and only if required in accordance with paragraph (d) or (e) of this clause.
- (d) If the contractor does not have a written approved purchasing system, consent to subcontract is required for any subcontract that:
 - (1) is of the cost-reimbursement, time-and-materials, or labor-hour type; or
 - (2) is fixed price and exceeds either the judiciary’s small purchase threshold or 5 percent of the total estimated cost of the contract.
- (e) If the contractor has a written approved purchasing system, the contractor nevertheless shall obtain the contracting officer’s written consent before placing the following subcontracts:

-
- (f) (1) The contractor shall notify the contracting officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (c), (d), or (e) of this clause, including the following information:
 - (i) a description of the products or services to be subcontracted;
 - (ii) identification of the type of subcontract to be used;
 - (iii) identification of the proposed subcontractor;
 - (iv) the proposed subcontract price;
 - (v) the subcontractor’s current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions;
 - (vi) the subcontractor’s Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract;
 - (vii) a negotiation memorandum reflecting:
 - (A) the principal elements of the subcontract price negotiations;
 - (B) the most significant considerations controlling establishment of initial or revised prices;
 - (C) the reason cost or pricing data were or were not required;
 - (D) the extent, if any, to which the contractor did not rely on the subcontractor’s cost or pricing data in determining the price objective and in negotiating the final price;

- (E) the extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;
 - (F) the reasons for any significant difference between the contractor's price objective and the price negotiated; and
 - (G) a complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.
- (2) If the contractor has a written approved purchasing system and consent is not required under paragraph (c), (d), or (e) of this clause, the contractor nevertheless shall notify the contracting officer reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds either the small purchases threshold or 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (f)(1)(i) through (f)(1)(iv) of this clause.
- (g) Unless the consent or approval specifically provides otherwise, neither consent by the contracting officer to any subcontract nor approval of the contractor's purchasing system will constitute a determination:
- (1) of the acceptability of any subcontract terms or conditions;
 - (2) of the allowability of any cost under this contract; or
 - (3) to relieve the contractor of any responsibility for performing this contract.
- (h) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, or any fee payable under cost-reimbursement type subcontracts will not exceed the fee limitations.
- (i) The contractor shall give the contracting officer immediate written notice of action or suit filed and prompt notice of any claim made against the contractor by any subcontractor or vendor that, in the opinion of the contractor, may result in litigation related in any way to this contract, with respect to which the contractor may be entitled to reimbursement from the judiciary.
- (j) The judiciary reserves the right to review the contractor's purchasing system.
- (k) Paragraphs (d) and (f) of this clause do not apply to the following subcontracts, which were evaluated during negotiations.

(end)

JP3 Clause 7-80, Competition in Subcontracting

As prescribed in 7.4.1.d.(2), insert this clause in Section I of solicitations and contracts.

Competition in Subcontracting (JAN 2003)

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

(end)

JP3 Clause 7-85, Examination of Records

As prescribed in 7.5.2.b., insert this clause in Section I of solicitations and contracts.

Examination of Records (JAN 2003)

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

(end)

JP3 Clause 7-95, Contractor Inspection Requirements

As prescribed in 7.6.6.e.(1), insert this clause in Section I of solicitations and contracts.

Contractor Inspection Requirements (JAN 2003)

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

(end)

JP3 Clause 7-100A, Limitation of Liability (Products)

As prescribed in 7.6.6.e.(2), insert this clause in Section I of the solicitation.

Limitation of Liability (Products) (JAN 2003)

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

(end)

JP3 Clause 7-100B, Limitation of Liability (Services)

As prescribed in 7.6.6.e.(3), insert this clause in Section I of the solicitation.

Limitation of Liability (Services) (JAN 2003)

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

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

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

(end)

JP3 Clause 7-105, Certificate of Conformance

As prescribed in 7.6.9.b., insert this clause in Section E of solicitations and contracts.

Certificate of Conformance (JAN 2003)

- (a) The contractor shall provide a Certificate of Conformance with any products for which the contract would otherwise require inspection at source. In no case will the judiciary's right to inspect products under the inspection provisions of this contract be prejudiced. Shipments or deliveries of such products will not be made under this contract until use of the Certificate of Conformance has been authorized in writing by the contracting officer or inspection and acceptance have occurred.
- (b) The contractor's signed certificate shall be attached to each invoice provided to a court and the Administrative Office of the U.S. Courts. In addition, a copy of the signed certificate shall also be attached to or entered on copies of the inspection or receiving report accompanying the shipment.

- (c) The judiciary has the right to reject defective products or services within a reasonable time after delivery by written notification to the contractor. The contractor shall in such event promptly replace, correct, or repair the rejected products or services at the contractor's expense.
- (d) The certificate shall read as follows:
 “I certify that during the period covered by the attached invoice, _____ [insert contractor's name] furnished the products and/or services called for by _____ [insert contract number] via _____ [insert carrier] on _____ [identify the bill of lading or shipping document] in accordance with all applicable requirements. I further certify that the products and/or services are of the quality specified and conform in all respects with the contract requirements, including specifications, drawings, preservation, packaging, packing, marking requirements, and physical item identification (part number), and are in the quantity shown on this or on the attached acceptance document.

Date of execution: _____
 Signature: _____
 Title: _____”

(end)

JP3 Clause 7-110, Bankruptcy

As prescribed in 7.6.13.d., insert this clause in Section I of solicitations and contracts.

Bankruptcy (JAN 2003)

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

(end)

JP3 Clause 7-115, Availability of Funds

As prescribed in 2.2.9.j.(1), insert the following clause in Section I of solicitations and contracts.

Availability of Funds (JAN 2003)

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

(end)

JP3 Clause 7-120, Availability of Funds for the Next Fiscal Year

As prescribed in 2.2.9.j.(2), insert the following clause in Section I of solicitations and contracts.

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

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

(end)

JP3 Clause 7-125, Invoices

As prescribed in 7.7.2.c., insert this clause in Section G of solicitations and contracts.

Invoices (JAN 2003)

- (a) Invoices shall be submitted in an original and two (2) copies to the address specified on the SF 26 or SF 33 as applicable, or as otherwise specified with this contract. Invoices shall be submitted in accordance with the schedule for payments as set forth elsewhere under this contract.
- (b) The office that will make payments due under this contract will be designated as specified in the contract at the time of contract award.
- (c) To constitute a proper invoice, the billing document shall include the following information and/or attached documentation:
 - (1) name of business concern and such business's Taxpayer Identification Number;

- (2) period(s) covered by invoice and invoice date;
- (3) purchase/delivery/task order or contract number or other authorization for delivery of property or services;
- (4) for each line item - general description of product delivered or services rendered, measured unit, and associated price;
- (5) payment terms;
- (6) total amount billed;
- (7) a subtotal of any and all fees or credits applied to the invoice;
- (8) an amount due (if any) or credit balance;
- (9) name (where practicable), title, phone number, fax number, and complete mailing address of the responsible official to whom payment is to be sent. The "remit to" address shall correspond to the remittance address in the contract;
- (10) other substantiating documentation or information as required by the purchase/delivery/task order or contract;
- (11) all follow-up invoices shall be marked "Duplicate of Original." Contractor questions regarding payment information or check identification shall be directed to the relevant paying authority specified in the contract.

Alternate I - As prescribed in 5.2.1.o.(6), and when applicable, the contracting officer must substitute the following paragraph (c)(4) for paragraphs (c)(4) of the basic Clause 7-125.

- (4) All invoices for services under this agreement shall indicate in detail the following:
 - (i) person performing service each day by hour and part of an hour;
 - (ii) services performed each day by hour and part of an hour.
 - (iii) rates and charges for each service so detailed; and
 - (iv) individual expenses charged, if allowed under this agreement.
 Note: Minimum charges for portions of an hour may be allowed, if such a charging practice has been disclosed before award of this agreement.
 (end)

JP3 Clause 7-130, Interest (Prompt Payment)

As prescribed in 7.7.3.c., insert this clause in Section I of solicitations and contracts.

Interest (Prompt Payment) (JAN 2003)

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

(end)

JP3 Clause 7-135, Payments

As prescribed in 7.7.3.e.(1), insert this clause in Section I of solicitations and contracts.

Payments (JAN 2003)

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

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

(end)

JP3 Clause 7-140, Discounts for Prompt Payment

As prescribed in 7.7.3.e.(2), insert this clause in Section I of solicitations and contracts.

Discounts for Prompt Payment (JAN 2003)

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

(end)

JP3 Clause 7-145, Government Purchase Card

As prescribed in 7.7.3.e.(3), insert this clause in Section I of solicitations and contracts

Government Purchase Card (JAN 2003)

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

(end)

JP3 Clause 7-150, Extras

As prescribed in 7.7.3.e.(4), insert the following clause in Section I of solicitations and contracts.

Extras (JAN 2003)

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

(end)

JP3 Clause 7-155, Certification of Final Indirect Costs

As prescribed in 7.7.3.e.(5), insert this clause in Section I of solicitations and contracts.

Certification of Final Indirect Costs (JAN 2003)

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

- (b) Failure by the contractor to submit a signed certificate, as described in this clause, may result in final indirect costs at rates unilaterally established by the contracting officer.
- (c) The certificate of final indirect costs shall read as follows:

Certificate of Final Indirect Costs

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

- (1) all costs included in this offer _____ (*identify offer and date*) to establish final indirect cost rates for _____ (*identify period covered by rate*) are allowable in accordance with the cost principles in JP3 Chapter 4 applicable to the contracts to which the final indirect cost rates will apply; and
- (2) this offer does not include any costs which are expressly unallowable under cost principles of JP3 Chapter 4.

Firm: _____

Signature: _____

Name of Certifying Official: _____

Title: _____

Date of Execution: _____

(end)

JP3 Clause 7-160, Limitation on Withholding of Payments

As prescribed in 7.7.4.d., insert this clause in Section I of solicitations and contracts.

Limitation on Withholding of Payments (JAN 2003)

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

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

(end)

JP3 Clause 7-165, Penalties for Unallowable Costs

As prescribed in 7.7.5.e.(1), insert this clause in Section I of solicitations and contracts.

Penalties for Unallowable Costs (JAN 2003)

- (a) *Definition* "Offer," as used in this clause, means either:
- (1) a final indirect cost rate offer submitted by the contractor after the expiration of its fiscal year which:
 - (i) relates to any payment made on the basis of billing rates; or
 - (ii) will be used in negotiating the final contract price; or
 - (2) the final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.
- (b) Contractors which include unallowable indirect costs in an offer may be subject to penalties. The penalties are prescribed in 10 U.S.C. § 2324 or 41 U.S.C. § 256, as applicable
- (c) The contractor shall not include in any offer any cost that is unallowable, as defined in JP3 Chapter 4.
- (d) If the contracting officer determines that a cost submitted by the contractor in its offer is expressly unallowable, the contractor shall be assessed a penalty equal to:
- (1) the amount of the disallowed cost allocated to this contract; plus
 - (2) simple interest, to be computed:
 - (i) on the amount the contractor was paid on a billing payment in excess of the amount to which the contractor was entitled; and
 - (ii) using the applicable rate effective for each six-month interval prescribed by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).
- (e) If the contracting officer determines that a cost submitted by the contractor in its offer includes a cost previously determined to be unallowable for that contractor, then the contractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.
- (f) Determinations under paragraphs (d) and (e) of this clause are final decisions.
- (g) In certain cases, the contracting officer may waive the penalties in paragraph (d) or (e) of this clause. The contracting officer will provide a written determination of the reasons for the waiver in the contract file.
- (h) Payment by the contractor of any penalty assessed under this clause does not constitute repayment to the judiciary of any unallowable cost which has been paid by the judiciary to the contractor.

(end)

JP3 Clause 7-170, Notice of Intent to Disallow Costs

As prescribed in 7.7.5.e.(2), insert this clause in Section I of solicitations and contracts.

Notice of Intent to Disallow Costs (JAN 2003)

- (a) Notwithstanding any other clause of this contract:

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

JP3 Clause 7-175, Assignment of Claims

As prescribed in 7.7.7.d.(1), insert this clause in Section I of solicitations and contracts.

Assignment of Claims (JAN 2003)

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

JP3 Clause 7-180, Prohibition of Assignment of Claims

As prescribed in 7.7.7.d.(2), insert this clause in Section I of solicitations and contracts.

Prohibition of Assignment of Claims (JAN 2003)

The assignment of claims under the Assignment of Claims Act of 1940, as amended, 31 U.S.C. § 3727, 41 U.S.C. § 15, is prohibited for this contract.

(end)

JP3 Clause 7-185, Changes

As prescribed in 7.8.7.e.(1), insert this clause in Section I of solicitations and contracts.

Changes (JAN 2003)

- (a) The contracting officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:
 - (1) drawings, designs, or specifications when the products to be furnished are to be specially manufactured for the judiciary in accordance with the drawings, designs, or specifications;
 - (2) statement of work or description of services to be performed;
 - (3) method of shipment or packing of products;
 - (4) place of delivery of products or place of performance;
 - (5) delivery or performance schedule, time (i.e. hours of the day, days of the week, etc.) or place of delivery or performance of services;
 - (6) judiciary-furnished property or facilities.
- (b) Any other written or oral order (including direction, instruction, interpretation, or determination) from the contracting officer that causes a change will be treated as a change order under this clause, provided that the contractor gives the contracting officer written notice stating (1) the date, circumstances, and source of the order and (2) that the contractor regards the order as a change order.
- (c) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the contracting officer will make an equitable adjustment in the contract price, the delivery schedule, or both, and will modify the contract.
- (d) The contractor shall assert its right to an adjustment within 30 days from the date of receipt of the written order. However, if the contracting officer decides that the facts justify it, the contracting officer may receive and act upon an offer submitted before final payment of the contract.
- (e) If the contractor's offer includes the cost of property made obsolete or excess by the change, the contracting officer will have the right to prescribe the manner of the disposition of the property.
- (f) Failure to agree to any adjustment is a dispute under the Disputes clause. However, nothing in this clause will excuse the contractor from proceeding with the contract as changed.
- (g) No products or services for which an additional cost or fee will be charged by the contractor will be furnished without the prior written authorization of the contracting officer.

(end)

JP3 Clause 7-190, Change Order Accounting

As prescribed in 7.8.7.e.(2), insert this clause in Section I of solicitations and contracts.

Change Order Accounting (JAN 2003)

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

(end)

JP3 Clause 7-195, Excusable Delays

As prescribed in 7.8.8.f.(3), insert this clause in Section I of solicitations and contracts.

Excusable Delays (JAN 2003)

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

(end)

JP3 Clause 7-200, Judiciary Delay of Work

As prescribed in 7.8.8.j.(1), insert the following clause in Section F of solicitations and contracts.

Judiciary Delay of Work (JAN 2003)

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

(end)

JP3 Clause 7-205, Payment for Judiciary Holidays

As prescribed in chapter 7.8.8.j.(2) insert this clause in Section I of solicitations and contracts.

Payment for Judiciary Holidays (JAN 2003)

On judiciary holidays, on-site contractors are not entitled to compensation unless: 1) the contract requires the contractor to be on-site at the judiciary facility during the holiday; 2) the contract specifically provides for compensation to the contractor on Judiciary holidays; or 3) the contractor obtains approval from the Contracting Officer or designated Contracting Officer's Technical Representative to perform work at an off-site location. The following holidays are observed by the judiciary: New Years Day, Martin Luther King's Birthday, Presidential Inauguration Day (metropolitan DC area only), President's

Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day.

(end)

JP3 Clause 7-210, Payment for Emergency Closures

As prescribed in chapter 7.8.8.j.(3) insert this clause in Section I of all solicitations and contracts.

Payment for Emergency Closures (AUG 2004)

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

(end)

JP3 Clause 7-215, Notification of Ownership Changes

As prescribed in 7.8.10.l., insert this clause in Section I of solicitations and contracts.

Notification of Ownership Changes (JAN 2003)

- (a) The contractor shall make the following notifications in writing:
 - (1) when the contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the contractor shall notify the contracting officer within 30 days;
 - (2) the contractor shall also notify the contracting officer within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.
- (b) The contractor shall:
 - (1) maintain current, accurate, and complete inventory records of assets and their costs;
 - (2) provide the contracting officer or designated representative ready access to the records upon request;
 - (3) ensure that all-individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the contractor's ownership changes;and

- (4) retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each contractor ownership change.
- (c) The contractor shall include the substance of this clause in all subcontracts under this contract.

(end)

JP3 Clause 7-220, Termination for Convenience of the Judiciary (Fixed-Price)

As prescribed in 7.10.3.k.(1), insert this clause in Section I of solicitations and contracts.

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

- (a) The judiciary may terminate performance of work under this contract in whole or, from time to time, in part if the contracting officer determines that termination is in the judiciary's interest. The contracting officer will terminate by delivering to the contractor a notice of termination specifying the extent of the termination and the effective date.
- (b) After receipt of a notice of termination, and except as directed by the contracting officer, the contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
 - (1) stop work as specified in the notice;
 - (2) place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities except as necessary to complete the continued portion of the contract;
 - (3) terminate all orders and subcontracts to the extent they relate to the work terminated;
 - (4) assign to the judiciary, as directed by the contracting officer, all right, title, and interest of the contractor under the subcontracts terminated, in which case the judiciary shall have the right to settle or to pay any termination settlement offer arising out of those terminations;
 - (5) with written approval or ratification to the extent required by the contracting officer, settle all outstanding liabilities and termination settlement offers arising from the termination of subcontracts; the written approval or ratification will be final for purposes of this clause;
 - (6) as directed by the contracting officer, transfer title and deliver to the judiciary:
 - (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
 - (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the judiciary;
 - (7) complete performance of the work not terminated;
 - (8) take any action that may be necessary, or that the contracting officer may direct, for the protection and preservation of the property related to this contract that is in

- the possession of the contractor and in which the judiciary has or may acquire an interest;
- (9) use its best efforts to sell, as directed or authorized by the contracting officer, any property of the types referred to in paragraph (b)(6) of this clause, *provided*, however, that the contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved in writing by, the contracting officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the judiciary under this contract, credited to the price or cost of the work, or paid in any other manner directed by the contracting officer.
- (c) The contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the contracting officer upon written request of the contractor within this 120-day period.
- (d) After expiration of the plant clearance period, the contractor may submit to the contracting officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the contracting officer. The contractor may request the judiciary to remove those items or enter into an agreement for their storage. Within 15 days, the judiciary will accept title to those items and remove them or enter into a storage agreement. The contracting officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and will correct the list, as necessary, before final settlement.
- (e) After termination, the contractor shall submit a final termination settlement offer to the contracting officer in the form and with the certification prescribed by the contracting officer. The contractor shall submit the offer promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the contracting officer upon written request of the contractor within this 1-year period. However, if the contracting officer determines that the facts justify it, a termination settlement offer may be received and acted on after the 1 year or any extension. If the contractor fails to submit the offer within the time allowed, the contracting officer may determine, on the basis of information available, the amount, if any, due the contractor because of the termination and shall pay the amount determined.
- (f) Subject to paragraph (e) of this clause, the contractor and contracting officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in paragraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract will be modified, and the contractor paid the agreed amount. Paragraph (g) of this clause will not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- (g) If the contractor and the contracting officer fail to agree on the whole amount to be paid because of the termination of work, the contracting officer will pay the contractor

amounts determined by the contracting officer as follow, but without duplication of any amounts agreed on under paragraph (f) of this clause:

- (1) the contract price for completed products or services accepted by the judiciary (or sold or acquired under paragraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges;
- (2) the total of:
 - (i) the costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to products or services paid or to be paid under paragraph (g)(1) of this clause;
 - (ii) the cost of settling and paying termination settlement offers under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(2)(i) of this clause; and
 - (iii) a sum, as profit on subdivision (g)(2)(i) of this clause, determined by the contracting officer; in effect on the date of the contract, to be fair and reasonable; however, if it appears that the contractor would have sustained a loss on the entire contract had it been completed, the contracting officer will allow no profit under this subdivision (g)(2)(iii) and will reduce the settlement to reflect the indicated rate of loss.
- (3) the reasonable costs of settlement of the work terminated, including:
 - (i) accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement offers and supporting data;
 - (ii) the termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (iii) storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (h) Except for normal spoilage, and except to the extent that the judiciary expressly assumed the risk of loss, the contracting officer will exclude from the amounts payable to the contractor under paragraph (g) of this clause, the fair value, as determined by the contracting officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the judiciary or to a buyer.
- (i) The cost principles and procedures of JP3 Chapter 4, in effect on the date of this contract, will govern all costs claimed, agreed to, or determined under this clause.
- (j) The contractor shall have the right of appeal under the Disputes clause, from any determination made by the contracting officer under paragraph (e), (g), or (l) of this clause, except that if the contractor has failed to submit the termination settlement offer or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request an extension of time, there is no right of appeal.
- (k) In arriving at the amount due the contractor under this clause, there will be deducted:
 - (1) all unliquidated advance or other payments to the contractor under the terminated portion of this contract;
 - (2) any claim which the judiciary has against the contractor under this contract; and

- (3) the agreed price for, or the proceeds of sale of materials, products, or other things acquired by the contractor or sold under the provisions of this clause and not recovered by or credited to the judiciary.
- (l) If the termination is partial, the contractor may file an offer with the contracting officer for an equitable adjustment of the price(s) of the continued portion of the contract. The contracting officer will make any equitable adjustment agreed upon. Any offer by the contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the contracting officer.
- (m) (1) The judiciary may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the contractor for the terminated portion of the contract, if the contracting officer believes the total of these payments will not exceed the amount to which the contractor will be entitled.
- (2) If the total payments exceed the amount finally determined to be due, the contractor shall repay the excess to the judiciary upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest will be computed for the period from the date the excess is repaid. Interest will not be charged on any excess payment due to a reduction in the contractor's termination settlement offer because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the contracting officer because of the circumstances.
- (n) Unless otherwise provided in this contract, or by statute, the contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The contractor shall make these records and documents available to the judiciary, at the contractor's office, at all reasonable times, without any direct charge. If approved in writing by the contracting officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(end)

JP3 Clause 7-223 Termination for Convenience of the Judiciary (Short Form)

As prescribed in 7.10.3.k.(2), insert this clause in Section I of solicitations and contracts.

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

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

(end)

JP3 Clause 7-225, Termination for Convenience (Cost-Reimbursement)

As prescribed in 7.10.3.k.(3), insert this clause in Section I of solicitations and contracts.

Termination for Convenience (Cost-Reimbursement) (AUG 2004)

- (a) The judiciary may terminate performance of work under this contract in whole or, from time to time, in part, if:
 - (1) the contracting officer determines that a termination is in the judiciary's interest; or
 - (2) the contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the contracting officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) The contracting officer will terminate by delivering to the contractor a notice of termination specifying whether termination is for default of the contractor or for convenience of the judiciary, the extent of termination, and the effective date. If, after termination for default, it is determined that the contractor was not in default or that the contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the judiciary.
- (c) After receipt of a Notice of Termination, and except as directed by the contracting officer, the contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
 - (1) stop work as specified in the notice;
 - (2) place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract;
 - (3) terminate all subcontracts to the extent they relate to the work terminated;
 - (4) assign to the judiciary, as directed by the contracting officer, all right, title, and interest of the contractor under the subcontracts terminated, in which case the judiciary will have the right to settle or to pay any termination settlement offer arising out of those terminations;
 - (5) with written approval or ratification to the extent required by the contracting officer, settle all outstanding liabilities and termination settlement offers arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; written approval or ratification will be final for purposes of this clause;
 - (6) transfer title (if not already transferred) and, as directed by the contracting officer, deliver to the judiciary:

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

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

within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the contracting officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the judiciary will pay the contractor:

- (1) the amount determined by the contracting officer if there is no right of appeal or if no timely appeal has been taken or
 - (2) the amount finally determined on an appeal.
- (k) In arriving at the amount due the contractor under this clause, there will be deducted:
- (1) all unliquidated advance or other payments to the contractor, under the terminated portion of this contract;
 - (2) any claim which the judiciary has against the contractor under this contract; and
 - (3) the agreed price for, or the proceeds of sale of materials, products, or other things acquired by the contractor or sold under this clause and not recovered by or credited to the judiciary.
- (l) The contractor and contracting officer shall agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The contracting officer will amend the contract to reflect the agreement.
- (m) (1) The judiciary may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the contractor for the terminated portion of the contract, if the contracting officer believes the total of these payments will not exceed the amount to which the contractor will be entitled.
- (2) If the total payments exceed the amount finally determined to be due, the contractor shall repay the excess to the judiciary upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest will be computed for the period from the date the excess payment is received by the contractor to the date the excess is repaid. Interest will not be charged on any excess payment due to a reduction in the contractor's termination settlement offer because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the contracting officer because of the circumstances.
- (n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

| **Alternate I** - *As prescribed in 7.10.3.k.(3), substitute the following paragraphs (h) and (l) for paragraphs (h) and (l) of the basic Clause 7-225.*

- (h) If the contractor and the contracting officer fail to agree in whole or in part on the amount to be paid because of the termination of work, the contracting officer will determine, on the basis of information available, the amount, if any, due the contractor and will pay the amount determined as follows:
- (1) If the termination is for the convenience of the judiciary, include:

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

(end)

JP3 Clause 7-230, Termination for Default (Fixed-Price - Products and Services)

As prescribed in 7.10.7.n.(1), insert this clause in Section I of solicitations and contracts.

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

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

produced or acquired for the terminated portion of this contract. Upon direction of the contracting officer, the contractor shall also protect and preserve property in its possession in which the judiciary has an interest.

- (f) The judiciary will pay the contract price for completed products delivered and accepted. The contractor and contracting officer will agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The judiciary may withhold from these amounts any sum the contracting officer determines to be necessary to protect the judiciary against loss because of outstanding liens or claims of former lien holders.
- (g) If, after termination, it is determined that the contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the judiciary.
- (h) The rights and remedies of the judiciary in this clause are in addition to any other rights and remedies provided by law or under this contract.

(end)

JP3 Clause 7-235, Disputes

As prescribed in 4.1.9.f., and 7.10.7.n.(2), insert this clause in Section I of solicitations and contracts.

Disputes (JAN 2003)

- (a) A contract dispute means a written claim, demand or assertion by a contracting party for the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other specific relief arising under or relating to the contract. A dispute also includes a termination for convenience settlement proposal and any request for an equitable adjustment, which is denied. A voucher, invoice, or other routine payment that is not disputed by the parties is not a dispute under this clause.
- (b) A contract dispute shall be filed within 12 months of its accrual and shall be submitted in writing to the contracting officer. The dispute shall contain a detailed statement of the legal and factual basis of the dispute and shall be accompanied by any documents that support the claim. The claimant shall seek specific relief, as provided in paragraph (a) above. However, the time periods set forth here shall be superceded if the contract contains specific provisions for the processing of any claim which would otherwise be considered a dispute under this clause.
- (c) Contracting officers are authorized to decide or settle all disputes under this clause. If the contracting officer requires additional information the contracting officer shall promptly request the claimant to provide such information. The contracting officer will issue a written determination within 60 days of the receipt of all the requested information from the claimant. If the contracting officer is unable to render a determination within 60 days, the claimant shall be notified of the date on which a

determination will be made. The determination of the contracting officer shall be considered the final determination of the judiciary.

- (d) The contractor shall proceed diligently with performance of this contract pending resolution of the dispute. The contractor shall comply with the final determination of the contracting officer unless such determination is overturned by a court of competent jurisdiction. Failure to diligently continue contract performance during the pendency of the claim or failure to comply with the final determination of the contracting officer may result in termination of the contract for default or imposition of other available remedies.

(end)

Appendix C - Cost Accounting Standards

The official codified Cost Accounting Standards appear at 48 CFR Chapter 99.

This Chapter may be accessed via the website at <http://www.gpoaccess.gov/cfr/index.html> by searching for "48CFR9903".

Matrix of Solicitation Provisions and Clauses

Key:

Type of Contract:

P or C	=	Provision or Clause
IBR	=	Incorporated by Reference
UCF	=	Uniform Contract Format Section
FP PROD	=	Fixed-Price Product
CR PROD	=	Cost-Reimbursement Product
FP SERV	=	Fixed-Price Service
CR SERV	=	Cost-Reimbursement Service
T&M LH	=	Time & Material/Labor Hours
A&E	=	Architect-Engineering
IND DEL	=	Indefinite Delivery
SM PUR	=	Small Purchase (Open Market \$5,000 - \$25,000)

Contract Purpose:

R	=	Required
A	=	Required when Applicable

Note 1:

The following clauses are prescribed for Experts or Consulting Services:

Clause 1-5, "Conflict of Interest"

Clause 2-65, "Key Personnel"

Clause 5-1, "Payments under Personal Services Contracts"

Clause 5-5, "Nondisclosure (Professional Services)"

Clause 5 10, "Inspection of Professional Services"

Clause 5-15 "Invoices (Professional Services)"

Clause 5-20, "Records Ownership"

Provision 5-25, "Identification of Uncompensated Overtime"

Clause 6-70, "Work for Hire"

Note 2:

The following clauses are prescribed for Letter Contracts:

4-35 "Execution and Commencement of Work (Letter Contract)"

4-40 "Limitation of Judiciary Liability (Letter Contract)"

4-45 "Contract Definitization"

4-50 "Payments of Allowable Costs Before Definitization"

7-75 "Subcontracts"

7-235 "Disputes"

JP3 SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Chap	JP3 Clause #	Title	Presc.	Prov or Cl	IBR	UCF	FP PROD	CR PROD	FP SERV	CR SERV	T&M LH	A&E	IND DEL	SM PUR
		Change 2007-03 October 2006												
B	B-1	Solicitation Provisions Incorporated by Reference	B.2.1.(a)	P	No	L	R	R	R	R	R	R	R	R
B	B-5	Clauses Incorporated by Reference	B.2.1.(b)	C	No	I	R	R	R	R	R	R	R	R
B	B-10	Alterations in Solicitation	B.2.1.(c)	P	No	L	A	A	A	A	A	A	A	A
B	B-15	Alterations in Contract	B.2.1.(d)	C	No	I	A	A	A	A	A	A	A	A
B	B-20	Computer Generated Forms	B.2.1.(e)	C	Yes	I	A	A	A	A	A	A	A	*
1	1-1	Employment by the Government	1.4.2.d.	C	Yes	H			R	R	R	A	A	*
1	1-5	Conflict of Interest (note 1)	1.4.2.d. and 5.2.1.o.(1)	C	Yes	I			R	R	R	A	A	*
1	1-10	Gratuities or Gifts	1.4.4.e.	C	Yes	I	R	R	R	R	R	R	R	
1	1-15	Disclosure of Contractor Information to the Public	1.6.1.h.	C	Yes	I	R	R	R	R	R	R	R	
2	2-1	Request for Information or Solicitation for Planning Purposes	2.1.6.c.	P	No	L	A	A	A	A	A	A	A	
2	2-5A	Inspection of Products	2.2.1.e.(1) or (3)	C	Yes	E	R	R			A	A	A	
2	2-5B	Inspection of Services	2.2.1.e.(2) or (3)	C	Yes	E			R	R	R	A	A	
2	2-10	Responsibility of Products	2.2.1.e.(4)	C	Yes	E	R		A				A	
2	2-15	Warranty Information	2.2.3.d.(1)	P	Yes	L	A	A	A	A	A	A	A	
2	2-20A	Incorporation of Warranty	2.2.3.d.(2)(a)	C	Yes	I	A	A	A	A	A	A	A	
2	2-20B	Contractor Warranty	2.2.3.d.(2)(b)	C	Yes	I	A	A	A	A	A	A	A	
2	2-20C	Warranty of Services	2.2.3.d.(2)(c)	C	Yes	I			A	A	A	A	A	
2	2-25A	Delivery Terms and Contractor's Responsibilities	2.2.4.b.(1)	C	Yes	F	R	R	R	R	R	R	R	*
2	2-25B	Commercial Bill of Lading Notations	2.2.4.b.(2)	C	No	F	A	A					A	
2	2-30A	Time of Delivery	2.2.4.h.(1)	C	Yes	F	A	A	A	A	A	A	A	A
2	2-30B	Desired and Required Time of Delivery	2.2.4.h.(2)	C	No	F	A	A	A	A	A	A	A	A
2	2-35	F.o.b. Destination, Within Judiciary's Premises	2.2.4.h.(3)	C	Yes	F	A	A					A	A

JP3 SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Chap	JP3 Clause #	Title	Presc.	Prov or Cl	IBR	UCF	FP PROD	CR PROD	FP SERV	CR SERV	T&M LH	A&E	IND DEL	SM PUR
		Change 2007-03 October 2006												
2	2-40A	Variation in Quantity	2.2.4.i.(1)(a)	C	No	F	A		A				A	A
2	2-40B	Delivery of Excess Quantities	2.2.4.i.(1)(b)	C	Yes	F	A						A	A
2	2-45	Packaging and Marking	2.2.4.i.(2)	C	Yes	D	R	R	A	A	A		A	*
2	2-50	Continuity of Services	2.2.4.i.(3)	C	Yes	I			A	A	A		A	A
2	2-55	Privacy or Security Safeguards	2.2.4.i.(4)	C	Yes	I	A	A	A	A	A		A	A
2	2-60	Stop-Work Order	2.2.4.i.(5)	C	Yes	F	R	R	R	R	R	R	R	*
2	2-65	Key Personnel (note 1)	2.2.4.i.(6) & 5.2.1.o.(2)	C	No	H			A	A	A		A	A
2	2-70	Site Visit	2.2.4.i.(7)	P	Yes	L			A	A	A	A	A	A
2	2-75	Liquidated Damages	2.2.5.g.	C	No	F	A	A	A	A	A	A	A	
2	2-80	Judiciary Property	2.2.6.	C	Yes	I			A	A	A	A	A	A
2	2-85A	Evaluation Inclusive of Options	2.2.7.l.(1)(a)	P	Yes	M	A	A	A	A	A		A	A
2	2-85B	Evaluation Exclusive of Options	2.2.7.l.(1)(b)	P	Yes	M	A	A	A	A	A		A	A
2	2-85C	Evaluation of Options Exercised at Time of Contract Award	2.2.7.l.(1)(c)	P	Yes	M	A	A	A	A	A		A	A
2	2-90A	Option for Increased Quantity	2.2.7.l.(2)(a)	C	Yes	I	A		A				A	A
2	2-90B	Option for Increased Quantity-Separately Priced Line Item	2.2.7.l.(2)(b)	C	No	I	A	A			A		A	A
2	2-90C	Option to Extend Services	2.2.7.l.(2)(c)	C	No	I			A	A	A		A	A
2	2-90D	Option to Extend the Term of the Contract	2.2.7.l.(2)(d)	C	No	I	A	A	A	A	A		A	A
2	2-95	Material Requirements	2.3.2.b.	C	Yes	I	R	R					A	A
2	2-100	Brand Name or Equal	2.3.4.b.(3)	P	Yes	L	A	A			A		A	A
2	2-105	Economic Purchase Quantity - Products	2.3.4.c.(1)	P	No	K	A	A					A	A
2	2-110	Option to Purchase Equipment	2.2.8.d.(5) & 2.3.4.c.(2)	C	Yes	I	A	A	A	A	A	A	A	A
2	2-115	Terms for Commercial Advance Payment of Purchases	2.2.10.f.(6)	C	Yes	I	A		A				A	A
2	2-115, Alt I	Terms for Commercial Advance Payment of Purchases	2.2.10.f.(6)	C	Yes	I	A		A				A	A
2	2-120	Submission of Invoice	2.2.10.f.(6)	C	Yes	G	A		A				A	A
2	2-125	Security for Advance Payment	2.2.10.f.(6)	C	Yes	I	A		A				A	A

JP3 SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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		Change 2007-03 October 2006												
3	3-1	Contractor Use of Mandatory Sources of Products or Services	3.1.2.(g)	C	Yes	I	A	A	A	A	A		A	A
3	3-3	Provisions, Clauses, Terms and Conditions - Small Purchases	3.1.5.f.(4) & 3.4.8.a.(3)	C	Yes		A		A		A			R
3	3-5	Taxpayer Identification	3.5.1.c.(1)	P	No	K	R	R	R	R	R	R	R	
3	3-10	Data Universal Numbering System (DUNS) Number	3.5.1.c.(2)	P	Yes	L	R	R	R	R	R	R	R	
3	3-15	Place of Performance	3.5.1.c.(3)	P	Yes	K	R	R	R	R	R	R	R	
3	3-20	Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters	3.5.1.c.(4)	P	No	K	R	R	R	R	R	R	R	
3	3-25	Protecting the Judiciary's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment	3.5.1.c.(5)	C	Yes	I	R	R	R	R	R	R	R	
3	3-30	Certificate of Independent Price Determination	3.5.1.c.(6)	P	No	K	R		R		R	R	R	
3	3-35	Covenant Against Contingent Fees	3.5.1.c.(7)	C	Yes	I	R	R	R	R	R	R	R	
3	3-40	Restrictions on Subcontractor Sales to the Government	3.5.1.c.(8)	C	Yes	I	R	R	R	R	R	R	R	
3	3-45	Anti-Kickback Procedures	3.5.1.c.(9)	C	Yes	I	R	R	R	R	R	R	R	
3	3-50	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	3.5.1.c.(10)	C	Yes	I	R	R	R	R	R	R	R	
3	3-55	Price or Fee Adjustment for Illegal or Improper Activity	3.5.1.c.(11)	C	Yes	I	R	R	R	R	R	R	R	
3	3-60	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions	3.5.1.c.(12)	P	Yes	K	R	R	R	R	R	R	R	
3	3-65	Limitation on Payments to Influence Certain Federal Transactions	3.5.1.c.(13)	C	Yes	I	R	R	R	R	R	R	R	

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3	3-70	Determination of Responsibility	3.5.1.c.(14)	P	Yes	M	R	R	R	R	R	R	R	
3	3-75	Limited Criminal Background Suitability Check	3.5.1.c.(15)	C	Yes	H	R	R	R	R	R	R	R	
3	3-80	Submission of Offers	3.5.1.c.(16)	P	Yes	L	R	R	R	R	R	R	R	
3	3-85	Explanation to Prospective Offerors	3.5.1.c.(17)	P	Yes	L	R	R	R	R	R	R	R	
3	3-90	Late Submissions, Modifications and Withdrawal of Offers	3.5.1.c.(18) & 3.5.6.e.	P	Yes	L	R	R	R	R	R	R	R	*
3	3-95	Preparation of Offers	3.5.1.c.(19)	P	Yes	L	R	R	R	R	R	R	R	
3	3-100	Instructions to Offerors	3.5.1.c.(20) & 3.5.13.a.	P	Yes	L	R	R	R	R	R	R	R	
3	3-100, Alt I	Instructions to Offerors	3.5.1.c.(20)	P	Yes	L	A	A	A	A	A	A	A	
3	3-100, Alt II	Instructions to Offerors	3.5.1.c.(20)	P	Yes	L	A	A	A	A	A	A	A	
3	3-105	Audit and Records - Negotiation	3.5.1.c.(21)	C	Yes	I	R	R	R	R	R	R	R	
3	3-110	Deleted (No Replacement)												
3	3-115	Facsimile Offers	3.5.1.c.(22)	P	No	L	A	A	A	A	A	A	A	
3	3-120	Order of Precedence	3.5.1.c.(23)	C	Yes	I	R	R	R	R	R	R	R	
3	3-125	Acknowledgement of Solicitation Amendments	3.5.1.c.(24)	P	Yes	L	R	R	R	R	R	R	R	
3	3-130	Authorized Negotiators	3.5.1.c.(25)	P	No	K	R	R	R	R	R	R	R	
3	3-135	Single or Multiple Awards	3.5.1.c.(26)	P	Yes	L	A	A	A	A	A		A	
3	3-140	Notice to the Judiciary of Labor Disputes	3.5.1.c.(27)	C	Yes	I	A	A	A	A	A	A	A	
3	3-145	Payment for Overtime Premiums	3.5.1.c.(28)	C	No	I		R		R	A	A	A	
3	3-150	Contract Work Hours and Safety Standards Act-Overtime Compensation	3.5.1.c.(29)	C	Yes	I			A	A	A		A	
3	3-155	Walsh-Healey Public Contracts Act	3.5.1.c.(30)	C	Yes	I	A	A			A		A	*
3	3-160	Service Contract Act of 1965, as Amended	3.4.4.g. & 3.5.1.c.(31)	C	Yes	I			A	A	A	A	A	*
3	3-165	Deleted (No Replacement - use 3-160)												
3	3-170	Statement of Equivalent Rates for Federal Hires	3.5.1.c.(32)	C	No	I			A	A	A	A	A	*

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		Change 2007-03 October 2006												
3	3-175	Fair Labor Standards Act and Service Contract Act-Price Adjustment (Multiple Year and Option Contracts)	3.5.1.c.(33) & 4.1.14(3)	C	Yes	I			A		A	A	A	
3	3-180	Fair Labor Standards Act and Service Contract Act-Price Adjustment	3.5.1.c.(34)	C	Yes	I			A		A	A	A	
3	3-185	Evaluation of Compensation for Professional Employees	3.5.1.c.(35)	P	Yes	L			A	A	A		A	
3	3-190	SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA)	3.5.1.c.(36)	C	No	I			A	A	A		A	A
3	3-195	Exemption from Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain Information Technology, Scientific and Medical and/or Office and Business Equipment-Contractor Certification	3.5.1.c.(37)	P	No	K			A	A	A		A	A
3	3-200	Service Contract Act - Place of Performance Unknown	3.5.1.c.(38)	C	No	I			A	A	A		A	A
3	3-205	Protest after Award	3.5.1.c.(39)	C	Yes	I	R	R	R	R	R	R	R	*
3	3-210	Protests	3.5.1.c.(40)	P	No	L	R	R	R	R	R	R	R	
4	4-1	Type of Contract	4.1.2.b.	P	No	L	R	R	R	R	R	R	R	
4	4-5	Ordering	4.1.5.i.(1)(a)	C	Yes	I							R	
4	4-10	Order Limitations	4.1.5.i.(1)(b)	C	No	I							R	
4	4-15	Deleted (no replacement)												
4	4-20	Requirements	4.1.5.i.(3)	C	Yes	I							R	
4	4-25	Indefinite Quantity	4.1.5.i.(4)	C	Yes	I							A	
4	4-30	Payment (Time-and-Materials and Labor-Hour Contracts)	4.1.7.d.	C	Yes	I					R			

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4	4-35	Execution and Commencement of Work (Letter Contract)(Note 2)	4.1.9.h.(1)	C	No	I	R	R	R	R	R	R	R	
4	4-40	Limitation of Judiciary Liability (Letter Contract)(Note 2)	4.1.9.h.(2)	C	No	I	R	R	R	R	R	R	R	
4	4-45	Contract Definitization (Letter Contract)(Note 2)	4.1.9.f. & 4.1.9.h.(3)	C	No	I	R	R	R	R	R	R	R	
4	4-50	Payments of Allowable Costs Before Definitization (Letter Contract)(Note 2)	4.1.9.h.(4)	C	Yes	I		R		R	A	A	A	
4	4-55	Economic Price Adjustment - Standard Products	4.1.12.j. & 4.1.14.l.(2)	C	No	I	A	A					A	
4	4-60	Allowable Cost and Payment	4.1.13.h.(1)	C	Yes	I		A		A	A	A	A	
4	4-65	Fixed Fee	4.1.13.h.(2)	C	Yes	I		A		A	A	A	A	
4	4-70	Incentive Fee	4.1.13.h.(3)	C	No	I		A		A	A	A	A	
4	4-75	Cost Contract-No Fee	4.1.13.h.(4)	C	Yes	I		A		A	A	A	A	
4	4-80	Cost-Sharing Contract - No Fee	4.1.13.h.(5)	C	Yes	I		A		A	A	A	A	
4	4-85	Limitation of Cost	4.1.13.h.(6)	C	Yes	I		A		A	A	A	A	
4	4-90	Limitation of Funds	4.1.13.h.(7)	C	Yes	I		A		A	A	A	A	
4	4-95	Price Reduction for Defective Cost or Pricing Data	4.5.5.(1)	C	Yes	I	A	A	A	A	A	A	A	
4	4-100	Price Reduction for Defective Cost or Pricing Data - Modifications	4.5.5.(2)	C	Yes	I	A	A	A	A	A	A	A	
4	4-105	Integrity of Unit Prices	4.5.5.(3)	C	Yes	I	A	A	A	A	A	A	A	
4	4-110	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data	4.5.5.(4)	P	Yes	L	A	A	A	A	A	A	A	
4	4-110 Alt I	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data	4.5.5.(4)	P	Yes	L	A	A	A	A	A	A	A	
4	4-115	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data - Modifications	4.5.5.(5)	C	Yes	I	A	A	A	A	A	A	A	

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4	4-115, Alt I	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data - Modifications	4.5.5.(5)	C	Yes	I	A	A	A	A	A	A	A	
4	4-120	Cost Accounting Standards Notices and Certification	4.6.2.g.(1)	P	No	K	A	A	A	A	A	A	A	
4	4-125	Cost Accounting Standards	4.6.2.g.(2)	C	Yes	I	A	A	A	A	A	A	A	
4	4-130	Disclosure and Consistency of Cost Accounting Practices	4.6.2.g.(3)	C	Yes	I	A	A	A	A	A	A	A	
4	4-135	Cost Accounting Standards-Educational Institution	4.6.2.g.(4)	C	Yes	I	A	A	A	A	A	A	A	
4	4-140	Predetermined Indirect Cost Rates (CR R&D)	4.6.2.g.(5)	C	Yes	I	A	A	A	A	A	A	A	
4	4-145	Administration of Cost Accounting Standards	4.6.2.g.(6)	C	Yes	I	A	A	A	A	A	A	A	
4	4-150	Cancellation under Multi-Year Contracts	4.1.14.I.(1)	C	Yes	I	A	A	A	A	A			
4	4-155	Evaluation of Price Proposal - Multi-Year Contract	4.1.14.I.(4)	P	Yes	M	A	A	A	A	A			
4	4-160	Cancellation Period and Ceiling	4.1.14.I.(5)	C	No	H	A	A	A	A	A			
4	4-165	Price Proposal Instruction - Multi-Year Contract	4.1.14.I.(6)	P	Yes	L	A	A	A	A	A			
5	5-1	Payments under Personal and Professional Services Contracts (Note 1)	5.1.1.f. & 5.2.1.o.(3)	C	Yes	I			A	A	A	A	A	
5	5-5	Nondisclosure (Professionnal Services) (Note 1)	5.2.1.o.(4)	C	Yes	I			A	A	A	A	A	
5	5-10	Inspection of Professional Services (Note 1)	5.2.1.o.(5)	C	Yes	E			A	A	A	A	A	
5	5-15	Deleted (Replaced with 125 Alt I)	7-											
5	5-20	Records Ownership (Note 1)	5.2.1.o.(7)	C	Yes	I			A	A	A	A	A	
5	5-25	Identification of Uncompensated Overtime (Note 1)	5.2.1.o.(8)	P	Yes	L			A	A	A	A	A	
5	5-30	Authorization and Consent	5.3.7.g.(1)	C	Yes	I						A		
5	5-30, Alt I	Authorization and Consent	5.3.7.g.(1)	C	Yes	I						A		

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5	5-30, Alt II	Authorization and Consent	5.3.7.g.(1)	C	Yes	I						A		
5	5-35	Payments under Fixed-Price Architect-Engineer Contracts	5.3.7.g.(2)	C	Yes	I						A		
5	5-40	Permits and Responsibilities (Services)	5.3.7.g.(3)	C	Yes	I						A		
5	5-45	Design Within Funding Limitations	5.3.7.g.(4)	C	No	I						A		
5	5-50	Responsibility of the Architect-Engineer Contractor	5.3.7.g.(5)	C	Yes	I						A		
5	5-55	Work Oversight in Architect-Engineer Contracts	5.3.7.g.(6)	C	Yes	I						R		
5	5-60	Requirements for Registration of Designers	5.3.7.g.(7)	C	Yes	I						R		
5	5-65	Subcontractors and Outside Associates and Consultants (Architect-Engineer Services)	5.3.7.g.(8)	C	Yes	I						R		
5	5-70	Termination (Fixed-Price Architect-Engineer)	5.3.7.g.(9)	C	Yes	I						A		
5	5-75	Suspensions and Delays	5.3.7.g.(10)	C	Yes	F						R		
6	6-1	Performance Bond Requirements	6.1.2.c.(1)	C	No	I	A	A	A	A	A	A	A	
6	6-1, Alt I	Performance Bond Requirements	6.1.2.c.(2)	C	No	I	A	A	A	A	A	A	A	
6	6-5	Fidelity Bond Requirements	6.1.4.	P	Yes	L	A	A	A	A	A	A	A	
6	6-10	Deposit of Assets Requirements	6.2.2.e.(1)	P	Yes	L	A	A	A	A	A	A	A	
6	6-15	Deposits of Assets Instead of Surety Bonds	6.2.2.e.(2)	C	Yes	I	A	A	A	A	A	A	A	
6	6-20	Insurance-Work on a Judiciary Installation	6.3.2.c.(1)	C	Yes	I	A		A		A	A	A	
6	6-25	Insurance-Liability to Third Persons	6.3.2.c.(2)	C	Yes	I		A		A	A		A	
6	6-30	Insurance	6.3.2.c.(3)	C	Yes	I	A	A	A	A	A	A	A	A
6	6-35	Errors and Omissions	6.3.4.e.	C	No	I			A	A	A	A	A	A
6	6-40	Federal, State, and Local Taxes	6.4.3.d.(2) & 6.4.4.(1)	C	Yes	I	A		A		A	A	A	

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6	6-45	Federal, State, and Local Taxes (Noncompetitive Contract)	6.4.3.d.(2) & 6.4.4.(2)	C	Yes	I	A		A		A	A	A	
6	6-50	Representation of Rights in Data	6.5.3.a. & b. and 6.5.4.a.	P	No	K	A	A	A	A	A	A	A	A
6	6-55	Delivery of Limited Rights and Restricted Computer Software	6.5.4.e.	C	Yes	I	A	A	A	A	A	A	A	A
6	6-60	Rights in Data - General	6.5.1.d., 6.5.5.a. & 6.5.6.(1)	C	No	I	A	A	A	A	A	A	A	*
6	6-65	Rights in Data-Special Works	6.5.8.b.	C	Yes	I	A	A	A	A	A	A	A	A
6	6-70	Work for Hire (note 1)	5.2.1.o.(9) & 6.5.9.b.	C	Yes	I			A	A	A	A	A	A
6	6-75	Rights to Data in an Offer	6.5.11.b.	C	No	I	A	A	A	A	A	A	A	A
7	7-1	Contract Administration	7.2.10.a.(1)	C	Yes	G	R	R	R	R	R	R	R	
7	7-5	Contracting Officer's Technical Representative	7.2.10.a.(2)	C	Yes	G	R	R	R	R	R	R	R	
7	7-10	Contractor Representative	7.2.10.a.(3)	C	No	G	R	R	R	R	R	R	R	
7	7-15	Observance of Regulations/Standards of Conduct	7.2.10.a.(4)	C	Yes	I	R	R	R	R	R	R	R	
7	7-20	Security Requirements	7.2.10.a.(5)	C	Yes	I	R	R	R	R	R	R	R	*
7	7-25	Indemnification	7.2.10.a.(6)	C	Yes	I	R	R	R	R	R	R	R	A
7	7-30	Public Use of the Name of the Federal Judiciary	7.2.10.a.(7)	C	Yes	I	R	R	R	R	R	R	R	*
7	7-35	Disclosure or Use of Information	7.2.10.a.(8)	C	Yes	I	R	R	R	R	R	R	R	*
7	7-40	Judiciary-Contractor Relationships	7.2.10.b.	C	Yes	I	A	A	A	A	A	A	A	*
7	7-45	Travel	7.2.10.c.	C	Yes	H	A	A	A	A	A	A	A	A
7	7-50	Parking	7.2.10.d.	C	No	H	A	A	A	A	A	A	A	A
7	7-55	Contractor Use of Judiciary Networks	7.2.10.e.	C	Yes	H	A	A	A	A	A	A	A	A
7	7-60	Judiciary Furnished Property or Services	7.3.1.c.(1)	P	Yes	L	R	R	R	R	R	R	R	*
7	7-65	Protection of Judiciary Buildings, Equipment, and Vegetation	7.3.1.c.(2)	C	Yes	I			A	A	A	A	A	*

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7	7-70	Judiciary Property Furnished "As Is"	7.3.1.c.(3)	C	Yes	I	A	A	A	A	A	A	A	A
7	7-75	Subcontracts (Note 2)	7.4.1.a. & 7.4.1.d.(1)	C	No	I	A	R	A	R	R	A	A	
7	7-80	Competition in Subcontracting	7.4.1.d.(2)	C	Yes	I	A	R	A	R			A	
7	7-85	Examination of Records	7.5.2.b.	C	Yes	I	R	R	R	R	R	R	R	*
7	7-95	Contractor Inspection Requirements	7.6.6.e.(1)	C	Yes	I								A
7	7-100A	Limitation of Liability (Products)	7.6.6.e.(2)	C	Yes	I	R	R				A	A	
7	7-100B	Limitation of Liability (Services)	7.6.6.e.(3)	C	Yes	I			R	R	R	R	A	
7	7-105	Certificate of Conformance	7.6.9.b.	C	No	E	A	A	A	A	A	A	A	A
7	7-110	Bankruptcy	7.6.13.d.	C	Yes	I	R	R	R	R	R	R	R	
7	7-115	Availability of Funds	2.2.9.j.(1)	C	Yes	I	A	A	A	A	A	A	A	A
7	7-120	Availability of Funds for the Next Fiscal Year	2.2.9.j.(2)	C	No	I			A	A			A	
7	7-125	Invoices	7.7.2.c.	C	Yes	G	R	R	R	R	R	R	R	
7	7-125, Alt I	Invoices	5.2.1.o.(6)	C	Yes	G	R	R	R	R	R	R	R	
7	7-130	Interest (Prompt Payment)	7.7.3.c.	C	Yes	I	R	R	R	R	R	R	R	*
7	7-135	Payments	7.7.3.e.(1)	C	Yes	I	R		R		A	A	A	*
7	7-140	Discounts for Prompt Payment	7.7.3.e.(2)	C	Yes	I	R		R		A	A	A	*
7	7-145	Government Purchase Card	7.7.3.e.(3)	C	Yes	I	A	A	A	A	A	A	A	*
7	7-150	Extras	7.7.3.e.(4)	C	Yes	I	R		R		A	A	A	*
7	7-155	Certification of Final Indirect Costs	7.7.3.e.(5)	C	No	I		A		A	A	A	A	
7	7-160	Limitation on Withholding of Payments	7.7.4.d.	C	Yes	I	A	A	A	A	A		A	
7	7-165	Penalties for Unallowable Costs	7.7.5.e.(1)	C	Yes	I	A	A	A	A	A	A	A	
7	7-170	Notice of Intent to Disallow Costs	7.7.5.e.(2)	C	Yes	I	A	R	A	R	A	A	A	
7	7-175	Assignment of Claims	7.7.7.d.(1)	C	Yes	I	A	A	A	A	A	A	A	
7	7-180	Prohibition of Assignment of Claims	7.7.7.d.(2)	C	Yes	I	A	A	A	A	A	A	A	
7	7-185	Changes	7.8.7.e.(1)	C	Yes	I	R	R	R	R	R	R	R	*
7	7-190	Change Order Accounting	7.8.7.e.(2)	C	Yes	I	A	A				A	A	
7	7-195	Excusable Delays	7.8.8.f.(3)	C	Yes	I	A	A	A	A	A		A	

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7	7-200	Judiciary Delay of Work	7.8.8.j.(1)	C	Yes	F	R	R	A					*
7	7-205	Payment for Judiciary Holidays	7.8.8.j.(2)	C	Yes	I			A	A	R		A	*
7	7-210	Payment for Emergency Closures	7.8.8.j.(3)	C	Yes	I	R	R	R	R	R	R	R	*
7	7-215	Notification of Ownership Changes	7.8.10.l.	C	Yes	I	R	R	R	R	R	R	R	
7	7-220	Termination for Convenience of the Judiciary (Fixed Price)	7.10.3.k.(1)	C	Yes	I	R		R		A		A	
7	7-223	Termination for Convenience of the Judiciary (Short Form)	7.10.3.k.(2)	C	Yes	I	A	A	A	A	A		A	
7	7-225	Termination for Convenience (Cost-Reimbursement)	7.10.3.k.(3)	C	Yes	I		A		A		A	A	
7	7-225, Alt I	Termination for Convenience (Cost-Reimbursement)	7.10.3.k.(3)	C	Yes	I					A		A	
7	7-230	Termination for Default - Fixed-Price Products and Services	7.10.7.n.(1)	C	Yes	I	R		R		A	A	A	
7	7-235	Disputes (Note 2)	4.1.9.f. & 7.10.7.n.(2)	C	Yes	I	R	R	R	R	R	R	R	*

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Advance	Agreement	4.7.3.b.
Blanket Purchase	Agreement	3.4.8.b.
Change of Name	Agreement	Exhibit 7-2
Commercial Use	Agreement	5.4.
Content of	Agreement	4.1.6.e.
Limitation (Ordering	Agreement)	4.1.6.d.
Novation	Agreement	Exhibit 7-1
Novation and Change of Name	Agreement	7.8.10.
Obligation (Ordering	Agreement)	4.1.6.c.
Ordering	Agreement	4.1.6.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
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Pricing (Ordering	Agreement)	4.1.6.h.
Surety Takeover	Agreement	6.2.4.b.
	All Evidence is Documented	7.6.4.b.
Rejection of	All Offers	3.5.12.
Determining	Allocability	4.7.3.
Cost	Allowability	4.7.
Determining Cost	Allowability	4.7.1.
	Alterations of Leased Property	4.7.5.g.
	Amending Solicitations	3.4.5.d.
Failure to Acknowledge	Amendment	3.5.7.
	Amendment of Solicitations	3.5.3.
The	Amount Due is Computed	7.6.4.c.
	Amount of the Bond	6.2.1.d.
Determining Fraud or Gross Mistake	Amounting to Fraud	7.6.12.d.
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Cost	Analysis	3.8.5.; 4.5.1.
Offer	Analysis	4.3.2.
Price	Analysis	3.8.4.; 4.4.1.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
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Types of Contracts &	Analysis of Offers	Chapter 4
The Contractor's Reply is Obtained and	Analyzed	7.6.4.f.
Local	Announcements and Advertisements	3.2.2.(3)
	Annual Payment Bond	6.1.3.c.
	Annual Performance Bond	6.1.2.d.
	Anti-Deficiency Act	2.2.9.
	Appeal	7.9.2.f.
Decisions and	Appeal	7.9.2.
	Applicability (Other Than Full and Open Competition)	3.6.1.e.
	Applicability (Small Purchase Procedures)	3.4.1.c.
	Application (Firm-Fixed Price)	4.1.4.b.
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Data File	(Architect and Engineer)	5.3.1.e.
Delegation	(Architect and Engineer)	5.3.1.a.
Publicizing	(Architect and Engineer)	5.3.1.d.
	Architect-Engineer Contracts	5.3.
Cost Estimate for	Architect-Engineer Contracts	5.3.6.
Negotiations of	Architect -Engineer Contracts	5.3.7.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
	Architect-Engineer Evaluation Board	5.3.2.
	Architect-Engineer Evaluation Board Functions	5.3.3.
	Architect-Engineer Selection	5.3.4.
	Architect-Engineer Selection Process for Small Purchases	5.3.5.
	Architect- Engineer Services	5.3.1.
Surety Notification and	Arrangement	7.10.7.1.
	Arrangement and Numbering (of JP3)	1.3.3.
The	Assessment is Discussed with the Contractor	7.6.4.d.
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	Assignment by Law	7.7.7.c.
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	Assistance in Subcontract Settlement	7.10.3.i.
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Quality	Assurance at Judiciary Site or Destination	2.2.1.f.
Demand for Adequate	Assurance for Causes Other Than Failure to Make Timely Delivery	7.10.4.e.
	Authority	1.2.1.
Protest Decision	Authority	3.9.2.d.
	Authority and Responsibility	1.2.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
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	Authority, Responsibility, and Conduct	Chapter 1
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	Automobile Liability Insurance	6.3.2.b.(3)
	Availability of Funds	2.2.9.c
	Availability (of JP3)	1.3.2.
	Availability of Solicitations	3.5.1.b.(5)
	Award	3.4.6.c.(3); 3.5.19.
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Protest Filed Before and After	Award	3.9.2.h.
Selection for	Award	3.5.10.
	Award Debriefing	3.5.20.
Cost-Plus-	Award-Fee Contract	4.1.13.g.
Fixed-Price	Award Fee Contract	4.1.10.
	Award Made After Discussions	3.5.7.b.
	Award Made Without Discussions	3.5.7.a.
	Award Notification	3.5.19.d.
	Award Procedures	3.6.4.
	Award With Discussions	3.5.14.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
	Award Without Discussions	3.5.13.
	Awarded Contracts (release of information)	1.6.1.b.
Multiple	Awards from One Solicitation	4.1.5.f.
	BA	4.1.6.b.(3)
	Bad Debt	4.7.4.b.
Compensation	ban	1.4.1.e.
	Bankruptcy	7.6.13.
Consultation with Office of General Counsel	(bankruptcy)	7.6.13.c.
	Basic information (Unsolicited offers)	3.7.3.b.
	Basis for Award	3.4.6.
	Becoming a COTR	7.2.7.
Protest Filed	Before and After Award	3.9.2.h.
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Procurement Planning	Benefits	2.1.5.
	Best and Final Offers	3.5.17.
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Distinctions	Between Contracting Officer (CO) and Contracting Officer's Technical Representative (COTR)	7.2.3.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
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	Bilateral modification within the scope of the contract	7.8.2.a.
	Blanket Purchase Agreements (BPA)	3.4.8.b.
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	BOA	4.1.6.b.(2)
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	Bona Fide Needs Rule	Exhibit 1-1
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Amount of the	Bond	6.2.1.d.
Annual Payment	Bond	6.1.3.c.
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Date	(bond)	6.1.6.e.
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Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
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Payment	Bond for Other than Construction Contract	6.1.3.
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	Bond, Insurance, Taxes, and Rights in Data	Chapter 6
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Use of	BPAs	3.4.8.d.
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	Cancellation of Solicitations	3.5.4.
	Cardinal Change	7.8.7.c.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
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	Cause for Debarment	3.3.3.h.
	Cause for Suspension	3.3.6.
Show	Cause Notice	7.10.5.e.
Show	Cause Notice Response	7.10.5.f.(2)
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Proposed JP3	Change	1.3.4.a.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
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Proposed JP3	Change Format	1.3.4.c.
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	Change of Name Agreement	Exhibit 7-2
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	Change Order	7.8.2.b.(1)(b)
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	Changing or modifying the contract	7.2.4.f.
Providing “technical direction,” consisting of guidance, answering questions, and addressing other issues that the contractor may have; but not	“changing” the contract	7.2.4.e.
	Circumstances Permitting Other Than Full and Open Competition	3.6.2.
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Settlement of Subcontractor	Claim	7.10.3.f.
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Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
	(Claim and Disputes) Policy	7.9.1.
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Solicitation Provisions and Contract	Clauses	1.3.3.(c)
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	Clauses (Cost Analysis)	4.5.5.
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	Closing out the contract and orders	7.2.4.i.
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	Commercial Advance Payment	2.2.10
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Making sure that the judiciary is meeting its contractual	commitments	7.2.4.b.
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Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
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	Compensation ban	1.4.1.e.
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Adequate Price	Competition	4.3.3.
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Open Market Small Purchase Procedures With or Without	Competition	3.4.2.; 7.1.1.b.
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	Composition of Total Cost	4.6.2.a.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
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Incidental and	Consequential Damages	7.10.9.
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Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
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Performance Bonds for Other than	Construction Contract	6.1.2.
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Expert and	Consultant Services Contracts	5.2.
	Consultation with Office of General Counsel (bankruptcy)	7.6.13.c.
Non-federal employment	contact	1.4.1.d.
Judiciary Points of	Contact (for Unsolicited Offers)	3.7.2.
	Content of a Purchase Order	3.4.8.a.(1)
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	Content of Unsolicited Offers	3.7.3.
Cost	Continuing After Termination	4.7.5.c.
	Continuation of Current Contracts	3.3.3.g.
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Bilateral modification within the scope of the	contract	7.8.2.a.
Continuation of Current	Contract	3.3.3.g.
Cost	Contract	4.1.13.c.
Cost Estimate for Architect- Engineer	Contract	5.3.6.
Cost-Plus-Award-Fee	Contract	4.1.13.g.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
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Cost-Plus-Incentive-Fee	Contract	4.1.13.e.
Cost Reimbursement	Contract	4.1.13.
Cost-Sharing	Contract	4.1.13.d.
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Expert and Consultant Services	Contract	5.2.
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Firm Fixed Price	Contract	4.1.4.
Fixed-Price Award Fee	Contract	4.1.10.
Fixed-Price Incentive	Contract	4.1.11.
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Other Federal Agency	Contract	3.1.6.
Payment Bonds for Other than Construction	Contract	6.1.3.
Performance Bonds for Other than Construction	Contract	6.1.2.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Personal Services	Contract	5.1.
Physically Completed	Contract	7.11.1.
Unilateral modification within the scope of the	contract	7.8.2.b.
Supporting unusual	contract actions when necessary, such as protests, disputes, terminations, etc.	7.2.4.j.
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Types of	Contracts and Analysis of Offers	Chapter 4
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	(Contract Administration of) Judiciary Property	7.3.
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	(Contract Administration) Responsibilities	7.2.
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Solicitation Provisions and	Contract Clause	1.3.3.(c)
	Contract Closeout	7.11.
	Contract Closeout Procedures	7.11.2.
	Contract Completion	6.2.4.c.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
	Contract Cost	4.6.2.
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	Contract Type (experts and consultant)	5.2.1.p.
Limitations (Selecting	Contract Type)	4.1.3.
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	Contracting Officer Memorandum	7.10.6.i.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Distinctions Between	Contracting Officer (CO) and Contracting Officer's Technical Representative (COTR)	7.2.3.
Distinctions Between Contracting Officer (CO) and	Contracting Officer's Technical Representative (COTR)	7.2.3.
Soliciting Under Standard Competitive	Contracting Procedures	3.5.1.a.
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The Assessment is Discussed with the	Contractor	7.6.4.d.
Monitoring the progress of a	contractor and making sure deliverable schedules are maintained	7.2.4.a.
Receiving, inspecting, and either accepting or rejecting	contractor deliverables	7.2.4.d.
Review of	Contractor Deliverables	7.5.3.e.
Ensuring that the	contractor is paid for services and products that have been delivered and accepted	7.2.4.g.
Providing "technical direction," consisting of guidance, answering questions, and addressing other issues that the	contractor may have; but not "changing" the contract	7.2.4.e.
	Contractor Proprietary Interest	6.5.1.b.
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Prime	Contractor Rights and Obligations	7.10.3.f.(2)
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Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Responsible Prospective	Contractor	3.3.1.
Repurchase Against	Contractor's Account	7.10.8.b.
	Contractor's Duties	7.10.3.e.
The	Contractor's Reply is Obtained and Analyzed	7.6.4.f.
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	Contributions or Donations	4.7.4.c.
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	Copyrighted Data	6.5.5.
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Composition of Total	Cost	4.6.2.a.
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Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Entertainment	Cost	4.7.4.e.
Evaluating the effect of the offeror's current practices on future	cost	4.5.1.b.(2)
Indirect	Cost	4.6.2.e.
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Termination	Cost	4.7.5.
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	Cost Continuing After Termination	4.7.5.c.
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Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
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Table 4-2 Instructions for Submitting	Cost/Price Offers When Cost or Pricing Data is Required	Exhibit 4-2
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Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
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Technical Evaluation	Criteria	Exhibit 2-1
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	Cure Notice	7.10.5.b.
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Continuation of	Current Contracts	3.3.3.g.
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Incidental	Damages	7.10.9.a.
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Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
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Table 4-2 Instructions for Submitting Cost/Price Offers When Cost or Pricing	Data is Required	Exhibit 4-2
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Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
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Causes for	Debarment	3.3.3.h.
Conditions for	Debarment	3.3.3.i.
Period of	Debarment	3.3.4.
Procedural Requirements for	Debarment	3.3.5.
	Debarment, Suspension, and Ineligibility	3.3.3.
	Debriefing (release of information)	1.6.1.g.
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Restrictions on Purchases with Appropriated and	Decentralized Funds	Exhibit 1-1
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	Deduction of Damages from the Price	7.10.9.c.
	Default	7.10.8.c.(1)
Procedure in Lieu of Termination for	Default	7.10.6.g.
Termination for	Default	7.10.7.
Termination for	Default Notice	7.10.6.
Fraud, Gross Mistakes, or Latent	Defect	7.6.12.
	Defective Cost or Pricing Data	4.5.4.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
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	Defense of Fraud Proceedings	4.7.4.1.
Compensable	Delay	7.8.8.g.
Equitable Adjustment for	Delay	7.8.8.e.
Excusable	Delay	7.8.8.f.
	Delay in Settlement of Subcontractor Claim	7.10.3.h.
	Delegation (Architect and Engineer)	5.3.1.a.
Issuing a	Delinquency Notice	7.10.5.
Receiving, inspecting, and either accepting or rejecting contractor	Deliverable	7.2.4.d.
Review of Contractor	Deliverable	7.5.3.e.
Monitoring the progress of a contractor and making sure	Deliverable schedules are maintained	7.2.4.a.
Ensuring that the contractor is paid for services and products that have been	Delivered and accepted	7.2.4.g.
Demand for Adequate Assurance for Causes Other Than Failure to Make Timely	Delivery	7.10.4.e.
Failure to Make Timely	Delivery	7.10.4.
Notice of Impending Termination - Causes Other Than Failure to Make Timely	Delivery	7.10.4.d.
	Delivery or Performance Schedule	2.2.4 .

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
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	Delivery Order or Task Order Contracts	4.1.5.f.
Procurement Files (Purchase/	Delivery/Task Order or Contract Files)	7.1.1.
	Demand for Adequate Assurance for Causes Other Than Failure to Make Timely Delivery	7.10.4.e.
	Deposit of Assets Instead of Surety Bonds	6.2.2.
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	Determination Following Termination Notice	7.10.6.h.
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	Determining Cost Allowability	4.7.1.
	Determining Fraud or Gross Mistake Amounting to Fraud	7.6.12.d.
	Determining Reasonableness	4.7.2.
	Determining Responsibility and Nonresponsibility	3.3.2.
Waivers/	Deviations	1.2.3.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
	Direct Cost	4.6.2.d.
	Direct Settlement by the Judiciary	7.10.3.j.
Workshop for People Who are Blind or Severely	Disabled	3.1.2.
	Disallowing Costs	7.7.5.
	Disclosure and Use of Information	3.5.5.
Use and	Disclosure of Data	3.7.8.a.
Non-	disclosure of proprietary and source selection information	1.4.1.c.
The Assessment is	Discussed with the Contractor	7.6.4.d.
	Discussing Offers	3.5.11.
	Discussion	3.3.2.d.
Award Made After	Discussion	3.5.7.b.
Award Made Without	Discussion	3.5.7.a.
Award With	Discussion	3.5.14.
Award Without	Discussion	3.5.13.
Conduct of	Discussion	3.5.15.
Storage, Handling, and	Disposal of Contract File	7.11.2.d.
	Disposition of Change Request	1.3.4.b.
	Disposition of Procurement Files	7.11.3.
Claims and	Dispute	7.9.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
	Dispute (GSA)	3.1.5.f.
(Claims and	Dispute) Policy	7.9.1.
Supporting unusual contract actions when necessary, such as protests,	dispute, terminations, etc.	7.2.4.j.
	Disqualified Offer and Offer Rejection	1.4.2.c.
	Distinctions Between Contracting Officer (CO) and Contracting Officer's Technical Representative (COTR)	7.2.3.
	Dividends	4.7.4.d.
	Documentation	3.3.2.b.
All Evidence is	Documented	7.6.4.b.
Internal	document (release of information)	1.6.1.c.
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Contributions or	Donation	4.7.4.c.
Contractor's	Duties	7.10.3.e.
Fixed- Price Contract With	Economic Price Adjustment	4.1.12.
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	Effect of Listing	3.3.3.f.
Evaluating the	effect of the offeror's current practices on future costs	4.5.1.b.(2)
Level-of-	effort	4.1.13.f.(3)
	Election of Forum	3.9.2.b.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
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Former government	employees	5.2.1.1.
Worker's Compensation and	Employers' Liability Insurance	6.3.2.a.
Non-federal	employment contacts	1.4.1.d.
Architect-	Engineer Contracts	5.3.
Cost Estimate for Architect-	Engineer Contracts	5.3.6
Negotiations of Architect -	Engineer Contracts	5.3.7.
Architect-	Engineer Evaluation Board	5.3.2.
Architect-	Engineer Evaluation Board Functions	5.3.3.
Architect-	Engineer Selection	5.3.4.
Architect-	Engineer Selection Process for Small Purchases	5.3.5.
	Entertainment Cost	4.7.4.e.
Architect-	Engineer Services	5.3.1.
	Ensuring that the contractor is paid for services and products that have been delivered and accepted	7.2.4.g.
National Posting on the Government Point of	Entry (GPE)	3.2.2.(1)
	Equitable Adjustment	7.8.8.
	Equitable Adjustment for Delay	7.8.8.e.
	Errors and Omissions Insurance	6.3.4.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
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Cost	Estimate for Architect-Engineer Contracts	5.3.6.
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Architect-Engineer	Evaluation Board	5.3.2.
Architect-Engineer	Evaluation Board Functions	5.3.3.
Technical	Evaluation Criteria	Exhibit 2-1
	Evaluation Factor	2.1.7.f.; 3.4.6.c.(1)
Sample	Evaluation Factor	Exhibit 2-1
	Evaluation of Offers	3.5.9.
	Evaluation of Other Factors	3.5.9.c.
Receipt and	Evaluation of Quotations	3.4.7.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
	Evaluation (of Unsolicited Offers)	3.7.5.
	Evaluation Panels	2.1.7.e.
	Evaluation Strategy	3.4.6.c.(2)
	Evaluation Sub-factors	2.1.7.g.
All	Evidence is Documented	7.6.4.b.
Prohibitions and	Exception (gratuities or gifts)	1.4.4.c.
	Exception (JWOD)	3.1.2.d.
	Exception (Service Contract Act)	3.4.4.c.
	Excusable Delay	7.8.8.f.
	Execution of Bonds	6.1.6.
	Exemption from Tax	6.4.3.d.
	Exercise of Options	2.2.7.m.; 7.8.5.
Federal	Excise Tax	6.4.2.
List of Parties	Excluded from Federal Procurement and Nonprocurement Programs	3.3.3.b.
Acquisition of	Existing Computer Software	6.5.10
Settlement	Expenses	4.75.h.
Contract Type	(expert and consultant)	5.2.1.p.
Restrictions	(expert and consultant)	5.2.1.i.
	Expert and Consultant Services Contracts	5.2.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Implementing	Express Warranties	7.6.11.
	Extended Warranties of Commercial Items	2.2.10.c
	Facilities Contract	7.2.8.a.
Cost or Price Related	Factor	2.1.7.h.
Evaluation	Factor	2.1.7.f.; 3.4.6.c.(1)
Evaluation of Other	Factor	3.5.9.c.
Evaluation Sub-	factor	2.1.7.g.
Sample Evaluation	Factor	Exhibit 2-1
	Failure to Acknowledge Amendments	3.5.7.
	Failure to Make Timely Delivery	7.10.4.
Demand for Adequate Assurance for Causes Other Than	Failure to Make Timely Delivery	7.10.4.e.
Notice of Impending Termination - Causes Other Than	Failure to Make Timely Delivery	7.10.4.d.
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Other	Federal Agency Contracts	3.1.6.
Non-	federal employment contacts	1.4.1.d.
	Federal Excise Tax	6.4.2.
List of Parties Excluded from	Federal Procurement and Nonprocurement Programs	3.3.3.b.
GSA	Federal Supply Schedules	3.1.5.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Cost-Plus-Award-	Fee Contract	4.1.13.g.
Cost- Plus-Fixed-	Fee Contract	4.1.13.f.
Cost-Plus-Incentive-	Fee Contract	4.1.13.e.
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	Fidelity Bonds	6.1.4.
Closeout of Contract	File	7.11.1.
Data	File (Architect and Engineer)	5.3.1.e.
Disposition of Procurement	File	7.11.3.
Maintaining procurement	file	7.2.4.h.
Procurement Files (Purchase/Delivery/Task Order or Contract	File)	7.1.1.
Procurement	File (Purchase/Delivery/Task Order or Contract Files)	7.1.1.
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Protest	Filed Before and After Award	3.9.2.h.
	Filing a Judiciary Protest	3.9.2.c.
Time for	Filing a Protest	3.9.2.e.
Best and	Final Offers	3.5.17.
	Final Payment	7.7.3.d.
Interest and Other	Financial Cost	4.7.4.h.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
	Fines and Penalties	4.7.4.f.
Application	(Firm-Fixed Price)	4.1.4.b.
Description	(Firm-Fixed Price)	4.1.4.a.
	Firm Fixed Price Contract	4.1.4.
Data Not	First Produced in Performance of a Contract	6.5.6.
Cost- Plus-	Fixed-Fee Contract	4.1.13.f.
	Fixed-Price Award Fee Contract	4.1.10.
	Fixed- Price Contract With Economic Price Adjustment	4.1.12.
	Fixed-Price Incentive Contract	4.1.11.
Firm	Fixed Price Contract	4.1.4.
Freedom of Information Act	(FOIA)	1.6.1.a.
Completion or Term	Form	4.1.13.f.(3)
	Form of Protest	3.9.2.f.
	Formal Competitive Open Market Contracts	7.1.1.d.
Proposed JP3 Change	Format	1.3.4.c.
Prescribed	Format (bond)	6.1.6.a.
	Former government employees	5.2.1.1.
Election of	Forum	3.9.2.b.
	Fraud, Gross Mistakes, or Latent Defects	7.6.12.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Determining	Fraud or Gross Mistake Amounting to Fraud	7.6.12.d.
Defense of	Fraud Proceedings	4.7.4.1.
	Freedom of Information Act (FOIA)	1.6.1.a.
Circumstances Permitting Other Than	Full and Open Competition	3.6.2.
Justification for Other Than	Full and Open Competition	3.6.3.
Other Than	Full and Open Competition	3.6.
Architect-Engineer Evaluation Board	Function	5.3.3.
	Function of the CO & COTR	7.2.4.
	Funding for Changes	2.2.9.h
Availability of	Funds	2.2.9.c
Limitation of Cost or	Funds	2.2.9.g
Evaluating the effect of the offeror's current practices on	future costs	4.5.1.b.(2)
Consultation with Office of	General Counsel (bankruptcy)	7.6.13.c.
	General Liability Insurance	6.3.2.b.
Gratuities or	Gifts	1.4.4.
Prohibitions and Exceptions (gratuities or	gifts)	1.4.4.c.
Former	government employees	5.2.1.1.
National Posting on the	Government Point of Entry (GPE)	3.2.2.(1)

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
National Posting on the Government Point of Entry	(GPE)	3.2.2.(1)
	Gratuities or Gifts	1.4.4.
Prohibitions and Exceptions	(gratuities or gifts)	1.4.4.c.
Small Purchase	greater than the noncompetitive purchase threshold	7.1.1.c.
Determining Fraud or	Gross Mistake Amounting to Fraud	7.6.12.d.
Fraud,	Gross Mistake, or Latent Defects	7.6.12.
Administration of Orders	(GSA)	3.1.5.e.
Disputes	(GSA)	3.1.5.f.
Ordering Procedures for Use of Schedules	(GSA)	3.1.5.d.
	GSA Federal Supply Schedules	3.1.5.
Providing “technical direction,” consisting of	guidance, answering questions, and addressing other issues that the contractor may have; but not “changing”the contract	7.2.4.e.
Storage,	Handling, and Disposal of Contract File	7.11.2.d.
Professional Services/Work for	Hire	6.5.9.
Labor-	Hour Contract	4.1.7.
	Identification of Potential Conflicts of Interest	1.4.2.b.
	Implementing Express Warranties	7.6.11.
Notice of	Impending Termination - Causes Other Than Failure to Make Timely Delivery	7.10.4.d.
Unmarked or	Improperly Marked Data or Software	6.5.7.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Fixed-Price	Incentive Contract	4.1.11.
Cost-Plus-	Incentive-Fee Contract	4.1.13.e.
	Incidental and Consequential Damages	7.10.9.
	Incidental Damages	7.10.9.a.
	Including Liquidated Damages	7.6.4.
Ordering	Indefinite Delivery or Requirements Contract	4.1.5.g.
Indefinite-Quantity Contracts,	Indefinite-Delivery and Requirements	4.1.5.
	Indefinite-Quantity Contracts	4.1.5.d.
	Indefinite-Quantity/Indefinite-Delivery and Requirements Contracts	4.1.5.
	Indirect Cost	4.6.2.e.
	Individual Sureties	6.2.1.c.
Debarment, Suspension, and	Ineligibility	3.3.3.
Awarded Contracts (release of	information)	1.6.1.b
Debriefing (release of	information)	1.6.1.g.
Disclosure and Use of	Information	3.5.5.
Internal documents (release of	information)	1.6.1.c.
Non-disclosure of proprietary and source selection	information	1.4.1.c.
Obtaining	Information	3.3.2.c.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Options (release of	information)	1.6.1.f.
Pricing (release of	information)	1.6.1.d.
Release of	Information	1.6.
Unsuccessful Proposal (release of	information)	1.6.1.e.
Freedom of	Information Act (FOIA)	1.6.1.a.
	Information and Notice to Sureties	6.2.4.a.
Basic	information (Unsolicited offers)	3.7.3.b.
Supporting	information (Unsolicited offers)	3.7.3.d.
Technical	information (Unsolicited offers)	3.7.3.c.
Receipt and	Initial Review (of Unsolicited Offers)	3.7.4.
Claim	Initiation	7.9.1.c.
Receiving,	inspecting, and either accepting or rejecting contractor deliverables	7.2.4.d.
Standard	Inspection Requirements	2.2.1.e.
Deposit of Assets	Instead of Surety Bonds	6.2.2.
Table 4-2	Instructions for Submitting Cost/Price Offers When Cost or Pricing Data is Required	Exhibit 4-2
	Insurance	6.3.
Automobile Liability	Insurance	6.3.2.b.(3)
Errors and Omissions	Insurance	6.3.4.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
General Liability	Insurance	6.3.2.b.
Life	Insurance	4.7.4.g.
Self	Insurance	6.3.3.
Types of	Insurance	6.3.2.
Worker's Compensation and Employers' Liability	Insurance	6.3.2.a.
	Insurance Policies	6.3.5.
Notice of Cancellation or Change (in	Insurance Policies)	6.3.6.
(Errors and Omissions	Insurance) Professional Services	6.3.4.a.
Bonds,	Insurance, Taxes, and Rights in Data	Chapter 6
(Errors and Omissions	Insurance) Waiver	6.3.4.c.
Procurement	Integrity Act	1.4.1.
Procurement	Integrity and Ethics	1.4.
	Interagency Agreements	5.5.
Conflicts of	Interest	1.4.2.
Contractor Proprietary	Interest	6.5.1.b.
Identification of Potential Conflicts of	Interest	1.4.2.b.
Organizational and Consultant Conflicts of	Interest	1.4.2.a.
Payment of	Interest	7.7.3.c.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
	Interest and Other Financial Cost	4.7.4.h.
	Interested Parties	3.9.2.a.
	Internal documents (release of information)	1.6.1.c.
	Invoices	7.7.2.
	(Invoices) Submission	7.7.2.b.
	Irrevocable Letter of Credit	6.2.3.
	Issuance of Changes	1.3.4.d.
Preparation and	Issuance of Liquidated Damages Notice	7.6.4.e.
Providing “technical direction,” consisting of guidance, answering questions, and addressing other	issues that the contractor may have; but not “changing”the contract	7.2.4.e.
	Issuing a Delinquency Notice	7.10.5.
Common	Items	4.7.5.b.
	Javits-Wagner-O’Day(JWOD) Act	3.1.2.a.
Availability (of	JP3)	1.3.2.
Organization of	JP3	1.3.
Publication of	JP3	1.3.1.
Proposed	JP3 Change	1.3.4.a.
Proposed	JP3 Change Format	1.3.4.c.
	JP3 Change Request Format	1.3.4.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Direct Settlement by the	Judiciary	7.10.3.j.
Relationship Between	Judiciary and Contractor Representatives	7.2.9.
Making sure that the	judiciary is meeting its contractual commitments	7.2.4.b.
	Judiciary Points of Contact (for Unsolicited Offers)	3.7.2.
	Judiciary Policy on Performance Monitoring	7.5.3.
	Judiciary Property	2.2.6.
(Contract Administration of)	Judiciary Property	7.3.
Filing a	Judiciary Protest	3.9.2.c.
Processing of	Judiciary Protest	3.9.2.g.
	Judiciary Protest Procedures	3.9.
Quality Assurance at	Judiciary Site or Destination	2.2.1.f.
	Judiciary-Wide Contracts	3.1.4.
	Justification for Other Than Full and Open Competition	3.6.3.
Exception	(JWOD)	3.1.2.d.
Javits-Wagner-O'Day	(JWOD) Act	3.1.2.a.
Performance Record	Keeping	7.5.2.
	Labor-Hour Contract	4.1.7.
	Late Offers	3.5.6.d.
	Late Quotations	3.4.7.b.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Fraud, Gross Mistakes, or	Latent Defects	7.6.12.
Assignment by	Law	7.7.7.c.
Rental Under Unexpired	Lease	4.7.5.f.
Alterations of	Leased Property	4.7.5.g.
	Letter Contract	4.1.9.
Irrevocable	Letter of Credit	6.2.3.
Sample Offering	Letter to Randolph-Shephard Agency	Exhibit 3-1
	Level-of-effort	4.1.13.f.(3)
Automobile	Liability Insurance	6.3.2.b.(3)
General	Liability Insurance	6.3.2.b.
Worker's Compensation and Employers'	Liability Insurance	6.3.2.a.
	Life Insurance	4.7.4.g.
	Limitation of Cost or Funds	2.2.9.g
	Limitation on Use (Other Than Full and Open Competition)	3.6.1.d.
	Limitation (Ordering Agreement)	4.1.6.d.
	Limitation (Selecting Contract Types)	4.1.3.
	Limitation (Small Purchase Procedures)	3.4.1.d.
Unsolicited Offer - Use of Data	Limited	3.7.8.d.
	Limited Rights Data	6.5.3.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
	Limited Use of Data (from Unsolicited Offers)	3.7.8.
	Liquidated Damages	2.2.5.
Including	Liquidated Damages	7.6.4.
Preparation and Issuance of	Liquidated Damages Notice	7.6.4.e.
	License	5.2.1.n.
	List of Parties Excluded from Federal Procurement and Nonprocurement Programs	3.3.3.b.
Effect of	Listing	3.3.3.f.
	Lobbying Cost	4.7.4.i.
	Local Announcements and Advertisements	3.2.2.(3)
	Local Posting	3.2.2.(2)
State and	Local Taxes	6.4.3.
Transfer of Title and Risk of	Loss	2.2.2.f.; 7.6.10.
	Loss of Useful Value	4.7.5.e.
	Losses on Other Contracts	4.7.4.j.
Technically Acceptable	Lowest Price	2.1.7.c.; 3.4.6.b.
Award	Made After Discussions	3.5.7.b.
Award	Made Without Discussions	3.5.7.a.
	Maintaining procurement files	7.2.4.h.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
	Maintaining Records	7.1.
	Maintenance Support Services	2.2.10
Failure to	Make Timely Delivery	7.10.4.
	Making sure that the judiciary is meeting its contractual commitments	7.2.4.b.
Unmarked or Improperly	Marked Data or Software	6.5.7.
Open	Market	3.1.7.
Formal Competitive Open	Market Contracts	7.1.1.d.
Open	Market Purchases	3.4.8.a.(3)
Publicizing Open	Market Procurement Actions	3.2.
	Market Research	2.1.6 .
	Market Research Methods	2.1.6.b.
Open	Market Small Purchase Procedures With or Without Competition	3.4.2.; 7.1.1.b.
Optional Method of Pricing	Material	4.1.8.d.
Time and	Materials Contracts	4.1.8.
	Matters Requiring Special Consideration (tax)	6.4.3.f.
	Means of Payment	7.7.3.a.
	Memoranda of Understanding (MOU)	5.5
Contracting Officer	Memorandum	7.10.6.i.
Post-Negotiation	Memorandum	3.8.6.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Market Research	Method	2.1.6.b.
Purchasing	Method and Procedures	Chapter 3
Optional	Method of Pricing Material	4.1.8.d.
	Method of Publicizing	3.2.2.
	Method of Solicitation	3.5.1.a.(3)
Ordering	Method Under Small Purchase Procedures	3.4.8.
Placing orders under some contract types and often treating those orders as	mini-contracts, which must be separately administered	7.2.4.c.
Acceptance of	Minor Nonconformance	7.6.5.j.
Correction of	Mistake	7.8.6.
	Mistake in Offers	3.5.8.
Fraud, Gross	Mistake, or Latent Defects	7.6.12.
	Modification and Withdrawal	3.5.6.c.
Contract	Modification	7.8.
Types of	Modification	7.8.2.
	Modification (bond)	6.1.6.f.
	Modification of Purchase Orders	3.4.8.a.(5)
	(Modification) Policy	7.8.1.
Bilateral	modification within the scope of the contract	7.8.2.a.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Unilateral	modification within the scope of the contract	7.8.2.b.
Changing or	modifying the contract	7.2.4.f.
	Monitor Actions of COTR and Other Support Personnel	7.5.3.c.
Use of Contractors to	Monitor Contract Performance	7.2.8.
Judiciary Policy on Performance	Monitoring	7.5.3.
Performance	Monitoring	7.5.3.
	Monitoring the progress of a contractor and making sure deliverable schedules are maintained	7.2.4.a.
	Multiple Awards from One Solicitation	4.1.5.f.
	Multiple BPAs	3.4.8.f.
	Multi-Year Contracts	4.1.14
Change of	Name Agreement	Exhibit 7-2
Novation and Change of	Name Agreements	7.8.10.
	National Posting on the Government Point of Entry (GPE)	3.2.2.(1)
	Negotiation	3.8.2.
Price	Negotiation	3.8.
Selection and	Negotiation	3.5.18.
Post-	Negotiation Memorandum (PNM)	3.8.6.
Criteria for Acceptance and	Negotiation of an Unsolicited Offer	3.7.6.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
	Negotiation of Architect-Engineer Contracts	5.3.7.
Pre-	Negotiation Procedures	3.8.1.
Small Purchase greater than the	noncompetitive purchase threshold	7.1.1.c.
Acceptance of Minor	Nonconformance	7.6.5.j.
Substantial	Nonconformance	7.6.5.m.
	Nonconforming Products or Services	7.6.5.
Damages for	Non-delivery or Repudiation	7.10.9.d.
	Non-disclosure of proprietary and source selection information	1.4.1.c.
	Non-federal employment contacts	1.4.1.d.
List of Parties Excluded from Federal Procurement and	Nonprocurement Programs	3.3.3.b.
	Non-ratifiable Commitments	1.5.1.f.
Determining Responsibility and	Nonresponsibility	3.3.2.
Data	Not First Produced in Performance of a Contract	6.5.6.
Cure	Notice	7.10.5.b.
Determination Following Termination	Notice	7.10.6.h.
Cure	Notice Response	7.10.5.f.(1)
Issuing a Delinquency	Notice	7.10.5.
Preparation and Issuance of Liquidated Damages	Notice	7.6.4.e.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Show Cause	Notice	7.10.5.e.
Termination for Default	Notice	7.10.6.
	Notice of Cancellation or Change (in Insurance Policies)	6.3.6.
	Notice of Impending Termination - Causes Other Than Failure to Make Timely Delivery	7.10.4.d.
	Notice of proposal to debar	3.3.5.a.
	Notice of Rejection	7.6.5.o.
	Notice of Suspension	3.3.6.c.
	Notice of Termination	7.10.2.
Show Cause	Notice Response	7.10.5.f.(2)
Information and	Notice to Sureties	6.2.4.a.
Award	Notification	3.5.19.d.
Surety	Notification and Arrangements	7.10.7.1.
	Notification of Contract Changes	7.8.3.
	Novation Agreement	Exhibit 7-1
	Novation and Change of Name Agreements	7.8.10.
	Novation Policy	7.8.10.a.
Arrangement and	Numbering (of JP3)	1.3.3.
	Obligation (Ordering Agreement)	4.1.6.c.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
COTR's	Obligation to the Customer Office	7.2.5.
The Contractor's Reply is	Obtained and Analyzed	7.6.4.f.
	Obtaining Information	3.3.2.c.
Javits-Wagner-	O'Day (JWOD) Act	3.1.2.a.
After Receipt of	Offer	3.5.5.c.
Best and Final	Offer	3.5.17.
Content of Unsolicited	Offer	3.7.3.
Discussing	Offer	3.5.11.
Evaluation of	Offer	3.5.9.
Evaluation (of Unsolicited	Offer)	3.7.5.
Late	Offer	3.5.6.d.
Limited Use of Data (from Unsolicited	Offer)	3.7.8.
Mistakes in	Offer	3.5.8.
Only One	Offer	3.5.9.d.
Prohibitions (of Unsolicited	Offer)	3.7.7.
Receipt and Initial Review (of Unsolicited	Offer)	3.7.4.
Receipt of	Offer	3.5.6.
Rejection of All	Offer	3.5.12.
Rights to Data in Successful	Offer	6.5.11.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Unsolicited	Offer	3.7.
	Offer Analysis	4.3.2.
Disqualified	Offer and Offer Rejection	1.4.2.c.
Pre-	Offer Conference	3.5.2.
Disqualified Offer and	Offer Rejection	1.4.2.c.
	Offer Time	3.5.1.b.(2)
Unsolicited	Offer - Use of Data Limited	3.7.8.d.
Table 4-2 Instructions for Submitting Cost/Price	Offer When Cost or Pricing Data is Required	Exhibit 4-2
Sample	Offering Letter to Randolph-Shephard Agency	Exhibit 3-1
Types of Contracts & Analysis of	Offers	Chapter 4
Evaluating the effect of the	offeror's current practices on future costs	4.5.1.b.(2)
COTR's Obligation to the Customer	Office	7.2.5.
Consultation with	Office of General Counsel (bankruptcy)	7.6.13.c.
Distinctions Between Contracting	Officer (CO) and Contracting Officer's Technical Representative (COTR)	7.2.3.
Distinctions Between Contracting Officer (CO) and Contracting	Officer's Technical Representative (COTR)	7.2.3.
Errors and	Omissions Insurance	6.3.4.
Only	One Offer	3.5.9.d.
Multiple Awards from	One Solicitation	4.1.5.f.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
	Only One Offer	3.5.9.d.
Circumstances Permitting Other Than Full and	Open Competition	3.6.2.
Justification for Other Than Full and	Open Competition	3.6.3.
Other Than Full and	Open Competition	3.6.
	Open Market	3.1.7.
Formal Competitive	Open Market Contracts	7.1.1.d.
Publicizing	Open Market Procurement Actions	3.2.
	Open Market Purchases	3.4.8.a.(3)
	Open Market Small Purchase Procedures With or Without Competition	3.4.2; 7.1.1.b.
	Opening and Recording	3.5.6.b.
	Optional Method of Pricing Material	4.1.8.d.
	Options	2.2.7.
Exercise of	Options	2.2.7.m.; 7.8.5.
	Options (release of information)	1.6.1.f.
	Oral Solicitations	3.4.5.c.
Change	Order	7.8.2.b.(1)(b)
Closing Out Purchase	Order	3.4.11.
Closing out the contract and	order	7.2.4.i.
Compliance with	Order	3.1.2.e.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Contents of a Purchase	Order	3.4.8.a.(1)
Modification of Purchase	Order	3.4.8.a.(5)
Purchase	Order	3.4.8.a.
Termination and Cancellation of Purchase	Order	3.4.10.
Delivery Order or Task	Order Contracts	4.1.5.g.
Administration of	Order (GSA)	3.1.5.e.
Procurement Files (Purchase/Delivery/Task	Order or Contract Files)	7.1.1.
Delivery	Order or Task Order Contracts	4.1.5.g.
Purchase	Order Terms and Conditions	3.4.8.a.(2)
Placing	order under some contract types and often treating those orders as mini-contracts, which must be separately administered	7.2.4.c.
	Ordering Agreement	4.1.6.
Limitation	(Ordering Agreement)	4.1.6.d.
Obligation	(Ordering Agreement)	4.1.6.c.
Pricing	(Ordering Agreement)	4.1.6.h.
	Ordering (BPAs)	3.4.8.i.
	Ordering (Indefinite Delivery or Requirements Contracts)	4.1.5.g.
	Ordering Methods Under Small Purchase Procedures	3.4.8.
	Ordering (Ordering Agreement)	4.1.6.f.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
	Ordering Procedures for Use of Schedules	3.1.5.d.
	Organization of JP3	1.3.
	Organizational and Consultant Conflicts of Interest	1.4.2.a.
Postaward	Orientation	7.5.1.a.
Quality Assurance at Contractor Site or	Origin	2.2.1.g.
	Original copy (bond)	6.1.6.b.
Losses on	Other Contracts	4.7.4.j.
Evaluation of	Other Factors	3.5.9.c.
	Other Federal Agency Contracts	3.1.6.
Interest and	Other Financial Cost	4.7.4.h.
Payment Bonds for	Other Than Construction Contract	6.1.3.
Performance Bonds for	Other Than Construction Contracts	6.1.2.
	Other Than Full and Open Competition	3.6.
Applicability	(Other Than Full and Open Competition)	3.6.1.e.
Circumstances Permitting	Other Than Full and Open Competition	3.6.2.
Justification for	Other Than Full and Open Competition	3.6.3.
Limitations on Use	(Other Than Full and Open Competition)	3.6.1.d.
	Other Types of Bonds	6.1.5.
Ensuring that the contractor is	paid for services and products that have been delivered and accepted	7.2.4.g.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Evaluation	Panels	2.1.7.e.
	Participants in the Contract Administration Process	7.2.2.
Interested	Parties	3.9.2.a.
List of	Parties Excluded from Federal Procurement and Nonprocurement Programs	3.3.3.b.
	Partnership as Principal	6.1.6.d.
Third-	Party Claim	7.7.5.c.
	Payment	7.7.; 7.7.3.
Final	Payment	7.7.3.d.
Means of	Payment	7.7.3.a.
Time of	Payment	7.7.3.b.
Withholding	Payment	7.7.4.
Annual	Payment Bond	6.1.3.c.
	Payment Bond for Other than Construction Contract	6.1.3.
	Payment of Interest	7.7.3.c.
Withholding	Payment Under Clauses	7.7.5.d.
Fines and	Penalties	4.7.4.f.
Workshop for	People Who are Blind or Severely Disabled	3.1.2.
Failure to	Perform	6.2.4.a.(2)
Acceleration of	Performance	7.8.9.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Consideration for Acceptance of Defective	Performance	7.6.5.n.
Contract	Performance	7.5.; 7.5.1.
Use of Contractors to Monitor Contract	Performance	7.2.8.
Annual	Performance Bond	6.1.2.d.
	Performance Bonds for Other than Construction Contracts	6.1.2.
	Performance Monitoring	7.5.3.
Judiciary Policy on	Performance Monitoring	7.5.3.
Data Not First Produced in	Performance of a Contract	6.5.6.
	Performance Record Keeping	7.5.2.
Delivery or	Performance Schedule	2.2.4.
	Period of Debarment	3.3.4.
	Period of Suspension	3.3.6.d.
Circumstances	Permitting Other Than Full and Open Competition	3.6.2.
	Personal Services Contracts	5.1.
Prohibition	(Personal Services Contracts)	5.1.1.b.
	Physically Completed Contract	7.11.1.
	Place of Acceptance	2.2.2.d.; 7.6.8.
	Placing orders under some contract types and often treating those orders as mini-contracts, which must be separately administered	7.2.4.c.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Source Selection	Plan	2.1.7.
Procurement	Planning and Preparations	Chapter 2
Procurement	Planning Benefits	2.1.5.
Cost-	Plus-Award-Fee Contract	4.1.13.g.
Cost-	Plus-Fixed-Fee Contract	4.1.13.f.
Cost-	Plus-Incentive-Fee Contract	4.1.13.e.
Judiciary	Point of Contact (for Unsolicited Offers)	3.7.2.
National Posting on the Government	Point of Entry (GPE)	3.2.2.(1)
(Claims and Disputes)	Policy	7.9.1.
Data Rights	Policy	6.5.1.
Insurance	Policy	6.3.5.
(Modification)	Policy	7.8.1.
Notice of Cancellation or Change (in Insurance	Policy)	6.3.6.
Novation	Policy	7.8.10.a.
Judiciary	Policy on Performance Monitoring	7.5.3.
	Postaward Orientation	7.5.1.a.
	Post-Negotiation Memorandum (PNM)	3.8.6.
Electronically	(posting)	3.2.2.(4)
Local	Posting	3.2.2.(2)

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
	Posting and Synopsis	3.5.1.a.(4)
National	Posting on the Government Point of Entry (GPE)	3.2.2.(1)
Identification of	Potential Conflicts of Interest	1.4.2.b.
Evaluating the effect of the offeror's current	practices on future costs	4.5.1.b.(2)
	Preaward Surveys	3.3.2.
	Pre-Negotiation Procedures	3.8.1.
	Pre-Offer Conference	3.5.2.
Procurement Planning and	Preparation	Chapter 2
	Preparation and Issuance of Liquidated Damages Notice	7.6.4.e.
	Preparation of Solicitations	3.5.1.a.(1)
	Prescribed Format (bond)	6.1.6.a.
Deduction of Damages from the	Price	7.10.9.c.
Technically Acceptable Lowest	Price	2.1.7.c.; 3.4.6.b.
Fixed- Price Contract With Economic	Price Adjustment	4.1.12.
	Price Analysis	3.8.4.; 4.4.1.
Fixed-	Price Award Fee Contract	4.1.10.
Adequate	Price Competition	4.3.3.
Fixed-	Price Contract With Economic Price Adjustment	4.1.12.
	Price Evaluation	4.3.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Fixed-	Price Incentive Contract	4.1.11.
	Price Negotiations	3.8.
Table 4-2 Instructions for Submitting Cost/	Price Offers When Cost or Pricing Data is Required	Exhibit 4-2
	Price or Cost Evaluation	3.5.9.b.
Firm Fixed	Price Contract	4.1.4.
Cost or	Price Related Factors	2.1.7.h.
Certificate of Current Cost or	Pricing Data	Exhibit 4-1
Cost or	Pricing Data	3.8.3.; 4.5.2.
Defective Cost or	Pricing Data	4.5.4.
Table 4-2 Instructions for Submitting Cost/Price Offers When Cost or	Pricing Data is Required	Exhibit 4-2
Optional Method of	Pricing Material	4.1.8.d.
	Pricing (Ordering Agreement)	4.1.6.h.
	Pricing (release of information)	1.6.1.d.
	Prime Contractor Rights and Obligations	7.10.3.f.(2)
Partnership as	Principal	6.1.6.d.
Cost	Principles	4.6.
	Procedural Requirements for Debarment	3.3.5.
	Procedural Requirement (for Protest)	3.9.2.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Administration Under Small Purchase	Procedure	3.4.9.
Award	Procedure	3.6.4.
Competitive Small Purchase	Procedure	3.4.3.
Contract Closeout	Procedure	7.11.2.
Judiciary Protest	Procedure	3.9.
Ordering Methods Under Small Purchase	Procedure	3.4.8.
Pre-Negotiation	Procedure	3.8.1.
Purchasing Methods and	Procedure	Chapter 3
Small Purchase	Procedure	3.4.
Soliciting Under Small Purchase	Procedure	3.4.5.
Soliciting Under Standard Competitive Contracting	Procedure	3.5.1.a.
Standard Competitive Contracting	Procedure	3.5; 3.5.1.
Ordering	Procedure for Use of Schedules	3.1.5.d.
	Procedure in Lieu of Termination for Default	7.10.6.g.
	Procedure (ratification)	1.5.1.b.
Open Market Small Purchase	Procedure With or Without Competition	3.4.2; 7.1.1.b.
Defense of Fraud	Proceedings	4.7.4.1.
Contract Administration	Process	7.2.1.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Participants in the Contract Administration	Process	7.2.2.
Architect-Engineer Selection	Process for Small Purchase	5.3.5.
	Processing of Judiciary Protests	3.9.2.g.
Special Categories of	Procurement	Chapter 5
Publicizing Open Market	Procurement Action	3.2.
Ratification of the	Procurement Action	1.5.1.c.
Unauthorized	Procurement Action Report	Exhibit 1-2
List of Parties Excluded from Federal	Procurement and Nonprocurement Programs	3.3.3.b.
Release of	Procurement Documents to the Public	1.6.1.
Disposition of	Procurement File	7.11.3.
Maintaining	procurement file	7.2.4.h.
	Procurement File (Purchase/Delivery/Task Order or Contract Files)	7.1.1.
	Procurement Integrity Act	1.4.1.
	Procurement Integrity and Ethics	1.4.
	Procurement Planning and Preparations	Chapter 2
	Procurement Planning Benefits	2.1.5.
Responsibility for	Procurement Policy	1.2.2.
	Procurement Sources	3.1.
Data Not First	Produced in Performance of a Contract	6.5.6.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Acceptance of	Product and Services	2.2.2 .
	Product Descriptions	2.3.4 .
Nonconforming	Product or Services	7.6.5.
Ensuring that the contractor is paid for services and	product that have been delivered and accepted	7.2.4.g.
(Errors and Omissions Insurance)	Professional Services	6.3.4.a.
	Professional Services/Work for Hire	6.5.9.
	Profit	4.5.3.
List of Parties Excluded from Federal Procurement and Nonprocurement	Programs	3.3.3.b.
Monitoring the	progress of a contractor and making sure deliverable schedules are maintained	7.2.4.a.
	Prohibition and Exceptions (gratuities or gifts)	1.4.4.c.
	Prohibition (Personal Services Contracts)	5.1.1.b.
	Prohibition (of Unsolicited Offers)	3.7.7.
Alterations of Leased	Property	4.7.5.g.
(Contract Administration of) Judiciary	Property	7.3.
Judiciary	Property	2.2.6.
	Property Records	7.3.2.
Unsuccessful	Proposal (release of information)	1.6.1.e.
Notice of	proposal to debar	3.3.5.a.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
	Proposed JP3 Change	1.3.4.a.
	Proposed JP3 Change Format	1.3.4.c.
Non-disclosure of	proprietary and source selection information	1.4.1.c.
Contractor	Proprietary Interest	6.5.1.b.
Responsible	Prospective Contractors	3.3.1.
Filing a Judiciary	Protest	3.9.2.c.
Form of	Protest	3.9.2.f.
Procedural Requirements (for	Protest)	3.9.2.
Processing of Judiciary	Protest	3.9.2.g.
Resolution (of	protest)	3.9.2.i.
Time for Filing a	Protest	3.9.2.e.
	Protest Decision Authority	3.9.2.d.
Supporting unusual contract actions when necessary, such as	protest, disputes, terminations, etc.	7.2.4.j.
	Protest Filed Before and After Award	3.9.2.h.
Judiciary	Protest Procedures	3.9.
	Providing “technical direction,” consisting of guidance, answering questions, and addressing other issues that the contractor may have; but not “changing” the contract	7.2.4.e.
Solicitation	Provisions and Contract Clauses	1.3.3.(c)

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Release of Procurement Documents to the	Public	1.6.1.
	Public Relations and Advertising Costs	4.7.4.a.
	Publication of JP3	1.3.1.
Methods of	Publicizing	3.2.2.
	Publicizing Open Market Procurement Actions	3.2.
Architect-Engineer Selection Process for Small	Purchase	5.3.5.
Blanket	Purchase Agreements (BPA)	3.4.8.b.
Procurement Files	(Purchase/Delivery/Task Order or Contract Files)	7.1.1.
	Purchase Order	3.4.8.a.
Closing Out	Purchase Order	3.4.11.
Contents of a	Purchase Order	3.4.8.a.(1)
Modification of	Purchase Order	3.4.8.a.(5)
Termination and Cancellation of	Purchase Order	3.4.10.
Best Value	Purchase	2.1.7.d.
Open Market	Purchase	3.4.8.a.(3)
Small	Purchase greater than the noncompetitive purchase threshold	7.1.1.c.
	Purchase of Services	3.4.4.
	Purchase Order Terms and Conditions	3.4.8.a.(2)
Administration Under Small	Purchase Procedures	3.4.9.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Competitive Small	Purchase Procedures	3.4.3.
Ordering Methods Under Small	Purchase Procedures	3.4.8.
Small	Purchase Procedures	3.4.
Soliciting Under Small	Purchase Procedures	3.4.5.
Open Market Small	Purchase Procedures With or Without Competition	3.4.2; 7.1.1.b.
Small Purchase greater than the noncompetitive	purchase threshold	7.1.1.c.
Restrictions on	Purchase with Appropriated and Decentralized Funds	Exhibit 1-1
	Purchasing Methods and Procedures	Chapter 3
	Purchasing Office Responsibilities	2.1.4.
	Purpose	1.1.1.
Contractor	Qualifications	3.3.
	Quality Assurance	7.6.
	Quality Assurance at Contractor Site or Origin	2.2.1.g.
	Quality Assurance at Judiciary Site or Destination	2.2.1.f.
	Quality Requirements	2.2.1.
Indefinite-	Quantity Contracts	4.1.5.d.
Indefinite-	Quantity Contracts, Indefinite-Delivery, and Requirements	4.1.5.
Providing “technical direction,” consisting of guidance, answering	questions, and addressing other issues that the contractor may have; but not “changing”the contract	7.2.4.e.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Late	Quotations	3.4.7.b.
Receipt and Evaluation of	Quotations	3.4.7.
	Randolph-Sheppard Act	3.1.3.
Sample Offering Letter to	Randolph-Sheppard Agency	Exhibit 3-1
Competitive	Range	3.5.16.
Non-	ratifiable Commitments	1.5.1.f.
	Ratification	1.5; 1.5.1
Procedures	(ratification)	1.5.1.b.
Reporting Requirement	(ratification)	1.5.1.g.
	Ratification of the Procurement Action	1.5.1.c.
	Rating Systems	2.1.7.i.
Determining	Reasonableness	4.7.2.
	Receipt and Evaluation of Quotations	3.4.7.
	Receipt and Initial Review (of Unsolicited Offers)	3.7.4.
	Receipt of Offers	3.5.6.
After	Receipt of Offers	3.5.5.c.
	Receiving, inspecting, and either accepting or rejecting contractor deliverables	7.2.4.d.
Maintaining	Record	7.1.
Property	Record	7.3.2.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Performance	Record Keeping	7.5.2.
Opening and	Recording	3.5.6.b.
	References	1.3.3.(a)
Travel	Reimbursement	5.2.1.m.
Cost	Reimbursement Contract	4.1.13.
	Reinstatement	7.10.2.e.
Receiving, inspecting, and either accepting or	rejecting contractor deliverables	7.2.4.d.
Disqualified Offer and Offer	Rejection	1.4.2.c.
Notice of	Rejection	7.6.5.o.
	Rejection of All Offers	3.5.12.
Cost or Price	Related Factors	2.1.7.h.
Public	Relations and Advertising Costs	4.7.4.a.
	Relationship Between Judiciary and Contractor Representatives	7.2.9.
	Release of Information	1.6.
Awarded Contracts	(release of information)	1.6.1.b.
Debriefing	(release of information)	1.6.1.g.
Internal documents	(release of information)	1.6.1.c.
Options	(release of information)	1.6.1.f.
Pricing	(release of information)	1.6.1.d.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Unsuccessful Proposal	(release of information)	1.6.1.e.
	Release of Procurement Documents to the Public	1.6.1.
After	Release of the Solicitation	3.5.5.b.
Contract	Remedies	7.6.2.
Types of	Remedies	7.6.3.
	Remedies and Damages	7.10.8.
	Remedies (liquidated damages)	7.6.4.h.
	Rental Under Unexpired Lease	4.7.5.f.
The Contractor's	Reply is Obtained and Analyzed	7.6.4.f.
Unauthorized Procurement Actions	Report	Exhibit 1-2
	Reporting Requirement (ratification)	1.5.1.g.
Relationship Between Judiciary and Contractor	Representative	7.2.9.
Distinctions Between Contracting Officer (CO) and Contracting Officer's Technical	Representative (COTR)	7.2.3.
Damages for Non-delivery or	Repudiation	7.10.9.d.
	Repurchase Against Contractor's Account	7.10.8.b.
Disposition of Change	Request	1.3.4.b.
	Requesting Office Responsibilities	2.1.3.
Table 4-2 Instructions for Submitting Cost/Price Offers When Cost or Pricing Data is	Required	Exhibit 4-2

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Reporting	Requirement (ratification)	1.5.1.g.
Indefinite Delivery Contracts: Indefinite-Quantity and	Requirements	4.1.5.
Quality	Requirements	2.2.1 .
Standard Inspection	Requirements	2.2.1.e.
	Requirements Contracts	4.1.5.e.
Procedural	Requirements for Debarment	3.3.5.
Procedural	Requirements (for Protest)	3.9.2.
Market	Research	2.1.6 .
Market	Research Methods	2.1.6.b.
	Resolution (of protest)	3.9.2.i.
Cure Notice	Response	7.10.5.f.(1)
Evaluate Contractor's	Response	7.10.5.f.
Show Cause Notice	Response	7.10.5.f.(2)
(Contract Administration)	Responsibilities	7.2.
Purchasing Office	Responsibilities	2.1.4 .
Requesting Office	Responsibilities	2.1.3.
Roles and	Responsibilities	2.1.2.
Authority and	Responsibility	1.2.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Subcontractor	Responsibility	3.3.1.c.
Authority,	Responsibility, and Conduct	Chapter 1
Determining	Responsibility and Nonresponsibility	3.3.2.
	Responsibility for Acceptance	2.2.2.c.; 7.6.7.
	Responsibility for Procurement Policy	1.2.2.
	Responsible Prospective Contractors	3.3.1.
	Restricted Computer Software	6.5.4.
	Restrictions (BPAs)	3.4.8.g.
	Restrictions (expert and consultant)	5.2.1.i.
	Restrictions on Purchases with Appropriated and Decentralized Funds	Exhibit 1-1
	Review of BPAs	3.4.8.j.
	Review of Contractor Deliverables	7.5.3.e.
Receipt and Initial	Review (of Unsolicited Offers)	3.7.4.
Subcontractor	Rights	7.10.3.f.(1)
Limited	Rights Data	6.5.3.
Unlimited	Rights Data	6.5.2.
Prime Contractor	Rights and Obligations	7.10.3.f.(2)
Bonds, Insurance, Taxes, and	Rights in Data	Chapter 6
	Rights in Data and Copyrights	6.5.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Data	Rights Policy	6.5.1.
	Rights to Data in Successful Offers	6.5.11.
Transfer of Title and	Risk of Loss	2.2.2.f.; 7.6.10.
	Role and Responsibilities	2.1.2.
	Role of COTR's Supervisor	7.2.6.
	Sample Evaluation Factors	Exhibit 2-1
	Sample Offering Letter to Randolph-Shephard Agency	Exhibit 3-1
Delivery or Performance	Schedule	2.2.4.
GSA Federal Supply	Schedule	3.1.5.
Ordering Procedures for Use of	Schedule	3.1.5.d.
Monitoring the progress of a contractor and making sure deliverable	schedule are maintained	7.2.4.a.
	Scope	1.1.2.
Bilateral modification within the	scope of the contract	7.8.2.a.
Unilateral modification within the	scope of the contract	7.8.2.b.
	Selecting Contract Type	4.1.; 4.1.2.
Limitations	(Selecting Contract Type)	4.1.3.
Architect-Engineer	Selection	5.3.4.
	Selection and Negotiation	3.5.18.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
	Selection for Award	3.5.10.
Non-disclosure of proprietary and source	selection information	1.4.1.c.
Source	Selection Plans	2.1.7.
Architect-Engineer	Selection Process for Small Purchases	5.3.5.
	Self Insurance	6.3.3.
Exceptions	(Service Contract Act)	3.4.4.c.
Acceptance of Products and	Services	2.2.2 .
Architect- Engineer	Services	5.3.1.
Nonconforming Products or	Services	7.6.5.
Purchases of	Services	3.4.4.
Ensuring that the contractor is paid for	services and products that have been delivered and accepted	7.2.4.g.
Expert and Consultant	Services Contracts	5.2.
Personal	Services Contracts	5.1.
Professional	Services/Work for Hire	6.5.9.
Assistance in Subcontract	Settlement	7.10.3.i.
Claim	Settlement	7.9.2.a.
Direct	Settlement by the Judiciary	7.10.3.j.
	Settlement Expenses	4.75.h.
	Settlement of Subcontractor Claim	7.10.3.f.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Delay in	Settlement of Subcontractor Claim	7.10.3.h.
Contracts for	Severable Services	2.2.9.f.
Workshop for People Who are Blind or	Severely Disabled	3.1.2.
Cost-	Sharing Contract	4.1.13.d.
Randolph-	Sheppard Act	3.1.3.
Sample Offering Letter to Randolph-	Shephard Agency	Exhibit 3-1
	Show Cause Notice	7.10.5.e.
	Show Cause Notice Response	7.10.5.f.(2)
Quality Assurance at Judiciary	Site or Destination	2.2.1.f.
Quality Assurance at Contractor	Site or Origin	2.2.1.g.
Architect-Engineer Selection Process for	Small Purchase	5.3.5.
	Small Purchase greater than the noncompetitive purchase threshold	7.1.1.c.
	Small Purchase Procedures	3.4.
Administration Under	Small Purchase Procedures	3.4.9.
Applicability	(Small Purchase Procedures)	3.4.1.c.
Competitive	Small Purchase Procedures	3.4.3.
Limitations	(Small Purchase Procedures)	3.4.1.d.
Ordering Methods Under	Small Purchase Procedures	3.4.8.
Soliciting Under	Small Purchase Procedures	3.4.5.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Open Market	Small Purchase Procedures With or Without Competition	3.4.2.; 7.1.1.b.
Acquisition of Existing Computer	Software	6.5.10.
Restricted Computer	Software	6.5.4.
Unmarked or Improperly Marked Data or	Software	6.5.7.
After Release of the	Solicitation	3.5.5.b.
Amending	Solicitation	3.4.5.d.
Amendment of	Solicitation	3.5.3.
Availability of	Solicitation	3.5.1.b.(5)
Before	Solicitation	3.5.5.a.
Cancellation of	Solicitation	3.5.4.
Method of	Solicitation	3.5.1.b.(3)
Multiple Awards from One	Solicitation	4.1.5.f.
Oral	Solicitation	3.4.5.c.
Preparation of	Solicitation	3.5.1.a.(1)
Written	Solicitation	3.4.5.b.
	Solicitation Provisions and Contract Clauses	1.3.3.(c)
	Soliciting Under Small Purchase Procedures	3.4.5.
	Soliciting Under Standard Competitive Contracting Procedures	3.5.1.a.
Procurement	Source	3.1.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
	Source (BPAs)	3.4.8.e.
	Source of Supply	3.1.1.
Non-disclosure of proprietary and	source selection information	1.4.1.c.
	Source Selection Plans	2.1.7.
	Special Categories of Procurements	Chapter 5
Matters Requiring	Special Consideration (tax)	6.4.3.f.
	Special Works	6.5.8.
	Specifications	2.3.2.
Descriptions,	Specifications, and Statements of Work	2.3.
	Standard Competitive Contracting Procedures	3.5.; 3.5.1.
Soliciting Under	Standard Competitive Contracting Procedures	3.5.1.a.
	(Standard Competitive Contracting) Provisions and Clauses	3.5.1.b.
	Standard Inspection Requirements	2.2.1.e.
	Standards of Conduct	1.4.3.
	Start-up Cost	4.7.5.d.
	State and Local Taxes	6.4.3.
	Statements of Work	2.3.3 .
Descriptions, Specifications, and	Statements of Work	2.3.
	Storage, Handling, and Disposal of Contract File	7.11.2.d.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Evaluation	Strategy	3.4.6.c.(2)
Assistance in	Subcontract Settlement	7.10.3.i.
	Subcontracting	7.4.
	Subcontractor Claim	4.7.5.i.
Delay in Settlement of	Subcontractor Claim	7.10.3.h.
Settlement of	Subcontractor Claim	7.10.3.f.
	Subcontractor Responsibility	3.3.1.c.
	Subcontractor Rights	7.10.3.f.(1)
Evaluation	Sub-factors	2.1.7.g.
(Invoices)	Submission	7.7.2.b.
Table 4-2 Instructions for	Submitting Cost/Price Offers When Cost or Pricing Data is Required	Exhibit 4-2
	Substantial Nonconformance	7.6.5.m.
Rights to Data in	Successful Offers	6.5.11.
Role of COTR's	Supervisor	7.2.6.
Sources of	Supply	3.1.1.
GSA Federal	Supply Schedules	3.1.5.
	Supporting information (Unsolicited offers)	3.7.3.d.
	Supporting unusual contract actions when necessary, such as protests, disputes, terminations, etc.	7.2.4.j.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
	Sureties	6.2.; 6.2.1.
Claims Against	Sureties	6.2.4.a.(3)
Contract Administration (for	Sureties)	6.2.4.
Corporate	Sureties	6.2.1.b.
Individual	Sureties	6.2.1.c.
Information and Notice to	Sureties	6.2.4.a.
Correspondence	(surety)	6.2.4.a.(1)
Deposit of Assets Instead of	Surety Bonds	6.2.2.
	Surety Notification and Arrangements	7.10.7.1.
	Surety Takeover Agreement	6.2.4.b.
Preaward	Surveys	3.3.2.
Notice of	Suspension	3.3.6.c.
Period of	Suspension	3.3.6.d.
Debarment,	Suspension, and Ineligibility	3.3.3.
Posting and	Synopsis	3.5.1.a.(4)
Rating	Systems	2.1.7.i.
	Table 4-2 Instructions for Submitting Cost/Price Offers When Cost or Pricing Data is Required	Exhibit 4-2
Surety	Takeover Agreement	6.2.4.b.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Procurement Files (Purchase/Delivery/	Task Order or Contract Files)	7.1.1.
Exemption from	Tax	6.4.3.d.
Federal Excise	Tax	6.4.2.
Matters Requiring Special Consideration	(tax)	6.4.3.f.
	Taxes	6.4.; 4.7.4.k.
Bonds, Insurance,	Taxes, and Rights in Data	Chapter 6
Clauses	(Taxes)	6.4.4.
State and Local	Taxes	6.4.3.
	Technical Analysis	4.2.; 4.2.1.
Providing	“technical direction,” consisting of guidance, answering questions, and addressing other issues that the contractor may have; but not “changing”the procurement	7.2.4.e.
	Technical Evaluation Criteria	Exhibit 2-1
	Technical information (Unsolicited offers)	3.7.3.c.
Distinctions Between Contracting Officer (CO) and Contracting Officer’s	Technical Representative (COTR)	7.2.3.
	Technically Acceptable Lowest Price	2.1.7.c.; 3.4.6.
Completion or	Term Form	4.1.13.f.(3)
Contract	Termination	7.10.
Cost Continuing After	Termination	4.7.5.c.
Notice of	Termination	7.10.2.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
	Termination and Cancellation of Purchase Orders	3.4.10.
Notice of Impending	Termination - Causes Other Than Failure to Make Timely Delivery	7.10.4.d.
	Termination Costs	4.7.5 .
Supporting unusual contract actions when necessary, such as protests, disputes,	termination, etc.	7.2.4.j.
	Termination for Convenience	7.10.3.
	Termination for Default	7.10.7.
Procedure in Lieu of	Termination for Default	7.10.6.g.
	Termination for Default Notice	7.10.6.
Determination Following	Termination Notice	7.10.6.h.
	Terms and Conditions	2.2.
Purchase Order	Terms and Conditions	3.4.8.a.(2)
	Third- Party Claim	7.7.5.c.
Small Purchase greater than the noncompetitive purchase	threshold	7.1.1.c.
Offer	Time	3.5.1.b.(2)
	Time and Materials Contracts	4.1.8.
	Time for Filing a Protest	3.9.2.e.
	Time of Payment	7.7.3.b.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Demand for Adequate Assurance for Causes Other Than Failure to Make	Timely Delivery	7.10.4.e.
Failure to Make	Timely Delivery	7.10.4.
Notice of Impending Termination - Causes Other Than Failure to Make	Timely Delivery	7.10.4.d.
Transfer of	Title and Risk of Loss	2.2.2.f.; 7.6.10.
Composition of	Total Cost	4.6.2.a.
	Transfer of Title and Risk of Loss	2.2.2.f.; 7.6.10.
	Travel Reimbursement	5.2.1.m.
Limitations (Selecting Procurement	Type)	4.1.3.
Contract	Type	Chapter 4
Selecting Procurement	Type	4.1.; 4.1.2.
	Type of Insurance	6.3.2.
Other	Type of Bonds	6.1.5.
	Type of BPAs	3.4.8.c.
	Type of Modifications	7.8.2.
	Type of Remedies	7.6.3.
	Types of Contracts and Analysis of Offers	Chapter 4
	Unallowable Cost	4.7.4.
Accounting for	Unallowable Cost	4.7.4.m.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
	Unauthorized Procurement Actions Report	Exhibit 1-2
Rental Under	Unexpired Lease	4.7.5.f.
	Uniform Contract Format	1.3.3.(b)
	Unilateral modification within the scope of the contract	7.8.2.b.
	Unlimited Rights Data	6.5.2.
	Unmarked or Improperly Marked Data or Software	6.5.7.
	Unsolicited Offer	3.7.
Basic information	(Unsolicited offer)	3.7.3.b.
Content of	Unsolicited Offer	3.7.3.
Evaluation (of	Unsolicited Offer)	3.7.5.
Judiciary Points of Contact (for	Unsolicited Offer)	3.7.2.
Limited Use of Data (from	Unsolicited Offer)	3.7.8.
Prohibitions (of	Unsolicited Offer)	3.7.7.
Receipt and Initial Review (of	Unsolicited Offer)	3.7.4.
Supporting information	(Unsolicited offer)	3.7.3d.
Technical information	(Unsolicited offer)	3.7.3.c.
	Unsolicited Offer - Use of Data Limited	3.7.8.d.
	Unsuccessful Proposal (release of information)	1.6.1.e.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Supporting	unusual contract actions when necessary, such as protests, disputes, terminations, etc.	7.2.4.j.
Commercial	Use Agreement	5.4.
	Use and Disclosure of Data	3.7.8.a.
	Use of BPAs	3.4.8.d.
	Use of Contractors to Monitor Contract Performance	7.2.8.
Limited	Use of Data (from Unsolicited Offers)	3.7.8.
Unsolicited Offer -	Use of Data Limited	3.7.8.d.
Disclosure and	Use of Information	3.5.5.
Loss of	Useful Value	4.7.5.e.
Best	Value	3.4.6.c.
Loss of Useful	Value	4.7.5.e.
Best	Value Purchases	2.1.7.d.
	Wage Determination	3.4.4.d.
Javits-	Wagner- O'Day(JWOD) Act	3.1.2.a.
(Errors and Omissions Insurance)	Waiver	6.3.4.c.
	Waivers/Deviations	1.2.3.
	Warranties	2.2.3.
Implementing Express	Warranties	7.6.11.

Context Preceding Keyword	Keyword and Context Following Key Word	JP3 Reference
Judiciary-	Wide Contracts	3.1.4.
Award	With Discussions	3.5.14.
Fixed- Price Contract	With Economic Price Adjustment	4.1.12.
Open Market Small Purchase Procedures	With or Without Competition	3.4.2.; 7.1.1.b.
Modification and	Withdrawal	3.5.6.c.
	Withholding Payments	7.7.4.
	Withholding Payment Under Clauses	7.7.5.d.
Award	Without Discussions	3.5.13.
Award Made	Without Discussions	3.5.7.a.
Bilateral modification	within the scope of the contract	7.8.2.a.
Unilateral modification	within the scope of the contract	7.8.2.b.
Professional Services/	Work for Hire	6.5.9.
	Worker's Compensation and Employers' Liability Insurance	6.3.2.a.
Special	Works	6.5.8.
	Workshop for People Who are Blind or Severely Disabled	3.1.2.
	Written Solicitations	3.4.5.b.